



EMPLOYMENT TRIBUNALS

Claimant: Dr L Reynolds

Respondent: London School of Hygiene & Tropical Medicine

Heard at: London Central Employment Tribunal

On: 8, 9, 11, 12, 15 – 18 February 2021

In chambers: 22 & 23 February 2021

Before: Employment Judge Khan
Mr D Carter
Mr G Bishop

Representation

Claimant: In person

Respondent: Ms B Criddle, Counsel

RESERVED JUDGMENT

The unanimous judgment of the tribunal is that:

- (1) The complaint of indirect disability discrimination fails and is dismissed.
- (2) The complaint of direct sex discrimination (allegation 8 in the agreed list of issues) fails and is dismissed.
- (3) The complaint of direct sex discrimination (allegations 11 and 12 in the agreed list of issues) is dismissed because the claimant did not actively pursue these allegations.
- (4) The complaint of equal pay (both in relation to like work and equal value) fails and is dismissed.

REASONS

1. By claims presented on 20 August 2018, 29 April and 9 December 2019, the claimant brought complaints of disability and sex discrimination, and equal pay. The respondent resists these complaints.

2. Allegations 6 and 7 of the second claim were struck out in a judgment sent to the parties on 4 September 2019.
3. We dismissed allegations 11 and 12 of the agreed list of issues because the claimant confirmed that she did not actively pursue them (on day three of the hearing).

The issues

4. We were required to determine the following issues which are based on the list of issues agreed by the parties in advance of the hearing:

A. Indirect disability discrimination (section 19 EQA)

(The first claim by amendment granted on 14 May 2019)

1. Does the respondent by its Promotion on the Academic Pathway – General Guidance 2018 apply a provision, criterion or practice that substantial mandatory unpaid work is a pre-requisite for promotion?
2. If so, does that put people suffering from cancer at a particular disadvantage? The claimant contends that fatigue caused by cancer and by chemotherapy treatment places those suffering from cancer at a particular disadvantage as this fatigue makes it harder for them to undertake substantial mandatory unpaid work.
3. If so, does it place the claimant at that disadvantage? The claimant contends that she was placed at that disadvantage because her cancer and chemotherapy treatment caused her fatigue.
4. If so, can the respondent show that the PCP was a proportionate means of achieving a legitimate aim? The respondent contends in its amended grounds of resistance that the PCP was a proportionate means of achieving a legitimate aim, namely:
 - a. comply with the objects in the respondent's Charter which are promoting original research, consultancy and the study of and education in public health and tropical medicine, and such other academic subjects as the School may consider appropriate;
 - b. recruit, promote, reward and retain members of the academic staff with appropriate academic standing;
 - c. maintain or improve the academic standing and reputation of the respondent nationally and internationally.
5. Has the complaint been presented within three months of the date of the act complained of and if not, would it be just and equitable to extend time to consider it?

B. Direct sex discrimination (section 13 EQA)

(The first claim by amendment granted on 14 May 2019)

6. Did the respondent treat the claimant less favourably because of her sex than it treated Dr Matthew Yeo each time it decided to continue to employ her on a 0.2 FTE contract compared to Dr Yeo who was employed on a 0.5 FTE contract? The dates on which the relevant decisions were made by the respondent are 22 August 2017 and 29 June 2018.
7. The claimant contends that there is evidence from which the tribunal could infer that each decision to continue to employ her on a 0.2 FTE contract rather than a 0.5 FTE contract was because of her sex, namely an alleged gender pay gap between male and female course directors.
8. Has the complaint been presented within three months of the date of the act complained of and if not, would it be just and equitable to extend time to consider it?

C. Victimisation (section 27 EQA)

(The second claim)

9. Did the respondent do the following alleged acts:
 - a. The new Dean, Professor Kara Hanson, making it appear that she was conducting an investigation into a grievance against the claimant – by talking to the claimant’s colleagues Dr Yeo and Professor Miles in or around October 2018 about the claimant outside of a formal process.
 - b. Removing the claimant’s office space over the Christmas closure 2018/19; and/or
 - c. Removing the claimant’s name from outside an office door in January 2019; and/or
 - d. Failing to acknowledge the claimant’s grievance submitted on 22 January 2019 and blocking the claimant’s access to the respondent’s grievance procedure?
10. If so, were these detriments to which the claimant was subject by the respondent because she had done a protected act, namely presented the first claim to the tribunal on 20 August 2018?
11. In respect of each complaint, has it been presented within three months of the date of the act complained of and if not, would it be just and equitable to extend time to consider it?

D. Equal Pay (sections 64 – 70 EQA)

(The third claim)

12. Was the claimant doing like work to Dr Yeo and / or Dr Hickson, and if so for what period?
13. If so, was there a material factor which does not involve reliance on direct or unjustified indirect sex discrimination? The factors relied upon by the respondent are the claimant being employed in a different post at a different grade to her comparators.
14. If the respondent fails to establish a material factor defence, the issue of equal value will fall for consideration thereafter.

The evidence and procedure

5. The hearing was a remote public hearing, conducted using the Cloud Video Platform (CVP) under rule 46. The parties were able to hear what the tribunal heard and see the witnesses as seen by the tribunal. There were a number of occasions when the claimant lost connectivity when the tribunal stopped and waited for the claimant to log back in. There was also a connectivity issue at the start of Ms Solomon's evidence which was resolved. In accordance with rule 46, the tribunal ensured that members of the public could attend and observe the hearing. This was done via a notice published on Courtserve.net. Several members of the public attended and those who requested it were given access via the respondent's solicitors to the hearing bundle and witness statements.
6. We were astute to ensure that the claimant was afforded as many breaks as necessary and that the witness evidence, and closing submissions, were timetabled to give the claimant sufficient time to prepare and rest.
7. The claimant gave evidence herself. For the respondent, we heard from: Dr Dame Anne Mills, Professor of Health Economics and Policy, and the Deputy Director and Provost; Dr Kara Hanson, Professor of Health System Economics and Dean of the Faculty of Public Health and Policy ("PHP"); Kessar Kalim, Director of HR; Niki Jones, Faculty Operating Officer for the Faculty of PHP; and Shirley Solomon, Department Office Administrator in the Department of Health Services Research and Policy.
8. There was a hearing bundle of 2489 pages. We allowed into evidence, by agreement, a limited number of additional documents. We read the pages to which we were referred.
9. We also considered written and oral closing submissions.
10. References below to [25] and [X/25] are to the bundle and witness statements, respectively.

11. Mindful that the claimant was a litigant in person and upon her alluding to other allegations at the start of this hearing, we referred the claimant to the relevant guidance on amendment applications set out in Selkent Bus Co v Moore [1996] ICR 836 and the overarching consideration of the relative balance of hardship. The claimant confirmed that she did not wish to make an application to amend her claims.

The facts

12. Having considered all the evidence, we make the following findings of fact on the balance of probabilities. These findings are limited to points that are relevant to the legal issues.
13. The respondent is a centre for research and postgraduate education in public and global health. It is a postgraduate-only college of the University of London. It comprises of three faculties: Public Health Policy (“PHP”); Infectious and Tropical Diseases (“ITD”); and Epidemiology & Population Health.
14. The claimant has at all material times worked in the Faculty of PHP. This faculty has around 250 academic staff and 140 research students across three departments: Health Services Research & Policy; Social & Environmental Health Research; and Global Health Development.
15. The claimant who has a background in humanitarian and consultancy work was initially engaged by the respondent on a zero hours teaching contract in 2008, having gained a doctorate in public health in the same year.

Cancer diagnosis and treatment

16. In the autumn of 2016 the claimant’s health deteriorated markedly. Between October 2016 and January 2017 she lost a third of her body weight. The claimant was diagnosed with late-stage lymphoma in January 2017 for which she underwent chemotherapy from April 2017. The cancer was in remission by July 2017. A year later, in July 2018, new tumours appeared, for which the claimant had a PET scan later that month followed by immunotherapy / chemotherapy in August and September 2018. A further PET scan in November 2018 and a biopsy in December 2018 revealed the presence of a treatment-resistant tumour in her throat. The tumour was removed in April 2019 (which resulted in a lung infection which took several months to resolve), followed by radiotherapy in June 2019. A melanoma was removed in October 2019. In May 2020, a scan confirmed remission of the throat tumour and revealed other tumours for which it is understood that the claimant continues to receive treatment.
17. The claimant says this did not affect her work performance or attendance.

The Academic Pathway

18. The respondent’s grading structure and system for academic staff, known as the Academic Pathway, enumerates the following grades and

corresponding title in ascending order of seniority: grade 5 / Research Assistant; grade 6 / Research Fellow; grade 7 / Assistant Professor (formerly Lecturer); grade 8 / Associate Professor (formerly Senior Lecturer); and professorial grades in ascending order from bands C, Bii, Bi and A.

19. Academic staff can either be appointed into one of the grades via a competitive selection process or through the annual promotion round when each application is considered on its own merit by reference to set criteria. We accepted the claimant's unchallenged evidence that academic staff already employed on grade 5 progress automatically to grade 6 when they obtain their doctorate.

Research Fellow appointment in March 2010

20. The claimant was appointed on 22 March 2010 as a Research Fellow (grade 6) in the Public and Environmental Health Research Unit (now Department) within the Department (now Faculty) of PHP in March 2010. This fixed-term research appointment was extended to July 2011. It was for 0.75 FTE (i.e. Full Time Equivalent).
21. The claimant's terms and conditions of employment referred [609] to the respondent's standard requirement for staff on teaching or teaching and research grades to spend up to 10% or 15 of their time, respectively, on teaching. The higher figure applied to the claimant's role. Teaching deployment was subject to the discretion of deans of faculty. These teaching requirements were also set out in the respondent's Allocation of Teaching Policy [366].

Programme Director appointment

22. The claimant was appointed into the role of Course Director (since renamed and hereafter referred to as 'Programme Director' ("PD") of the MSc Control of Infectious Diseases ("CID") programme on 1 October 2010 for an initial period of 12 months. The claimant was responsible to Dr Hannah Babad, Taught Course Director, in the Faculty of PHP [623], although Dr Babad did not in fact assume line management responsibility for the claimant until October 2018.
23. The CID course is a cross-faculty programme delivered by the ITD and PHP faculties. It is delivered as a one-year full time / two-year part-time taught course. The student intake fluctuates each year but is around 60. Students complete a core module in the first term and six study modules in the second, and third terms. The focus of this programme is infectious diseases and the control thereof as the course description [311] makes clear:

"This course aims to bridge the disciplines of epidemiology, laboratory sciences and public health and policy for training and retraining of students who wish to work directly on a multidisciplinary practical approach to the control of infectious diseases, and to equip

students with specialised skills that will facilitate a career in the control of infectious diseases...

Objectives

At the end of this course students should be able to: investigate the transmission of endemic and epidemic infections; select appropriate methods of control; design, implement and evaluate co-ordinates control methods; assess constraints of local public health delivery systems; manage available resources in the context of infectious diseases, and focus their efforts on particular geographical regions or specific diseases.”

In her oral evidence, the claimant agreed that this was an ITD-led course and the ITD Faculty provided the larger staff commitment of the two faculties with the PHP Faculty providing a more limited commitment of her 0.2 FTE PD role and two lecturers.

24. A PD is a teaching management position for which there is a generic job description template [310]. In her oral evidence, which we accepted, Professor Anne Mills, Deputy Director and Provost, agreed that the same core duties applied to all PDs which were then modified according to the requirements of each programme. In relation to PD work being undertaken by academic staff on different grades: Professor Mills said that there was not much of a difference between what Research Fellow and Assistant Professor brought to the role; and although she said there was a difference in academic expertise and standing which a Professor brought to the role as compared with an Assistant Professor, on the evidence before us this did not appear to amount to a requirement for the PD role itself. Nor did any of the respondent’s other witnesses identify what qualitative differences staff on grades 8 or above were required to bring to their PD work in comparison with those on lower grades.
25. The generic job description was modified, in the claimant’s case, for the PHP CID programme [625]. Both documents set out the duties of the role under the following three headings: course management, course delivery and student support. The claimant’s job description incorporated with one exception (i.e. leading as chair of the course committee) all elements set out in the generic document. It also had two additional entries under student support, including responding to enquiries from students (and prospective students) via email by using the proxy account. As this job description set out, this was one of two PDs who were required to “work as a team and share the duties and responsibilities for running the MSc course” across both faculties. It expressly referred to working in tandem with the ITD PD. We accept the respondent’s evidence that there was no automatic presumption that these responsibilities would be shared equally between the two PDs but according to the needs of the course, the composition of the student cohort and the respective resources and commitments that each faculty invested in the programme. In relation to the periodic course reviews (conducted annually and a more in-depth evaluation every five years) the ITD PD was cited the lead. We do not therefore find that there was a

presumption that as co-PD the claimant would be responsible for either half of the PD duties or for half of the student intake.

26. The PD role was intended to be undertaken alongside other academic work although in practice it has in several instances, such as the claimant's case since August 2011, become a standalone role by default when other contracted academic work has ceased. The PD role was therefore one for which an academic was either initially allocated or appointed to undertake in addition other contracted work. It was either incorporated within an academic's 1.0 FTE role for which there was no designated FTE allocation nor additional pay or it was additional to an academic's fractional teaching or research work for which an FTE allocation was designated and remunerated on the basis of their extant grade.
27. As the claimant was already employed as a Research Fellow she was therefore paid at grade 6 for this PD work when she took up this role in 2010. The claimant was not issued with a separate contract or terms and conditions for this PD role. She was contracted to work as a PD on the same terms as her research work. When the claimant's research contract was extended in May, June and July 2011 the respondent referred to the combined FTE of both roles (0.95 FTE) and confirmed that she would revert to 0.2 FTE (i.e. her PD role) when this research work ended. Since August 2011 the claimant has worked exclusively as a co-PD for the CID programme on 0.2 FTE apart from the 2013/14 academic year when she also worked as a PD on another course and in 2017 when she completed three months' research on a full-time basis (funded externally by WHO). The claimant has remained on grade 6.
28. We have no doubt that the claimant is a committed and dedicated PD who has applied herself with great diligence in the cause of her students and the CID programme more widely.

The FTE allocation

29. The CID programme was founded in 1996 by Professor Michael Miles of the ITD Faculty. Professor Jenny Roberts then of the PHP Faculty was co-PD. Because both professors were on 1.0 FTE 'without duration' contracts it was unnecessary to formally designate FTE allocations. We accept the evidence of Professor Mills, then Dean of the PHP Faculty, [AM/64-66] that it was envisaged from the outset that the two faculties would share the management and administration for the programme and the intention was that the ITD PD would be responsible for the major share of the work which corresponded with the academic focus of the programme and the relative deployment of expertise and resources from ITD and PHP. When Professor Roberts retired in 2006, Dr Nicky Thorogood, then Taught Programme Director in PHP, allocated 0.2 FTE for this PD work and the PHP Faculty budget was amended to include the central funding allocation for this. Professor Mills endorsed Dr Thorogood's recommendation which was itself based on a common understanding of the PD role and what the specific PHP commitment would be. It was also based on student numbers and the preponderance of ITD-oriented students. We accept Professor Mills' oral

evidence that she gained a clear understanding from discussions with Dr Thorogood and Professor Roberts that the nature of the PHP contribution based on the type and volume of tasks involved was very much a minority share in the programme. This was because the PD role was seen as largely one of mobilising and allocating tasks, and not teaching. As Dr Babad, who replaced Dr Thorogood as PHP Taught Programme Director, wrote in an email dated 17 July 2018 [1495]:

“The rationale for PHP input was to have policy input into the MSc and to guarantee some tutor support...it seems to me that it’s very ITD led anyway...”

We therefore find that this 0.2 FTE allocation in 2006, which predated the claimant’s appointment, was based on an evaluation by the PHP Faculty of the commitment required of it for this ITD-led programme. The claimant did not contend that this FTE allocation nor her appointment in 2010 on 0.2 FTE were tainted by sex discrimination. In fact, in her oral evidence, she accepted that this allocation had nothing to do with her sex. Notably, when the claimant applied for promotion in 2011 she explained [1262]:

“The team is led by Professor Michael Miles, who holds the equivalent post to mine in ITD; we split responsibility for tasks according to timing and skills required. The course has been running 10 years; it functions efficiently as does the CID Course Committee”

In her oral evidence, which we accepted, Professor Mills also said that there had not been a significant change in the purpose of the CID programme since its inception. We find that this is borne out by the fact that when the annual faculty budgets were set Dr Babad “re-bid” for the same 0.2 FTE allocation each year. It is also notable that, as will be seen, the claimant did not complain about this allocation until 2018.

The claimant’s application for promotion in 2011

30. The claimant applied for promotion to grade 7 in the spring of 2011. This application was supported by several referees including Professor Mills. It was made through the annual promotion round and was not a competitive exercise. The applicable Staff Review Committee Promotion Procedures provided for an assessment based on the applicant’s current role which was scored against the HERA job evaluation tool. Although the claimant’s PD work was HERA-assessed at grade 7, her application was not successful because she was not deemed to have met the requisite thresholds for each of the scoring criteria i.e. teaching, research and citizenship. Professor Mills confirmed this outcome on 22 August 2011 when she told the claimant that she needed to strengthen her application in relation to teaching development and scholarship. The claimant has not applied for promotion again.
31. Although the claimant takes issue with this promotion process she told the tribunal that she no longer pursued her allegation that the decision to reject her application for promotion in 2011 amounted to sex discrimination. She

agreed that the evidence showed that that she and Dr Yeo were both scored at grade 7, albeit in different academic years, and neither of them were promoted.

32. The claimant's PD 0.2 FTE appointment was extended from October 2011 for three years until September 2014. By the date of this first extension in October 2011, the claimant's fixed-term research appointment had expired which meant that she was now employed solely to carry out this PD work. This was extended for another year in October 2014. Because this work was reliant upon periodic approval of funding the respondent's standard procedure was that a redundancy consultation would be triggered when there were three months left to run on the contract and the funding for its renewal had not been allocated.

Proposal in relation to PDs – 2015

33. In April 2015 Professor Richard Smith, then Dean of the Faculty of PHP, notified PDs [1326], including the claimant, about a proposal to allocate PD roles to academic staff on grade 8 and above. Professor Smith explained that this proposal would need to be approved by the SLT (i.e. the Senior Leadership Team), the Planning and Finance Committee, and Council, before it was adopted and implemented. This was likely to take several years. The claimant understood that this amounted to a proposal to either make standalone PDs like herself redundant or to promote them to grade 8. The claimant discussed this with Professor Miles and was reassured that she was not likely to be made redundant because of the success and profitability of the CID programme.
34. The claimant's 0.2 FTE contract was extended by nine months in October 2015 to 31 July 2016 which was the end of respondent's financial year. The claimant's contracts were extended thereafter to coincide with this end date. It was extended by a further year to 31 July 2017.

The claimant's comparators

35. The claimant compares herself with Dr Matthew Yeo with whom she had joint responsibility as co-PD for the CID programme from October 2017 and also Dr Ford Hickson who since 2014 has been one of six co-PDs for the MSc in Public Health. Both Dr Yeo and Dr Hickson were appointed on a 0.5 FTE allocation for their respective PD roles.
36. Dr Yeo was initially employed as a Research Assistant (grade 5) by the respondent in 2003. He was upgraded to grade 6 in 2004 upon completion of his doctorate. When he applied for promotion in 2008, he was HERA-assessed at grade 7 but was not promoted on the basis that this application was premature. He was put onto a without duration contract in January 2011 [1039]. He was one of around 40 academic staff employed on fixed-term contracts (and which did not include the claimant or Dr Hickson) to whom the respondent applied this measure in 2011. We accept Professor Mills' oral evidence that this was a one-off action which was taken by the then HR Director. Dr Yeo was not promoted to grade 7 until 2015 and

remains on this grade having applied twice for promotion unsuccessfully in 2017 and 2019. He was appointed as co-PD for the CID programme on 0.5 FTE from October 2017.

37. In February 2011 Dr Ford Hickson was appointed as a full-time Lecturer (now Assistant Professor) (grade 7) in the Department of Social & Environmental Health Research. This was for an initial duration of 13 months ending on 31 March 2012. This contract was extended periodically until he was moved onto a without duration contract in April 2019. Dr Hickson became a PD for the MSc in Public Health programme in 2014 on an 0.5 FTE allocation. He was promoted to Associate Professor (grade 8) in December 2018, having applied unsuccessfully for promotion in 2013. Since gaining this promotion Dr Hickson has continued to undertake the PD role although without a formal FTE designation.
38. Excluding his upgrade to grade 6, Dr Yeo had therefore been promoted once out of four attempts in 15 years and Dr Hickson promoted once out of two attempts in 7 years. We were also taken to evidence in relation to Dr Neil Spicer who was a named comparator in relation to a complaint since withdrawn by the claimant which showed that he was promoted once out of three attempts in 13 years.

Appointment of Dr Yeo as co-PD on the CID course

39. On 22 August 2017 the claimant's contract was extended to 31 July 2018 [642].
40. By this date, in March 2017 Professor Brendan Wren, Dean of Faculty for ITD, had concluded that Dr Yeo should replace Professor Miles, who was intending to reduce his academic commitments, as co-PD of the CID programme on an 0.5 FTE allocation. In an email that month [1127], Professor Wren explained that he had discussed this with Professor Miles who was currently doing 0.5 FTE. In support of this proposal, he noted that Dr Yeo was research active and was likely to apply for Associate Professor within 12 – 18 months; also that the CID programme brought in 73 students. He also noted that Dr Yeo had an external interview and wrote "We can't afford to loose [sic] him, as there would be no succession for the CIDs course, and this would mean an over reliance on Michael [Professor Miles]." Dr Yeo's appointment as co-PD on a 0.5 FTE allocation was confirmed in October 2017 [1133]. This was for initial three-year period. As Dean of Faculty, this was ultimately Professor Wren's decision. We accept the respondent's evidence that Dr Yeo was selected for this role and given this allocation because of the need for succession planning. This was something which Dr Babad noted in an email dated 17 July 2018 (to which we have already referred) [1495] that

"They [ITD] had to pay for Matt Yeo's post at 0.5 because they didn't have anyone else in ITD to take over from Michael Miles".

We therefore find that this was decision was made by senior staff in the ITD Faculty based on the need to succession plan and predicated on the volume

of work which Professor Miles did as co-PD and was handing over to Dr Yeo (Professor Miles would retain some involvement as Deputy PD) and represented the budget commitment which the faculty was prepared to make. We do not therefore find that a woman in the same position as Dr Yeo would have been treated any differently.

Review of PDs / Associate Professor contracts – 2017

41. In December 2017 Professor Smith circulated a paper [344-347] in which he proposed that all PD roles were incorporated into Associate Professor without duration contracts on rotation and ceased to be a paid position in their own right. (As we have found, this was in fact what happened when Dr Hickson was promoted to grade 8 in 2018.) In his paper, Professor Smith, made the case for these changes by reference to quality assurance and consistency, career progression and cost-saving in the wider context of the move to place Associate Professors on without duration contracts.
42. In relation to quality assurance and consistency, Professor Smith wrote:

“The PD role requires experienced teachers, but at present we have PD who range from RF to Professor Band Bi...This is hard to justify on the basis of the specific requirements of the role; either some are vastly under qualified or over qualified. Given the requirement of a PD as a core management and academic leadership role for a specific programme...it would seem that the potential is more for being under-qualified. Having an RF as a PD seems hard to justify...”
43. Not only had these arrangements developed in an ad hoc way with the result that PD work was being undertaken by a range of academic staff, Professor Smith noted, with some concern, that eight of the present incumbents – four research fellows and four assistant professors – were employed solely on PD contracts. This had led to the situation in which fractional FTE staff were employed to manage taught programmes on fixed contracts which made it difficult for these staff to develop teaching scholarship which had been required for career progression. This had been a recognised deficit in the claimant’s 2011 promotion application. There was also an issue in that these roles had become fixed to individual contracts and could not therefore be rotated amongst staff. As to cost, Professor Smith calculated that moving the PD role to Associate Professor without duration contracts would recoup the current cost of paying for this work to be undertaken in its own right of £573,000.
44. However, Professor Smith did not elaborate on whether and if so, how, this allocation of PD work across the grades and in some cases on a standalone basis had impaired the quality of the work being delivered by the current cohort. Furthermore, Professor Smith’s emphasis on the requirement for experienced teachers is contradicted by Professor Mill’s evidence, which we have accepted, that the focus of the PD role was mobilising and allocating tasks, and not teaching. Notably, the respondent has not implemented this proposal.

45. Professor Smith tabulated [347] the 19 academic staff who were paid separately to do PD work (including two Deputy PDs) and employed on a lower grade than Associate Professor and who stood to be adversely affected by his proposal. 10 of these 17 paid PDs were women, eight of whom were on a higher grade and all had a greater FTE allocation than the claimant, and six were standalone PDs. Of the seven men in this cohort, six had a greater FTE allocation and all were on a higher grade than the claimant, and none were standalone PDs.
46. Data that the claimant gleaned from the respondent's website in spring 2018 [1961] shows [C/96] that four of the five PDs at professor grade were men, whereas three out of four at grade 6 were women, the median and average grade for men was grade 8 whereas that for women was grade 7. Across the wider staff body, data set out in an undated presentation entitled 'Improving Health Worldwide' [583] and enumerating the respondent's equality objectives for 2017, showed that there were more women than men employed in on grades 5 (66.3%), 6 (67.6%), 7 (63.4%) and 8 (57.5%) and more men employed on Professor grades (64.6%).

Redundancy consultation 2018

47. With little more than three months left to run on the claimant's contract and without further funding having already been allocated for its extension, Professor Smith wrote to the claimant on 20 April 2018 [1954] to arrange a redundancy consultation meeting. The claimant replied to challenge the assertion that her role was redundant. Notably, Professor Miles (now Deputy PD) and Dr Yeo also wrote to Professor Smith [1412] in support of the need to maintain the PHP contribution to the CID course and of the claimant's specific contribution when they enumerated the following responsibilities which she discharged in her PD role:
- a. PHP project-marking (in the region of 10 – 15 reports per academic year).
 - b. Marking a large number of exam scripts.
 - c. Processing PHP-orientated CARE forms.
 - d. Advising students on aspects of qualitative project design.
 - e. Contributing to exam question setting.
 - f. Delivering five PHP lectures in the first term.
 - g. Responding to PHP-orientated career questions.
 - h. Course tuition and project supervision (five students in the previous year).
 - i. Contributing to the Course Committee and Exam Board meetings.
48. Dr Yeo provided further details about his and the claimant's PD work to Meriel Cartwright, an HR Business Partner, in January 2020, in connection with these proceedings [1188].
- a. Screening applications: Dr Yeo reviewed all 280 applications made to join the course in 2019/20 save for 15 applications which the claimant dealt with because they had a PHP component. In her unchallenged oral evidence, which we accepted, the claimant said

that prior to 2017 she reviewed half of all applications. There was a single point of access to applications which Dr Yeo did not share with her. Although the claimant says that Dr Yeo was motivated by his objectives of achieving greater seniority and FTE allocation, and we make no findings on this, she agreed that from 2017 he screened the bulk of applications.

- b. Tutor allocations: Dr Yeo arranged for tutors for 46 out of 60 students. The claimant was responsible for the remaining 14 students who had a PHP-focus. The claimant agreed that she dealt with a limited number of students with a PHP-focus who she allocated to the limited number of academic staff in the PHP Faculty who acted as tutors on this course. This corresponds with Professor Hanson's oral evidence that, on average, around 20% of the student cohort has a PHP bias and the number of tutors provided by the PHP Faculty is commensurate with this.
- c. Five-year period review: Dr Yeo formulated the document for the periodic review completed in 2019. In her oral evidence, the claimant agreed although she said that they should have done this together. We find that Dr Yeo was the lead PD for this task and is also responsible for taking the lead in the annual course evaluation and curriculum review for this ITD-led programme as set out in the claimant's job description. Further, because this was an ITD-led programme, we also find it likely that Dr Yeo has a greater responsibility for contributing to exam question-setting than the claimant.
- d. Committee meetings: Dr Yeo is responsible for chairing these meetings which the claimant attends. The claimant agreed.
- e. Tutoring: Dr Yeo had seven tutees whereas the claimant typically had one or two. The respondent's data for the 2017/18, 2018/19 and 2019/20 CID cohorts [2212] show that Dr Yeo had four or five tutees each year and the claimant had one in two years and none in the other. This was not included in the PD role as it was part of the teaching element which each member of the academic staff was required to do.
- f. Lecturing: Dr Yeo does group work sessions totalling a minimum of seven hours whereas the claimant delivers six one-hour lectures. We accept the claimant's unchallenged evidence that she also delivers a one-hour lecture on projects in term 2 and a series of up to five qualitative workshop of 90 minutes each.
- g. Marking: Dr Yeo estimated that the claimant did around 25% of the volume of marking of projects and exam scripts that he did. From the relevant records in the bundle [2334-36, 2339-41] Dr Yeo marked three more projects than the claimant in 2017/18 (i.e. 5:2); and the claimant marked one more project than Dr Yeo in 2018/19 (i.e. 5:4); in relation to exam marking, the numbers of questions that the claimant and Dr Yeo were required to mark in each of the three academic years starting 2017/18 were, respectively, 4:5, 3:8 and 1:1. The figures for the 2019/20 academic year appear to be incomplete and we accept the claimant's unchallenged written evidence [C/202iv] that she and Dr Yeo had the same number of exam questions (4) and projects (4) to mark that year. It was not possible

to evaluate the actual number of exam questions each PD was required to mark each year as it was unclear to us whether these questions were mandatory or optional. However, we find the figures reveal that Dr Yeo over-estimated the volume of project-marking he did relative to the claimant (save for 2017/18) and it is likely that he similarly over-estimated the weighting for exam-marking (save, potentially, for 2018/19). Overall we find that Dr Yeo did significantly more marking than the claimant in 2017/18 and 2018/19 but not in 2019/20.

- h. Project supervision: Dr Yeo supervised one to two projects a year whereas the claimant supervised one. We accept the claimant's unchallenged evidence that she supervised five projects in 2019/20.
- i. Supporting students with ethics and approval committees for overseas research: We accept the claimant's oral evidence that they both worked on this and each delivered a talk to students. However, we find that because this was an ITD-led course in which less than 25% of the student cohort had a PHP-focus it is likely that Dr Yeo's involvement in relation to this aspect of the role was substantially greater than the claimant's.
- j. Student welfare: Dr Yeo saw around five students each week. He did not know how many students were seen by the claimant. As we have found above, because of the weighting of this course it is likely that Dr Yeo's involvement was greater than the claimant's.

49. We therefore find that since the 2017/18 academic year, Dr Yeo has been responsible for screening the bulk of the applications for the programme (he was responsible for over 90% of these applications in 2019/20), for arranging approximately 75% of the tutor allocations, has led on the five-year periodic review and annual course evaluation, has had greater responsibility for exam question-setting, has chaired the CID committee, and has had a greater responsibility for dealing with student support and welfare. We find that this greater share and volume of work is related to the fact that this was an ITD-led course for which some 75- 80% of the students have an ITD-bias, in which the ITD Faculty provided the bulk of the tutors for the programme and in which Professor Miles continued to be active as a Deputy PD in addition to Dr Yeo's allocation (and which in turn reflected the relative FTE allocations of the claimant and Dr Yeo). We accept the claimant's unchallenged evidence that she has continued to run the CID proxy account which is a marketing and information mailbox linked to the respondent's website which has involved her responding to more than 100 queries each year in 2018/19 and 2019/20.

50. Following a redundancy consultation meeting with Professor Smith on 30 April 2018, the respondent wrote to the claimant to confirm that her employment would be terminated by reason of redundancy on 31 July 2018 [1436]. Although the claimant had understood that this redundancy process related to Professor Smith's proposal to reallocate the PD work to Associate Professors, Nikki Jones, Faculty Operating Officer, for the PHP Faculty, wrote to the claimant on 3 May 2018 [1965] to explain that this related to the late running of the budget round. This had meant that the faculty had not been in a position to sign-off the funding to extend the claimant's

contract and it had been necessary to issue a redundancy notice as required by her contract. Ms Jones also explained that the claimant's contract would be extended if and when funding was available once the budget round had been concluded. She noted that this process applied to all faculty-funded fixed-term posts. We accept Ms Jones' evidence that this delay related to the arrival of a new Finance Director and was the reason why the claimant was given notice of redundancy. The same reason was given by Kessar Kalim, Director of HR, who wrote to the claimant on 22 June 2018 [1482] to confirm that provisional agreement for funding had now been agreed so that her contract would be extended. The redundancy notice was revoked and the claimant received confirmation on 29 June 2018 [1485] that her 0.2 FTE contract had been extended by another year to 31 July 2019. The claimant's appeal against the decision to make her redundant [1469] was therefore deemed otiose.

Promotion on the Academic Pathway: General Guidance 2018

51. In February 2018 the respondent brought in new guidance on gaining promotion on the Academic Pathway [370-390] ("the 2018 Guidance"). This introduced a 'portfolio approach' in which each applicant was required to make a case for promotion by providing evidence of their "contribution and achievement" across the following four categories: knowledge generation, education, internal contribution and external contribution. The first two categories have the greatest weighting with the balance between them predicated on the job description and annual PDR for each applicant. In the claimant's case in which she undertook a standalone teaching management role she would be required to demonstrate that she exceeded the expectations for the education category whereas she was required to show that she *met* the expectations which related to the other three categories. Across these categories there were 12 sub-categories or criteria. The 2018 Guidance contained a table which illustrated how these criteria could be evidenced for promotion to each grade.
52. The 2018 Guidance also provides for consideration of an applicant's personal circumstances. Under this process an applicant is required to complete a personal circumstances form which is then considered by a panel comprising Professor Mills, Mr Kalim, and the Equality Diversity and Inclusion Manager (the latter being added following a review in June 2019). If they agree that there are circumstances which have impacted materially on the application this will be declared to the assessment panel. Relevant circumstances include a limitation on the applicant's ability to evidence the required criteria because of part-time working or ill-health in which case the focus of the assessment panel will be on quality and a reduced output will be accepted. With its focus on quality and not quantity of output we find that this facility ensured that the 2018 Guidance does not require applicants to have completed substantial unpaid work. It is notable that an independent review commissioned by the respondent and completed in June 2019 found that there was a higher rate of success for candidates whose personal circumstances had been considered under this process albeit based on a limited sample size [493]. In October 2020, an external consultant recommended that the citizenship expectation was adjusted for disabled

applicants to enable those applicants to focus on teaching and research [2372]. We find that the personal circumstances process already provided the means of accommodating such an adjustment. We do not therefore find that the claimant was required to meet the majority of the criteria across all four categories through unpaid work in order to gain promotion under the 2018 Guidance, as she contends.

53. It is notable that in correspondence with the claimant dated 27 November 2019 [2161-2] Mr Kalim explained that she was ineligible for promotion under the Academic Pathway because she was employed in a teaching management role and not because she was a part-time worker. We accept Professor Mills' evidence that this advice was incorrect. This erroneous advice which is not said, nor do find to relate, nor do we find, related to the claimant's disability, came more than 18 months after the 2018 Guidance was introduced and more than six months after the claimant amended her first claim to include a complaint of indirect discrimination relating to this process and is not therefore causative of the claimant's election not to apply for promotion prior to receiving this advice.
54. We accept the oral evidence of Professor Mills and Professor Hanson that it was possible for the claimant to have obtained promotion in her standalone PD role weighted to the education category although this was likely to have taken longer because of the claimant's 0.2 FTE which was wholly unconnected with the claimant's disability or the effects of her cancer treatment.
55. However, the claimant has not applied for promotion since the 2018 Guidance was implemented and has not therefore availed herself of the personal circumstances facility. The claimant's evidence was that this came too late in the process and it was necessary for the respondent to make adjustments to the targets set at the PDR stage [C/274]. We find that the claimant has conflated, and therefore confused, the adjustments which could be made to the promotion process and those which could be made to her academic role and PDR objectives. The absence of the latter did not preclude an application for promotion.
56. The conditions for applying promotion under this Guidance include having completed a PDR within the last 12 months, although this can be waived in exceptional circumstances where evidence is provided which explains why one has not been completed. As will be seen, the claimant was not allocated a line manager until October 2018 and this was self-evidently capable of amounting to an exceptional basis on which to proceed without a PDR; and once the claimant was allocated a line manager she elected not to progress an interim PDR and / or to proceed with an application. The claimant does not complain and nor do we find that the absence of a line manager and a PDR in these intervening years was related to her disability.
57. Although the claimant says that the requirement for applicants to undertake substantial unpaid work, one which we have found was not in operation, is harder to meet for those who like her are disabled because of the impact, including fatigue, and demands of cancer and its treatment, she does not

say precisely how this has impacted on her. What she does say, however, is that she has been able to meet the compulsory criteria for promotion to grade 8 [C/268, Schedule 5], which is two grades higher than her current grade, notwithstanding her disability and its treatment. In oral evidence, the claimant said that had she submitted an application and had the respondent considered it fairly she would have been appointed to grade 8.

The claimant's grievance in July 2018

58. The claimant submitted a grievance on 9 July 2018 [1486-9] in which she complained about the failure to provide her with a permanent contract, the requirement for unpaid work and the "bogus" redundancy process, and she requested a permanent contract, an upgrade in rank and pay scale, and an increase to 0.5 FTE in line with Dr Yeo. In relation to her PD work, she said that she had a student share of over 30, had been required to mark 22 research projects in September 2017, had tutored eight students in 2016/17 and delivered additional lectures and fulfilled a careers advisory role. This was the first time that the claimant formally complained about her FTE allocation. Although the claimant referred to a prospective tribunal claim with reference to the equality (and whistleblowing) legislation this grievance is not relied on as a protected act for the purposes of the Equality Act 2010.
59. Mr Kalim acknowledged the claimant's grievance and request for a permanent contract the next day [1491]. At around the same time, senior academic staff within the PHP Faculty were in correspondence about the claimant's line management arrangements and it was agreed that Dr Babad would be responsible for this.
60. Professor Kara Hanson, the new Dean of Faculty of PHP from 1 August 2018, was first made aware of this grievance five days later when the claimant attended her office to discuss her complaints. The claimant referred to the early conciliation process and told Professor Hanson that she had spoken to ACAS about her contract and had been advised to speak to her employer first before she proceeded with a tribunal claim. Professor therefore understood, correctly, that the claimant planned but was yet to bring a tribunal claim. The claimant submitted her first tribunal claim, a fortnight later, on 20 August 2018.
61. Professor Hanson agreed to investigate this grievance under the informal stage 1 of the respondent's Grievance Policy as confirmed by Mr Kalim the next day [1508]. Having reviewed the claimant's written grievance, she then emailed the claimant on 9 August 2018 [1516] to set out what she understood were the claimant's main concerns:
 - a. She was entitled to a without duration contract.
 - b. Her pay was not commensurate with her colleagues in similar roles and should be upgraded to the average rank and pay scale of other MSc PDs.
 - c. Her hours of work were not sufficient to complete her PD duties and should be increased to 0.5 FTE.

Professor Hanson explained that it would be necessary to conduct a contractual review of the claimant's employment, with HR support, which would involve making enquiries with other colleagues. She assured the claimant that "confidentiality with regards to your grievance will be maintained throughout this process". We therefore find that Professor Hanson decided to refer neither to the fact that the claimant had submitted a grievance nor to any of the specific complaints she had raised in order to safeguard the claimant's confidentiality. Professor Hanson noted that she would be on leave from 12 August and would return to work on 28 August 2018.

62. Before commencing her investigation, Professor Hanson emailed Ms Cartwright, who was assigned to support her with this process, and Ms Jones, a grid identifying the information she needed to obtain and review in relation to the claimant's fixed-term contract, pay and working hours [1518]. On her return from leave, Professor Hanson made enquiries with Professor Miles, Dr Yeo, Dr Babad and Ms Jones. She did retain any notes of these meetings on the basis that this was an informal process.
63. Professor Hanson discussed the allocation of PD responsibilities across the CID programme with Professor Miles and Dr Yeo on 10 and 11 September 2018, respectively. We accept her oral evidence that the details which Ms Cartwright obtained from Dr Yeo in January 2020 (see paragraph 47) were consistent with her discussion with Dr Yeo in September 2018. In keeping with her commitment to maintain confidentiality, she did not reveal that the claimant had brought a grievance. We fail to understand how the FTE allocation issue which Professor Hanson was investigating with these colleagues could have had the effect of making it appear that the claimant was the subject of a grievance investigation, as she alleges, however, we accept the claimant's unchallenged evidence that a short exchange with Professor Miles left her with such an impression. We find that if Professor Hanson's discussions with Professor Miles and Dr Yeo had such an effect this was because of the stated need for confidentiality.
64. Having completed her investigation, Professor Hanson wrote to the claimant on 2 October 2018 [1543-6] to confirm her findings and recommendations in relation to the three areas of concern she had identified in her email dated 9 August 2018 together with a fourth issue which related to the redundancy notification in May 2018 and also to clarify the claimant's line management arrangements. In relation to the claimant's contract, she explained that PD roles were intended to be held for defined periods and to rotate and this was expected to apply equally to staff employed on fixed-term and without duration contracts. She also referred to an impending review of how teaching was managed and delivered. She concluded that for these reasons the claimant's PD role would remain "underpinned" by a fixed-term contract. In relation to the claimant's FTE allocation, Professor Hanson concluded that there was no reasonable justification for increasing the claimant's FTE allocation. She found that it had never been the intention or design to share the workload equally across the PDs on the CID programme. The PHP contribution existed because of the demonstrated student interest in PHP issues. She concluded that Dr Yeo and Professor Miles carried the

substantial burden of course management work and that the claimant's workload could be managed at 0.2 FTE. We accept her oral evidence that she reached this conclusion based on her discussions with both Professor Miles and Dr Yeo and her working assumption was that the former had a clear understanding of the claimant's contribution to the CID course because he had worked with her since 2010. In relation to the redundancy notification, Professor Hanson explained, in terms consistent with those already given by Ms Jones and Mr Kalim, that this had been triggered automatically as required by the claimant's contract because of the delay in obtaining agreement for funding from the Finance Director in late June 2018 and from the Council in July 2018. Finally, Professor Hanson recommended that the claimant moved to the Department of Health Services Research & Policy where she would be line managed by Dr Babad and that she completed a PDR without delay to review her workload and career planning. Professor Hanson invited the claimant to a meeting to discuss her recommendations. Although she did not refer to a right of appeal, she invited the claimant to confirm if she was "not content with the recommendations...so that we may discuss next steps".

65. We accept Professor's Hanson's evidence that the first time she was put on notice that a tribunal claim had been lodged was via an email from Mr Kalim on 10 October 2018 which was after her investigation had been completed. This was two days after the tribunal sent a notice of claim to the respondent.
66. The claimant declined to meet Professor Hanson, to whom she wrote on 17 October 2018 [1548] to confirm that she had now issued a claim and explained "Although I would welcome dialogue about the issues in dispute, I suggest that this now needs to be done within the ET process."
67. In consequence of this grievance outcome, Mr Kalim wrote to the claimant on 22 October 2018 [2032] to provide formal confirmation that her request to transfer to a without duration contract had been declined and she would remain on a fixed-term contract.

Office accommodation

68. The claimant had the use of room 126 in the respondent's Tavistock Place site. Until December 2018 the name plate outside this office read: "Hot Desk & Lucy Reynolds". The claimant did not come in to work on fixed days. There was a calendar on the door which each member of staff was required to complete to let other colleagues and students know when to expect them.
69. The respondent's Space Allocation and Sharing Policy for Tavistock Place dated 2014 [418-9] provided that all contracted staff would be allocated an office and / or desk for their exclusive use on the days when they were contracted to work and in the case of those working at or under 0.4 FTE there was an expectation that this would be shared with other part-time staff who had a complimentary work pattern.
70. Owing to a refit of the Tavistock Place site there was a need to reallocate offices for some of the academic staff. Ms Jones, who had overall

responsibility for managing accommodation within the Faculty, emailed colleagues about this in late November 2018 [1644]. One of the affected offices was room 138. Professor David Cromwell agreed to vacate his office to make way for the outgoing incumbent of room 138, Dr Pauline Allen, who required a single office. He was moved to room 126. We find that these office moves were discussed and agreed by Ms Jones together with Deborah Stanley, Department Manager. These moves were planned to take place during the 2018/19 Christmas closure.

71. To facilitate this move, Shirley Solomon, Department Office Administrator, changed the name plate outside room 126 as follows: "David Cromwell, Professor of Health Services Research / Hot Desk Room". The claimant's name had therefore been removed. We accept Ms Solomon's evidence that Ms Stanley, who was her manager, told her about these office moves and instructed her to change the name plates although it was Ms Solomon's decision to remove the claimant's name and not replace it in the new sign she made. We find that she did this because of Professor Cromwell's status. This is because in her oral evidence, which we accepted, Ms Solomon placed great emphasis on the fact that Professor Cromwell was a senior member of the academic staff. Ms Solomon was not therefore instructed to remove the claimant's name from the signage. Nor did she understand that by taking this step she had removed the claimant's access because the room retained a hot desk facility which the claimant could continue to use. We also accept Ms Solomon's evidence that she was not aware of the claimant's first tribunal claim when she changed the name plate. The claimant agreed that Ms Solomon had taken her name off the signage and was not aware of her claim at the time and speculated that Ms Jones either instructed her to do this, which we have not found, or that there had been a systems breakdown, which we find to be the case. The claimant connected this change with her tribunal claim. Although we accept the claimant's oral evidence that she was forewarned about this change by an unnamed HR officer because this prompted her to take photographs of the office signage before and after the changeover we do not find that her name was removed because of the first claim.
72. Although the claimant felt that the removal of her name from the signage resulted in a loss of status, we do not find that it had the effect of removing her office space. The claimant retained the same office and desk. She retained the key. She was still able to use this room had she wished. It remained a shared office facility. We also accept Ms Jones' oral evidence that there was no need to consult with the claimant about this issue because the claimant retained the use of this office. It is notable that according to the claimant, Professor Cornwall only required use of this office for one month in the year. We do not therefore find that the claimant lacked office space in which to meet her students. In fact, her evidence was that this room was unsuitable for her in any event on health grounds. This was entirely unrelated to her claim.

The claimant's grievance appeal and second grievance

73. The claimant emailed Professor Hanson on 13 December 2018 [1564-8] to respond to her grievance findings and to lodge an appeal. Notably, in relation to a PDR the claimant stated the process this year had been missed but that it would be hard to complete one in any event without the tribunal's decision in relation to her hours and seniority and she noted that she had agreed, presumably with Dr Babad, to complete this PDR once the tribunal outcome was known although she would, in the meantime, start to prepare for one. Professor Hanson forwarded this to Ms Cartwright who emailed Mr Kalim and another HR colleague when she noted her understanding that this was not an appeal because the next stage in the process was for the Director to hear the grievance. Mr Kalim acknowledged the claimant's email a week later [1581].
74. The claimant then submitted a second grievance appeal to Professor Mills on 21 December 2018 [1583] to complain that her grievance had not been investigated properly. She also stated that she would need to submit a second grievance to complain about the conduct of the grievance investigation "as if it were an investigation into a grievance brought against me instead of one brought by me" which she said amounted to "victimisation at an organisational level". Professor Mills replied on 11 January 2019 [1600] to say that Mr Kalim would be in contact with a proposal in relation to her first grievance. By this date the parties had attended a preliminary hearing on 30 November 2018 and had written to the tribunal to confirm that they were interested in judicial mediation ("JM"). There was also an outstanding application which the claimant had made to amend her claim (dated 19 December 2018) to which the respondent had objected. Mr Kalim wrote to the claimant on 22 January 2019 [1588] when he referred to the claimant's tribunal claim and the stated willingness on both sides to participate in JM. He queried whether the claimant wished to proceed with her grievance appeal which could involve Professor Mills or agree to pause the grievance process pending JM.
75. The claimant submitted a second grievance, dated 22 January 2019, to Professor Peter Piot, Director, on 28 January 2019 [1591-2] in which she complained about the way in which her first grievance had been dealt with. She also complained that Professor Hanson had given the impression to colleagues that she had been investigating a grievance against her which had caused reputational damage and breached the respondent's Bullying and Harassment Policy. The respondent agrees that it failed to acknowledge this second grievance. We find that this was an inadvertent oversight which is explained by Mr Kalim's focus on the claimant's first grievance.
76. The next day, on 29 January 2019, the claimant replied to Mr Kalim [1597] to confirm that she wished to proceed with her grievance noting that she would only be prepared to consider a stay once her amendment application had been determined by the tribunal. Two weeks later, at a preliminary hearing on 13 February 2019, the tribunal agreed to list a private hearing on 11 March 2019 to conduct JM. The claimant was in attendance and

agreed to take part in JM. On the same date, 13 February 2019, the claimant forwarded her second grievance to Mr Kalim and she chased him a week later, on 20 February 2019, [1520] when she confirmed that she wanted both grievances to proceed and not stayed pending JM. We find that the claimant's actions were contradictory. Although she doubtless understood that she needed to proceed with the grievance in order to protect her legal position and was therefore intent that both grievances were investigated the continuance of these internal processes was incompatible with the aims of JM which required the parties to focus on and commit to narrowing the issues between them to resolve their dispute.

77. The claimant discussed the PDR process with Dr Babad on 8 April 2019. Dr Babad emailed the claimant the next day to summarise and feedback [1620]. She noted that the claimant wanted her next PDR to cover the last nine years. Dr Babad suggested instead a "catch-up PDR" reflecting the last two to three years which could be completed in the run-up to the next PDR round. In her oral evidence, the claimant said that she objected to this. Dr Babad also noted that the claimant had referred to reasonable adjustments. She queried whether this related to the PDR and / or promotion processes. Dr Babad explained that if this related to the PDR process and the academic expectations of the claimant's role then this required Occupational Health input. If, this related to the promotion process then the claimant could rely on the personal circumstances process. Dr Babad was offering to provide support to the claimant which would have enabled her to apply for promotion.
78. Mr Kalim did not write to the claimant about her grievances until 20 June 2019 [1627-9]. This was the first time that the claimant's second grievance was acknowledged. Mr Kalim explained that the grievance process had been stayed because the claimant had agreed to JM. The respondent had taken this decision unilaterally because, as we have seen, the claimant did not agree to this stay. Mr Kalim provided no explanation to the claimant for the intervening three months since JM had taken place. However, we find that this interregnum is explained to a large extent by the following activity: the claimant notified ACAS again on 11 March 2019 which was the same date on which JM had taken place (and the early conciliation period ended on 1 April 2019); the amendment application was considered at a preliminary hearing on 4 April 2019 and was granted in part, and confirmed by an Order dated 14 May 2019 which was sent to the parties two days later; in between these two dates, the claimant submitted a second tribunal claim on 29 April 2019; there was another preliminary hearing on 12 June 2019 when the respondent confirmed that it had not received a copy of the second claim.
79. Mr Kalim confirmed that the grievances had been referred to Professor Mills via Professor Piot under stage 2. The claimant was invited to a grievance hearing on 26 June 2019. She replied [1630] to explain that she declined to attend this hearing because all issues were now the subject of tribunal proceedings and should be discussed through ACAS. In relation to the PDR she noted further progress would not be possible until a set of standards modified for part-time hours in relation to unpaid tasks was provided. Mr

Kalim wrote to the claimant again on 9 August 2019 [1630] to encourage her to engage with the grievance process which he emphasised was distinct from the tribunal proceedings and ACAS conciliation. The claimant declined to engage.

80. The claimant's contract was extended by another year in July 2019 [2147].
81. In October 2019 Dr Yeo requested that his PD hours were increased to 1.0 FTE [1165, 1168-9]. In making this request, he relied on one of the recommendations of the five-year period review of the CID programme, which had reported earlier that year that the PD allocation was increased to 1.0 FTE "in light of the current focus on individual tailoring of the programme" [2131]. Dr Yeo stated that he routinely worked 50 – 60 hours per week and that his current 0.5 FTE allocation was insufficient to run the CID programme. He also stated that this course was not only one of the largest taught programmes in the ITD Faculty but one of the respondent's most lucrative flagship courses. This request was declined by the respondent who wrote to the claimant on 17 December 2019 [1177] that the current allocation of 0.5 FTE was considered "to be appropriate for the role, and in line with expectations of other Course Directors in the School." Related correspondence dated 14 November 2019 [2354] conveyed the view of the ITD Taught Course Director that the 0.5 FTE allocation was "in line with the appropriate allocation for Course Director time for the number of students on the course". We find that this justification for not increasing Dr Yeo's allocation which was made by members of the ITD Faculty sheds no light on the separate decision made in relation to the claimant's FTE allocation by members of the PHP Faculty. However, what is clear is that the respondent refused to increase the FTE allocations for both the claimant and Dr Yeo who both felt that they required additional time to complete their PD duties.
82. The claimant was moved onto a without duration contract in March 2020 [644]. In confirming this, Ms Cartwright explained that as part of the current review of the teaching management posts it had been agreed that staff who had held a teaching management role on a standalone basis for more than three years were entitled to a permanent contract.

The law

Direct discrimination

83. Under s13(1) EQA, direct discrimination takes place where, because of a protected characteristic, a person (A) treats the claimant less favourably than that person treats or would treat others.
84. There are two elements in direct discrimination: the less favourable treatment, and the reason for that treatment (see Glasgow City Council v Zafar [1998] IRLR 36).
85. The protected characteristic need not be the only reason for the treatment but it must have been a substantial or "effective cause". The basic question

is “What, out of the whole complex of facts before the tribunal, is the ‘effective and predominant cause’ or the ‘real or efficient cause’ of the act complained of?” (see O’Neill v Governors of St Thomas More RC Voluntarily Aided Upper School and anor [1997] ICR 33, EAT; see also Nagarajan V London Regional Transport [2000] 1 AC 510).

86. Under section 23(1), when a comparison is made, there must be no material difference between the circumstances relating to each case. Under section 23(2), where the protected characteristic is disability, the circumstances relating to a case include a person’s abilities.

Indirect discrimination

87. Under section 19 EQA, indirect discrimination occurs when a person (A) applies to the claimant a provision, criterion or practice (“PCP”) which (a) A applied or would have applied to those with whom the claimant does not share this protected characteristic, (b) put, or would have put those sharing the claimant’s protected characteristic at a particular disadvantage when compared with those not sharing the claimant’s protected characteristic, (c) put, or would have put the claimant at that disadvantage, and (d) A cannot show it to be a proportionate means of achieving a legitimate aim.
88. The burden is on the claimant to establish (a) to (c) and if so discharged, the burden shifts to the respondent to justify the PCP (d).

Victimisation

89. Section 27(1) EQA provides that a person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act, or A believes B has done, or may do a protected act.
90. Section 27(2) EQA enumerates the four types of protected act which include bringing proceedings under the EQA.
91. As to causation, the tribunal must apply the same test to that which applies to direct discrimination i.e. whether the protected act is an effective or substantial cause of the employer’s detrimental actions.
92. In a victimisation complaint, an essential element of the prima facie case is that the claimant must show that the putative discriminator knew about the protected act on which the complaint is based or believed that a protected act was done by the claimant (see Chief Constable of Kent Constabulary v Bowler UKEAT/0214/16/RN).

Detriment

93. Section 39(2)(d) EQA provides that an employer (A) must not discriminate against an employee of A’s (B) by subjecting him to “any other detriment”.
94. A complainant seeking to establish detriment is not required to show that she has suffered a physical or economic consequence. It is sufficient to

show that a reasonable employee would or might take the view that they had been disadvantaged, although an unjustified sense of a grievance cannot amount to a detriment (see Shamoon v Chief Constable of RUC [2003] IRLR 285).

95. The EHRC Employment Code provides that “generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage”.
96. Any alleged detriment must be capable of being regarded objectively as such (see St Helens MBC v Derbyshire [2007] ICR 841).

Equal pay (like work)

97. Section 65(2) EQA provides that A’s work is like B’s work if (a) A’s work and B’s work are the same or broadly similar and (b) such differences as there are between their work are not of practical importance in relation to the terms of their work. Section 65(3) states that for the purposes of this comparison it is necessary to have regard to (a) the frequency with which differences between their work occur in practice and (b) the nature and extent of the differences. These questions must be considered sequentially. It is for the claimant to prove that she does the same or broadly similar work with her comparator and if so it is for the employer to show whether there are any differences of practical importance.
98. In deciding whether work is broadly similar a comparison of jobs must usually take into account the whole job although there may be circumstances such as where a part of a job is in effect separate and distinct when it is necessary to exclude that part from the comparative exercise undertaken by the tribunal (see Maidment and Hardacre v Cooper and Co (Birmingham) Ltd [1978] ICR 1094, EAT; and also Doncaster Education Authority v Gill EATS568/89).
99. The EHRC Code of Practice on Equal Pay explains that differences such as additional duties, levels of responsibility, skills, the time at which work is done, qualifications, training and physical effort are all capable of being of practical importance. Consideration of whether there are any differences of practical importance requires a comparison to be made between the tasks that are actually done and their frequency rather than between the things that the claimant and their comparator could be required to do under their contracts but which were not done.
100. If the claimant has shown that she is doing like work with that of an appropriate comparator then it is presumed that any difference in pay is because of a difference in sex. This presumption will not apply if the employer is able to show that the difference in pay is due to a ‘material factor’ which does not involve direct or unjustified indirect discrimination (section 69 EQA). The burden is on the claimant to show that a factor relied on by the respondent is indirectly discriminatory in which case the respondent is required to justify this disparate treatment. The material factor relied on need only be material in a “causative sense” rather than a

“justificatory” one i.e. it will be sufficient if it has been the cause of the pay disparity.

Burden of proof

101. Section 136 EQA provides that if there are facts from 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.
102. Section 136 accordingly envisages a two-stage approach. Where this approach is adopted a claimant must first establish a prima facie case. This requires the claimant to prove facts from which a tribunal could conclude that on the balance of probabilities the respondent had committed an unlawful act of discrimination; and something more than a mere difference in status and treatment (see Madarassy v Nomura International plc [2007] ICR 867, CA).
103. The two-stage approach envisaged by section 136 is not obligatory and in many cases it will be appropriate to focus on the reason why the employer treated the claimant as it did and if the reason demonstrates that the protected characteristic / protected act played no part whatsoever in the adverse treatment, the complaint fails (see Bowler). Accordingly, the burden of proof provisions have no role to play where a tribunal is able to make positive findings of fact (see Hewage v Grampian Health Board [2012] IRLR 870).

Conclusions

Indirect disability discrimination

104. This complaint fails because we have found that the PCP contended for was not operative:
 - (1) We have found that the respondent did not apply the PCP of requiring applicants to undertake substantial mandatory unpaid work in order to achieve promotion under the 2018 Guidance. In particular, we have found that the personal circumstances procedure enabled academic staff to apply for promotion on the basis of the quality, not quantity, of their output.
 - (2) Had we been so required, we would not have found that this PCP put or would have put applicants who had the same disability as the claimant at a particular disadvantage. The claimant adduced no evidence to show this. In fact, the albeit limited 2018 data suggested that applicants who used the personal circumstances process had a greater likelihood of success.
 - (3) Nor would we have concluded, had we been required to make findings, that this PCP put the claimant at a particular disadvantage because on her own evidence, which we were not required to interrogate, she says that she was able to show that she met the requisite categories for promotion by two grades to the role of Associate Professor.

- (4) For completeness, we have found that once Dr Babad was on board as the claimant's line manager from October 2018 the claimant failed to make an application because of her insistence on a nine-year PDP, her refusal to have a "catch-up" PDR in the interim, her mistaken belief that it was necessary to adjust her role objectives before an application for promotion could be made, and her decision to await the tribunal's findings in relation to her hours of work and seniority.
 - (5) Finally, notwithstanding the claimant's assertion that she was able to evidence the case for promotion under the 2018 Guidance, to the extent that it was necessary for her to have evidenced that she exceeded or met the relevant categories for promotion, we accepted the respondent's evidence that this was likely to have taken her longer to achieve because she had a 0.2 FTE allocation, a factor which was unrelated to her disability.
105. Because of these findings it is unnecessary to make any findings in relation to the issue of justification.

Direct sex discrimination

106. This complaint fails because we have found that the claimant's sex was not a substantial or effective cause for the renewal and extension of her 0.2 FTE allocation on 22 August 2017 and 29 June 2018:
- (1) We have found that the initial decision to designate a 0.2 FTE allocation to the PHP's co-PD role for the CID programme in 2006 was made by Dr Thorogood based on the time spent in this role by Professor Roberts and reflected the commitment that the PHP Faculty was prepared to contribute and allocate to this ITD-led course.
 - (2) We accepted that the PHP Faculty continued to view that this was the correct allocation of its resources to this programme. Dr Babad re-bid for the same allocation at each year's Faculty budget round. Nor did the claimant challenge her allocation formally until 2018, after Dr Yeo had replaced Professor Miles as co-PD.
 - (3) We have also found that the decision to allocate 0.5 FTE to Dr Yeo was made by a different faculty and decision-maker, Professor Wren, and was based on Professor Miles' assessment of his time commitment in the role and the ITD Faculty's need to succession plan for his retirement.
 - (4) We have found that these respective allocations were predicated on the resources that each faculty was prepared to commit to the CID programme each year. It is clear that both the claimant and Dr Yeo felt that their hours should be increased and notable that Dr Yeo's request to increase his PD hours to 1.0 FTE was declined on the basis that his 0.5 FTE allocation remained appropriate notwithstanding the recommendation of the 2019 periodic review to increase the combined PD establishment to 1.0 FTE.
 - (5) In concluding that the FTE was allocated to PDs on the basis of the resources of each faculty and the requirements of each course is we have taken account of the fact that the December 2017 cohort of employed PDs with designated FTE allocations ranged from 0.2 to 0.7

FTE as follows: 0.2 (2), 0.25 (1), 0.33 (1), 0.4 (1), 0.5 (8), 0.6 (3) and 0.7 (1). It is also notable that all other (nine) women in this cohort had a greater FTE allocation than the claimant.

- (6) For completeness, the claimant has failed to establish a prima facie case that the decision to retain her 0.2 FTE allocation whilst designating to Dr Yeo a 0.5 FTE allocation was because of her sex.

Victimisation

107. This complaint fails because we have found that the protected act which the claimant did when she presented her first tribunal claim on 20 August 2018 was not a substantial or effective cause of the detriments we have found and in respect of one allegation we have concluded that there was no detriment:

- (1) We have found that Professor Hanson was not cognisant of this claim until after she had completed her investigation into the claimant's grievance. We have also found that if their interactions with Professor Hanson left Professor Miles and / or Dr Yeo with the impression that the claimant was the subject of a grievance investigation the reason for this was the need to maintain confidentiality.
- (2) We have found that the claimant's office space was not removed.
- (3) We have also found that the claimant's name was not reprinted on the new office plate which was produced by Ms Solomon because of Professor Cornwall's academic status and at a time when Ms Solomon was not aware that the claimant had brought her first claim.
- (4) We have found that the respondent's failure to acknowledge the claimant's second grievance was an inadvertent oversight which related to Mr Kalim's focus on the first grievance process. We have also found that the respondent took the unilateral decision to suspend the grievance process because it wanted to focus on JM which the claimant had agreed to, and the further delay was caused by the overlap between the two grievances, the focus on the claimant's amendment application and second claim. Although the result was that the respondent delayed the claimant's access to the grievance process unreasonably we do not therefore find that a substantial or effective cause of this delay was that the claimant had complained of discrimination in her first claim. In concluding this we have also taken account of the fact that the respondent invited the claimant to participate in the grievance process on 20 June 2019 and again on 9 August 2019 which we find demonstrates its willingness to apply this process.

Equal pay (like work)

108. This complaint fails for the following reasons.

109. The claimant compares herself with Dr Yeo and Dr Hickson. We find that the PD work undertaken by them was severable and distinct from their other research and teaching work, and also that this PD work was broadly similar with the claimant's PD work for the following reasons:

- (1) There was a generic job description for this PD work which was modified by each faculty.
 - (2) We accepted Professor Mills' evidence that the PD role was one of mobilising and allocating tasks, and not teaching.
 - (3) The claimant was one of eight standalone PDs ranging from Research Fellow to Assistant Professor in the December 2017 cohort which included both comparators. This underscores the subsisting ad hoc arrangements in which PDs are employed across a range of grades, FTE allocations and contracts.
 - (4) Although Dr Yeo has an additional research role which was 0.5 FTE (this has since reduced to 0.1 FTE) we were provided with no evidence that this research work was materially relevant to his PD work or the skills or knowledge he was required to bring to this work; and we have accepted Professor Mills' evidence that there was no qualitative difference between what a Research Fellow and an Assistant Professor brought to the role.
 - (5) In respect of Dr Hickson, until his promotion in December 2018 his research and PD work each had a 0.5 FTE designation and although this formal demarcation has been removed from this date the respondent has not suggested that this demarcation has not continued in practice. Until his promotion in 2018, Dr Hickson carried out the PD role as an Assistant Professor for four years. None of the respondent's witnesses adduced any evidence to show there was any difference in the way Dr Hickson was required to perform his PD work before and after his promotion nor between what a Research Fellow and Associate Professor were required to bring to the role.
110. Having found that the claimant was engaged to do broadly similar work with her comparators the burden shifts to the respondent to show that there were differences of practical importance.
- (1) We find that overall, the differences between the claimant and Dr Yeo in the tasks they have been required to do in their respective PD roles are of practical importance because of their frequency, nature / extent and the degree of responsibility involved. We have found that Dr Yeo is required to lead on the five-year period review and annual course evaluation, and chair the CID committee and he is also responsible for screening the bulk of applications. We have also found that Dr Yeo has the greater share of responsibility and volume of work for arranging tutor allocations, exam question-setting, student support and welfare although the claimant is also required to do the same work to a degree which is relative to the ITD / PHP balance of the student intake. We have taken account that the claimant is responsible for dealing with pre-application enquiries via the proxy account. We did not take account of tutoring work because this was not part of the PD role itself. We therefore find that the claimant was engaged to do like work with Dr Yeo.
 - (2) In relation to Dr Hickson, the respondent has provided no evidence and has not therefore discharged the evidential burden to establish any differences of practical importance. We therefore find that the

claimant was engaged to do like work with Dr Hickson in respect of their respective PD work.

111. We find that the difference in pay between the claimant and Dr Hickson and, for completeness, Dr Yeo, is because of a material factor which neither involved direct nor indirect discrimination. The reason for the difference in pay is the grade which each academic was on when they were appointed into the PD role or in Dr Hickson's case since December 2018, the grade into which he was promoted. As we have found, the PD role was not treated as a separate contract although in certain circumstances, such as in the claimant's case it became a standalone role. This is the reason that the claimant is paid at grade 6, that Dr Yeo is paid at grade 7 and that Dr Hickson was paid at grade 7 from 2014 until his promotion to grade 8 four years later. The claimant applied for promotion in 2011 and withdrew her complaint that this process discriminated against her because of her sex. She has not applied for promotion since this date and she does not complain that the 2018 Guidance is discriminatory on the grounds of sex. It is notable that the respondent's 2017 employment data [583] demonstrate that more women than men were employed in grades 6, 7 and 8.

The equal value claim

112. The claimant has also brought a complaint of equal value in relation to the same comparators. Because of our finding that the respondent has identified a non-discriminatory material factor which accounts for the difference in pay (in relation to both comparators), this equal value claim is also dismissed as it has no prospects of success.

113. For these reasons, all of the complaints fail and are dismissed.

Employment Judge Khan

11 June 2021

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

14/06/2020.....

.....
FOR EMPLOYMENT TRIBUNALS