EMPLOYMENT TRIBUNALS

Claimant: **Dr M Jackson**

Respondents: **(1) Cardiff University**
(2) Carole Tucker
(3) Bernard Richardson
(4) Paul Roche
(5) Matthew Griffin

Heard: **Remotely, by CVP**

On: **8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25 February 2021, 30 March 2021**

Before: **Employment Judge S Moore**
Ms A Fine
Mr B Roberts

Representation
Claimant: In Person
Respondent: Mr French- Williams, Solicitor

RESERVED JUDGMENT

1. The Claimant's claim for unfair dismissal contrary to S98 ERA 1996 fails and is dismissed.
2. The Claimant's claim for failure to provide particulars of employment contrary to S1 REA 1996 fail and is dismissed.
3. The Claimant's claim for unauthorised deduction from wages fails and is dismissed.
4. The Claimant's claims for direct sex and disability discrimination contrary to S13 EQA 2010 fails and are dismissed.
5. The Claimant's claims for discrimination arising from disability contrary to S15 EQA 2010 fail and are dismissed.
6. The Claimant's claims for indirect sex and disability discrimination contrary to S19 EQA 2010 fail and are dismissed.
7. The Claimant's claims for failure to make reasonable adjustments contrary to S21 EQA 2010 fail and are dismissed.
8. The Claimant's claims for sex and disability harassment contrary to S26 SQA 2010 fail and are dismissed.
9. The Claimant's claims for victimisation contrary to S27 EQA 2010 fail and are dismissed.

REASONS

Background and Introduction

1. The ET1 was presented on 27 October 2017 following early conciliation with Day A being 8 September 2017 and Day B being 8 October 2017. Between 16 February 2018 and 18 January 2021 there were 15 preliminary hearings. The claim has been extensively case managed with a view to ensuring the claims and issues were sufficiently clarified as well as ensuring reasonable adjustments were in place both for case management and the final hearing. A consolidated pleadings schedule drawn from the previous schedule of claims and issues was agreed and before the Tribunal.

2. The Hearing took place remotely by video due to the Covid-19 pandemic.

Reasonable Adjustments

3. The Claimant has autism spectrum disorder (ASD).

4. Paragraph 8 of REJ Davies' order dated 10 December 2019 contained the reasonable adjustments agreed for the final hearing. Further adjustments were implemented during the course of the hearing. Decisions given orally were confirmed in writing by email along with any instructions or orders made during the day. The Claimant was provided with additional time to respond in writing.

5. The Claimant gave her evidence from her home in Canada. The hearing time was initially midday to 5pm daily to account for the time difference. This was adjusted to a later start date as the Claimant was finding the early starts tiring.

6. The Claimant was a litigant in person. On occasion during cross examination of the Respondent witnesses, the Tribunal had to intervene to require the Claimant to move on to her next question when a question had already been put repeatedly to the witnesses and to assist the Claimant with ensuring her references to evidence that had been given were accurate. This was because on a number of occasions the Claimant asserted that evidence had been given and her recollection did not accord with the Tribunal's note of the evidence. This was in some way explained when part way through cross examination of the Respondent's witnesses, the Claimant told the Tribunal she had not been keeping any contemporaneous notes of the evidence the Respondent's witnesses had given.

7. The hearing timetable was adjusted and a further date added to allow time for exchange of written submissions, and to reply to each other's written submissions. A further hearing day was listed to enable the parties to follow these up with oral submissions on 30 March 2021.

Applications arising during the Hearing

8. Both parties made a number of applications during the hearing to admit new documents and supplementary witness evidence. Reasons for decisions were provided orally and confirmed in writing.

9. On 25 February 2021 after evidence had concluded the Claimant raised an issue that she had not understood that the Tribunal and Respondent were proceeding on the basis she relied on her ASD alone as her disability and that the stress condition and ASD was interchangeable. As such she had proceeded on the basis that both conditions were relied as disabilities.

10. The Respondent objected to any suggestion that the Claimant's disability discrimination claims had proceeded and been advanced in reliance on both ASD and stress as the disability. They accepted they had conceded stress was a symptom of autism but not a disability in itself.

11. The Tribunal clarified that given the extensive case management, further and better particulars and schedule of claims and issues none of which had proceeded on the basis that stress was relied upon as a "stand alone" disability that the course of the hearing would remain as set out in these documents with the disability under consideration being ASD.

Evidence

12. There was a "main bundle" and in addition a medical records bundle, pleadings bundle and a preliminary hearing orders bundle.

13. The Tribunal heard evidence from the following witnesses:

Date	Name of witness
10 February 2021	Claimant
11 February 2021	Claimant
12 February 2021	Claimant
13 February 2021	Claimant
16 February 2021	Professor Tucker
17 February 2021	Professor Tucker
18 February 2021	Professor Tucker Helen Mullens
19 February 2021	Helen Mullens Professor Griffin
22 February 2021	Professor Griffin
23 February 2021	Dr Richardson Dr Lewis
24 February 2021	Dr Cartwright Dr Roche

Findings of Fact

14. We make the following findings of fact on the balance of probabilities.

15. It was agreed that the Claimant has a diagnosis of autism. This has been historically referred to as Asperger's syndrome. Autism is referred to as

autistic spectrum disorder ("ASD"). Where we refer to ASD in this Judgment we are also referring to autism and Asperger's syndrome.

16. The Claimant relied upon autism as her disability and that stress/ anxiety is a symptom of autism. The Respondent conceded that the Claimant has experienced stress as a symptom of her autism but not that stress was a separate disability.

17. The Tribunal had sight of the joint expert report dated 17 December 2018 and the Claimant's impact statement.

Impact Statement

18. The Claimant had set out a list of ASD symptoms and traits from which she has always suffered. We have only set out those that are relevant to the issues in this case. For example as there are no issues regarding making telephone calls we have not set out what the Claimant says about her difficulties with telephone calls.

19. For the avoidance of doubt we accepted the Claimant's evidence regarding the following list of symptoms and traits. They were corroborated by Dr Rajpal's report and the evidence we heard throughout the case.

20. These were as follows:

a. Severe social anxiety and great discomfort approaching or interacting with strangers or people she did not know well. The Claimant prefers email communication, describing it as it as usually a non threatening form of interaction.

b. An inability to understand or interpret social cues, non verbal communication and body language and relies almost exclusively on words used to derive meaning.

c. Difficulty in communication true feelings intentions and explanations in a way other people can understand with specific regard to interactions with other people leading to difficulty with interacting with other people in daily life.

d. Employment of coping strategies to counteract feelings of nervousness in social situations.

e. An inability to put herself on other people's shoes not to be confused with lack of empathy but a difficulty in thought interpreting process.

f. A marked inability to deal with conflict and unpredictable behaviour of others.

g. Difficulty in knowing the appropriate level of detail to convey in order to communicate effectively often providing too much detail.

h. A tendency to unintentionally give offence.

i. A tendency unconsciously behave in a way that may make the Claimant appear condescending or unapproachable to others.

21. We did not find that the Claimant had demonstrated that her ASD meant a need to have guidelines and rules for working activities preferably in writing. Other than the impact statement there was no other evidence in the extensive documentation and correspondence during her employment of the Claimant ever demonstrating this was required.

22. The Claimant's impact statement did not mention ASD effecting her organisational skills. The Claimant's position shifted substantially in this regard during the hearing. It will be seen from the findings below that at no time during her employment with the Respondent did the Claimant accept that she had problems with organisation. Indeed the Claimant's position was advanced as the exact opposite particularly in respect of the trip organisation. In respect of the student criticisms of the Claimant being disorganised the Claimant maintained the students were wrong and that they only thought this way as they had been influenced by Dr Roche.

23. However as the cross examination of Professor Tucker advanced it became apparent that the Claimant was seeking to assert that lack of organisation was attributable to her disability. The Claimant was asked to confirm her position on 11 February 2021. The Claimant sent an email dated 12 February 2021 attaching an article titled "Disorganization: The Forgotten Executive Dysfunction in High Functioning ASD". In the covering email the Claimant stated:

"I do not believe that it was listed as a particular symptom in my own condition, because I assert that I do not have difficulties with organisation, as has been suggested by the Respondents."

24. For the avoidance of doubt we find that the Claimant's ASD did not affect her organisational skills. It had not been listed in her impact statement and the Claimant reiterated this in her email above.

Expert Report

25. Dr Rajpal, Consultant Psychiatrist prepared a report for the purpose of a contested disability hearing and we accepted the contents of his report. This confirmed the Claimant's diagnosis and that the Claimant has qualitive deficits in social interaction, social communication, social imagination, with rigid thoughts and inflexible preference of routines.

26. There are three levels of severity in DSM[1] for ASD. On the severity DSM Dr Rajpal assessed the Claimant at Level 1, "requiring support". Without support, deficits in social communication causes noticeable impairments. These are as follows (this was a generic description not specifically a description of the Claimant's impairments):

a. Difficulty in initiating social interactions and clear examples of atypical or unsuccessful responses to social overtures of others. Individuals may appear to have a decreased interest in social interactions. For example a

[1] Diagnostic and Statistical Manual of Mental Disorders (DSM)

person who is able to speak in two full sentences and engages in communication but whose to-and-fro conversation with others fails and whose attempts to make friends are off and unsuccessful.

b. Inflexibility of behaviour, causing significant interference with functioning in one or more contexts. Difficulty switching between activities. Problems of organisation and planning hamper independence.

27. Under “Prognosis”, Dr Rajpal confirmed ASD is a pervasive developmental disorder and as such the above deficits can cause morbidity lifelong. People with ASD are born with the deficits and will always have them and is not amenable to treatment although co morbidity (anxiety) can be treated the disorder itself cannot.

28. In terms of the severity, if the environment can adjust and adapt to the diagnosed person the morbidity is reduced, if the limit of possible adaptions is reached then morbidity returns and can cause stress and anxiety.

29. The effects of ASD are as follows. ASD is a pervasive neurodevelopmental condition, describing a pattern of strengths and relative weaknesses across different aspects of daily functioning. It is a lifelong disability that will affect how a person makes sense of the world, processes information and relates to other people. ASD is often described as a spectrum disorder because it affects people in many different ways and to varying degrees. People with ASD typically show differences or experience difficulties in social interactions which may lead to misunderstanding and stress often in the workplace. They are as a result more vulnerable to mood problems such as anxiety and depression. ASD also associated with deep intense interests and preferences for order, clarity and precision. This combination in people with ASD who are often also highly intelligent can make them very valued members of the workforce and society.

30. They are often referred to as 'the triad of impairments' (again this was a generic description not specifically a description of the Claimant’s impairments). They are:

    A. Social communication
    B. Social interaction
    C. Social imagination.

<u>Difficulty in social communication:</u> People with ASD sometimes find it difficult to express themselves emotionally and socially. They may:

➢ have difficulty understanding gestures, facial expressions or tone of voice

➢ have difficulty knowing when to start or end a conversation and choosing topics to talk about

➢ use complex words and phrases but may not fully understand what they mean

➢ be very literal in what they say and

➢ can have difficulty understanding jokes, metaphor and sarcasm.

Difficulty with social interaction: People with the condition may:

- ➢ struggle to make and maintain friendships
- ➢ not understand the unwritten 'social rules' that most of us pick up without thinking.
- ➢ find other people unpredictable and confusing
- ➢ become withdrawn and seem uninterested in other people, appearing almost aloof
- ➢ behave in what may seem an inappropriate manner.

Difficulty with social imagination

- ➢ imagining alternative outcomes to situations and finding it hard to predict what will happen next
- ➢ understanding or interpreting other people's thoughts, feelings or actions. The subtle messages that are put across by facial expression and body language are often missed
- ➢ having a limited range of imaginative activities, which can be pursued rigidly and repetitively, e.g. lining up toys or collecting and organising things related to his or her interest.

People with ASD can have difficulties in interaction with others, present as coming across with lack of empathy, whilst communicating come across as hostile or aggressive, be perceived as rude or patronising. Eye contact can be variable, and deficits in social communication, social interaction and social imagination are core deficits.

31. Executive function deficits, such as lack of organisation can also be described by this diagnosis.

32. Dr Rajpal confirmed in a question from the Respondent's representative that the Claimant's diagnosis would not explain any inability to bring to notice, to her employers, the diagnosis.

33. The Respondent also asked the following question:

Whether Dr Jackson's presentation could be likened (at least to the lay person) to the presentation of someone suffering from stress/work pressures, or
whether there were presentational factors unique to ASD that would be reasonably apparent to a lay person?

34. Dr Rajpal's opinion was that it was possible that her presentation would look like somebody who is stressed, when she was under stress or work pressure but he was unable to comment further as he had not seen her stressed. He also advised that there are no unique stress presentations to ASD. They are unique to specific individuals.

35. In a further report dated 14 January 2020 Dr Rajpal confirmed in response to a question from the Claimant that when people are struggling with ASD, are anxious, their ability to socially engage, socially interact would become worse, compared to when they are not stressed. He also agreed that if they were unable to manage the anxiety it will continue to worsen until external intervention is put in place.

Claimant's employment

36. In July 2014 the First Respondent ("R1") advertised a role for a Temporary Lecturer in Astronomy within the School of Physics and Astronomy. This was categorised as an academic role in teaching and scholarship ("T&S"). It was a fixed term position for one year. The Claimant applied for the position and attended an interview in Cardiff on 8 August 2014 and was offered the position on 18 August 2014. Professor Tucker, the Second Respondent was involved in the Claimant's recruitment and they had a discussion on 29 August 2014 which was confirmed in an email of 30 August 2014. R1 had a particular requirement for Teaching cover and this was made clear to the Claimant in both the written documentation including the job advertisement and the discussions with Professor Tucker. In that sense it differed to other academic teaching and pathway roles where someone may not be expected to teach in the first semester. Professor Tucker agreed the following with the Claimant:

37. The Claimant would teach PX2338 (Observational Techniques in Astronomy ("Obs Tech")) and PX4106 (Interstellar Medium and Star Formation ("ISM")). It was acknowledged this was a "large load" and there was no preparation time and therefore the Claimant would not be required to teach other courses in the first semester. There was reference to the Claimant needing to 'hit the ground running'. The Claimant was also expected to take Year 1 Tutees (four students one hour per week) and assist with assessments and reports for the final year project students. In semester two the Claimant would be continuing with PX2338 and assist with developing the MsC course in Astrophysics (Obs Tech) and PX4106 would come to an end. Professor Tucker told the Claimant there was likely to be an opportunity for continued effort in the long term in respect of the MsC course. A start date of 22 September 2014 was agreed as the Claimant had to relocate to Cardiff.

38. The Claimant had been recruited to cover the teaching duties of a Ms Gomez who taught PX2338 and acting deputy for PX4106. Ms Gomez had been authorised to take a period of research leave. There was a dispute of fact between the parties as to the reasons the Claimant had been recruited. The Claimant relied upon a statement made by Professor Tucker to a later investigation that she had been hired to recruit 3 people. This was not the case. Her initial appointment which was purely to cover Ms Gomez.

39. The course materials were made available to the Claimant via a Dropbox at the end of August 2014.

40. In the pre employment checks the Claimant ticked the "No" box when asked if she had a disability.

Contract of employment

41. In respect of the Claimant's contract, Professor Tucker informed the Claimant that this would be sent to her electronically and to her Stockholm address that had been provided by the Claimant. The Claimant did not raise any issue about this.

42. The contract was dated 10 September 2014 and signed by the Claimant the same day. The Claimant initially denied ever receiving a copy of the contract but after receiving a copy of the signed contract changed her position to having never been sent a copy. We find that a copy was sent to the Claimant by email and post and it must have been received and read by the Claimant as she signed it the same day.

43. The contract was for a fixed term with a start date of 22 September 2014. It had a specified fixed term end date of 21 September 2015. The probationary period was 36 months as was the standard period for R1's academic roles. It expressly incorporated standard terms and conditions of employment. Under the heading "Fixed Term Contract" it provided as follows:

"The reason for your post being fixed term is that you will be employed to cover the teaching of undergraduate courses whilst the existing post holder is on sabbatical for 12 months".

44. The contract contained a link to R1's fixed term contract staff information on the staff intranet. It also stated that the Claimant would not be deemed to be redundant at the end of the period or entitled to a redundancy payment or redeployment as the post was to cover staff absence.

Initial feedback on the Claimant

45. R1 operates student and staff panel meetings which are minuted and open meetings. On 5 November 2014 the minutes record that there was an issue with the ISM course being taught by the Claimant. The minutes state as follows:

"students are not sure that the lecturer is adequately prepared for the lecture and there are very few exercise classes, which makes it difficult for the students to relate to the content. BER[2] said that the MO[3] had a very short time to prepare before starting the course. He will speak to her."

46. Also in November 2014, some concerns were raised by Swansea University. Some students were attending the ISM lectures remotely. Dr Richardson, who was the Director of Undergraduate Studies, received an email reporting that a number of students had expressed concern with the module. These were in summary; that the lecturer was not writing her own slides and problem sheets and often asserted that she didn't understand something on the slide as she didn't write the slide. There were also complaints that the lectures lacked preparation and complex equations were skimmed over. Following receipt of this email Dr Richardson contacted Professor Sutton who was the teaching quality officer ("TQA") for the school and they arranged to meet with the Claimant. This meeting took place on 17 November 2014. The meeting was not minuted however there was an email the following day from Dr Richardson to Swansea University in which he sought to defend the Claimant in respect of the concerns that have been raised. He told the University that the Claimant had had very little time to prepare the module and was using someone else's slides. He acknowledged that the Claimant was perhaps a little "nervy" by nature and

[2] This was a reference to Bernard Richardson (the third respondent)

[3] This was an abbreviation often used to describe the Module Organiser, who is the designated person in charge of the course

"perhaps too honest" so she may have made comments about not knowing what was on the slides. He was of the view that the Claimant clearly understood the material and was ahead of the students. It was clear and the Claimant accepted in her evidence that Professor Sutton and Dr Richardson had offered her some advice and guidance.

First probation meeting 24th of November 2014

47. The Claimant met with Professor Tucker on 24 November 2014 for a probation review meeting. The paperwork for the meeting was not completed at the time and was completed later in May 2015. Around this time it had been identified that there would be an ongoing requirement to extend cover for Ms Gomez as she was going to take a further period of research leave beyond the initial 12 months. Professor Tucker discussed with the Claimant extending her contract for an additional two years. No issues in respect of the Claimant's performance were raised other than a training need identified associated with assertiveness and teaching management skills. The Claimant did not raise any issues in respect of health other than to raise that her office was noisy and did not have any natural light which was causing her various health and other issues (she used the phrase "migraines et cetera"). Following this it was arranged for the Claimant to relocate to a different office that had natural light. The paperwork recorded that a mentor was "not assigned".

MsC Co-Ordinator application

48. The Claimant had applied for the above role in February 2015. She was not successful and Dr Paul Roche was appointed (the fourth Respondent). The Claimant was marked as first reserve which meant that she would automatically be added to a relevant talent pool and candidates in that pool may be searchable and may be invited to apply or called to interview for a similar position. The Claimant had scored 30 points on the shortlisting form by Dr Richardson. This was the same score as Dr Roche and they both had the same comments that they were well suited to the role. Dr Richardson's evidence which we accepted as it was not challenged was that he and the other panel members concluded that the Claimant's presentation was over detailed and had concentrated too much on the pedagogy of teaching rather than the oversight and management of introducing new MSc programme.

Probation review meeting 28th of April 2015

49. A probation review meeting took place between the Claimant and Professor Tucker on the above date. Professor Tucker recorded that the Claimant had successfully acted as the module organiser for both of her courses and that both had achieved a greater than 60% teaching quality score which was a good standard given the demands of teaching the modules at short notice and for the first time. For the remainder of the Claimant's contract the Claimant was set objectives to collate new suggestions and improvements for the Obs Tech module and assist with its development for use at MSc level through liaising with the MSc Co-Ordinator (Dr Roche). In the mentor box was the words "to be assigned".

Fixed term contract extension

50. The Tribunal had sight of a fixed term review record that was a record of the meeting held on 24 November 2014 the same date as the first probation meeting between the Claimant and Professor Tucker. This coincided with Professor Tucker's evidence that it had become clear around this time there was a need for the lecturer in astronomy to continue beyond the envisaged end date of the Claimant's contract. The form was not signed by the Claimant's and it is unclear whether the Claimant ever had sight of this form but we find nothing turns on that.

51. Professor Tucker discussed the possibility of an extension to the Claimant's contact at this meeting. This was not formally confirmed at that meeting. On 16 June 2015 R1 wrote to the Claimant regarding the scheduled termination of her post on 21 September 2015. This letter reiterated that the reason the Claimant's post was fixed term was that she had been employed to cover the teaching of an undergraduate course while the existing post holder was on sabbatical for 12 months.

52. R1 subsequently wrote to the Claimant on 6 October 2015 confirming the extension of her fixed term contract with a renewal start date of 22 September 2015 and end date of 21 September 2017. Under the heading "Reason for fixed term renewal" it stated the post was to cover astronomy teaching while the existing post holder was undertaking research on a research grant for 24 months. The work was currently available until 21 September 2017.

June 2015

53. There was a dispute of fact between the Claimant and Professor Tucker regarding a conversation the Claimant says she had in Professor Tucker's office in June 2015. The Claimant's evidence was that she informed Professor Tucker that after her work conditions during the first year she was feeling exhausted, overwhelmed and burnt out and that she needed assurance she will be given more support and not be 'expected to figure out so much herself'. The Claimant told the Tribunal that she was reassured by Professor Tucker's response that she had greatly appreciated the efforts made by the Claimant and acknowledged she had not been given the support to which she was entitled to and that things would be very different from now on. The Claimant further asserted that she informed Professor Tucker during this conversation about the problems she had had in a previous role in Sweden where her work had been plagiarised and stolen.

54. Professor Tucker was asked about this in cross examination and told the Tribunal she had absolutely no recollection of this conversation.

55. We find there may have been an informal conversation between the Claimant and Professor Tucker at this time about workloads generally but that the Claimant did not impart information to Professor Tucker that she was exhausted overwhelmed and burnt out. Given Professor Tucker's later reaction in November 2015 when the Claimant reported stress, we find on the balance of probabilities that she would not have ignored being informed as such on this occasion.

Mentor

56. Professor Tucker's evidence about the mentor was that in the initial probation meeting she was unsure if the school would appoint a mentor and she committed to find out from HR, who informed her that it was not a necessity but the Claimant could have a mentor she requested one. She recalled she subsequently had a conversation with the Claimant where she related this to her and the Claimant said that she was 'okay for now' or words to that effect. The next time the issue of a mentor came up was when Claimant needed to undertake the academic practice module and at that stage the Professor Tucker agreed to help the Claimant find a mentor.

57. There was no evidence that the Claimant ever requested a mentor be assigned to her.

2015-2016 academic year

58. The Claimant's teaching duties for this academic year were as follows:

59. The Claimant would be teaching the PX 4229 module from January 2015 (this was the ISM module the Claimant had taught in autumn 2014).

60. The module PX2338 (Obs Tech), which had been taught by the Claimant the previous year. The Claimant and Dr Paul Roche have been due to work together to update the course and the Claimant had preparation time between June 2015 to the end of September 2015.

61. The Claimant was also tasked with teaching a new module PX 0102 Motion and Energy. The Respondent's case was this was an existing module with a full set of lecture and exercise materials and was due to be delivered in the autumn semester. This was a module to preliminary science/foundation students described as an A-level equivalent module.

62. On 15 July 2015 Dr Richardson emailed the Claimant to inform her that she would be asked to teach the Obs Tech course again and also the ISM model module but not until Spring 2016. He also asked the Claimant to take on PX0102 which comprised of 11 one-hour lectures plus a few exercise classes and asked the Claimant to get in touch with Dr Westwood who was the deputy module organiser familiar with the materials. Dr Richardson stressed to the Claimant that she would not be expected to have any involvement in the lab. The Claimant went to see Dr Richardson about this email. Dr Richardson remained of the view the allocation was reasonable and did not accept her concerns.

63. On 17 July 2015 the Claimant got in contact with a Mr Smith[4] to request the digital files for PX0102. Mr Smith replied on 20 July 2015 attaching all of the lecture notes and exercise sheets and acknowledged the latter probably needed a small overhaul. He also stated that he had not sent out Power Point slides that he used during the lectures as he guessed she had her own style. The Claimant did not reply to Mr Smith but she did later ask him

[4] We do not know Mr Smith's job title and have therefore referred to him as Mr Smith

for a copy of the slides on 21 September 2015. The Claimant did not raise any further issues in respect of teaching this module until November 2015.

64. On 20 July 2015 the Claimant emailed Professor Tucker raising concerns about the request to teach the PX0102 module in the coming year. The Claimant's concerns were focused on the fact that it was likely to be the last time the module would be taught this would mean she would have to prepare and teach a new module then a further new module the following year. The Claimant went on to say that she was not saying she did not want to take on an additional module rather she wanted a module that will continue into future years so she would not have to prepare another new module next year. The Claimant told Professor Tucker she had raised it with Dr Richardson and that he seemed to think her concerns were unfounded and assured her it would take minimum work to prepare the module as she could use the material previously prepared by others. Professor Tucker did not reply to this email as she was on leave for the summer.

65. On 15 September 2015 the Claimant was sent an email from Dr Westwood about the PX0102 module as he was running the associated lab module. He suggested that the Claimant also run the exercise classes and also informed the Claimant there may be up to 60 students. The Claimant did not reply to his email and so he chased the Claimant on 24 September 2015. The Claimant replied indicating quite clearly she had not been told how much work the module would involve and that she believed she would need to prepare the lectures, write the exam and run the exercise clauses. This was contrary to Dr Richardson's instructions not to do so given there was an existing set of lecture notes and exercise materials. As it turned out the Claimant ended up running half of the exercise classes.

<u>Overhaul of the Observational Techniques module and withholding of lab materials</u>

66. The Claimant and Dr Roche were tasked with improving the above course. In the summer of 2015 they had agreed to split the preparation and the emails in June 2015 indicated an amicable and progressive discussion between the two. The Claimant alleges that Dr Roche withheld lab materials from her until shortly before the lectures which made her appear disorganised to the students. There was evidence that the information was provided to the Claimant shortly before the sessions (for example on 16 October 2015). We find that this was not deliberate on the part of Dr Roche and there was no evidence that the Claimant informed Dr Roche at the time that this was causing her difficulty.

<u>Lab Demonstrators</u>

67. It was established practice that R1 provided teaching support in laboratory sessions to assist with the running of the laboratory and marking duties. The Claimant was assigned two lab demonstrators to assist her with the Obs Tech Modules. We shall refer to these as LD1 and LD2 as their actual identity is not relevant to the issues. They were PhD students but also employed by the university in these roles.

68. On 23 September 2015 LD2 emailed the Claimant to inform her she was unable to undertake the next two weeks as she would be on an observing trip. She asked the Claimant if she wanted her to try and find someone to fill in for her. The Claimant did not reply to this email. The Claimant says she went to find LD2 to discuss but she had already departed. On 15 October 2015 LD2 emailed again to give the Claimant notice she had a hospital appointment on 30 October 2015 and again offered to try and find a replacement. LD2 also informed the Claimant she would have to miss the session on 23 October 2015 as she had a training commitment.

69. On 19 October 2015 the other lab demonstrator (LD1) emailed Professor Tucker to inform her he wanted to be removed from all duties connected to the Observational Techniques module. He stated in a further email the primary reason was due to the significant change to the module which would take up more time that he could commit to. The Claimant told the Tribunal that she understood the real reason was that she had inadvertently offended LD1 when she had advised him he got some marking wrong and this was overheard by students and had offered to apologise.

70. On 20 October 2015 LD2 went to see the Claimant in her office and they had a disagreement. The Claimant says she then experienced an autistic meltdown and approached Dr Richardson to report LD2's behaviour but he was unsympathetic. Dr Richardson was asked about this in cross examination. He had described the Claimant as "agitated" during this discussion and that she had not made a great deal of sense and it had taken him some time to unpick what had happened. He went on to say that she was clearly coming across to others as having some difficulties and it was this an uncharacteristic and rather aggressive stance. He told the Tribunal that Claimant had been shouting and not making much sense. He was asked about describing this as a meltdown in his witness statement of November 2018. He explained that his reference to the word "meltdown" did not mean he understood to be an "autistic meltdown" rather he meant that she was losing her temper or 'losing her rag'. He agreed that the Claimant displayed extreme behaviour. Dr Richardson's evidence, which we accepted as plausible is that he had no understanding of what an autistic meltdown might be and had not attributed this behaviour to ASD at that time.

71. The Claimant then went to see Dr Roche as she was still very upset and at that time she believed he had always seemed sympathetic. Unbeknown to the Claimant after she had been to see Dr Roche, he then emailed Professor Tucker and stated that he had had 'a very p-eed off (sic) Miranda' and that she had had 'a bit of a run in' with LD2. He informed Professor Tucker that they had talked through the problems he had made a number of suggestions. Professor Tucker replied the next day and stated that she believed that the Claimant had a 'bit of a run-in' with Dr Richardson also.

<u>Email exchanges commenting on the Claimant's character</u>

72. On 21 October 2015 Professor Tucker emailed Dr Richardson replying to an unrelated subject and stated as follows:

"Ken told me that you had a Miranda encounter yesterday afternoon. I had an email from Paul R to the same effect; he has been working to ease the Obs Tech situation as a result."

73. Dr Richardson also emailed Dr Westwood on 21 October 2015 stating:

"MJ clearly has a different perspective on what she's doing or an inability to express what she is ACTUALLY doing to other people"

"Warpath" email

74. In an email dated 22 October 2015 from Dr Cartwright to Dr Richardson, she stated as follows:

"Miranda has just told me that the observing trip has been confirmed, and that the students have been told they are going on it. There appears to be some sort of meltdown with her markers and demonstrators?"

75. In response Dr Richardson replied as follows:

"Unlucky you if you've had a visit from Miranda. She's on the warpath about all sorts of things – but basically problems of her own making."

76. On 22 October 2015 Dr Richardson emailed the Claimant and informed her he had discussed the problems she was having with the PX0102 modules with Dr Westwood and the two demonstrators. He acknowledged that he had not understood the difficulties she felt she was having but told the Claimant that he did not believe it was unreasonable to expect her to deliver 11 lectures and take half of the exercise classes. He also raised with the Claimant that she had not replied to emails that Dr Westwood had sent the Claimant and went on to reiterate that he had asked the Claimant to do as little as possible to the existing material given that it was unlikely to run again. He also dealt with the issue with LD2. Dr Richardson was aware as he had been informed by LD2 that she had informed the Claimant that she was going to be away and offered to obtain cover but the Claimant had never replied to emails. After a long email exchange he asked the Claimant to "**keep LD2 as sweet as possible".**

77. ON 28 October 2015 LD2 emailed the Claimant to request when she would be receiving her marking and to remind her she would not be attending the session on 30th. The Claimant did not reply so LD2 chased the following day. The Claimant subsequently replied and advised she had completed all of the marking as she had not been present at the lecture and believed she would not have known the topic well enough to mark. The Claimant also informed LD2 she had no idea she would not be attending the session on 30th and hoped there would be no more absences.

78. LD2 was evidently upset at the email from her reply the same date. She reminded the Claimant she had told her about not being able to attend on 30th a number of weeks ago and that she had always offered to find a replacement. The Claimant subsequently sent a very long reply. Although the Claimant apologised for forgetting LD2 had told her about her hospital appointment the Claimant went on to sharply rebuke LD2 for her perceived shortcomings as a lab demonstrator. The Claimant alleged that LD2 was not taking her obligations as a demonstrator seriously and that the issues involved with her being a demonstrator were 'taking the Claimant more time' than if she did not a have a demonstrator. We do not set out the entire email

as it is too lengthy but it is important to record the tone of the email which was being sent to an employee of R1.

"**Then, last week, you came marching into my office, giving me orders about what marking I am allowed and not allowed to assigned to you, and now you're complaining I gave you too little to mark! It's your job as a demonstrator to show up for the lab sessions and do the marking as the MO assigns it. It is not your place to tell the MO how much marking she should be doing herself, or to instruct the MO in how she should assign the marking duties. I have never so far this year given you more than six hours of work in any week (including the demonstration in the lab session) so you have no reason whatsoever to complain.**

If you want to continue to be my demonstrator, you need to show for lab sessions unless there are urgent, unavoidable reasons for you not to, and do the marking that I assign you to do. In addition if you do miss lab sessions in full or in part, you need to be willing to make at the time by doing tasks that I assign you. If you agree to these conditions, then I am happy to keep you one as a demonstrator for Obs Tech. If you will not agree to this, then I just don't have the time or energy to keep you on as a demonstrator. Perhaps in that case Bernard will be able to assign you demonstrator duties for another module. I'm sorry it has to be like this and I am trying to be fair…now I must finish writing the lab exercise for tomorrow which will take me well into the evening, thanks to my having to respond to your email"

Dr Richardson's email to Claimant dated 30 October 2015 (harassment)

79. Dr Richardson responded to the Claimant's email on 30 October 2015. He informed the Claimant that the breakdown in communication between her and LD2 had escalated to a point where LD2 had asked to be relieved of lab marking duties. Although the version before us did not suggest he had copied in LD2, it was accepted by Dr Richardson that he had copied her in. He went on to say that there had been feedback on the Claimant's Obs Tech module raised at a staff student feedback meeting (which LD2 was in attendance as a student) and referred to students raising an 'apparent lack of organisation' for early provision of written material for the lab (which the Claimant alleges was Dr Roche's fault – see above at paragraph 66). Dr Richardson had sought to defend the Claimant at that meeting by advising the materials were probably on the learning central system (which they were not).

80. LD2 had been present at that meeting as a student and therefore would have been aware of the comment. Dr Richardson accepted that despite this, he should not have copied in LD2 on the exchange with the Claimant.

81. Dr Richardson also informed the Claimant that elements of her email to LD2 had strayed into areas of contractual matters, as the employment of demonstrators was between the school and the individual postgraduates and if there were problems they needed to be handled through the school. This was in reference to the Claimant's suggestion in her email to LD2 that she may not be kept on as a demonstrator (assigned to the Claimant), bearing in mind she was employed by R1. He commented that there was a clear breakdown in communication between her and LD2 and it had escalated to the point where LD2 had asked to be relieved of demonstrating duties. The Claimant replied to Dr Richardson that she found it extremely inappropriate for her to criticise her work on Obs Tech and copy it to LD2.

2 November 2015 email Dr Richardson to LD 2[5]

82. In a separate email exchange Dr Richardson commented to LD2:

"..don't feel bad. To be honest it's me who feels bad that any of our academic staff have such poor people skills that we find ourselves in this position."

83. The Claimant asserts that little or no effort was made to recruit new demonstrators and compares this to efforts made to recruit demonstrators for Dr Westwood. Dr Richardson dealt with this in cross-examination. His evidence, which we accepted was that the entire pool of available demonstrators had already been allocated at the start of the academic year. Dr Westwood had been able to secure a replacement demonstrator as one of his demonstrators wished to swap with another in respect of marking duties and therefore it was a straight swap. In the Claimant's case both demonstrators had resigned and there was no more resource available. The only way that they could have allocated a new demonstrator to the Claimant would have been to have removed a demonstrator from someone else. The added complication was the demonstrator would also need specialist knowledge in astronomy and astrophysics whereas Dr Westwood's demonstrators only needed a more general physics knowledge concerning physics laboratories. LD2's offer to secure a temporary complacent during her various absences could not be compared with securing a permanent replacement. Ultimately Dr Richardson did find some interim solutions for cover for the demonstrators the Claimant was provided with two demonstrators in the following semester.

Disclosure of stress on 10 November 2015

84. On 10th of November 2015 the Claimant sent an email to Professor Tucker. She advised she was no longer able to perform tasks assigned and had been working very long hours and had a chronic headache for the past few weeks and had developed other health problems indicative of high levels of stress and that she simply could not continue. She informed Professor Tucker that the marking for the observation techniques module had contributed significantly to this and stated she had made it clear to her and Dr Richardson when she had been assigned the Motion energy module but her concerns were dismissed. Professor Tucker replied the next morning and stressed the need to discuss what could be changed and the need to meet as soon as possible. She asked the Claimant whether she had been able to go to the doctor regarding the headaches. She suggested a meeting the following day.

85. After Professor Tucker received the Claimant's email she contacted Dr Richardson to inform him of the Claimant's email. She did not forward the email but summed up the content. In relation to the Claimant's health she stated as follows:

"last night I received and email from Miranda detailing how she cannot cope with her current workload and the impact of stress on her health".

86. She also contacted another lecturer to see if he could take on the last four lectures of the Motion and Energy Module and asked Dr Roche about

[5] This was not copied to the Claimant. She found out about it as a result of a SAR in August 2017

helping with marking. There was no evidence that Professor Tucker disclosed the Claimant's stress condition to anyone other than Professor Griffin and Dr Richardson.

87. The Claimant was very critical of the Professor Tucker's alleged disclosures to other staff that she had a stress condition. She relied upon this as conduct amounting to harassment. The Claimant asserted she had not given permission to share details about her health status with anyone else and Professor Tucker is alleged to have been done in a mocking way. There was no evidence it was done so. It was reasonable for her as a line manager to have taken her to have discussed this issue with Dr Richardson particularly given the Claimant had informed her that she needed to discuss a reduction workload after that week and his role in charge of undergraduate studies.

88. Dr Richardson replied on 11 November 2015. The contents of this email were also relied upon for the Claimant's claim of harassment.

89. As the email exchanges were of some significance we set out the relevant passages as follows:

90. (Dr Richardson to Professor Tucker)

"Oh dear-Miranda. I don't actually think we're asking her to do too much at all. I appreciate that some of the enforced changes in Obs Tech have perhaps been stressful but maybe she's also tinkered with that far more than was necessary (considering that it's worked very nicely for quite a few years). The Prelim module[6] should have been a pleasant addition to her work load – and far from an unreasonable addition to her workload considering that she is hired to teach (I'm assuming that that is her contract). So I have to ask if the stress has been caused by something else. Clearly we have to support her with this. I would not want to have to find someone else to stand in for Obs Tech and I would not want to have to find someone else to do ISM next semester either- so both sides have a strong interest in keeping her on the rails.

…….

We have to get to the bottom wall of the real cause of stress or I think we are in for a long haul and possible disruptions to all the things she's engaged in. I will reiterate that I don't think we're asking her to do too much - so she cannot cope with that workload, we will have to seriously consider her longer term future, but we need short-term plans as well."

91. And Professor Tucker's reply to Dr Richardson:

"I completely agree with your stance; that Miranda's workload is very fair and completely in line with other academics (and less than other T& S academics). I will be firm on this point.

I also agree that she is suffering from her own tinkering. I think her teaching intentions are very good, but that she is not as experienced as we thought and practice.

Clearly Miranda is suffering from stress and I should direct her to staff counselling. For her sake and the sake of the students we need to find a working solution."

[6] Motion and Energy course

Meeting 12 November 2015

92. Professor Tucker subsequently met with the Claimant on the above date. We had sight of some notes that she made at the meeting which were later typed. The meeting lasted several hours. There was a dispute of fact about what was discussed at this meeting. The Claimant says she disclosed to Professor Tucker that she had experienced this kind of condition during previous employment and had been prescribed sleeping pills and time off work. It was the Claimant's case that Professor Tucker was informed that the Claimant's condition was a recurrence of one which she had been diagnosed and treated over a year previously. Professor Tucker disputed this account. Her evidence was that at no point during the meeting did the Claimant mention to her that she had previously suffered from poor mental ill-health. She told the Tribunal that this would have allowed her to differentiate between a relatively common occurrence case of an academic expressing concern about their workload and a temporary period of stress and a recurrence of a previous condition. Had the Claimant disclosed this to her she would have taken steps to refer to occupational health who might have advised her on making suitable adjustments.

93. We have preferred Professor Tucker's account of this meeting as we accepted that Professor Tucker would have reacted differently had she been so advised, given her expressed intention to refer the Claimant to staff counselling.

94. It was common ground that Professor Tucker offered to reallocate the final four lectures in the motion energy module to a different lecturer but the Claimant refused at this suggestion she believed there were only three weeks left in semester and she had already mostly prepared it would only save for about an hour a week. It was also suggested all that she should limit contact time with students to the minimum within timetabled hours and she should not assist students with coursework on other modules. Dr Roche had already offered to assist with Obs Tech marking but the Claimant had not taken him up on this offer.

95. In relation to the Claimant's workload on the Obvs Tech course, the issues over the departure of the demonstrators were discussed. The Claimant told Professor Tucker that she needed more upfront information from Dr Roche which was the first time she raised the issue about the late provision of lab material (see paragraph 66 above). Professor Tucker asked the Claimant to arrange a meeting with her, Dr Roche and another staff member to discuss the planned module content for the next semester and the overseas trip.

96. The note recorded that 20 credits in each Spring and Autumn semester was a reasonable workload and that the Claimant had been offered the role on the ground of teaching and that Professor Tucker recommended an appointment with Health and Well-Being staff to which the Claimant replied she had no time to do this, and to which the note by Professor Tucker records she "understands".

97. It was put to the Claimant during cross examination on this issue that Professor Tucker had referred to the Claimant to the R1's well-being and

counselling services. The Claimant accepted this had been raised but complained that she was not told how to contact this organisation. This led to the Respondent applying to disclose an email from Professor Tucker to the Claimant dated 11 November 2015 at 12.44 where she referred the Claimant to the University's staff well being and counselling services that dealt with stress issues and provided a direct link to the website. The Respondent was permitted to rely on the email as it was plainly relevant given the Claimant's assertion she had not been told how to make contact.

98. The Claimant was permitted to admit new written evidence to address this email. The Claimant's explanation for not following up or contacting the well-being and counselling service was that booking a workshop or partaking in some of the other services would not have alleviated her immediate problem of experiencing so much stress she was unable to function or her headaches. Further, the link provided in the email could not be accessed by the Claimant as it is an internal link and therefore she was unable to comment on the usefulness of the information provided. The Claimant told the Tribunal that it was insensitive of Professor Tucker to send a link to a workshop knowing it would take up time she did not have and this was sending a message that Professor Tucker wanted her to solve the problem on her own. This was not a reasonable position to take. Professor Tucker had sent the Claimant a link to a health and well being support service. We do not find that such actions were insensitive or indicative of Professor Tucker not wanting to help the Claimant, rather the opposite indicating a degree of support.

99. Following the meeting the Claimant did not have any time off work for ill health and was not signed off by her GP or by self certification. There was no evidence that the Claimant raised any further issue of stress at this stage.

<u>Probation Reviewing Meeting 17 November 2015</u>

100. The notes record that the Obvs Tech module had undergone a "major redesign" in the previous summer. It was reiterated the Claimant should call a meeting with Professor Tucker and Dr Roche. The modules had achieved good student satisfaction scores (74% and 64%). It also noted the directions above regarding operating an office only hours procedure. Under areas of concern Professor Tucker noted:

"The main concern is in how Miranda manages her workload. She is teaching 40 credits worth of material, split 20 + 20 and is dedicated to those tasks and the student learning. It is suggested that no major changes are made to lecture materials unless there is time to do so".

101. It was suggested the Claimant went on courses in time management and managing stress. Professor Tucker reiterated the indicative guide for effort which was 4 hours per contact hour for an established module, 7 hours per contact hour for a new or changed module.

102. This paperwork was not provided to the Claimant until 21 March 2016.

103. The Claimant asserted she had attempted to arrange the meeting to discuss the Obvs Tech module. She relied on an email dated 19 January 2016 to Professor Tucker copied to Dr Roche. The email was quite long

over two pages and dealt with a number of different subjects. Towards the end of the email the Claimant does indeed ask if they could meet to discuss Obs Tech and suggests a number of dates. Professor Tucker accepted she had missed the reference to the meeting in that email and the Claimant did not follow this up and no meeting did take place as had been requested by R2.

Exam Board Meeting 10 February 2016

104. The events at this meeting are asserted to have amounted multiple acts of discrimination by a number of Respondents. Dr Richardson is alleged to have unfairly upbraided the Claimant in front of the entire faculty (40-50 colleagues).

105. The Claimant had previously been appointed Unfair Practice Coordinator. The issue of low level plagiarism was raised and minuted at the meeting. There was a dispute between the Claimant and Dr Richardson as to how the topic was raised and why although we found this not relevant to the issues in question. The Claimant insisted that the issue had been raised by Dr Westwood and she attempted to comment as she had recently attended a meeting in her role as Unfair Practice Co-ordinater where this had been discussed. Dr Richardson acknowledged he stopped the conversation abruptly. His explanation for doing so was the Claimant launched into a discussion and it was contrary to policy and not the appropriate meeting to discuss the issue. He refuted he was disrespectful but accepts he was firm and as chair he needed to move the meeting on. He denied his actions were because of the Claimant's disability. He told the Tribunal he would have moved the meeting on the same way regardless as to who had been raising matters outside of procedure.

106. Professor Tucker recalled herself that the Claimant had been visibly upset at the meeting and agreed Dr Richardson had been "quite abrupt". Professor Tucker did not recall the Claimant saying it was gender related. Professor Tucker was unable to recall specifics but believed she had a "quiet word" with Dr Richardson about the incident.

107. The Claimant's evidence was that she raised this with Professor Tucker at the next monthly meeting and that she agreed Dr Richardson had treated the Claimant inappropriately. The Claimant commented she found it strange that Professor Tucker thought it a mitigating factor that the Claimant had brought this up at the wrong meeting which corroborates what Dr Richardson said about the Claimant raising the issue at the wrong meeting.

108. It was not raised again by the Claimant formally or informally until the "mouth zipping " incident which we refer to below.

109. Dr Richardson did not recall this as a major incident until these proceedings. He apologised to the Claimant in his evidence if she had been offended but he had not apologised at the time.

11 May 2016 meeting of female staff

110. This meeting had been called to discuss treatment of female staff and postgraduates following responses from a staff survey where female staff responses differed to males. Areas of concern highlighted were treatment of staff, recognition of performance and confidence in management. There was no suggestion that Dr Richardson was named or referenced in any part of these survey results.

111. The Claimant raised Dr Richardson's treatment of her at this meeting, attended by female academics only. She told the meeting that she felt she had been treated that way due to her gender. She did not name Dr Richardson directly

112. We find on the balance of probabilities the Claimant did raise this as a gender issue at that meeting.

113. After the meeting the Claimant confided in Dr Cartwright that the person she had referred to at the meeting was Dr Richardson.

Mid term questionnaires – March 2016

114. On 30 March 2016 the Claimant was sent mid term questionnaires for the ISM module by Professor Sutton who was responsible for teaching quality. He advised there were concerns over length of assignments, lecture organisation and the amount of worked examples. The Claimant replied in a very detailed email the next day and asked for support. The Claimant was defensive and critical of the students. Professor Sutton did not reply until 28 November 2016 by which point the end of semester questionnaires had been received and he maintained there was still a "big gap" between the Claimant's effort in improving the module and what the students were expecting and suggested a meeting.

Alleged Solicitation of comments by Professor Tucker and Dr Roche

115. On 19 April 2016 Professor Tucker arranged to meet with the Claimant's second year astronomy students to discuss a survey that suggested they were less satisfied with their degree than physics students. That survey was not in the bundle but Professor Tucker told the Tribunal there had been a 20% drop in student satisfaction compared to the previous year. The Claimant was not aware of this meeting until later. Dr Roche was also at that meeting but the Claimant was unaware it was taking place. Over 20 students attended.

116. Under the heading "Obs Tech" the notes record that the students reported the Claimant was disorganised, had not provided constructive criticism and had been unprofessional at times. Disappointment was expressed about the field trip falling through[7]. There were other complaints that homework was not marked and returned, and issues with assessments.

[7] In the later covert recording of the 24 month probation review Professor Tucker told the Claimant that she (Professor Tucker) had taken the blame for this. This trip was nothing to do with the Claimant.

117. The notes showed that it was not just the Claimant's module that was discussed with the students. Other modules and lecturing staff were also discussed extensively. The students were asked to complete the upcoming questionnaires and include any comments they wished to the school could deal with them in the appropriate manner.

118. The Claimant alleges that the timing of the meeting was questionable as it was a few days before the module questionnaires were due to be distributed on 22 April 2016. She alleges that the organisation of the meeting was designed to interfere and pervert the intended purpose of the entire module questionnaire process in order to discredit the Claimant. Professor Tucker disputed this. She told the Tribunal the reason the meeting was called was the 20% drop in satisfaction on the survey and there had also been negative feedback at the staff student forum meetings. The students informed her at the meeting that the issues were with the Claimant and the lack of the field trip the previous year, whilst raised, was not the dominant factor. Other lecturers were also discussed not just the Claimant.

119. The questionnaires themselves were later distributed and the Respondent was expecting to be in a position to act on the contents. These questionnaires went missing. It was unclear why this happened at that time. The Claimant told the Tribunal she had given the questionnaires to a student to hand into the office. Therefore there were no end of module questionnaire results available to the Respondent.

120. At the end of the academic year in 2016 Professor Tucker decided to reassign the module away from the Claimant. Her witness statement did not deal with this issue. When she was asked about this in cross examination she told the Tribunal that she went to see the Claimant in June 2016 and informed her the module was being reassigned. The decision was taken without any discussion with the Claimant. Other than the email from Professor Sutton on 30 March 2016, no steps were taken to discuss the complaints with the Claimant before reassigning the module.

121. The reason for the reassignment was set out in the Claimant's probation review document which took place in January 2017. This recorded as follows:

> **"Unfortunately there were no module questionnaire returns, but a large number of students complained via formal and informal Staff Student Panels about lack of organisation, consistency and critical comments. There was also the issue of the demonstrators resigning from their posts.**
>
> **...**
>
> **As a result of student feedback and general astronomy need to review astro related modules and the content of PX 2338 specifically, Miranda's MO duty for PX2338 was removed and replaced with MO for the MSc level, smaller cohort PXT203."**

122. We find that there was no intention of perverting the questionnaire process for the Claimant. The reason the meeting was called was out of concern regarding the drop in the student satisfaction survey. We do find that Professor Tucker sought to encourage the students to record their concerns on the questionnaires so they could be acted upon. However she

did not seek to influence what these comments should be only that they should complete the questionnaires.

Director of International Role

123. In June 2016 the role of Director of International became available. This was not a vacancy in the usual sense more of an honorary role. Professor Griffin emailed all academic staff within the school on 15 June 2016 inviting expressions of interest and attaching an outline of the role. The Claimant submitted an expression of interest on 24 June 2016.

124. On 28 June 2016 Professor Tucker emailed Professor Griffin regarding the individuals who had expressed an interest in the role. The Claimant was referenced as "not advisable, she needs a broader knowledge for our purpose." From the names on the email there had been 8 expressions of interest, 6 male and two females.

125. The Claimant was informed by email dated 3 August 2016 that she had not been successful and that Dr Lewis had been appointed.

Mouth zipping incident 5 September 2016

126. On 5 September 2016 the Claimant attended an Exam Board meeting. The Claimant maintained she was the only female present. The minutes showed there was another female present. The Claimant wished to make it clear she had worked from a template document which Dr Richardson had suggested was unclear and sought to make this point. Dr Richardson accepted that in response he had made a "mouth zipping" gesture and a "Shushing" sound but only after the Claimant had repeatedly returned to the issue and he had stressed several times there was nothing further to discuss. He told the Tribunal that there was no malicious intention in this action nor was there any intent to be discriminatory or harassing and strongly refuting the behaviour was due to the Claimant's gender.

127. We accepted Dr Richardson's evidence that the Claimant returned to the issue after being asked not to and so made it difficult for Dr Richardson to move the meeting on. This was an issue of some importance to the Claimant having recently been appointed Unfair Practice Co-ordinator. We also think it more likely than not that the Claimant would have continued to speak over Dr Richardson based on our observations of the Claimant during these proceedings and what the Claimant has told the Tribunal regarding her inability to read social signals as well as her difficulty in knowing the appropriate level of detail to convey often providing too much detail.

128. After the meeting the Claimant was very upset about the incident and went to see Dr Roche. She did not report the incident directly to Professor Tucker at the time and when Professor Tucker was asked about it under cross examination she did not recall the Claimant raising it with her (the Claimant did not say she had done so in her witness statement). Dr Roche advised Professor Tucker in an email that **"she's not happy about Bernard making "shush" noises / gestures to her when she was trying to talk though…".**

129. Dr Roche did not report that the Claimant had raised any issues in relation to her gender as a result of this incident.

Allegations against Professor Griffin, fifth Respondent

130. On 17 November 2016 Professor Griffin emailed HR, copied to Professor Tucker regarding the Claimant. This was another email the Claimant had discovered as a result of her DSAR and was not known to her before these proceedings. The Claimant asserts that the content of the email amounted to direct disability discrimination. In the email Professor Griffin stated as follows:

"Issue in a nutshell:

We have a temporary lecturer (Dr Miranda Jackson) whose contract we want to allow to finish.

But at the same time there is a continuing need for various measures to backfill teaching for people on teaching relief (funded by grants, fellowships etc.).

Our view is that the individual concerned will not be suited to our future needs – but the situation is complex and maybe be open to debate / interpretation."

131. Professor Griffin told the Tribunal his query to HR was brought about as the School needed to recruit a new T & S position in Experimental Physics which he wanted to advertise externally. He was unsure whether he could do so and this was the reason he was consulting HR about the Claimant specifically was that she was on a fixed term contract and he wanted advice about whether he would be compelled to offer the job to the Claimant. He accepted he did not want to do so as is shown by the content of the email. However his reasons, which we accepted as plausible was that the Claimant in his view did not have the area of expertise in experimental physics. This was what he was referring to when he stated she would not be suitable to future needs.

132. HR subsequently informed him this would not be necessary as the Claimant did not have this area of expertise and further that the role could be advertised externally.

24 month probation paperwork

133. On 23 November 2016 the Claimant was sent her probation paperwork by HR. She was asked to complete the first section before she met with Professor Tucker. A meeting was scheduled for 13 December 2016. On 12 December 2016 Professor Tucker emailed the Claimant to chase her for her completed section. The Claimant replied to advise she was unsure what sections to fill out and that as she had someone booked to repair her washing machine she agreed to Professor Tucker's suggestion to postpone to the New Year. Professor Tucker replied that she was required to fill in the majority and suggested they meet on the Friday of that week. For reasons that are unclear the meeting actually then happened on 13 January 2017 (see below).

134. The Claimant relied upon this conduct as disability related harassment.

Field Trip

135. In June 2016 Professor Tucker had discussed with Dr Roche the possibility of involving the Claimant with the field trip planned for Obs Tech students in 2017. Dr Roche responded enthusiastically to this suggestion suggesting this would assist with her getting involved with high level and more involved with advanced content.

136. Professor Tucker held a meeting with the Claimant and Dr Roche on 21 June 2016 to discuss this further. The Claimant was tasked with organising all elements of the trip supported by Dr Roche. It was agreed they would an observatory in Provence in October 2016 to scope it out as a potential venue.

137. Dr Roche had been involved in previously organising student trips. He told Professor Tucker that before introducing the Claimant to his personal contacts, he wanted to be confident in the Claimant's inter personal skills as the organisation of the trip was based around his personal contacts. He was asked about this in cross examination. He acknowledged he had concerns about introducing the Claimant to his contacts he had called upon to organise the trip the year before. When pressed as to why he told the Tribunal it was because the Claimant could be abrupt and possibly rude. He agreed he would not have hesitated to pass on his contact details about someone who he was confident could work with his contacts without friction.

138. Prior to the trip Dr Roche sent an email to two work colleagues on 7 October 2016. The Claimant learned of these emails from her data subject access request. He stated:

"I'm away all next week, having a restful 5 days with Miranda in the south of France- what could possibly go wrong?!

I'll hopefully have some internet access, so can vent any frustration / rage online during the week 😉!!

139. And also

"Yes, this is my 5 days in Provence with Miranda…I'm going to make surviving this part of my next promotion case, or an application for some sort of medal!"

140. Dr Roche drove himself and the Claimant on the trip. On the return journey there was a conversation in the car. The content of the conversation is disputed. Dr Roche's evidence was that the Claimant told him she had problems reading people and about her difficulties in her previous role in Sweden. Dr Roche asked her whether there might be an element of autism and she vehemently disagreed this could be the case and was vociferous in her denial saying words to the effect of *"how dare you!"* Dr Roche recalled the conversation clearly as he was trying to drive the car in a thunderstorm. He immediately sensed he had really upset the Claimant and it was never mentioned again. Dr Roche never told anyone about the conversation until these proceedings and it was first raised in his witness statement for the contested disability hearing.

141. The Claimant agreed with this account up to a point (she recalled they were driving through a town and she was navigating). However she recalled that rather than reacting badly to the suggestion she told him she had also suspected for some time she may have Asperger's syndrome and it was a calm conversation.

142. We prefer Dr Roche's account for the following reasons. The Claimant never referred to this discussion in her further and better particulars and not until after witness statement exchange for the contested disability hearing. She did not rely on it as evidence of the Respondent's knowledge of her disability. Dr Roche had included his account of it in his witness statement prepared for the purpose of the preliminary hearing on disability and firstly volunteered his account of the discussion in November 2018. Therefore his recollection was based on events that happened two years previously whereas the Claimant's recollection was some years later. In other words the Claimant never raised the discussion in any of the extensive correspondence including her various grievances. Had she recalled a conversation where the possibility of her having autism or Asperger's had been discussed we have no doubt that the Claimant would have referred to that in those grievances and then the further particulars of claim and she did not. Further, we find that it was more likely the Claimant reacted in the way Dr Roche claims rather than in a calm manner as this was corroborated by how she reacted when her union representative raised the issue with her in 2017. Dr Martin described the Claimant as "quite resistant" to the idea of raising it with the university.

Trip organisation

143. On 8 November 2016 the Claimant was due to meet Professor Tucker to discuss trip organisation but Professor Tucker had to cancel at short notice as she was unwell. She asked the Claimant to meet with Dr Roche instead and chased a report stating it was starting to get rather urgent. The Claimant had prepared the report and was intending to show this at the meeting. The Claimant alleged that Professor Tucker had given her less than 15 minutes notice to cancel the meeting but had told Dr Roche that morning she would be away and that this was disability related harassment. We were not taken to any evidence that Professor Tucker had told Dr Roche she would be away that morning. This seems unlikely given Professor Tucker had developed a stomach upset. We find that Professor Tucker did not deliberately only give the Claimant 15 minutes notice of cancelling the meeting and Dr Roche more notice.

144. In relation to the organisation of the trip, this was left in the main to the Claimant. Professor Tucker occasionally chased the Claimant for updates and asked her to write short reports about what progress had been made. On 14 February 2017 Dr Roche emailed the Claimant and asked if she had thought about first aid, risk assessments and getting the passport details. The tone of the email was friendly and helpful. He apologised for mentioning these items if the Claimant had already thought about them (which she had not).

145. Later as part of the grievance procedure the Claimant subsequently prepared a PowerPoint presentation outlining a very detailed chronology of

what she had done to organise the trip and what she says Professor Tucker and Dr Roche had failed to do. What became clear from the evidence was that the Claimant refused to accept that she had organisational failings in respect of the trip and that Professor Tucker and Dr Roche assumed the Claimant had a level of knowledge to organise the trip which included an assumption she would be aware that matters such as risk assessments and insurance would be needed. Both told the Tribunal that they were astonished that an academic would not be aware that these types of administrative arrangements would be needed to take away students on a trip. Conversely we find the Claimant had genuinely no understanding that this would be required of her or any awareness that such matters would fall to her to organise. She appears to have assumed someone else would be taking care of all of this but equally did not make any enquiries as to who would be involved in organising this element of the trip. It simply did not occur to the Claimant. Whilst we find this to be a genuine position on the part of the Claimant it was in our judgment not a reasonable one and we find that the Respondent's assumptions that an academic lecturer would have had a basic knowledge of what was required to take students abroad was a reasonable one.

146. By 1 December 2016 the Claimant had booked the observatory. However by the end of January 2017 no flights had been booked and there was no confirmed list of students who would be attending. The Claimant wanted Dr Roche to gather the information from the students including dates of birth, passport details etc. Dr Roche declined and asked the students to email the Claimant directly as he felt this would negate room for error and be better to have one point of contact.

147. This led to the Claimant sending Dr Roche an email copying in Professor Tucker and another member of staff on 28 February 2017 complaining that Dr Roche had not complied a list of his students. The email was rude in the tone and content and confrontational. It contained inappropriate use of capital letters which came across as aggressive and patronising. We make no criticism of the Claimant and accept it was likely to have been drafted as such due to traits of her ASD. Dr Roche's emails contained offers of help to the Claimant and often the Claimant simply did not reply.

148. Professor Tucker intervened after the email exchanges between Dr Roche and the Claimant we have set out above. It was the Claimant who had copied in the other member of staff yet the Claimant asserted Professor Tucker humiliated her by copying in this same member of staff in her response. She relied upon this conduct as disability related harassment. In particular where Professor Tucker told the Claimant she did not consider it unreasonable for her to have pulled together a spreadsheet of staff and student information in the email. Professor Tucker was of the view that as the Claimant had been the MO for the trip (thus had been provided designated time to organise it) this was not an unreasonable expectation. Dr Roche eventually pulled together all of the information and compiled a spreadsheet.

24 month Probation Review meeting 13 January 2017

149. This meeting had been rearranged from December 2016 with the agreement of both the Claimant and Professor Tucker (see above). On 10 January 2017 Professor Tucker emailed Ms Jukes in HR and asked for advice about how to answer a question in some separate fixed term contract renewal paperwork. The question was 'will you be renewing this contract'? to which Professor Tucker stated **"In my mind the answer is clearly no, as the school has no plans/ needs to renew on the previous grounds. But we are likely to be advertising for a new open ended T&S post within the next couple of months. Should I point this out?"**

150. Ms Jukes advised in response to ensure performance was discussed in the probation and the need for the post and any suitable arising vacancies should be discussed at the FTC review and to keep the issues separate.

151. Professor Tucker held a probation review meeting with the Claimant on the above date. The Claimant covertly recorded this meeting and a transcript of the conversation was in the bundle. The Claimant did not explain in her evidence why she chose to covertly record this meeting. We had sight of the action plan afterwards by Professor Tucker which was dated 31 January 2017. There were three objectives set. In relation to PX4229 the Claimant was required to ensure the module was well received by students and a number of actions points were set out. In relation to PXT203 the actions included clear plans for content, deadlines and timetabling as well as finalising the organisation of the trip. The Claimant was also required to respond to invitations to enrol on academic mentoring. Under support required to achieve it noted the Claimant would receive support from the TQA and Professor Tucker and there would be a review if a mentor would be beneficial. The TQA would become responsible for coordinating the module questionnaires. There also would be fortnightly one to one meetings.

152. Professor Tucker advised the Claimant that previously she had been concerned with PXT203 that things "weren't planned out" and that by week one or two of the course there were some MSc students who did not know what they were doing. She also advised that some MSc students had been to see Dr Lewis to complain they had concerns about information provided for PXT203 two weeks previously. The Claimant did not understand why the students were complaining as she believed she had given them the information a month before (despite being required to give it two weeks before). Professor Tucker replied as follows **"OK. Anyway, it sounds like it's been resolved, hasn't it".**

153. The Claimant's case was that Professor Tucker set actions that she could not achieve and manufactured complaints so she would fail her probation. We do not find this was the case and there was no evidence to support these allegations. Indeed the transcripts of the covert recording presented a reasonable and professional discussion between Professor Tucker and the Claimant. Professor Tucker raised matters of concern in an appropriate way with the Claimant. This included raising issues about her approachability and making the students feel silly when they did (which clearly came to a surprise to the Claimant although she accepted Professor Tucker had previously raised she had been condescending to some Obs

Tech students the previous year). Professor Tucker accepted the Claimant had raised issues about Dr Roche getting her lab materials late previously.

154. Professor Tucker also agreed that the Claimant had been misinformed regarding the motion and energy course which needed up with 60 students rather than 10 or so. She agreed to discuss appointing a mentor for the Claimant.

155. In relation to the trip Professor Tucker explained the Claimant would need to organise the risk assessment , first aid and insurance and suggested a meeting with staff who could assist.

156. The Claimant brought up an email Professor Tucker had sent the department regarding a vacancy that had been advertised on the intranet she asked if it was "intended for anyone" to which Professor Tucker replied no and she should be encouraged to look at it as it was a permanent role. The Claimant stated she only got it [the email from Professor Tucker] two days ago and Professor Tucker replied that everyone got it two days ago [the email from Professor Tucker]. It had also been advertised on the recruitment internal website for a period before that as the closing date was that same day.

157. Professor Tucker incorrectly suggested to the Claimant she would be eligible to go on the redeployment list. This was incorrect as it contradicted the express written term of her contract (see paragraphs x above). It was clarified to the Claimant by an email dated 16 February 2017 that she could not apply as an internal candiciate but could apply if it moved to external advertising. The Claimant replied that she did not have a copy of her contract.

158. The probation plan was emailed to the Claimant on 2 February 2017. She did not add comments until prompted to do so by Juliet Jukes as part of the investigation in March 2017.

<u>Academic Practice</u>

159. The Claimant was required to enrol on R1's academic practice programme which was mandatory as part of her probation. She was invited to do so by email dated 12 December 2016 but had not done so by the probation meeting in January 2017. The Claimant's explanation for not doing so was that she wanted to check it did not clash with students' trips. She later enrolled as required.

<u>Dr Roche's comments to students on 27 January 2017</u>

160. On 27 January 2017 Dr Roche was about to present a lecture. There were approximately 37 students due to or in attendance. Dr Roche was in discussion with a student who had previously referred to the Claimant as "the module dis-organiser" at the front of the lecture room. He had expressed surprised that the Claimant's MSc students were in his lecture. Dr Roche was asked by a student how they will be assessed in his labs to which replied:

"Well she was up yesterday asking about the assessment for the course. I was like, "the stuff I sent you 6 months ago".

161. The student then asked if the Claimant was the module organiser. In response he stated:

"Yeah the dis-organiser".

162. The Claimant only became aware of this conversation later on 7 May 2017 (see paragraph 262 below).

163. Dr Roche accepted in his evidence that the comments were inappropriate and it should not have been made.

Events from February 2017

164. On 2 February 2017 Dr Roche emailed the Claimant to advise that a delegation of MSc Astro students and been to see him yesterday and were unhappy that there was no information on their assessments uploaded to the learning central system. This was in relation to a module that had started the week before. He asked the Claimant to get more details to the students as soon as possible. The Claimant had uploaded a brief outline of the assessments but no materials or marking scheme. Dr Roche also raised this with Dr Lewis and Professor Tucker. The Claimant replied that she was working on it and asked Dr Roche to inform the students to come and see her if they had a problem and that she had given the students the opportunity to ask questions the previous week but they had left straight away. In the Claimant's view she could not be blamed for the students not knowing anything as they had not asked any questions. In a later email the Claimant also did not accept that the students did not need to know the marking breakdown before picking a topic and reiterated the students should come directly to her rather than Dr Roche.

165. Students were also raising issues with Dr Roche and Dr Lewis regarding the ISM module being taught by the Claimant. On 9 February 2017 Dr Lewis emailed Professor Tucker following a meeting held with MSc students. He advised that students had raised concerns. The comments he reported students had made about the Claimant were not positive. They were as follows:

"I would be asking for a refund";
"I don't feel like I've learned anything";
"We should record these lectures";
I cannot believe she's been doing this for 3 years";
There is a long list of these [complaints] that we can send you";
It feels like we are back of primary school (a reference to the Claimant's attitude to queries).

166. Dr Lewis informed Professor Tucker that the students were more concerned with the Claimant's lack of approachability and reportedly dismissive attitude then the delivery of the course. The students explicitly asked for the complaints to be elevated.

167. Dr Roche raised further concerns he said had been raised by ISM students on 17 February 2017 to Professor Tucker. These included errors in questions set and high volume of materials.

Meeting of 20 February 2017 relating to trip organisation

168. The Claimant relied on the conduct of Professor Tucker and Dr Roche at this meeting as disability related harassment.

169. The Claimant's evidence was the purpose of the meeting was "to convince others I had failed to carry out certain tasks related to the trip organisation". Further that Professor Tucker had told her to wait for the meeting to organise the insurance but then suggested she had failed to organise the insurance at the meeting.

170. The covert recording of the meeting on 13 January 2017 records that Professor Tucker raised the issue of risk assessments and insurance with the Claimant and that as trip organiser this meant covering all of these issues. She told the Claimant that the "easiest thing is that all the people involved should get together in one go and we just work out what needs to be done".

171. The meeting took place on 20 February 2017. There were notes of the meeting showing the Claimant, Dr Roche, Professor Tucker and 3 other attendees. Professor Tucker prepared a note of the outstanding and urgent actions and sent this to the Claimant and others on 21 February 2017. The Claimant and Dr Roche were jointly assigned to gather student passport information, health cards and travel forms. Professor Tucker's evidence was that the meeting did not go well and the Claimant was defensive and aggressive and did not appreciate the urgency of the actions required.

172. We do not find that Professor Tucker called the meeting with the purpose of convincing others the Claimant had failed to carry out certain tasks. There were urgent outstanding matters such as insurance and risk assessments that required organising. On the balance of probabilities it is more plausible that Professor Tucker was more concerned about ensuring these matters were progressed than organising a meeting to deliberately humiliate the Claimant.

173. The Claimant did eventually book flights by around 8 March 2017 but there were a number of errors that had to be later corrected. After her departure from the university on 10 March 2017 (see below) Professor Tucker and Dr Roche had to take over organisation of the trip which included health and safety reviews, arranging insurance, coach hire booking and arranging accommodation.

Teaching and Scholarship vacancy – Lecturer in Experimental Physics

174. This vacancy arose in February 2017 and was posted on the internal recruitment board operated by R1. This was the vacancy Professor Tucker had highlighted to staff and been discussed with the Claimant at the probation review meeting in January 2017 (see above). On or around 13

February 2017 Professor Tucker highlighted the vacancy to all members of staff in an email, including the Claimant. As noted above she had erroneously advised the Claimant she was eligible for redeployment. Four staff emailed Professor Tucker for further information, which she duly provided but the Claimant did not do so. The reason Professor Tucker provided these persons with more information is because they asked her for information. The reason she did not provide the Claimant with the information is that the Claimant did not ask for it.

175. The Claimant asserts that Professor Tucker deliberately withheld the vacancy from her, had discussed with others whether to inform the Claimant about the post making it clear she had no intention that the Claimant should continue to be employed and lied to the Claimant when she told her on 15 February 20217 that she had only just found out about this new role. It is also alleged that Professor Tucker shared information about the role with others before the 'blanket' email to try and give the Claimant an unfair disadvantage only having two days before the deadline to apply. Lastly that Professor Tucker deliberately planned the timing of the vacancy so as to prevent the Claimant from being eligible for redeployment. This conduct was alleged to have amounted to direct discrimination and harassment by Professor Tucker.

176. There was no evidence to support the allegation that Professor Tucker engaged in any of the behaviour above. These were extremely serious allegations and we find them to be baseless and wholly without merit. They were unsupported by the covert recording. At no time did Professor Tucker tell the Claimant she had only just found out about the vacancy. Further, the Claimant would not at any time have been eligible for redeployment under the terms of her contract so it makes no sense to suggest Professor Tucker would have devised such a plan.

177. Professor Tucker was aware there would be an upcoming vacancy in her capacity as Deputy Head of School. She was not obliged to highlight vacancies to staff as these were posted on the internal recruitment pages. There was a reasonable onus on the staff to watch out for an apply for any upcoming vacancies and this did not differ in the case of the Claimant. It was not Professor Tucker's responsibility to highlight roles to the Claimant. She was also not prejudiced by her inability to apply as a redeployment candidate as the vacancy went to external advertising in any event. Professor Tucker emailed all staff two days before the deadline to highlight the vacancy so all staff were treated in the same way as the Claimant. There was no evidence to support the allegation she had lied or had shared information with others about the role other than to respond to requests for information. The Claimant could also have asked Professor Tucker for further information but she did not.

178. The Claimant submitted an application but was informed on 16 February 2017 that she was not eligible to apply as a redeployment candidate due to the terms of her contract and should the vacancy move to external advertising she would be considered as a candidate with no need to reapply. This is what then happened. The Claimant was considered as an external candidate for the role. She was assessed by Dr Lewis and Dr Cartwright.

Dr Lewis was very direct about his reasons for not shortlisting the Claimant on the internal shortlisting form. Under the comments box he stated:

> **"It should be noted this candidate has a historically low module figure of merit an that MSc students have complained about the candidate's demeanour and attitude towards them for the past two academic years.**
>
> **I would therefore strongly recommend against shortlisting candidates for a position in which they would most likely have a profound negative effect on the student experience quality of delivery of the core MSc modules. "**

179. It was relevant that at the time of assessing the Claimant Dr Lewis had been in receipt of the very negative feedback he had been receiving from students (see above). Dr Lewis was gravely concerned about the feedback and the impact on the reputation of the school. However notwithstanding these comments and his recommendation not to shortlist the Claimant, she proceeded to be considered at the external candidate stage.

180. At the external stage there were approximately 30 candidates. These were also shortlisted by Dr Lewis and Dr Cartwright. The total potential score in essential and desirable criteria was 36 points. The candidates ranged from receiving between nine and 36 points with the Claimant receiving 23 points which was in the median range of all the candidates. As such the Claimant was not invited to an interview. Dr Lewis explained in his witness statement that he had no understanding or appreciation at the time of his assessment the Claimant had autistic spectrum disorder or any other disability or health condition. We accepted his evidence. Despite his critical comments above, we also accepted Dr Lewis's evidence that the numerical scores he awarded the Claimant were based solely on the content of her written application. In Dr Lewis's view the primary shortcoming of the Claimant's written application was that it failed to adequately demonstrate sufficient experience in issues such as module design. A number of other candidates demonstrated significantly more extensive experience in areas such as design and specialist skills.

181. Dr Cartwright also scored the Claimant during the shortlisting exercise and also decided that she should not be shortlisted. Her reasons for doing so were recorded as "**no student feedback scores for teaching. Small range of subjects**". The Claimant alleged that Dr Cartwright's scoring of her during that recruitment exercise was tainted having accompanied Dr Roche at his grievance meeting. However as will be seen below that grievance meeting took place after the shortlisting exercise had been completed and therefore could not have impacted on her decision. And further we accepted Dr Cartwright's evidence that her role at the grievance meeting was purely to act as a workplace companion to Dr Roche and she was not particular close to Dr Roche nor that she would be have acted in a biased way.

182. Professor Tucker also recorded her view that the Claimant should not be shortlisted. She stated:

> **"Q6 relates to communication skills and a proven level of ability of excellence in this area. Local results suggest this has not been achieved. No evidence of experimental physics application or detailed engagement with industry".**

183. It was unclear when the Claimant was informed she had not been successful.

Claimant's workload

184. There was considerable dispute between the parties about the Claimant's workload. Both the Claimant and Professor Tucker's statements contained evidence about her workload.

185. On 15 February 2021 the Claimant sought permission to admit a new document which was a spreadsheet of teaching allocations. The Respondent did not object provided they had the opportunity to respond to the document by way of a supplementary statement. Permission was given for Dr Richardson to file a supplementary statement dealing with this document. The Claimant then objected to Dr Richardson being permitted to do so and this was treated as an application to vary the order to allow the Respondent to admit evidence to deal with the Claimant's new document. That was refused as it would not be fair to allow the Claimant to admit new evidence without giving the Respondent the opportunity to respond.

186. The Respondent formerly used a university wide workload model from 2016-2017. Prior to that the School of Physics and Astronomy used their own workload model for the previous 15 years at least. This provided for a number credits per module depending on the module type.

187. The Claimant's position was that in 2015 – 2016 only four other colleagues taught the same number of credits as the Claimant and that she was also teaching three different year levels.

188. The problem we had with the spreadsheet of teaching allocations submitted by the Claimant was that the Claimant had removed certain criteria she considered to be not relevant. We therefore did not place any weight on that spreadsheet as it had been open to interpretation by the Claimant.

189. The evidence before us was as follows:

190. The Claimant had been specifically recruited to teach – this was the primary function of her role. Therefore her comparisons with other colleagues in her statement were not reliable as they had other responsibilities other than teaching.

191. The Claimant raised issues with her workload in 2015 but other than this, no other issues were raised.

192. In the last year of her employment, the Claimant was MO of the ISM, 12 students in total involving 10 credits with 2 hours of lectures per week for 11 weeks. Also setting and marking the exam. She also was the MO for the MSc Obs Tech and field trip module, with 8 MSc students and a 10 credits module designed around preparation and work during an observational trip. She also had other duties such as the overseas trip, tutoring, unfair practice co-ordinator and the PI on the Quark net project

193. In conclusion we find that the Claimant has not demonstrated that she had an unreasonable workload.

Student feedback

194. On 8 March 2017 Professor Sutton emailed Professor Tucker to advise he had received very negative comments from some of the students on the Claimant's modules. The questionnaires received were as follows:

- PX4229 2/63 students; (ISM – Mphys, formerly PX4106 in 2014/15)
- PXT226 3/15 students: (ISM – MSc)
- PXT203 2/13 students (Advanced Obs Tech)

195. Professor Sutton copied and pasted the comments into the email to Professor Tucker. These had been anonymised. A summary of the comments are as follows:

196. PXT203 student A

- Students needed actual contact hours for help with assignments and to not just be passed off to go to Dr Roches' lectures;
- The Claimant should stop using the announcement system on learning central as they disappeared,
- actual useful resources were needed on learning central instead of databases that had little if no usable data or entirely in French or blocked;
- some degree of respect should be shown to students when they come to a lecturer for help they should not be accused of being stupid for not to do something;
- just overall lack of organisation and childlike attitude from the Claimant.

197. PXT203 student B

- No timetabled contact hours;
- The entire course outline is provided on one sheet of A4 paper with scant information some of which was incorrect;
- The Claimant took criticism or requests for clarification as a personal attack and responded negatively to almost all input.
- The field trip to France would be an "inevitable organisational nightmare".

198. PX 4229 students A and student B both commented that the lectures were interesting and gave no negative feedback.

199. PX 226 student A

- A different lecturer was needed who was more familiar with the subject and that they felt sorry for the Claimant who appeared to have been put in an awkward position;
- The Claimant appeared to be mostly reading out slides contents of which she was completely unfamiliar with;
- The few worked examples were ill-prepared and the Claimant "stumbled through them in a confusing manner making many mistakes".
- The first assessment was long and repetitive and contained a number of errors to begin with.

- The topic is so poorly delivered they felt they were learning very little and that it would be a better use of their time to self learn from appropriate textbook.

200. PXT226 student B. This student gave particularly long and negative feedback regarding the Claimant.

201. There were complaints about the lecture slides and hand out notes and that many of the worked examples contain fundamental mistakes. The student alleged that if someone in class pointed out mistakes they would be confronted by the Claimant becoming defensive and aggressively childlike in her response and this happened when students try help and correct mistakes are simple requests for suggest ways they could be helped in their learning.

202. PXT226 student C. This student described the delivery of material being 'catastrophic' as well as the Claimant not knowing the material on the slides, being unable to follow through any workings without the aid of paper notes which have been forgotten on multiple occasions. They also refer to mathematical mistakes being made. This student commented that other members of staff had been contacted about the problem and had recommended textbooks so they did not fall behind. Students see also stated that members of staff in the same department had said **"don't bother she's useless read this book instead".**

203. Professor Sutton and Professor Tucker met later on 8 March 2017 to discuss the feedback. They, along with Professor Griffin (who had been copied in by email), agreed there should be some deletions as some of the comments were of a particularly personal nature. The redactions were in the main the more personal and potentially hurtful comments that had been made. In addition, the comment about a member of staff calling the Claimant "useless" had also been deleted. For reasons that remained unexplained to the Tribunal, the favourable reviews by the PX4229 students were also removed. There was no explanation why Professor Sutton removed these comments when he sent the Claimant the feedback.

204. Professor Tucker replied at 11.42am. We set out this email as the Claimant asserts that Professor Tucker made a joke about the Claimant that amounted to disability related harassment in her reply to Patrick Sutton (the TQQ):

"Lordy! See you at 2pm?

Also say 'projects' to me!"

205. We were unable to understand what the joke about the Claimant was said to be from this email and the Claimant's witness statement did not deal with this any further.

206. Also on 8 March 2017 Professor Tucker sent an email at 14.36pm to all students on the PX4229 and PXT226 course. This stated as follows:

"Based on mid-term questionnaire results for the above model I would very much appreciate holding an informal staff-student meeting with as many of you as possible.

'Staff' = me + Patrick Sutton.

'Students' = any/all of you enrolled on the above module. Plea for student reps if you are available.

Some very firm opinions have been stated in the questionnaire results, but by a very small number (only 20%) of students. For the school to act on these issues, it would be helpful to gather the opinion of a larger proportion of the cohort. So I propose an informal discussion with me and Patrick, at which we will take notes of general feelings but everything will be attributed anonymously."

207. It should be noted that this email was not disclosed until 23 February 2021. The Claimant did not object to this email being admitted into the bundle provided she had and was granted the opportunity to comment. Her comments were contained in her email to the tribunal of 24 February 2021. The Claimant's evidence was that it was clear from the email that Professor Tucker was telling the students she had received unfavourable feedback and that she wanted further similar feedback from additional students to confirm the results. We agree that this is what the email implies.

208. On 9 March 2017 at 10.25am Professor Sutton sent the Claimant an email attaching the redacted comments from the mid term questionnaires. He asked to meet with the Claimant the following day along with Professor Tucker to discuss how to handle the situation. In the covering email he referred to enclosing feedback from the PX4229 students which was the positive feedback. We did not see the actual attachments but it was agreed the positive feedback form PX4229 had been removed when the comments were sent to the Claimant. We did not hear from Professor Sutton however as he referred to enclosing that feedback in the covering email we have found that there was no intention to remove the positive feedback deliberately and this was likely to have been an error.

209. The Claimant was devasted by the comments and we accepted her evidence that reading the comments had a profound impact on her. She sought out Professor Sutton and Professor Tucker but could not find either of them so went to see Professor Griffin.

210. Professor Griffin sent an email after the meeting to HR copied to Professor Tucker. It was sent at 17.01 on the same day. It contained a brief summary of their discussion. He also prepared a more detailed note of the meeting. The Claimant did not keep a note of the meeting and therefore her evidence was contained in her witness statement and based on her recollection of events.

211. The Claimant was very angry and upset and close to tears. Professor Griffin agreed she was very distressed and expressed incomprehension at the student's comments.

212. The Claimant's evidence was that she told Professor Griffin she suspected Dr Roche was influencing students against her and she suspected students were discriminating against her. Further that she had reported to Professor Tucker that Dr Richardson had harassed her in two meetings and she had done nothing about it.

213. The contemporaneous note did not corroborate this language. Professor Griffin's note recorded that the Claimant told him Dr Richardson had undermined her by dismissing her at a meeting and criticising her in an email copied to a student that and Professor Tucker had spoken to him about it. There was no mention of students discriminating against her or of Dr Roche influencing the students.

214. We prefer the account in the contemporaneous note and find that the Claimant did not use the words harass although she did inform Professor Griffin Dr Richardson had undermined her. We also find that she did not allege students were discriminating against her or that Dr Roche was influencing the students.

215. The Claimant described Professor Griffin's reaction as cold and without sympathy or regard for her feelings. He denied he had been cold and told the Tribunal he had tried to calm the Claimant down and that the feedback would be looked at objectively but agreed that he reiterated to the Claimant a number of times that student complaints had to be taken seriously. He also accepted in response to the Claimant alleging R1 intended to "fire" her that he said there was no such intention but noted she was on a fixed term contract and there was no assurance it would be extended.

216. The Claimant then stated she may as well "quit" and saw no point continuing with the module or field trip. Professor Griffin tried to persuade her to return for the meeting the following day as she left his office. He informed Professor Tucker by email of what had happened. He was then informed that the Claimant was clearing out her office and loading her belongings into a taxi and went down to try and speak to the Claimant. He expressed concern about her well being and asked her to telephone him the following day. This was followed up by an email.

217. Professor Tucker also emailed the Claimant to express concern and offered a meeting the following week, also offering the link to the Employee Assistance Programme and confidential 24 hour counselling service.

218. On 10 March 2017 Professor Tucker attended the meeting she had called on 8 March 2017. Six MSc students turned up. She had pre prepared a sort of script. In summary the script noted that she would inform the students everything was anonymous, they had been watching the module carefully, the MO (the Claimant) have been set a number of clear objectives to turnaround issues raised the previous year and given support to do so, the mid-term questionnaires indicated the module was no better and the implication was much worse. The reason for the meeting was recorded as firstly to hear directly that the views expressed were the views of the majority and secondly to suggest to the students how they intend to act on this and thirdly to apologise to the students for receiving a less than satisfactory learning experience. The note/script goes on to say as follows;

"Wait and tease out from the students if: issues raised come down to;
-lack of organisation of the MO, both in provision of materials and in preparedness for lectures;
-manner of delivery of lecture;
-support and communication issues, especially outside of lectures.
Is that fair? Need to know that all feel like this."

219. We also had sight of the actual notes of the meeting that had been taken by some David Brown. These recorded that six MSc students turned up to the meeting. The notes record that the group agreed there was a general lack of organisation and preparation of materials, lack of support in an out of lectures and that the MO just didn't know material being taught. The students are noted as feeling it was not worth attending lectures in the handbook had been made available in late which didn't help for the first assignment. They went on to discuss suggestions and apologies on behalf of the school. The notes record and intention there will be no further contact from the MO and the Claimant will not be involved and there was no current replacement. There would be a further meeting when details were further forward. It was also noted there was no information regarding the trip.

220. The Claimant was not aware that this meeting had taken place at that time.

221. On 10 March 2017 the Claimant telephoned Professor Griffin and they had a discussion. There were notes of the discussion in the bundle that had been taken Professor Griffin at the time and the conversation was recorded as generally polite and coherent. He asked the Claimant if she was intending to resign her post after her departure yesterday with all of their belongings need described her answers noncommittal. He told the Claimant that if she was resigning she should do so in writing and the school would waive the normal period of notice if she preferred. If she was not resigning she should return to work.

222. The student comments were discussed and the Claimant was recorded as still being upset and angry. She described the comments as " hateful" and that she would not be exposed to such comments again. Further that she was contemplating taking legal action against the students were damaging her career, they had a beef about her due to colleagues making negative comments and they have been coached to make the negative comments. The Claimant observed the comments were only a small number proportionately of the whole class. Professor Griffin reiterated he did not recommend resignation and asked to return to work so they could discuss a way forward. He confirmed in an email later that day that they had agreed she would be in touch with Professor Tucker by the middle of the following week to clarify her plans in respect of her employment at the school and specifically whether she would be resigning her post he informed her that the arrangements were being put in place to cover teaching for the rest of the semester.

223. On 15 March 2017 the Claimant sent Professor Tucker a lengthy email. She requested an investigation into the comments and made a number of suggestions as to what material should be looked at as the Claimant evidently maintained that the comments that have been made by the students were without merit.

224. The Claimant also referred to a meeting had been held involving the MSc students at which was discussed all of the complaints they have about their modules including the Claimant's. This must have been in reference to the meeting in April 2016 described at paragraphs x above. She maintained that the questionnaires had therefore been tainted and should not be

considered. She also asserted that the comments were suspiciously similar to that of an email she had received from Dr Roche. This was in reference to the student comments made to Dr Roche and Dr Lewis as set out above.

225. The Claimant went on to say that she believed because of her gender and her obvious different national origin or both she was being perceived and judged differently. There was no mention of disability or of what the Claimant was describing as her stress condition at that time.

226. We had sight of notes made by Professor Griffin after a call between him, Professor Tucker and HR on 16 March 2017. HR advised that the investigation did not have to be limited to the Claimant's complaints – it could include conduct; reaction and recent behaviour. This corroborated that only the Vice Chancellor could decide on a formal suspension. The notes also stated **"Contract finises (sic) end Aug – no intention to extend it".**

227. The Claimant's email of 15 March 2017 was treated as a grievance and this was confirmed in a letter from Professor Griffin to the Claimant dated 16 March 2017. The Claimant was informed the investigating officer would be looking at a number of issues of concern including her performance in her role as Lecturer. Professor Griffin also requested confirmation of the Claimant's postal address as they did not have an up to date contact address for her and also requested she return some equipment belonging to the university. He chased the Claimant for her postal address again on 13 April 2017 as she had not replied to this enquiry.

228. Professor Tucker subsequently sent a copy of the Claimant's email of 15 March 2017 to HR. She set out her comments in relation to the issues the Claimant had raised. We do not find these comments were overly defensive. Professor Tucker recorded areas where she disagreed with the Claimant's allegations with brief reasons why. Some of the comments disagreed with the Claimant's allegations and set out brief reasons why. Other comments were either notes as to what further information would be needed or in which a number of comments had been made setting out a response to what the Claimant had raised. In the covering email to HR she described this her and Professor Griffin having "dissected" the Claimant's email. They were also concerned that the Claimant had been in contact with school students on a project and was going to meet with them on 16th March 2017 and agreed they would contact the school to postpone the visit. Professor Tucker duly contacted the school to inform them it was postponed and emailed the Claimant at 10.19am to advise she had postponed the visit.

229. The Claimant saw this email later presumably as part of the SAR. The Claimant was of the view that the use of the word dissection was evidence that they simply wanted to pick the email apart to dismiss each of the concerns contained within.

230. Unbeknown to Professor Tucker, the Claimant had emailed the school and was clearly intending to go ahead with the visit as she asked them to print out some hand outs, even though she was absent from work. She had also arranged to meet with two third year students who were assisting with the visit to go to the school together but they had been told the school trip had been postponed. There was an unfortunate and clearly uncomfortable

situation for all involved in the car park as the Claimant arrived to meet the students to find out the trip had been cancelled which resulted in the Claimant leaving the care park in haste. She later sent an email to Professor Griffin about the cancellation of the trip. The Claimant maintained she would retain ownership of the project and must be allowed contact with the students to supervisor the project.

231. On 17 March 2017 Professor Griffin replied and confirmed that she was absent without leave, had vacated her office of all belongings on 8 March 2017 and left site and not returned. In those circumstances they had reassigned her teaching duties "until further notice" including the project supervision and asked that she should not students until further notice. The Claimant's status was subsequently amended to authorised leave from 21 March 2017.

Investigation

232. Professor Griffin appointed Professor Chris Morley, Director of Undergraduate Studies, School of Chemistry as the Investigating Officer. Sadly, Professor Morley has passed away and we were therefore only able to make findings from the documents and the witness evidence in respect of any evidential disputes regarding the investigation.

233. Professor Morley was commissioned to investigate the following matters of concern:

- student feedback on the teaching of the Claimant
- complaints raised by the Claimant; and
- the performance of the Claimant in her role as lecturer

234. The Claimant had been invited if she chose to do so to expand on her email of 15 March 2017 with a statement of the complaints which she did so by an email of 20 March 2017.

235. Professor Griffin's commission did not instruct Professor Morley to investigate which member of staff had called the Claimant "useless". Neither he nor Professor Tucker expressed any concern about this at the time. They were asked about this by the Tribunal. Professor Tucker's evidence was that the reason she did not investigate the comment was that she was overwhelmed by the student issue and she did not see fit at the time to see who the member of staff was or act on finding out the member of staff. Professor Griffin told the Tribunal that his reasons were to retain confidentiality of the questionnaire process and protect student anonymity describing it as "sacred".

236. Professor Morley interviewed the Claimant on 23 March 2017, Professor Tucker on 24 March 2017 and Dr Roche on 27 March 2017 and sought feedback from Professor Sutton by correspondence. Professor Morley specifically decided after consideration that he would not interview the students who had participated in the student feedback questionnaires which had led to the Claimant's departure from the University. His reasons were that students were promised anonymity in the feedback survey, and that would have been potentially damaging to the ongoing relationship of the lecturing staff with the students. Furthermore if the students were

approached Professor Morley took the view this could discourage them from providing feedback in the future thus damaging an important measure of student satisfaction within the University. We note that his approach differed to that of Professor Tucker who chose to call all students to a meeting referencing the questionnaires and there appeared to be no similar concern for anonymity on the part of Professor Tucker.

237. Prior to finalising the investigation report Professor Morley met with Juliet Jukes (HR) and Professor Griffin. An email exchange concerning a draft report was before us in the bundle. On 7 April 2017 Ms Jukes had emailed Professor Morley attaching a draft of the report based on comments from that morning. She referenced needing to finalise comments on the draft through a meeting with Professor Griffin provisionally planned for Wednesday. On 12 April 2017 (which was a Friday) Professor Morley emailed attaching a revised version of the report and asked Ms Jukes to let him know if he had missed out anything that was discussed at their meeting.

238. Professor Griffin was asked about this and cross examination. Professor Griffin did not recall the meeting and had checked and there were no notes of that meeting but he accepted that the meeting was in his diary and was recorded as having taken place at 12 o'clock noon. He accepted that changes referred to in Professor Morley's email above was sent a few hours later. Professor Griffin was adamant that he had no influence on the investigation.

239. The investigation report before us in the bundle was dated 13 April 2017. We did not have copies of the drafts that we have referred to above.

240. However in light of the emails between Professor Morley, HR and Professor Griffin we find that there were must have been changes to the report following a meeting with Professor Griffin although we are unable to say what these were.

241. In summary Professor Morley's conclusions were as follows:

- the feedback of the students should not be disregarded and had been appropriately handled by the school. Used in conjunction with other indicators of teaching quality, the Claimant's perception that the feedback would determine her future career was not well-founded.

- Although there was a similarity of responses from students which could be perceived as collusion there was insufficient evidence to find there had been and in any event the matter of concern was how the school dealt with the feedback rather than whether the students had colluded.

- Professors Sutton and Tucker had acted appropriately in removing some of the comments and what remained did not offend the University's dignity at work and study policy. The comments were not inappropriate although it was acknowledged they may be upsetting. Furthermore Professors Sutton and Tucker had made themselves available to speak to the Claimant and time the release of the feedback shortly before they were available to meet her.

- Dr Roche had not coached the students to provide the feedback. It was noted Dr Roche had regular contact with the MSc students and was in a position to coach them but the proximity also meant he was well placed to pick up on informal feedback of students and relate this to the Claimant informally. This was supported by the email correspondence between the Claimant and Dr Roche from early February 2017 in which Dr Roche was relaying the views of the MSc students and this was eventually reflected in the feedback that was received. Professor Morley was of the view that the correspondence and timing of the communications between Dr Roche and the Claimant were supportive and encouraging.

- Professor Morley concluded that the Claimant had believed the school would accept the questionnaire results comments without testing their validity and did not seem to be aware of the other measures such as meetings of the staff student panels at which students were asked to justify comments.

242. On the balance of probabilities it was concluded there was no case to answer and Professor Morley was satisfied there was no evidence of malpractice in the creation or gathering of the student feedback and that the school had applied an appropriate duty of care when providing the feedback to the Claimant, further that the student feedback would be appropriately used with other indicators of teaching quality to make decisions about the quality of teaching modules.

Complaints raised by the Claimant

243. Professor Morley concluded that whilst there were gaps in the material provided by Dr Roche to the Claimant (the lab material) he did not consider these been deliberately withheld by Dr Roche. Professor Morley concluded that the Claimant's integration into the school was not as good as it should have been and there had been deficiencies in the way she had been managed but did not see any evidence to suggest that this was personal. He concluded the objectives contained in the February 2017 action plan were not well constructed and lacked rigour as a performance management tool. Further there was a lack of evidence to show the Claimant had engaged in performance discussions until this investigation.

244. Professor Morley acknowledged that whilst it was unusual for a newly appointed member of staff to immediately take on the role of module organiser, this was the purpose of the teaching and scholarship lectureship to which the Claimant had been appointed. He considered the workload and the responsibility for organising the trip was a reasonable expectation.

245. Professor Morley also concluded that Dr Roche's involvements on the grant was reasonable and there were no grounds to her concerns.

246. In respect of the Claimant's performance Professor Morley concluded from the feedback from students, commentary on the probation review forms and information provided Professor Tucker and Professor Sutton that there was clear evidence her performance fell below the standards required. He concluded there was an apparent lack of progress in organising the observational techniques field trip.

Allegations of less favourable treatment on the grounds of gender and nationality

247. The Claimant had alleged that her gender and her nationality were likely to have affected students' perception of her teaching capabilities and had cited a publication in support. Professor Morley noted that the Claimant had relied on previously receiving higher rating more favourable feedback from students, therefore student feedback had been affected by relevant factors such as gender nationality had not been consistently resulting in adverse comments. Professor Morley also scrutinised the text comments from the student questionnaires did not find any comments which related reference to nationality or gender. For these reasons he concluded there was insufficient evidence to support this allegation. Professor Morley made a number of recommendations including that the performance of the Claimant should be considered under the University's procedure. (It should be noted that as the Claimant was on probation the Respondents disciplinary procedure did not apply).

248. On 18 April 2017 Professor Griffin wrote to the Claimant and summarised the findings of Professor Morley's investigation report. He informed the Claimant that one of the recommendations was that her performance be considered under the University's probation procedure and that he would write her separately regarding this. He also informed the Claimant she was welcome to return to the school should she wish or remain on authorised paid leave. This was followed by a letter of 24 April 2017 informing the Claimant a probation review meeting will be convened. There were three areas of performance outlined to be discussed which were as follows:

- The Claimant's performance in module organisation and delivery to the levels expected and required by the school;
- Performance in the organisation of the observational techniques field trip;
- Other aspects of the Claimant's performance as evidence in her probation review documentation by student feedback.

249. The Claimant was highly critical of the investigation. She asserted that Juliet Jukes should not have been involved as she was not impartial as Professor Tucker and Professor Griffin had sought her advice previously about the expiry of her FTC (see paragraph 149 and 130). We do not find this was the case. It cannot be said that on the basis of advice given and sought from Ms Jukes she in some way tainted the investigation. HR advisors often have to advise on a range of matters and it would not be reasonable for a different HR advisor to advise on every occasion.

250. The Claimant also asserted she had not been aware of allegations regarding her performance until she received the outcome of the investigation. We can see the Claimant was told her performance was being investigated however it is fair to say she did not know what would be said the issues were until she received the outcome. She was however going to have the opportunity to respond as part of the probation procedure but that never progressed beyond 18 May 2017. We find this made no material difference to the overall fairness of the investigation.

251. The Claimant also asserted that in refusing to view videos of her lecture, Professor Morley was one sided. However Professor Morley had not been able to access the videos as they had not been saved to the Learning Central system by the Claimant.

252. The Claimant further asserted that Professor Morley should have asked Dr Roche exactly what he had said to students – as he knew some of the students had said a member of staff had called the Claimant "useless" – but he failed to do so. It is correct that he was not directly asked if he had been the author of the "useless" comments but he did deny colluding with students regarding the feedback.

Funding project Quark net

253. The Claimant had been awarded a Welsh Assembly Government[8] National Science Academy Quark Net grant. It was awarded as a two phase grant over the period first of March 2016 to 31 March 2018. The initial award covered the period 1 January 2016 to 30 June 2017 and was £76,405. The further tranche of the grant funding was subject to satisfying an 18 month project review.

254. The Claimant was the designated Principal Investigator ("PI"). Professor Griffin wrote to the Claimant on 28 April 2017 with a number of questions about the grant. He asked the Claimant to reply (in particular he needed to know if she was submitting the quarterly report due at the end of April) by 5 May 2017. Professor Griffin advised the Claimant if he did not receive a reply by 5 May he will assume that the school must take over responsibility for the report. He also repeated his request for the return of university and equipment procured under this grant.

255. The Claimant did not reply to Professor Griffin's letter and as a result the school took over responsibility for the grant and appointed Dr Roche as the PI. Professor Griffin's unchallenged evidence was that the equipment to this day had not been returned.

256. The project aimed to deliver 70 school visits and 20,000 students engaged by the end of March 2018. As of June 2017 only 3 schools had been visited with 100 pupils engaged.

Evidence of Dr Martin Wright – UCU representative for the Claimant

257. Dr Wright was not called as a witness to the tribunal hearing. Dr Wright had accompanied the Claimant to her probation review meeting on 18 May 2017 and represented her thereafter. On 14 February 2021 during the course of the hearing, the Claimant applied to admit five new documents. One of the documents was a redacted email dated 15 February 2018 Dr Martin to the Claimant. The Respondent objected to the admission and sought disclosure of the entire document. The Claimant was asked to search for the unredacted documents and there was a discussion about whether another judge would consider any unredacted version and go one to decide whether it should subsequently be admitted as evidence. This was

[8] As was the name at that time

because the Claimant told the Tribunal the redacted email contained either legally privileged advice or referred to without prejudice discussions. As it transpired the Claimant located the unredacted email and sent it along with two attachments to the Tribunal and the Respondent later on 15 February 2021. The redacted email did not contain any legal advice or without prejudice communications. Accordingly the email from Dr Wright and his attached witness statement was admitted as evidence. It should be noted that we only had the written statement of Dr Wright and that he was not called to give evidence at the hearing.

258. Dr Wright had written a statement in February 2018 in response to a request from the Claimant to write a statement ahead of a preliminary hearing due to take place on February 16, 2018. The Claimant had particularly wanted Dr Wright to deal with whether she was allowed to present information by PowerPoint at a meeting in September 2017 (we return to this below). And also the Claimant informed Dr Wright that the Respondent was not conceding disability and asked him as follows in her email:

"I have a pretty good idea of how I want to argue this point, since you were the first person who suggested I have a disability, could you please outline your basis for this assertion, in case I have missed any important points?"

259. Dr Wright statements stated as follows (we have not set out the entire statements only the sections relevant to the issues in the claim):

"Miranda has asked that I provide a statement regarding my experience of interacting with her, and in particular with regard to my belief that Miranda exhibits symptoms of Asperger's syndrome, and I'm happy to do so, as follows.

I first met Miranda Jackson in May 2017…

I should stress that I do not have any formal medical expertise in the diagnosis of autistic spectrum disorders (I am a history lecturer, not a medic), but I do have extensive personal experience of Asperger's syndrome, based on my own family circumstances. I do feel, therefore, in a position to make a reasoned judgement in such matters.

At our first meeting, which took place on 12 May 2017, I sat with Miranda for an hour or so, and she went through the details of her dispute with her employer in detail. Very quickly, at this meeting, it became apparent to me that Miranda was exhibiting classic Asperger's syndrome symptoms, in particular an inability to adjust to and understand the dynamics of social situations. It also occurred to me that many of the negative experiences Miranda has experienced in her working life could have arisen as a result of her condition not having been accounted for. I suggested this to Miranda, and at first she was quite resistant to the idea of raising it to Cardiff University, but I gather that she has since been formally diagnosed with the Asperger's syndrome.

I made my belief clear at a subsequent meeting on 14 June 2017 with Miranda's manager and with a representative of HR.

I must say that in my subsequent interactions with Miranda my belief has only been confirmed and strengthened content that anyone with a basic knowledge of autism spectrum disorders would quickly come to the conclusion that Miranda exhibits the classic symptoms of autism spectrum disorder.

I state this to be a true account of my experience interacting with Miranda."

260. The Claimant's evidence about her meeting was that Dr Wright told her within 10 minutes of meeting her it was clear to him that she had Asperger's syndrome. The Claimant says she told Dr Wright that she had suspected that for some time. The Claimant goes on to say that Dr Wright told the Claimant was considered a disability in the UK and that she was entitled to protection under the Equality Act. Further that Asperger's syndrome is not considered a disability in Sweden. None of this was in Dr Wright's witness statement but we find nothing turns on it.

Discovery of the "Dis Organiser" comments by Dr Roche

261. On 7 May 2017 the Claimant was looking through lecture videos she had downloaded and discovered the lecture on 27 January 2017 when Dr Roche described the Claimant as the "module dis-organiser." (See above paragraph). The Claimant has consistently described this as Dr Roche "badmouthing" her to students. The Claimant found this comment to be blatantly unprofessional and unacceptable to make in front of students. It was very clear to the Tribunal that the discovery of this video had a profound effect on the Claimant and in her mind provided corroboration and an explanation for all of the negative feedback she had received from the students. The Claimant had previously sought to blame Dr Roche for the negative feedback but this was without doubt in the Claimant's mind the reason for all of her troubles and proof that Dr Roche had undermined her.

Probation review meeting 18th of May 2017

262. As a result of the Claimant subject access request the Claimant later learned and we had sight of notes of a prepared script ahead of the probation review meeting.

263. The Claimant asserted in her evidence that Professor Griffin had been prepared to provide an answer as to whether she had passed her probation at the meeting on 18 May 2017, in other words that it was a pre determined outcome. The script did not corroborate this assertion. It was clear from the script that there were a number of different outcomes depending on what would be heard at the probation meeting following a discussion between Professor Griffin and the HR team. The potential outcomes recorded on the script were: dismissal (if applicable), support mechanisms and arrangements for probation extension. We therefore find that there had been no predetermined decision that the Claimant would be dismissed at this probation review meeting.

264. In attendance at the meeting chaired by Professor Griffin was also Professor Tucker, the Claimant and Dr Wright as well as HR representatives. The meeting started by Professor Tucker putting forward a case that the Claimant was not meeting requirements of the University probation scheme. She also asserted that the Claimant had not engaged with procedures including the probation scheme. Professor Tucker had included copies of the probation review documents. The versions she provided were blank where the Claimant could comment however the Claimant had commented on her review form in August 2015. This therefore was not strictly accurate although the Claimant had not commented on any of the more recent forms.

265. The Claimant was permitted to provide a response in the form of a PowerPoint format presentation approximately 55 pages long and approximately half way through the Claimant was asked to stop presenting and submit the presentation to be considered afterwards.

266. This was the first occasion where the Claimant brought to the Respondent's attention the "badmouthing" of her by Dr Roche on 27 January 2017. The Claimant played a clip from the lecture and provided a transcript she had prepared. Her focus according to the notes was that the common factor with her declining student feedback scores was the influence of Dr Roche on the students. She listed ways in which he had allegedly interfered with the teaching and relationships with the students over two years. She also noted that student feedback was inconsistent and asserted students perceive lecturers differently based on gender, ethnicity and nationality leaving her in a less favourable position. Disability, including the stress condition was not mentioned.

267. There followed a further discussion with Professor Tucker summarising the position line management point of view and then a discussion by Professor Griffin followed. Professor Griffin asked if a mentor had been appointed. Professor Tucker told the meeting that a mentor had not been assigned at the 6 and 12 month meeting but she had advised the Claimant one could be made available and also at the stage of academic practice a mentor would also be assigned. She did not inform the meeting that the Claimant had refused a mentor.

268. Professor Griffin acknowledged that not all of the probation paperwork had been signed off although the procedure itself had been followed. Comments had only been made by the Claimant on the 24 month form and only as part of this review.

269. Professor Griffin asked Dr Wright if there are any issues he wished to raise and Dr Wright for the first time told the meeting that in his opinion the Claimant exhibited some characteristics of an autism spectrum disability or Asperger's syndrome. Dr Wright indicated that line managers are expected to act on constructive knowledge and make any reasonable adjustments required. He added that a possibly disability discrimination claim could be filed if undermining colleagues can be added to the misfortunes already associated with such a disability.

270. The Claimant was asked by the HR representative if she had been diagnosed with any disability and the Claimant told her that she had not to date. Dr Wright pointed out that a diagnosis was not necessary and the characteristic should have been recognised and linked to such a syndrome. Professor Griffin noted that the Claimant had not at any stage up to now "declared Asperger's" or any such condition and asked the Claimant if she wanted this to be taken into consideration during the process. The Claimant said she would be content for it to be taken into account but that that "it need not be used as an excuse given the allegations against her were unfounded."

271. The meeting was adjourned and Professor Griffin advised that given the video recording of Dr Roche and the seriousness of issues raised at the meeting he would not come to a decision at that that time. It was agreed the Claimant would remain on authorised leave.

272. At the end of the meeting Dr Wright asked if the matter of disability would be addressed. The HR person present said it would be "noted and considered appropriately".

273. Following the probation review meeting the probation procedure was never resumed. There was no further procedure that assess the Claimant's performance or whether she had passed or failed her probation procedure.

274. The Claimant was not asked to provide any further information regarding Dr Wright's opinion offered at the probation review meeting that the Claimant may have Asperger's syndrome. Furthermore, the Respondent took no steps to investigate this further for example by referring the claimant to occupational health for a medical report or assessment. Ms Mullens was asked about this cross examination. Her explanation was that the Claimant had absented herself from work and said she had no intention of returning. She remained on authorised leave and subsequently went off sick and therefore there was no opportunity to engage or investigate further whether the Claimant was indeed disabled. She accepted there had been no investigation by the Respondent into whether the Claimant did have a disability.

275. Following the meeting again in a document disclosed under the subject access request we had sight of the documents which was a draft email drafted by Juliet Jukes on behalf of Professor Griffin in which she had drafted the phrase for his approval:

"Thank you for attending the probation meeting on 18 May 2017 and for your professionalism at that meeting."

276. In Professor Griffin's reply to Juliet Jukes dated 19 May 2017 he did not agree with that terminology and stated that he would not describe the Claimant's behaviour as particularly professional e.g. that she had rambled on a great length for an over an hour when given a guideline in 20 minutes, sometimes not very coherently, repeating itself on numerous occasions, failing to provide specific answers to specific questions. Professor Griffin was a view that this was not a compliment the Claimant deserved. Professor Griffin was asked about is under cross examination and it was put to him that this constituted harassment as at that meeting her disability had been brought to light and he was criticising her communication style. Professor Griffin told the tribunal that courtesy was obligatory and praise was discretionary. He said that the letter was to go in his name and he decided that he did not want to use the phrase professional to describe the Claimant's conduct and although the Claimant had never been intended to see his comments he stood by his judgement. He told the tribunal did not believe the Claimant's disability made it difficult to communicate with students pointed to her being an academic lecturer. He didn't accept that this amounted to criticism of the Claimant's communication skills moreover it was his decision not to use a word that the HR team had put into his mouth.

277. Professor Griffin also told the Tribunal that he did not know whether Professor Morley was informed of Dr Wright's opinion expressed at the probation review meeting. He accepted he had not told Professor Morley and when he was asked why he explained that the reason the investigation was revisited was due to the Claimant's complaint against Dr Roche and that had been the focus of the investigation rather than the disclosure or opinion expressed by Dr Wright. Professor Griffin did not accept that the mention of the possibility that the Claimant has Asperger's syndrome by Dr Wright constituted a diagnosis of disability.

Further investigation into Dr Roche

278. Professor Griffin asked Professor Morley to conduct a further investigation to consider the allegations against Dr Roche on 22 May 2017. He was also asked to consider whether his investigation into this particular allegation altered any findings or recommendations contained in his original report and if so to revise and resubmit that original report.

279. Professor Morley interviewed Dr Roche on 25 May 2017 who was accompanied by Dr Cartwright. Dr Roche immediately accepted he had made the "module dis-organiser" comment. He offered to apologise to the Claimant. On 31 May 2017 Professor Morley produced an addendum to his investigation. Dr Roche had also accepted he had made the statement "What the f**" but this was in response to IT equipment he was setting up and nothing relating to the Claimant. We accept this evidence as being corroborated by the video extract. That comment clearly was unrelated to the Claimant but a new turn of events of an IT problem.

280. Dr Cartwright was asked about this under cross examination but she could not recall whom she was referring to when she made this comment (which staff she had alleged the Claimant had made disparaging comments about).

281. Professor Morley concluded that the module dis-organiser comment had been disrespectful and his conduct had fallen short of the standards set out in the University's dignity at work and study policy. Professor Morley took into account and described it as significant that email correspondence from Dr Roche to the Claimant in early February was supportive and encouraging and related to student concerns to assist her to improve. Professor Morley also concluded that he continued to hold the opinion it was appropriate that Dr Roche to have directed the students to use their scheduled mid-term evaluation questionnaires to feedback their comments to the school. Accordingly there was no grounds to alter the findings or conclusions of the original report.

282. We should also deal with an allegation the Claimant has made regarding comments made by Dr Cartwright when she accompanied Dr Roche at the investigation meeting. The notes of the meeting record that Dr Cartwright told Professor Morley that the Claimant had made" disparaging comments about staff". The Claimant alleges this constituted victimisation and violated confidentiality as she asserts that Dr Cartwright must have been talking about her complaint of harassment against Dr Richardson. Dr Cartwright

could not recall why she had made these comments or whom they had been referring to.

283. Following the outcome of Professor Morley's investigation on 6 June 2017, Professor Griffin decided that Dr Roche would receive "strong reprimand", an instruction it would not happen again, a recommendation he maintain professional distance between him and students and a recommendation he apologise to the Claimant. Dr Roche was formally reprimanded by Professor Griffin. He was not subjected to the disciplinary procedure. Dr Roche wrote handwritten letter of apology to the Claimant and we accepted his evidence that this was passed on to the HR team for them to forward to the Claimant. This did not happen and the Claimant only received the letter when she requested a paper copy of the second investigation report in July 2017 (see below).

Our findings in respect of Dr Roche's alleged behaviour towards the Claimant

284. Having regard to all of the email correspondence and the evidence we have heard, we find that Dr Roche did not solicit, encourage or manufacture student complaints against the Claimant. The more reasonable explanation, corroborated by contemporaneous emails was that the students were approaching Dr Roche (and Dr Lewis) to complain about the Claimant. This is unsurprising given Dr Roche was the MSc Coordinator. Dr Roche handled these complaints in a reasonable way. He firstly reported them to the Claimant and respected her wishes to ask the students to go directly to the Claimant with their issues and concerns.

285. Further, the tone of the email correspondence between Dr Roche and the Claimant was supportive in its nature. Whilst Dr Roche may have made less guarded and sometimes unwise remarks about the Claimant in emails intended to be of a private nature these were not made with the intention or plan to undermine the Claimant in any way and even less so for reasons relating to her ASD.

Events from June 2017

286. On or around 2 June 2017 Dr Wright met with Professor Griffin to discuss the Claimant's situation. Dr Wright emailed the Claimant on 6 June 2017. He summarised the two main things that come out of his meeting. Firstly that Professor Griffin had reported the investigation into Dr Roche concluded and it had not significantly changed anything. A report would follow shortly. Secondly they had provided Dr Wright with a copy of the Claimant's contract and pointed out that the fixed term would be coming to an end. Dr Wright told the Claimant this overrode the probation procedure. He went on to say that as the post was to replace a member of staff who had been assigned to other duties and as this was made clear in the original contract there was no way to challenge the termination of the contract. Dr Wright told the Claimant the University wished to begin consultation on this immediately and were proposing to arrange a meeting the following week.

287. In an internal email exchange dated 6 and 7 June 2017 Professor Griffin had questioned the HR team on including a reference to making reasonable

adjustments regarding the meeting being arranged to discuss the end of the Claimant's fixed term contract. After quoting the draft sentence where it offered to make reasonable adjustments Professor Griffin queried as follows:

> **"I'm a bit worried about what this means or how it might be interpreted. MJ has no declared health requirements and I don't see that the issue raised by Martin Wright is germane to the FTC review. So including this sentence could cause some confusion or be interpreted as implying the School acknowledges the existence of a health condition for which it has no medical evidence."**

288. The HR team explained this needed to be retained to demonstrate their willingness to respond to a request for a reasonable adjustment but agreed to amend to say "any health requirements you may have" so this was more equivocal.

Notice of end of fixed term contract

289. On 7 June 2017 Professor Griffin wrote formally to the Claimant to inform her that her fixed term contract scheduled to end on 21 September 2017 as part of that process she would be invited to a meeting to discuss on 15 June 2017. The letter contains a reference to adjustments and asked that if there were any the Claimant to let them know in advance of the meeting.

290. By 12 June 2017 the Claimant had not confirmed her attendance. Professor Griffin emailed HR with a number of potential outcomes regarding the Quark Net project depending on the outcome of the fixed term review meeting. He expressed concern about the project being significantly behind schedule. Two of the three outcomes envisaged the Claimant continuing with the project one of which set out how Professor Griffin saw that working with support for the Claimant continuing as PI.

291. The Claimant chose not to attend that meeting instead she was represented by Dr Wright however Dr Wright was unable to put forward any reasons why the contract should be renewed. Instead Dr Wright put forward a request for settlement and is recorded in an email between the HR team that Dr Wright again raised that the Claimant has Asperger's and would therefore be covered by the "DDA".

292. On 26 June 2017 the Claimant was sent a letter by HR administration manager. This confirmed that her contract would end as scheduled on 21 September 2017 and sets out that she had a right to appeal the decision in accordance with the policy on fixed term contracts.

293. The Claimant submitted a subject access request. It was not clear when she submitted it, but we saw that on 29 June 2017 R1 had begun to deal with that request by sending out instructions for the searches required. The Claimant alleged that R1 tried to intimidate her into withdrawing the request. Her witness statement did not contain any evidence as to who is alleged to have intimidated her and how. The correspondence before the Tribunal showed R1 engaged in the request and took reasonable steps to collate and send the information albeit outside of the timeframe of 30 days.

Outcome of investigation part 2

294. On 5 July 2017 Professor Griffin wrote to Claimant to advise her of Professor Morley's findings of the second phase of the investigation. The Claimant was informed that Dr Roche's unacceptable and unprofessional behaviour had been stressed within the School and he had been reprimanded. She was also told that he had offered to apologise in writing and this would be provided under separate cover.

Discovery of "useless" comments

295. At some point in July 2017 Dr Wright requested that the Claimant be sent a paper copy of the investigation report and it was duly sent. Upon receipt of the report the Claimant discovered for the first time the "useless" comments that have been made by the students in the feedback in March 2017. The Claimant was very distressed on this discovery and considered that it corroborated her contention that Dr Roche or some other member of the teaching staff had bad mouthed her to Dr Roche's MSc students yet R1 had done nothing about it and still found against her in the investigation. The Claimant described herself as falling into an even deeper despair and started to contemplate suicide.

296. On 25 July 2017 the Claimant was certified as unfit for work due to stress. The GP sent a letter advising that she was having a very stressful time and this was causing her problems with not eating well, not sleeping and other symptoms associated with stress. He advised that he had referred the Claimant to mental health services but regarded the underlying cause to be the ongoing situation at work and asked if they could assist in amicably resolving the situation as soon as possible. There was no mention by the GP of ASD or Asperger's or that the Claimant had been referred specifically for a diagnosis.

Grievance

297. On 27th July 2017 the Claimant submitted a grievance. This was a lengthy document in summary raised the following issues:

- Harassment perpetrated by Dr Roche and set out a series of allegations against Dr Roche which the Claimant stated had undermined her teaching and interactions with students that have resulted in the poor student evaluation complaints by students and colleagues. The Claimant also set out that she maintained she was protected against harassment at work due to her protected characteristic of disability which the Claimant described as long-standing social anxiety disorder as well as "possible Asperger's syndrome" of which the Respondent would have a diagnosis made in the next few weeks. The Claimant asserted that Dr Roche was fully aware of her troubles with social interaction as she had confided in him this was the case and also it been part of the investigation mentioned and she alleged he had chosen to exploit a disability to his own advantage.

- Secondly the Claimant raised a grievance regarding discrimination perpetrated by members of the School namely the investigation initiated by Professor Griffith and in particular that the student feedback had been used

to arrive at the finding the Claimant's teaching performance was substandard. Further that there had been no investigation into which colleague had called the Claimant "useless" as recorded in the student feedback and there had been a cover-up.

298. The grievance was acknowledged on 3 August 2017 by Liz Connelly who was at that time the head of HR for the University

299. Ms Connelly wrote to the Claimant acknowledging the grievance and to advise she would set up a fact finding meeting and asked if she required any adjustments or support for that meeting. There was some discussion about the process for dealing with the grievance but it was agreed around 9 August 2017 that it would be forwarded to the Vice Chancellor. The Claimant submitted the grievance to the Vice Chancellor on 10 August 2017 along with a number of attachments. This was acknowledged on 24 August 2017 and Professor Riordan appointed Professor Stephens as the investigating officer to conduct a formal investigation. He was to be supported throughout the process by Ms Martin HR manager. The meeting was arranged for 20 September 2017 to discuss grievance in detail.

300. On or around 27 August 2017 the Claimant received a substantial volume of documents pursuant to her Subject Access Request.

301. On 5 September 2017 the Claimant wrote to Ms Martin regarding arrangements communication and the meeting that the proposed on 20 September 2017. The Claimant asserted that she had made the University aware of her disability and that she recently realised she had actually made her line manager aware of issues related to her disability nearly 2 years ago and at that time she had refused to make any reasonable adjustments and apparently did not document the discussion in the University records.

302. Ms Martin asked the Claimant to provide any information or evidence relevant to the discussions the Claimant asserted she had with Professor Tucker regarding her disability.

303. In a further email on 8 September 2017 the Claimant, in response to the offer reasonable adjustments, advised it was the structure of the meeting that would need adjustments. She asked for an adjustment so that she could make the salient points of her case by way of a presentation rather than to sit conversant and have to maintain eye contact with someone. She requested Professor Stephens confirm that a presentation format would be acceptable and she considered that this would take approximately two hours.

304. By reply, the same date Ms Martin asked the Claimant to provide her with the presentation and supporting documents so it could be viewed in advance.

305. On 18 September 2017 the Claimant emailed Ms Martin with the PowerPoint presentation, written documents, several files containing support material and a diagnosis of autistic spectrum disorder along with several medical certificates from 2013 confirming the Claimant suffered with a recurrent stress condition. This was a very brief letter from Dr David

Steadman of Cardiff and Vale University Health Board Community Mental Health Team. It was dated 18 September 2017 and read as follows:

"I am writing this letter in capacity of Speciality Doctor in adult psychiatry. I am based at the North East Cardiff Community Mental Health Team (Pentwyn CMHT). As a psychiatrist I was asked to assess Dr Jackson for autism spectrum disorder.

I can confirm that Dr Jackson meets the criteria is suffering from autism spectrum disorder."

Meeting of 20 September 2017

306. This was attended by the Claimant, Dr Wright, Ms Martin and Professor Stephens. As stated above the Claimant had submitted a detailed document and supporting evidence and a PowerPoint presentation. The Claimant says she was denied permission to present the PowerPoint presentation she had prepared. The notes of the meeting are silent in that they do not record either that the request was raised by the Claimant nor do they record it was denied. The notes were not verbatim and record the usual ebb and flow of discussion. They note that the format of the meeting would be the Claimant would be asked questions and her answers would be noted into minutes she would then be asked to agree. This was contrary to the format of the meeting the Claimant had requested above, which was for her to present information by way of a PowerPoint lasting approximately two hours. We do not know if Ms Martin or Professor Stephens actually previewed the PowerPoint prior to the meeting. The Tribunal did not hear evidence from Professor Stephens or Ms Martin. The Claimant had produced an email from Dr Wright dated 15 February 2018 (this was the email attaching the statement we referred to above regarding his opinion on her status with regards to Asperger's). Dr Wright stated as follows:

"I've gone back over my notes of the various meetings. The one you refer to is, I think, 20 September 2017. I do not have a note that you were specifically refused the use of PowerPoint, having asked to make a presentation, although I do have a clear memory that PowerPoint was not used at that meeting, and there is no record of a PowerPoint presentation in my notes. I know this is probably not the most emphatic statement that you would like, but is most detailed statement unprepared to make, given I cannot clearly recall the request to make a presentation being declined at that meeting. It is important that I am 100% rigorous in this respect.

307. The Claimant had written to Dr Martin on 15 February 2018 thanked him for his email. She told Dr Wright that "**all she had wanted regarding the PowerPoint was a statement from him saying that he she definitely did not present the PowerPoint as University were saying that she had done PowerPoint presentation on that day".**

308. The Claimant's evidence changed somewhat from above where she was asserting she did not present a PowerPoint to that she was actively prevented from doing so and she had been tricked at the last minute into believing she would be permitted to present her information by PowerPoint.

309. The notes of the meeting are in the majority (some five pages of close typed text) a record of what the Claimant said at the meeting.

310. We find, based on the notes of the meeting, the Claimant's own evidence and that of Dr Wright that the Claimant did not present a PowerPoint at that meeting but she was not prevented from doing so. Further, given most of

the notes record what the Claimant's comments we also find that the Claimant was able to convey her concerns and comments and they were noted and recorded.

311. On 16 November 2017 Ms Martin confirmed an agreement they would deal with the remaining issues by email as the Claimant had complained she was being pressured into attending a further face to face meeting.

312. Thereafter followed a period of without prejudice discussions. There was a delay in the Claimant receiving emails from Ms Martin was unsurprising as at least until mid October 2017 she was sending emails to the Claimant's deactivated work email account.

313. There was subsequently a delay in communicating the outcome of the grievance investigation to the Claimant. This was due to a number of reasons namely ongoing without prejudice discussions and a delay in between communications with the Claimant and Ms Martin. There was no fault on the part of either individual to the delay and it was not deliberate or intentional. After the correct email address had been established for the Claimant Ms Martin replied to her emails in a prompt and reasonable timeframe.

314. The Claimant was eventually informed on 15th February 2018 that her grievance had not been upheld. In relation to the allegations against Dr Roche these were upheld in part in relation to the comments he had made on 27 January 2017. The other allegations against Dr Roche (the collusion and harassment) were not upheld. The remaining allegations were not upheld in their entirety. The letter effectively set out that they did not accept the Claimant had had a diagnosis of a disability that could reasonably have been known to her colleagues at the relevant time but even if it had been there was no evidence she had been treated less favourably in light of any protected characteristic.

315. We also set out the first section of the letter as it is relied upon as an act of direct disability discrimination by the Claimant. This states as follows:

> **"Ordinarily the outcome of your grievance would be discussed and communicated with you in a meeting, however it has not been possible to engage you in meeting (sic) to discuss this matter further since your initial grievance meeting. This is due to the fact you were on sick leave from 25 July 2017 to the date of the termination of your fixed term appointment and subsequent attempts to engage with you have not been successful."**

Evidence prepared for contested issue of disability

316. It is appropriate here to set out the relevant evidence we heard contained in the witness statements prepared for the purpose of the contested disability hearing and make findings of fact about that evidence. These were prepared in November 2018 and appendiced to the Respondent's witness statements for the main hearing. They were written before disability was conceded but included as the Respondent continued to maintain that they did not have knowledge of the Claimant's disability during the time she was actively employed. We only set out additional relevant evidence for those witnesses where necessary and where it has not arisen in the above findings in respect of the chronological sequence of events.

Dr Richardson

317. Dr Richardson had had experience with several students who have diagnosis of ASD and each displayed different traits. There was nothing in the Claimant's behaviour or mannerisms that would have led him to conclude the Claimant had ASD. He accepted he had found the Claimant a "little odd" and not particularly friendly or fun but this was not out of the ordinary in comparison with some other academic colleagues and that he believed she cared a lot about teaching and students.

Professor Griffin

318. Professor Griffin's unchallenged evidence was as follows. He has a laypersons understanding of ASD and takes people as they are. Unless it was raised in a professional capacity he would not regard it as proper to make any assumptions relating to ASD but to treat people as individuals.

319. Having encountered all kinds of academics the Claimant was not highly exceptional in this sense. He has known other academics with similar characteristics to the Claimant and described it as a disservice to behave towards them as assuming they may have a disability where they have not declared one, describing this as improper. He also stated that he believed the Claimant able to interact with people and that they would never have employed somebody who they thought would not be able to interact with other members of staff or students. He was asked about this in cross examination. He maintained it was in the context of praising the Claimant and was horrified it had been interpreted by the Claimant that had he known about her ASD he would never have employed her. He stood by his view that it was essential criteria that a lecturer needed to be able to communicate with colleagues and students.

The Law

320. Unfair Dismissal

Section 98 of the Employment Rights Act 1996 provides:

98 General

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

And

(4) [Where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

> **(c) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and**
>
> **(d) shall be determined in accordance with equity and the substantial merits of the case.**

321. It is for the Respondent to show the reason for the dismissal.

Discrimination

322. Direct disability and sex discrimination pursuant to Section 13 of the Equality Act 2010 ("EA 2010")

323. In **Nagarajan v London Regional Transport and others [1999] IRLR 572 HL** held that the Tribunal must consider the reason why the less favourable treatment has occurred. Or, in every case of direct discrimination the crucial question is why the Claimant received less favourable treatment.

324. The key to identifying the appropriate comparator is establishing the relevant "circumstances". In **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285** this was expressed as follows by Lord Scott of Foscote:

"...the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class."

325. On the burden of proof Section 136 EA 2010 provides:

> **(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.**

326. In **Igen v Wong [2005] IRLR 258 (CA)** the guidance issued by the EAT in **Barton v Investec Henderson Crosthwaite Securities Ltd** was approved in amended form. The Tribunal must approach the question of burden of proof in two stages.

"*The first stage requires the complainant to prove facts from which the ET could, apart from the section, conclude in the absence of an adequate explanation that the respondent has committed, or is to be treated as having committed, the unlawful act of discrimination against the*

complainant. The second stage, which only comes into effect if the complainant has proved those facts, requires the respondent to prove that he did not commit or is not to be treated as having committed the unlawful act, if the complaint is not to be upheld." (paragraph 17, per Gibson LJ)

327. **Hewage v Grampian Heath Board [2012] IRLR 870 (SC)** endorsed the guidelines in **Madarassy v Nomura International [2007] IRLR 246 (CA)** concerning what evidence is required to shift the burden of proof. Facts of a difference in treatment in status and treatment are not sufficient material from which a Tribunal could conclude that on the balance of probabilities there has been unlawful discrimination; there must be other evidence.

328. In relation to knowledge of the protected characteristic we were referred to the case of **Patel v Lloyds Pharmacy Ltd UKEAT/0418/12** by the Respondent. This was a case concerning strike out of a discrimination claim as having no reasonable prospect of success as (one of the reasons being) there was no evidence that the alleged perpetrators had any knowledge of his disability.

S15 – Disability Arising from Discrimination

329. Section 15 provides:

15 Discrimination arising from disability

(1) A person (A) discriminates against a disabled person (B) if—

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

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

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

330. **Basildon & Thurrock NHS Foundation Trust v Weerassinghe UKEAT/0397/14** provides the Tribunal should identify two separate causative steps in Section 15 claims (per Langstaff J, then the President of the EAT):

"The current statute requires two steps. There are two links in the chain, both of which are causal, though the causative relationship is differently expressed in respect of each of them. The Tribunal has first to focus upon the words "because of something", and therefore has to identify "something" – and second upon the fact that that "something" must be "something arising in consequence of B's disability", which constitutes a second causative (consequential) link. These are two separate stages."

331. **Pnaiser v NHS England & anor [2016] IRLR 170** sets out the approach to be followed in Section 15 claims (paragraph 31):

(a) A Tribunal must first identify whether there was unfavourable treatment and by whom: in other

words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.

(b) The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section 15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant.

(d) The Tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is "something arising in consequence of B's disability". That expression 'arising in consequence of' could describe a range of causal links.

(e) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

(f) The statutory language of section-on 15(2) makes clear that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the 'something' leading to the unfavourable treatment is a consequence of the disability.

B. It does not matter precisely in which order these questions are addressed. Depending on the facts, a Tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of "something arising in consequence of the claimant's disability". Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to 'something' that caused the unfavourable treatment.

332. In respect of S15 (1) (b), the Tribunal must objectively balance whether the conduct in question is both an appropriate and reasonably necessary means of achieving the legitimate aim. In **Birtenshaw v Oldfield [2019] IRLR 946**, the EAT held that the Tribunal's consideration of that objective question should give a substantial degree of respect to the judgment of the decision-maker as to what is reasonably necessary to achieve the legitimate aim provided he has acted rationally and responsibly.

Indirect Discrimination

333. Section 19 of the Equality Act 2010 provides:

> **(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.**
> **(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—**
> **(a) A applies, or would apply, it to persons with whom B does not share the characteristic,**
> **(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,**
> **(c) it puts, or would put, B at that disadvantage, and**
> **(d) A cannot show it to be a proportionate means of achieving a legitimate aim**

334. The EHRC Code of Practice on Employment provides that the phrase 'provision criterion or practice' should be construed widely so as to include for example, any formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions.

335. The PCP must be of neutral application. A PCP can be a one-off decision **(British Airways Plc v Starmer [2005] IRLR 862)**. A liberal rather than overly technical approach should be adopted when considering PCP's. However a one off flawed disciplinary procedure will not satisfy the low threshold **(Nottingham City Council v Harvey EAT 0032/12).**

336. In **Essop & Ors v Home Office (UK Border Agency) & another [2017] ICR 640** the Supreme Court identified six salient features of the definition of indirect discrimination: First, there was no express requirement for an explanation of the reasons why a particular PCP put one group at a disadvantage when compared with others. Second, whilst direct discrimination expressly required a causal link between the less favourable treatment and the protected characteristic, indirect discrimination did not. Instead, it required a causal link between the PCP and the particular disadvantage suffered by the group and the individual. Third, the reasons why one group might find it harder to comply with the PCP than others were many and various. The reason for the disadvantage did not need to be unlawful in itself or be under the control of the employer or provider. Both the PCP and the reason for the disadvantage were 'but for' causes of the disadvantage: removing one or the other would solve the problem. Fourth, there was no requirement that the PCP in question put every member of the group sharing the particular protected characteristic at a disadvantage. Fifth, it was commonplace for the disparate impact, or particular disadvantage, to be established on the basis of statistical evidence. Sixth, it was always open to the respondent to show that his PCP was justified. There was no finding of unlawful discrimination until all

four elements of the definition in s 19(2) were met. The essential element was a causal connection between the PCP and the disadvantage suffered, not only by the group, but also by the individual.

S20/21 – Failure to make reasonable adjustments

337. Sections 20 and 21 of the Equality Act 2010 set out the duty to make reasonable adjustments. In this case, it is the duty arising under S20 (3) EQA 2010. The Tribunal must consider first of all the PCP applied by the employer, secondly the identity of non-disabled comparators (where appropriate) and thirdly the nature and extent of the substantial disadvantage suffered by the Claimant. (**Environment Agency v Rowan 2008 ICR 218, EAT).**

S 26 EQA 2010 – Harassment

338. This provides:

Section 26 Harassment

(1) A person (A) harasses another (B) if—
- **(a) A engages in unwanted conduct related to a relevant protected characteristic, and**
- **(b) the conduct has the purpose or effect of—**

violating B's dignity, or

(2) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

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

(4) A also harasses B if—
- **(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,**
- **(b) the conduct has the purpose or effect referred to in subsection (1)(b), and**
- **(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.**

(5) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
- **(a) the perception of B;**
- **(b) the other circumstances of the case;**
- **(c) whether it is reasonable for the conduct to have that effect.**

339. Part 7 of the EHRC Code provides that unwanted conduct 'related to' a protected characteristic has a broad meaning in that the conduct does not have to be because of the protected characteristic.

340. In **Hartley v Foreign and Commonwealth Office Services UKEAT/33/15** the employee had been dismissed for capability reasons. The employee had Asperger's syndrome. The EAT held that whether conduct is "related to" a disability should be determined having regard to the evidence as a whole; the perception of the person who made the remark is not decisive.

341. At paragraph 24 Judge Richardson held:

"A's knowledge or perception of B's characteristic is relevant to the question whether A's conduct relates to a protected characteristic but there is no warrant in the legislation for treating it as being in any way conclusive. A may, for example, engage in conduct relating to a protected characteristic without knowing B has that characteristic."

342. It is a question of fact for the Tribunal as to whether the conduct complained of occurred. If so, the Tribunal must determine if it had the purpose or effect as set out in S26 (1) (b). The test has subjective and objective elements to it. The subjective part involves the tribunal looking at the effect that the conduct of the alleged harasser has on the Claimant. The objective part requires the tribunal to ask itself whether it was reasonable for B to claim that A's conduct had that effect.

343. In **Tees Esk and Wear Valleys NHS Foundation Trust v Aslam [2020] IRLR 495** the EAT held that the broad nature of the 'related to' concept means that a finding about what is called the motivation of the individual concerned is not the only necessary or possible route to the conclusion that the conduct in question is related to the particular characteristic. Nevertheless there must still be some feature or features of the factual matrix identified by the Tribunal which properly leads it to the conclusion that the conduct is related to the protected characteristic. The Tribunal must articulate what these features are.

344. **UNITE the Union v Nailard [2018] IRLR 730** is a case about third party liability for harassment however the EAT's reasoning at paragraphs 100 – 103 (as to how a Tribunal should approach the issue of "related to" under S26) was upheld (per Lord Justice Underhill at paragraph 98). The ET should focus upon the conduct of the individual or individuals concerned and ask whether their conduct is associated with the protected characteristic. The first task is to identify the conduct; the next is to ask whether that conduct is related to the protected characteristic. The focus must be on the person against whom the allegation of harassment is made and his conduct or inaction, it will only be if his conduct is related to the protected characteristic that he will be liable under S26. It will be a matter of fact whether the conduct is related to the protected characteristic.

345. At paragraph 98 LJ Underhill held that he did not believe that the mere use of the formula 'related to' is sufficient to convey an intention that employers who themselves are innocent of any discriminatory motivation should be liable for discriminatory acts of third parties and that the phrase 'related to' has an associative effect'.

346. We were referred to the case of **General Municipal and Boilermakers Union v** Henderson 2015 IRLR 451, as an example where a single comment could not constitute harassment because it had not reached the necessary degree of seriousness.

347. In **Reverend Canon Pemberton (appellant) v Right Reverend Inwood, former acting Bishop of Southwell and Nottingham (respondent) - [2018] IRLR 542,** Underhill LJ held: S 26 of the 2010 Act

[entitled “Harassment”] … is not in identical terms to s 3A of the Race Relations Act 1976, with which I was concerned in Dhaliwal … the precise language of the guidance at para 13 of [that] judgment … needs to be re-visited. I would now formulate it as follows. In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances – sub-section (4)(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so.'

Victimisation

348. Section 27 EQA 2010 provides:

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 in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

349. The test as to whether there has been a detriment is a subjective and objective one. The EHRC Code of Practice provides at 9.8 that a detriment is anything which the individual might reasonably consider changed their position for the worse or put them at a disadvantage. In **St Helens Borough Council v Derbyshire and others [2007] UKHL 16,** it was held that an alleged victim cannot establish 'detriment' merely by showing that she had suffered mental distress: before she could succeed, it would have to be objectively reasonable in all the circumstances.

Order for considering claims where multiple acts of discrimination are alleged

350. S212 (1) EQA 2010 provides that 'detriment' does not, subject to subsection (5), include conduct which amounts to harassment.

351. S212 (5) EQA 2010 provides that (5) where this Act disapplies a prohibition on harassment in relation to a specified protected characteristic, the disapplication does not prevent conduct relating to that characteristic from amounting to a detriment for the purposes of discrimination within section 13 because of that characteristic.

Disability – Knowledge

352. This is a question of fact for the Tribunal. The burden is on the employer to show it was unreasonable to have the required knowledge.

353. The EHRC Employment Code provides that employers must do all they can reasonably be expected to do to find out whether a worker has a disability. (This does not extend to work colleagues and will not apply to the second, third, fourth and fifth Respondents). What is reasonable will depend on the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.

354. S15 (2) provides that the discrimination will not arise if A shows they did not know and could not reasonably be expected to know that B had a disability.

355. In respect of reasonable adjustment claims, an additional element of knowledge is required. The first element is the same test as in S15 namely that A shows they do not know or could be reasonably be expected to know that the [interested] disabled person has a disability. Schedule 8 EQA 2010 pt. 3 para 20 states that A is not subject to the duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know that a disabled person has a disability and is likely to be placed at a disadvantage. Accordingly, the additional element on knowledge for S20/21 claims is that A must also be reasonably expected to know the disabled person is likely to be placed at the disadvantage.

356. In deciding the S15 claims it is necessary to determine who the alleged discriminator was and whether they had imputed knowledge (Gallop v Newport City Council [2016] IRLR 395, EAT). In the Court of Appeal decision in Gallop [2014] IRLR 211, a reasonable employer must form their own judgment as to whether the employee is disabled and not simply rely on advice from an occupational health advisor. The employer must have the requisite knowledge at the time of the unfavourable treatment. In cases where there are alleged series of acts it is necessary to consider whether it gained knowledge at any subsequent stage when the treatment was ongoing.

357. Under S15 (2) lack of knowledge that a disability causes the “something arising” in response to which the employer subjected the

employee to unfavourable treatment is not a potential defence **(City of York Council v Grosset ICR 1492, CA).**

358. In respect of the reasonable adjustment claim, the approach in **Ridout v TC Group 1998 IRLR 628, EAT** was endorsed in **Secretary of State for Work and Pensions v Alam 2010 ICR 665, EAT.** The Tribunal must consider two questions:

359. Did the employer know both that the employee was disabled and that his disability was liable to affect him in the manner set out in s.4A(1)?

A. If the answer to question (i) is "no", ought the employer to have known both that the employee was disabled and that his disability was liable to affect him in the manner set out in s.4A(1)?

360. If the answer to both questions is "no", then the employer will qualify for the exemption from any duty to make reasonable adjustments.

361. Also in **Ridout** the EAT held that it is not incumbent on an employer to make every enquiry when there is little or no basis for doing so and that 'people must be taken very much on the basis of how they present themselves'.

362. In **Jennings v Barts and the London NHS Trust - [2013] All ER (D) 184 (Mar**), the EAT held that if a wrong diagnostic label was attached to a mental impairment a later re-labelling of that condition was not diagnosing a mental impairment for the first time using the benefit of hindsight; it was giving the same mental impairment a different name. Harvey on Industrial Relations and Employment Law suggests this decision suggests that an employer should concentrate on the impact of the impairment and not the diagnosis. This is supported by the decision of the EAT in **Urso v Department for Work and Pensions [2017] IRLR 304.**

363. The issue of constructive knowledge arose in the case of **Donelien v Liberata UK Ltd UKEAT/0297.14.** The knowledge required is that the person has a disability. This must take the Tribunal back to the definition now in S6 EQA 2010. Accordingly it is for the employer to show that it was unreasonable to be expected to know first that a person suffered with a physical or mental impairment, secondly that the impairment had a substantial and long term effect (and further as this was a reasonable adjustments claim, of the substantial disadvantage). In that case the Claimant had a very poor sickness record with erratic and occasional attendance. She did not suffer with a condition giving rise to impairments which had consistent effects. There were occupational health referrals identifying a myriad of different reasons for the absences other fact was that it was difficult to disentangle from what the claimant could not do because of her disability as opposed to what she would not so.

364. In **A Ltd v Z EAT 0273/18** the EAT held that in relation to S15 claims, the complete answer to the S15 (20 question in that particular case was even if the employer could reasonably have been expected to do more (make enquiries), it could not reasonably have been expected to have known about the Claimant's disability. The Tribunal must also take into

account what the employer might reasonably have been expected to know had it made enquiries.

Time limits

365. S123 EQA 2010 provides:

123 Time limits

(1) [Subject to [[section 140B]]] proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—

(a) the period of 6 months starting with the date of the act to which the proceedings relate, or

(b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

366. The key date as to when time starts to run is the date of the act. In **Virdi v Commissioner of Police of the Metropolis [2007] IRLR 24, EAT** Elias P held that the question is when the act is done, in the sense completed and that cannot be equated with the date of communication. He goes on to say as follows:

"As desirable as it might be that time should not run until the employee knows of the detriment, it is difficult to see why, at least in a case where the grievance relates to the refusal to grant a benefit, the detriment is not suffered with the rejection of a grievance, whenever that is communicated and whether the employee knows of it or not. "

367. In **Commissioner of Police of the Metropolis v Hendricks [2002] EWCA Civ 1686,** Mummery LJ held that the Claimant was entitled to

pursue her claim beyond the preliminary stage on the basis that the burden is on her to prove, either by direct evidence or by inference from primary facts, that the numerous alleged incidents of discrimination are linked to one another and that they are evidence of a continuing discriminatory state of affairs covered by the concept of "an act extending over a period."

368. In **Galilee v Commissioner of Police of the Metropolis UKEAT/207/16,** Judge Hand QC held that amendments to pleadings in the employment tribunal which introduce new claims or causes of action take effect for the purposes of limitation at the time permission is given to amend and there is no doctrine of "relation back" in the procedure of the employment tribunal. Also, whilst in some cases it may be possible without hearing evidence to conclude that no prima facie case of a continuing act or for an extension of just and equitable grounds can arise from the pleadings, in many cases, often, but not necessarily confined to discrimination cases, it will not be possible to reach such a conclusion without evidential investigation.

369. In **South Western Ambulance Service NHS Foundation Trust (appellant) v King (respondent) [2020] IRLR 168,** the EAT held that in order to give rise to liability, the act complained of must be an act of discrimination. Where the complaint is about conduct extending over a period, a claimant will usually rely upon a series of acts over time (the 'constituent acts') each of which is connected with the other, either because they are instances of the application of a discriminatory policy, rule or practice or they are evidence of a continuing discriminatory state of affairs. If any of those constituent acts is found not to be an act of discrimination, then it cannot be part of the continuing act.

Burden of proof

370. S136 EQA 2010 sets out the burden of proof provisions. 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. This does not apply if A shows that A did not contravene the provision.

Conclusions

Unfair Dismissal

371. It was accepted that the Claimant was dismissed. The Respondent asserted the reason was the expiry of the fixed term contact and relied on this as a potentially fair reason for dismissal as 'some other substantial reason under S98 (1) (b). The Claimant asserted that reason the contract was not renewed was that she had disclosed her disability and also that the concerns surrounding poor performance were unfair, unjustified and grossly exaggerated.

372. We have concluded that the reason for the dismissal was the expiry of the fixed term contract and this was a potentially fair reason. The reason we have reached this conclusion was that this was the very clear written

intention of the parties as evidenced by the contractual documentation. The Respondent had in our judgment very specifically spelled out to the Claimant on a number of occasions the reason for her employment which was to cover the absence of Ms Gomez. It was unchallenged that Ms Gomez was due to return to the post for which the Claimant was providing cover for under the FTC.

373. We do not accept the suggestion that the Claimant was dismissed for failing her probation. After the meeting on 18 May 2017 no further steps were taken by the Respondent to progress Professor Morley's earlier recommendation that the Claimant's performance be considered under the probation procedure.

374. We also do not agree that the reason the Claimant was dismissed was that she had disclosed her disability. The Claimant was under notice that her contract was for a fixed term long before the suggestion the Claimant was disabled. In addition there was evidence that the Respondent had decided not to renew the fixed term contract a long time before they knew or reasonably could have been expected to know the Claimant was disabled. Both Professor Tucker and Professor Griffin had said as much (see paragraphs 150 and 130 above). We further took into account that internal emails evidenced that there was no pre determined decision by Professor Griffin ahead of the meeting with Dr Wright and he was at that stage still open minded to the Claimant continuing in employment at the university in some capacity as was evidenced by his exploration of outcomes for the Quark net project (see paragraph 291 above). Lastly, of most significance was Professor Griffin's email to HR in which he specifically stated he did not see how the disclosure of Dr Wright's opinion was germane to the FTC review. This in our judgment was direct evidence of what was in his mind and that the disclosure played no part in the decision to dismiss the Claimant upon the expiry of her fixed term contract.

375. Turning now to the reasonable of the dismissal under S98 (4) ERA 1996.

376. The Respondent wrote to the Claimant on 7 June 2017 to arrange a meeting to discuss the end of the fixed term contract. The Claimant declined to attend the meeting and instead Dr Wright attended on her behalf. Dr Wright accepted that that the expiry of the fixed term contract overrode the probation procedure and advised the Claimant as such.

377. It was open to the Claimant to apply for vacancies and we saw that the Respondent operated an internal jobs website where vacancies had been advertised. It remained available and open to the Claimant to apply for alternative roles but there was no evidence she had undertaken any job searches or made an applications after her unsuccessful application in February 2017. We do not think it was incumbent on the First or Second Respondent to undertake searches for the Claimant or highlight any particular vacancies to the Claimant at the time of the fixed term contract review albeit we note that Professor Tucker had previously sought to bring the T&S vacancy to the Claimant's attention and checked with HR whether other vacancies needed to be automatically offered, as had Professor Griffin.

378. The Claimant submitted that the decision not to appoint her on other vacancies should be considered in assessing the reasonableness. We do not agree this should be the case. The last vacancy the Claimant applied for was in February 2017 and should not form part of the question of reasonableness under S98(4) as it was some months before her dismissal occurred. Even if it could be said to be relevant, we find that the selection exercise for this role was conducted in a reasonable manner. There were two assessors and objective criteria was used. We observe that Dr Lewis's comments cannot have influenced the outcome as the Claimant went on to be included in the external selection stage even though those comments had been made and we also accepted that his opinions did not affect his numerical scoring.

379. After a meeting to discuss the expiry of the fixed term contract the Respondent wrote to the Claimant advising her of the termination date and offered a right of appeal. No appeal was ever submitted.

380. Having regard to the very clear express reasons provided to the Claimant at the start and the reminders during the contract that the contract was to cover Ms Gomez, the fact that she was returning, the attempts to consult with the Claimant (in which she did not engage) and the right to appeal (which she also did not engage) we find the dismissal was reasonable in all the circumstances.

381. For these reasons the unfair dismissal claim fails.

Failure to provide particulars of employment

382. We find this claim fails and further that it was wholly unmeritorious. The Claimant was provided with particulars of her employment by the provision of a contract which met all of the requirements under S1 ERA 1996. That is evidenced by her signing that said contract of employment on 10 September 2014. She was also provided with the updated contract on 6 October 2015 confirming the extension of her fixed term contract.

383. The Respondent acted reasonably in issuing correspondence to the Claimant via email and the address she had provided and it was the Claimant's responsibility to have updated the Respondent when she moved address.

384. We also consider that the Claimant's denial that she had ever been provided a contract of employment was unreasonable as was the fact this was maintained until she was provided a signed copy.

Breach of contract

385. It was recorded in the case management order dated 5 May 2020 that REJ Davies had explained to the Claimant that in the absence of a constructive dismissal claim there was no freestanding claim of 'breach of contract' of the sort that had been described in the schedule (breach of trust and confidence). The Claimant was permitted to retain in the schedule the acts said to amount to a breach of contract by way of clarification of her position in respect of her other complaints / claims.

Unlawful deduction from wages

386. In the schedule of claims this was said to have arisen from the Claimant having been wrongly regarded as on annual leave from 25 July 2017 whereas she was signed off sick. Further that the period of leave from when she left the university premises on 10 March 2017 should have been paid leave.

387. The problem with this claim is the Claimant led no evidence on it whatsoever. It was not covered in her witness statement nor was it addressed in submissions. We also had no details of the payslips or the amounts said to be due.

388. For these reasons the claims fails.

Knowledge of disability

389. We consider it necessary and appropriate to firstly deal with the issue of knowledge of disability as this will affect whether some of the claims need to be further considered at all.

390. The Respondents maintain that they did not have, neither could they be expected to have had, any knowledge of the Claimant's disability at any time during the time that she was actively engaged in work with R1. This is a question of fact for the Tribunal.

391. The Claimant relies on the following to establish that the Respondents had knowledge of her disability during the relevant periods:

- Behavioural traits of ASD exhibited by the Claimant;
- The disclosure of stress to Professor Tucker in November 2015;
- The discussion with Dr Roche on the trip to Provence[9];
- The communication from Dr Wright that he believed the Claimant had Asperger's Syndrome at the probation review meeting on 18 May 2017;
- The need for reasonable adjustments was acknowledged by the First Respondent in the letter dated 7 June 2016 and therefore this must mean they had knowledge of the disability
- The letter from Dr Steadman dated 18 September 2017.

392. It is necessary to determine what knowledge, if any, each of the Respondents had at the relevant times.

Behavioural traits of ASD

393. The Claimant submitted that all of the Respondents should have noticed her significant social difficulties and as these are symptoms of ASD this imputed knowledge to all of the Respondents. Her submissions relied on her behaviour in October 2015 and in particular the events on 20 October 2015 which the Claimant describes as an autistic meltdown as well as her difficulty in interacting with others.

[9] This was not set out in the Claimant's further particulars of claim but was relied upon in her submissions

394. The evidence showed that the Respondents who worked closely had a perception that she displayed, on occasions, challenging and difficult behaviour. This particularly became apparent during the issues that arose with the lab demonstrators. Professor Tucker referred to Dr Richardson have a *"Miranda encounter"*. Dr Richardson also expressed a view in an email that the Claimant *clearly had a different perspective on what she's doing or an inability to express what she is actually doing to other people* and later described the Claimant to LD2 as having *poor people skills.*

395. The Claimant attached importance to the use of the word "meltdown" during these events. From the evidence before us the only contemporaneous use of the word "meltdown" was by Dr Cartwright when she emailed Dr Richardson about the lab demonstrators issue (see above). The email suggests that it was the Claimant who had told Dr Cartwright about the issue with the lab demonstrators as she references the Claimant having been to see her about the trip.

396. In our view Dr Cartwright was not using the word "meltdown" to describe the Claimant's behaviour but to describe the relationship breakdown between the Claimant and the lab demonstrators.

397. Dr Richardson had used the word "meltdown" in a later witness statement.

398. It was put to Dr Richardson in cross examination that the Claimant had experienced an autistic meltdown. He agreed her behaviour was erratic on that day and out of character. However we accepted his evidence that he did not at any time equate that behaviour to ASD traits. In our view it is plausible that someone who is not medically qualified would be able to reasonably know that the Claimant's behaviour on that day amounted to traits of ASD. It is far more plausible that a work colleague or manager would attribute this behaviour to natural upset and annoyance when two work colleagues have had a break down in their working relationship which was evidently the case or that the Claimant was stressed.

399. The Claimant's description she now uses to describe her behaviour on that day (an autistic meltdown) is in our judgment not relevant. The Claimant, with the benefit of her diagnosis of ASD in September 2017 has since been able to have a level of understanding as to her behaviour and reactions during this time but this does not assist with evaluating what the Respondent knew or ought reasonably to have know about the Claimant's disability at that time.

400. We have considered the incident in the context of what colleagues and an employer could sensibly be deemed to reasonably know at that time.

401. The issues between the Claimant and her lab demonstrators had been building up for a few weeks. LD1 had asked to be removed from all duties for reasons that were in part by the Claimant's own admission because the Claimant had caused him some upset and embarrassment. LD2 had been communicating with the Claimant to inform her she was unable to attend some sessions and offering to provide cover but the Claimant had not

been answering the emails and there was likely to have been some tension between the Claimant and LD2. This continued on after 20 October 2015 culminating in the email the Claimant sent LD2 set out at above which we found to have amounted to a sharp rebuke by the Claimant. This was an inappropriate email for the Claimant to have sent an employee of the Respondent and she was rightly picked up on this by Dr Richardson as straying into employment status of LD2 as the Claimant had suggested she would be dismissed at least from her role supporting with the Claimant.

402. There was no evidence from the Claimant or Dr Rajpal that her ASD would cause her to have difficulty in communicating by email. In fact the Claimant's impact statement stated that she preferred communicating by email finding it generally to be a non threatening form of interaction. However we find that the content of this email displayed the Claimant's ASD traits in relation to difficulties in communication.

Student feedback

403. Although not directly relied upon by the Claimant as evidence of constructive knowledge we also address this when assessing whether the Respondents had knowledge of the Claimant's ASD.

404. The various feedback from different cohorts of students is set out above. There was a pattern of feedback about the Claimant from students which can be summarised as disorganised, not being adequately prepared for lectures, lengthy assignments, lecture organisation, worked examples (and errors), resistant to criticism and challenge and could be defensive and confrontational when challenged. Professor Tucker had also raised that the Claimant was perceived an unapproachable and condescending.

Probation concerns

405. Professor Tucker and latterly Professor Griffin as well as Professor Morley were aware that there were issues in respect of the Claimant's performance. Objectives had been set in January 2017 around organisation.

406. The Claimant also asserted that the statement by Professor Griffin prepared for the purpose of contesting disability was evidence he had knowledge of her social difficulties and thus her disability. This was in reference to the section on his witness statement where he states 'they would never employ someone who could not interact with staff or students'. We do not agree with this interpretation of what Professor Griffin had said and it does not in our view assist the Claimant. Professor Griffin was explaining that in his view the Claimant was able to interact with others.

407. We have concluded that the Claimant's behavioural traits and performance issues, except for errors in worked examples and organisation, were related to her ASD. However the Respondents did not know nor should they reasonably have been expected to know that the reason for these traits and performance issues was that Claimant had

ASD. The Respondents are not medically trained and could not be expected to know that stress can be caused by ASD even less so to know that someone displaying symptoms of stress might have ASD.

408. The knowledge displayed by Dr Wright can be distinguished as he had considerable personal experience of a family member with Asperger's Syndrome. None of the individual Respondents had a similar level of knowledge or personal experience. It is simply too big a leap in our judgment to expect have expected any of the Respondents to have known, actually or constructively of the facts constituting the disability from the behavioural traits and performance of the Claimant.

409. Whilst not a significant factor in our conclusion, we have also taken into account the factual context of the environment within which the Claimant worked. A number of the Respondents gave evidence that the Claimant's behaviour did not strike them as out of the ordinary in the context of an academic environment, where academics can often become stressed. Dr Rajpal also confirmed that it was possible that the Claimant's presentation could look like somebody who was stressed (but qualified he was unable comment further as he had never seen the Claimant stressed).

Disclosure of stress to Professor Tucker in November 2015

410. We made findings of fact that the Claimant did not tell Professor Tucker that the stress episode was a recurrence of a previous episode (see paragraph 92 above). Therefore as far as Professor Tucker was concerned, this was the first presentation of stress, the Claimant had not taken any sick leave nor did she take any thereafter. We do not seek to underplay the level of stress the Claimant was feeling at that time, but that is not the issue. An employer in these circumstances cannot have been reasonably expected to know that an employee presenting with stress had requisite elements of the facts constituting the disability; namely the impairments and that it would have a substantial and long term effect. Stress is a very significant issue for many employers and employers common place in most workplaces and it would be implausible to conclude that the Respondents should reasonably make such a link. We agree with the Respondents' submissions that this was a case at this stage where there was no basis to make any further enquiry **(Ridout).** In any event even if they had made such further enquiries these would not have led to any more information as the Claimant declined to take up the offer of access to the health and well being service **(A Ltd v Z).**

The discussion with Dr Roche on the trip to Provence

411. Firstly, we made a finding of fact that Dr Roche first disclosed this discussion with the Claimant when he gave a witness statement for the purpose of the contested disability hearing. We accepted his evidence that prior to this and at the relevant time he had never discussed this conversation with anyone. Therefore taken at its highest, this discussion could only have imputed knowledge to Dr Roche.

412. Dr Roche, of all the Respondents was the colleague who had worked the closest with the Claimant. On his own admission after the Claimant

told him about her problems reading people and problems in Sweden he asked her whether there might be 'an element of autism'. This evidently represented an element of knowledge in the ordinary sense for him to have raised it. The Claimant then denied this was the case and reacted badly to the suggestion. However we think that Dr Roche's suspicion or opinion that the Claimant's behaviour may have elements of autism is a very different frame of mind to that required for constructive knowledge of an employer. For these reasons we find that Dr Roche did not know nor could he be reasonably expected to know the Claimant was disabled.

<u>The communication from Dr Wright that he believed the Claimant had Asperger's on 18 May 2017</u>

413. Firstly we should say that only the First Respondent, Professor Tucker and Professor Griffin were aware of this communication as they were at the meeting. Dr Richardson and Dr Roche were not aware of this communication and had not had any dealings with the Claimant since her departure from the university and for some time previous to that in the case of Dr Richardson. They cannot therefore be said to have constructive knowledge from this communication

414. We find that the First Respondent, Professor Tucker and Professor Griffin did not know or could have been reasonably be expected to know from Dr Wright's communication of his opinion that the Claimant was a disabled person (that is knowledge of the facts constituting the disability in S1 EQA 2010). They could not have known from that communication of opinion that there was an impairment, that it would be substantial and long term. This was not sufficient to fix them with the knowledge nor could they have been reasonably expected to gain the knowledge by the expression of this opinion.

415. The matter becomes more complicated when we consider Professor Griffith's state of mind in respect of knowledge. There are grounds to conclude that Professor Griffith's knowledge (actual or constructive) differs from the other Respondents' given his involvement with the Claimant after the meeting on 18 May 2017 as none of the other Respondents were privy to information that Professor Griffin was following this date.

416. Dr Wright had pointed out to Professor Griffin and therefore the First Respondent that a diagnosis was not necessary and the characteristics should have been recognised and linked to such a syndrome. This was a point repeated to Professor Griffin and therefore the First Respondent by Dr Wright at the meeting on 2 June 2017. Professor Griffin was aware from his meeting with Dr Wright on 15 June 2017 that Dr Wright was maintaining the Claimant had Asperger's syndrome and that he was seeking a settlement as she would be covered by the "DDA". Professor Griffin was not however involved in the Claimant's grievance specifically the letter she sent to the First Respondent advising she expected to have a diagnosis of Asperger's within a few weeks – this was sent to Ms Connolly not Professor Griffin.

417. Professor Griffin's unchallenged evidence was that he had a laypersons understanding of ASD. He had believed the Claimant capable

of interactions and had not thought her exceptional or different to other academics in respect of similar characteristics.

418. We therefore find it was not reasonable for Professor Griffin to have know the Claimant was disabled (in that he did not have knowledge of the facts constituting the disability). Whilst he was aware there was a suggestion the Claimant may have ASD he did not know nor could he be reasonably expected to know that the impairment would have a substantial and long term adverse effect on the Claimant's ability to carry our day to day activities.

The need for reasonable adjustments was acknowledged by the First Respondent in the letter dated 7 June 2016 and therefore this must mean they had knowledge of the disability

419. We do not consider that acknowledging or asking if reasonable adjustments were required means the Respondents had knowledge of the disability. This does not impart the necessary elements of knowledge.

Dr Steadman's letter dated 18 September 2017

420. We agree with the Respondent's submissions that the letter provided limited information (stating that the Claimant "met the criteria" as suffering from Autism Spectrum Disorder). ASD is a spectrum disorder and all the letter does is confirm the Claimant meets the criteria. It did not impart information concerning the effect of the condition on the Claimant's ability to carry out normal day-to-day activities, whether that effect was substantial and adverse, and whether it was long term. For these reasons we reject the contention that this imparted knowledge to the Respondents.

421. We go on to consider whether the First Respondent has satisfied the requirement in the EHRC Code to do all they can reasonably be expected to do to find out whether the Claimant had a disability.

422. In this case, we know that the First Respondent did not make any enquiries other than ask if the Claimant if she had a diagnosis at the probation meeting on 18 May 2017. They made no such further enquiries such as write to her GP or refer her to Occupational Health.

423. The issue therefore is whether the need to make enquiries was triggered in all of the circumstances of the case and if so when, as this will be the date at which the First Respondent will become fixed with constructive knowledge.

424. We have considered whether the date of the constructive knowledge can be said to be 18 May 2017 or whether it should be at some later point, for example when the first Respondent received the GP letter dated 15 July 2017 advising the Claimant had been referred to mental health services or later when she advised in her grievance letters she was expecting a diagnosis of Asperger's within a few weeks.

425. We have concluded that the date is 18 May 2017. Following Dr Wright's suggestion the Claimant may have Asperger's syndrome the First

Respondent should have made further enquiries and had they done so, they could reasonably have been expected to know of the facts of the Claimant's disability by rereferring her to Occupational Health or following up with her GP. At this stage there was now a real basis for doing so. Although we have rejected that up to this date, the Claimant's behavioural traits and performance had imputed knowledge, Dr Wright's assertion changed the situation and shone a spotlight on the Claimant's past behavioural traits and in our view should have cast it in a different light. The First Respondent should have made further enquiries about this potential mental impairment and did not do so.

426. The First Respondent did nothing to follow this up even when the Claimant informed them she was expecting a diagnosis in a few weeks in her grievance letter of 27 July and 10 August 2017 and made allegations of discrimination because of her condition. Ms Mullens accepted they had not sought advice from Occupational Health. Her explanation for not doing so was that the Claimant was not in the workplace. We find this to be an unsatisfactory explanation. The fact that some is not physically present at work does not prevent reasonable enquiries from being made where they ought to be. The Claimant was still employed albeit absent but there was still a duty to make reasonable adjustments to any processes she may have been involved in such as the grievance procedure.

427. HR were clearly aware they needed to be seen to offer to make reasonable adjustments from the discussions with Professor Griffin on 6 and 7 June 2017.

428. For these reasons we find that the First Respondent, on receipt of Dr Wright's communication on 18 May 2017 ought to have made reasonable enquiries and did not. As such that is the date we find they should have reasonably been expected to know about the Claimant's disability.

429. The next question to consider is what would have been established if the First Respondent had made reasonable enquiries? **(A Ltd v Z).**

430. The Respondents submit that even if the First Respondent made reasonable enquiries, by way of a referral to if Occupational Health, they would have not been in a position to diagnose the Claimant with ASD as she would have needed to see her GP.

431. There are a number of problems with this submission. Firstly the Claimant had seen her GP and been referred to mental health services but even when they were told this the First Respondent made no further enquiries.

432. Secondly, the employer does not need constructive knowledge of the diagnosis itself. They need to show that it was unreasonable for it to be expected to know both of the impairment and that it would have a substantial and long term adverse effect. The First Respondent were on notice that Claimant was in the process of seeking a diagnosis. The GP letter dated she had been referred to the mental health team.

433. ASD is by its very nature a spectrum disorder. Therefore the fact that an individual has ASD does not follow they will have a disability under S6 EqA 2010. However in our judgment it would have been reasonable for the First Respondent to have known by this stage the facts of the disability given the Claimant's behavioural traits, Dr Wright's disclosure, the GP letter and the Claimant's grievance.

434. We see no reason why given all of the background evidence regarding the Claimant's behaviour and performance issues that Occupational Health would not have been in a position to have advised the Respondent on the facts of the disability. There was no evidence that the OH advisors could not have advised on this had the Claimant been referred to them. The Tribunal sees many OH referrals and almost all are asked to express an opinion on whether the individual would meet the definition of a disabled person under S6 EQA 2010.

435. We therefore find that as of 18 May 2017 the Respondent ought to have knowledge of the Claimant's disability had they made reasonable enquiries.

436. There is a further consideration in respect of the reasonable adjustment claim as the First Respondent must also have been reasonably expected to know about the disadvantage. We consider for the same reasons as above that had the Respondent made reasonable enquiries by referral to OH or the Claimant's GP they would have known about the disadvantages relied upon.

Time limits

437. The Claimant contacted ACAS on 8 September 2017 (Day A) and the certificate was issued on 8 October 2017 (Day B). Her ET1 was presented on 27 October 2017. In respect of the discrimination claims the Claimant had three months in which to present a claim if it was to be presented within the primary limitation period. Given that the ACAS early conciliation process started on 8 September 2017, it follows that any claim arising prior to 9 June 2017 is potentially out of time unless it falls within S123 (3) as conduct extending over a period which shall be treated as done at the end of the period or in the case of an failure to do something, to be treated as occurring when the person in question decided on it.

438. The majority of the Claimant's claims are very substantially out of time. It is important to note that we had no evidence or submissions from the Claimant as to why time should be extended. Inexplicably the Respondent's response and submissions did not deal with time limits either. Nonetheless the issue of time is a jurisdictional matter and one we must consider regardless of submissions or pleadings.

439. There are a number of claims presented in time which, if we find there to be conduct extending over a period (or failures) may mean the claims are in time. We do not need to visit this any further as we conclude below that none of the 'constituent acts' were acts of discrimination and accordingly cannot form part of a continuing act then it cannot be part of the continuing act **(South West Ambulance Service v King).**

Harassment claims

440. The Claimant's harassment claims have taken a great deal of unravelling from the further and better particulars by cross referencing the schedule. The Claimant has alleged in excess of 80 acts of harassment against the all of the Respondents. There are different allegations against different Respondents; some are alleged to be related to gender and disability and some related to disability only. Many of the same courses of conduct have also alleged to have been acts of direct discrimination, victimisation and discrimination arising from disability. In accordance with S212 EQA 2010 we therefore consider the harassment claims first as any act also relied upon as a detriment will not include conduct that amounts to harassment.

441. Notwithstanding our findings on knowledge there can be circumstances whereby the perpetrator of the alleged harassment is unaware of the protected characteristic but nonetheless can be guilty of harassment. We need to consider whether the conduct is "related to" a disability by having regard to the evidence as a whole; the perception of the person who made the remark is not decisive **(Hartley).**

442. If we find that the conduct was not "related to" the Claimant's disability in some circumstances it may be appropriate to go on and record our findings on the further elements required to establish a harassment claim namely whether the conduct had the 'purpose' or 'effect' of violating a person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

443. Given the number of harassment claims advanced we do not consider it proportionate to set out our conclusions in respect of that further element in respect of each allegation. However we do record some general findings in this regard below at paragraphs 575-582.

Conclusions – Harassment related to sex

444. According to the schedule, the Claimant relies on paragraphs 51 (u), 51 (aa – bb), 68 (a), 68 (c) – (d) as harassment related to her sex.

Paragraphs 51 (u) – Claimant attempted to raise concerns with Professor Griffin on 9 March 2017 and made allegations of harassment by both students and Dr Roche but Professor Griffin kept repeating "they take student concerns very seriously".

445. See findings of fact at paragraphs 213-215. We found that the Claimant did not raise issues of harassment at that meeting with Professor Griffin. The schedule of claims clarified that the alleged unwanted conduct was Professor Griffin's 'lack of concern' after the Claimant had complained about harassment.

446. The evidence did not support the allegation that Professor Griffin showed a lack of concern towards the Claimant. He did seek to reassure her but also reasonably in our view told the Claimant that the student

concerns would be taken seriously. Therefore the unwanted conduct did not occur. Further there was no evidence or basis that this conduct related to the Claimant's sex. This claim fails.

Paragraph 51 (aa) – the purpose of the meeting on 18 May 2017 was to inform the Claimant that she had not passed her probation.

447. See findings of fact at paragraphs 263-273. We found that factually this claim is not made out and there was no purpose or predetermined outcome to fail the Claimant's probation related to her sex or otherwise. The conduct complained of did not factually occur. There was also no evidence that any decisions taken in respect of the Claimant's probation was related to her sex. This claim fails.

Paragraph 51 (bb). The Second Respondent made the claim that the Claimant's response to her 24 month probation report should not be considered, even though no deadline had been specified. The information contained within that response was ultimately ignored.

448. We did not hear any evidence from the Claimant to support the contention that Professor Tucker made representations that the Claimant's response to the 24 month probation should be ignored. This was not set out in the notes of the meeting. The Claimant had not, until the student complaints issue arose in March 2017 completed her section of the form. She was advised to do so by Ms Jukes of HR in March 2017. This does not corroborate allegations that Professor Tucker decided to advise it should be ignored. Further, it was not ignored rather not taken any further as the probation review halted as of 18 May 2017. We conclude that the unwanted conduct did not occur. We would further find that there was no evidence advanced as to why the conduct complained of related to the Claimant's sex.

Paragraph 68

449. The further and better particulars allege that Dr Richardson harassed the Claimant on the ground of gender and disability "at least four times". Only one of the sub paragraphs pleaded a harassment claim and this is not pleaded as on the basis of gender but disability. The schedule however confirms that the Claimant relies upon paragraph 68 (a), (c) and (d) as harassment related to her sex.

450. In respect of these sub paragraphs we first of all consider whether the conduct was unwanted and related to the protected characteristic of sex .

Paragraphs 68 (a) - Email 30 October 2015 (see paragraphs 79-81 for findings of fact). This was the email where Dr Richardson commented that there was a breakdown of communication between the Claimant and LD2 and an apparent lack of organisation in early distribution of lab material.

451. We were unable to understand how or why this conduct amounted to unwanted conduct related to the Claimant's sex and as such this claim fails.

Paragraph 68 (c) – The meeting on 10 February 2016 where Dr Richardson allegedly unfairly upbraided the Claimant.

452. See our findings of fact at paragraphs 104-108. The only evidence put forward by the Claimant to support the claim that this conduct was related to gender is that the Claimant was the only female at this meeting. Factually this was not supported by the minutes which showed another female present. Even if the Claimant had been the only female present she has not shown facts from which we could decide in the absence of any other explanation, that Dr Richardson acted in the way he did in relation to the Claimant's gender. This claim fails as the Claimant has not met the necessary burden of proof.

Paragraphs 68 (d) – the mouth zipping gesture by Dr Richardson.

453. See our findings of fact at paragraph 126-129. We wish to record that this was an inappropriate way for Dr Richardson to have behaved towards the Claimant. It showed a lack of judgment and management skills. However this does not mean that the conduct related to the Claimant's gender. The Claimant again has not shown facts from which we could decide in the absence of any other explanation, that Dr Richardson acted in the way he did in relation to the Claimant's gender. This claim therefore fails.

<u>Conclusions – harassment related to disability</u>

454. For ease of reference we start our consideration of the 80+ allegations of disability related harassment with paragraph 68 given we have just set out all but one above. Paragraphs 68 (a)- (d) were also relied upon as disability related harassment.

Paragraphs 68 (a)

455. The comments regarding the organisation of lab materials cannot have been related to the Claimant's disability. It is not the Claimant's case that she was dis-organised (see paragraph 22). Further, on the Claimant's case the lab materials were provided late because Dr Roche had not been providing them in a timely manner and were not related to her disability. In relation to the reference of a breakdown in communication this was not aimed at the Claimant specifically moreover the breakdown in communication between the Claimant and LD2. For these reasons we find that the comments were not related to her ASD.

Paragraphs 68 (b) - Email of 2 November 2015

456. See paragraph 82 for findings of fact. This email referred to the Claimant as having "poor people skills". The unwanted conduct is established. We go on to consider whether the unwanted conduct was related to the Claimant's ASD?

457. Communication and people skills are evidently impairments relating to the Claimant's disability. Therefore these references technically, with the benefit of hindsight and expert medical advice, that can be linked to the

Claimant's disability. Dr Richardson was not to know about that at the time. This is relevant to the question but does not have to be conclusive.

458. It was inappropriate to have referred to the Claimant as having poor people skills to LD2. However given the lack of knowledge of the disability impairments we do not conclude that in doing so, Dr Richardson engaged in unwanted conduct related to the Claimant's disability. He did not know and could not have reasonably been expected to know that when describing the Claimant as having "poor people skills" that these impairments were disability related when he made those comments. In our judgment this can be distinguished from the situation in **Hartley** where the employer knew about the disability. We have very carefully considered this matter as we must not apply a "because of" test. We have had regard to the type of situation where the perpetrator of the harassment may be unaware that A had the protected characteristic but could still be found to have harassed that individual. For example the harasser could be making offensive racist remarks and the complainant could have their dignity violated or be subjected to an offensive environment even if the complainant did not share that protected characteristic. In our judgment this is a very different situation that we are considering here. In this case, remarking that someone has poor people skills cannot automatically be related to ASD particularly when the person making the remark has no knowledge.

Paragraph 68 (c) – The meeting on 10 February 2016 where Dr Richardson unfairly upbraided the Claimant.

Paragraphs 68 (d) – the mouth zipping gesture by Dr Richardson.

459. Turning to Dr Richardson's actions at the meetings on 10 February 2016 and 5 September 2016 in the context of disability related harassment. In both meetings, we conclude that the Claimant was engaging in behaviour related to an impairment of ASD in that she failed to recognise both that she was providing too much information and picking up on the social cues that she had spoken for long enough off topic. This is what prompted Dr Richardson's reactions on both occasions. As far as he was aware he was dealing with a disruptive person at a meeting who wanted to speak off topic and had not responded to the usual cues to allow the meeting to move on. We find that the conduct was related to the traits that had arisen from the impairments rather than the impairments or disability itself. It is relevant that Dr Richardson did not know that the Claimant had ASD and that these behaviours were related to ASD. There was no motivation conscious or unconscious to engage in the conduct for reasons relating to ASD. We therefore find the conduct was not related to the Claimant's disability.

460. We therefore dismiss the claims in paragraph 68.

Remaining disability related harassment claims

Paragraphs 9 and 10

461. This was set out in the schedule as follows:

MJ informed 2 days before deadline of a new T&S position by blanket email. CT had known since January and discussed with others, making it clear she intended that she did not want MJ to be given the opportunity to be employed in the new position.

CT also lied stating she did not know about the role before this point. CT made it clear others had been considered for redeployment, but did not know who was on the redeployment list. Clear it was not intended that MJ would continue to be employed by CU, or that MJ would have priority for this position over external candidates. Because of learning about the post so close to the deadline, MJ was denied the same opportunity as non-disabled employees would enjoy.

462. We refer to our findings of fact above at paragraphs 149 and 156-157. The Claimant asserted that the email from Professor Tucker to Ms Jukes on 10 January 2017 corroborated the first part of this allegation. The email clearly showed Professor Tucker was aware of the T&S post coming up in February 2017 as she asked Ms Jukes whether she needed to mention it to the Claimant in her email of 10 January 2017. However that email does not corroborate the allegation that she did not want the Claimant to be given the opportunity to be employed in the new position. We also see that Professor Tucker later brought the post to the Claimant's attention and discussed it with her at the probation reviewed when the Claimant brought it up. We find therefore that this unwanted conduct did not take place.

463. In respect of the second paragraph, Professor Tucker did not lie or claim she had not known about the vacancy until that point. This is not what the Claimant's own covert recording says at all and this was an unreasonable allegation to make against Professor Tucker. The Claimant learned about the post at the same time as the other people Professor Tucker emailed drawing the post to their attention. It should also be noted that the post had been advertised on the intranet and the Claimant had a responsibility to be checking this herself. It was not reasonable to allege Professor Tucker unlawfully harassed the Claimant by bringing the vacancy to her attention no matter what the timing of that email was.

464. Further, there was no evidence that any of this conduct was related to the Claimant's disability. The Claimant learned of the deadline at the same time as other colleagues. Professor Tucker brought it to the attention of all her colleagues in the same email. This claim fails.

Paragraph 14

465. This was set out in the schedule as follows:

04.2017 - Application for T&S post rated by Carole Tucker (this became apparent only when document disclosure for this case was made in December 2019), Annabel Cartwright ("AC") and Richard Lewis ("RL"). AC had been sent derogatory communications about MJ by BR. AC also accompanied PR to a grievance hearing against PR but testified against MJ which is forbidden by the rules. RL shares an office with PR. In a

previous application, with nearly identical questions, MJ was assigned highest possible ratings, on the later application, CT, AC and RL assigned much lower ratings. Ratings included references to slanderous comments from CT, BR and PR, and feedback from students influenced by PR, and references to MJ's disability. Not impartial, and negative attitudes of these people are a result on MJ's disability.

466. The Tribunal was unclear as to what the unwanted conduct was alleged to be in respect of this harassment claim as the paragraph above sets out a number of different courses of conduct. In relation to the sentence "AC had been sent derogatory communications about MJ by BR", we did not know what this email was or when it was sent and we are not prepared to try and guess what this email was. We therefore dismiss this claim.

467. In relation to the sentence "*AC also accompanied PR to a grievance hearing against PR but testified against MJ which is forbidden by the rules. RL shares an office with PR."* We did not understand what the unwanted conduct relating to the Claimant's disability was said to be. We therefore dismiss this claim.

468. In relation to the sentence *"In a previous application, with nearly identical questions, MJ was assigned highest possible ratings, on the later application, CT, AC and RL assigned much lower ratings. Ratings included references to slanderous comments from CT, BR and PR, and feedback from students influenced by PR, and references to MJ's disability. Not impartial, and negative attitudes of these people are a result on MJ's disability.*

469. We understand the unwanted conduct to be the comments on the ratings form for the February 2017 T&S vacancy regarding the complaints by students regarding the Claimant's demeanour and attitude (see findings of fact at paragraph 178 above).

470. We consider whether this was unwanted conduct relating to the Claimant's disability. The comments made were (see paragraphs 178, 181 and 182):

(Dr Lewis): *"It should be noted this candidate has a historically low module figure of merit an that MSc students have complained about the candidate's demeanour and attitude towards them for the past two academic years.*

(Dr Cartwright): *no student feedback scores for teaching. Small range of subjects".*

(Professor Tucker): *Q6 relates to communication skills and a proven level of ability of excellence in this area. Local results suggest this has not been achieved. No evidence of experimental physics application or detailed engagement with industry".*

471. We conclude that none of these comments were related to the Claimant's disability. Dr Cartwright's comments have no connection

whatsoever. Dr Lewis and Professor Tucker's comments can be said to be connected to ASD traits generally but that is not what is required to establish that the comments amounted to unwanted conduct related to the protected characteristic. Neither knew the Claimant had ASD at that stage nor that the behavioural traits they were describing were related to ASD. This claim therefore fails.

Paragraph 19

472. This was set out in the schedule as follows:

Communication written about MJ and a desire not to continue her employment.

473. By Cross referencing the further and better particulars at paragraph 19 we were able to identify there were three acts relied upon under this heading. The following two were duplicated elsewhere in the further and better particulars namely:

a. The email from Dr Richardson to Professor Tucker dated 11 November 2015 (see paragraph 90 above – as this is pleaded under paragraph 31 we deal with this below at paragraph 479);

b. Unsubstantiated performance accusations at the probation review meeting on 18 May 2017 (see paragraphs 263-273 above – as this is also pleaded under paragraph 51 (o) we deal with this below.

474. In respect of the email from Professor Griffin to HR dated 17 November 2016 (see paragraphs 130 above) we deal with this as follows.

475. The unwanted conduct appears to be Professor Griffin advising HR in November 2016 that he wants to allow her contract to finish. Professor Griffin did not know the Claimant was disabled. That conduct did not relate to the Claimant's disability. No-one knew that the Claimant was disabled at that point in time. Although Professor Griffin does not say specifically why he said he wanted her contract to finish at that point in time, it cannot have been relating to her disability as he did not know she was disabled. This is a case where knowledge is the only relevant factor. This claim therefore fails.

Paragraphs 30 and 31

Paragraph 30- The Second Respondent saw fit to share the Claimant's stress disclosure in a mocking way..in emails dated 10 November 2015.

Paragraph 31 – email dated 11 November 2015 from Dr Richardson where he referred to "real reason" for the Claimant's stress and suggested her contract should not be renewed as she could not handle the workload.

476. Paragraph 30 is not factually made out. Professor Tucker did not refer to the stress condition in a mocking way (see paragraph 85 for what Professor Tucker actually said). Further, any reference to the Claimant's stress condition at that time was not related to her disability.

477. In relation to paragraph 31, the Claimant complains about the reference to the "real reason" for the Claimant's stress and that the email suggested her contract should not be renewed as she could not handle the workload. Our findings of fact are at paragraph 90. Dr Richardson did express the view that if she could not handle the workload they would have to seriously consider her future.

478. We consider whether, in making these comments, Dr Richardson engaged in unwanted conduct relating to the Claimant's disability. The reference to the "real reason" for the Claimant's stress was not her disability. It was a reference to Dr Richardson's opinion that the Claimant had caused herself the stress by changing more than was necessary with both the Obs Tech course and the Motion and Energy course. Dr Richardson regarded the latter as a pre packaged course that should have been straight forward to deliver and had stressed this to the Claimant on a number of occasions. Further there should not have been any need to amend the materials as the course was not running again in the future, and he had explained all of this to the Claimant.

479. The comments were not related to the Claimant's disability. This claim also fails.

Paragraphs 33 and 34

CT breached Equality and Human Rights Commission Code of Conduct paras 5.14 & 5.15. CT is a representative of CU and so has a duty to consider if the illness could be regarded as a disability, given the knowledge she had, which was that MJ had a condition that caused her a substantial detrimental impact on her ability to perform day-to-day activities, and that it had recurred on a long-term basis. As well as failing to make reasonable adjustments, CT and BR blamed MJ for quality of work, and the health condition. CT is either incompetent, not trained, or ignored the code of conduct because MJ had a disability. CU did not take steps to rectify this, but claimed they had no way of knowing that MJ had disability or that she never had a disability. They failed to uphold MJ's basic human rights. Actions taken by the respondents were related to MJ's stress condition and disclosure thereof, and therefore to the disability. Therefore this constitutes discrimination and harassment.

480. We found this to be a very difficult allegation to understand in particular how it was said to amount to disability related harassment. We did not understand what the unwanted conduct related to the Claimant's disability is said to have been. The paragraphs are very long and set out the EHRC Code of Practice in respect of knowledge of disability and that Professor Tucker failed in this duty.

481. We dismiss this claim as we are unable to identify what the alleged unwanted conduct was said to be.

Paragraphs 35 – 36

482. This was set out as follows in the schedule:

MJ was again diagnosed with stress in 25.07.2017 because of the harassment by CT and PR. Further harassment was directed at MJ after she reported the treatment to CU.

483. We dismiss this claim as we are unable to identify what the alleged unwanted conduct was said to be.

Paragraph 37

484. This is set out in the schedule as:

On probation documents and in the probation meeting on 18 May 2017, CT used the disability disclosure from 2015 to claim poor time management and that MJ couldn't handle her work load.

485. This is a duplicate claim set out in paragraph 51 (g) and we deal with our conclusions regarding disability related harassment around the Claimant's probation below.

Paragraphs 42 – 43

486. This was set out in the schedule as follows:

The disclosure on 10.11.2015 did not result in any extra support from the CU. Also CT, BR and PR comments about traits of MJ's disability were of the same quality before and after the disclosure, so they must have already known about the disability and already made a conscious effort to discriminate. Actions before and after the disclosure should be considered as discrimination and harassment.

487. We dismiss this claim as we are unable to identify what the alleged unwanted conduct amounting to disability related harassment was said to be.

Paragraph 51 (a) to (f)

Paragraph 50 (f) – in an email dated 11 November 2015 the Second Respondent blamed the Claimant for issues outside her control which amounted to bullying and as the Second Respondent knew the Claimant was disabled it constituted harassment

488. The above paragraph was in the further and better particulars. The schedule also confirms that paragraphs 50 (a) to (f) are relied upon as disability harassment. We set out (a) to (f) as follows:

CT told MJ that she had good ideas, and made several suggestions presented as probation objectives .MJ told CT when work toward CT's suggestions was underway. CT did not reply, but BR then complained to CT that MJ had amended too much, but CT was already aware of the extent of MJ's changes and had requested these changes, but did not communicate that to BR. BR did not tell MJ directly of his concerns regarding her work, which he would have done to a non-disabled employee. CT agreed with BR in an email but did not inform MJ. Others in the department also criticised

MJ behind her back for issues over which she had no control and this seemed to be encouraged, or at least accepted. This is bullying, Harassment and Direct Discrimination. (Note: this describes several distinct incidents which had been divided into parts but was put into one single paragraph by the respondents in this spreadsheet)

489. This was in relation to the comments made by Professor Tucker and Dr Richardson regarding the Claimant's "tinkering" with the Obs Tech module – see paragraph 90 above. Both held the view that the Claimant had contributed to her overloading her workload more than had been necessary.

490. We consider whether, in making these comments, Dr Richardson and Professor Tucker engaged in unwanted conduct relating to the Claimant's disability. We have concluded that they did not. Firstly they did not know that the Claimant was disabled at that time. Secondly, there are no grounds to conclude that the comments regarding the Claimant making more than necessary changes to the Obs Tech model related to the Claimant's disability in any event. For this reason the claim fails.

Paragraph 51 (d)

491. This is set out in the schedule as follows:

17.11.2015 - 12 month probation meeting - On the report, MJ was held responsible for issues out of her control i.e. waiting on PR for agreed contribution to their joint teaching efforts while he was on unauthorised leave, even though CT said verbally that she realised that was not MJ's fault. Additionally, CT noted in the probation paperwork new issues that had arisen after the 12 month term.

492. The unwanted conduct appears to be blaming the Claimant for issues outside her control and gives the example of waiting on PR (Dr Roche) for agreed contribution. This was in relation to Dr Roche allegedly withholding lab materials from the Claimant.

493. The probation review document does not say anywhere that Professor Tucker was blaming the Claimant for Dr Roche's failings. Factually this claim is not made out. Further there is no evidence to support the contention that any of Professor Tucker's comments at the probation review meeting were related to the Claimant's disability. This claim fails.

Paragraph 51 (g)

494. This is set out in the schedule as follows:

21.03.2016 - MJ provided with probation document. CT stated MJ failed to have meeting about module even though it was CT's fault. CT assigned blame to MJ for lack of time management, even though 6 month meeting identified good time management.

495. Our findings of fact relating to the failure to organise the module meeting are at paragraph 104. Professor Tucker had missed a reference to the meeting she had asked the Claimant to arrange. There was no evidence

that Professor Tucker did this deliberately or that it was related to the Claimant's disability. It was a simple error which was understandable given the meeting request was at the end of a long email and some months after Professor Tucker had asked the Claimant to arrange it. There is also no evidence that raising issues of time management related to the Claimant's disability. This claim fails.

Paragraph 51(h)

496. This is set out in the schedule as follows:

Paragraph 51 h – Professor Tucker harassed the Claimant by falsely claiming at the probation meeting on 18 May 2017 that the Claimant had turned down a mentor.

497. See findings at paragraph 268. This claim is not factually made out and there was no such false claim by Professor Tucker. This claim therefore fails.

Paragraphs 51 (k – m)

498. These are set out in the schedule as follows:

A 24 month probation meeting was cancelled in late 2016 because MJ did not fill out paperwork, even though it was CT's job. CT criticised MJ for not bringing paperwork for new module even though MJ had waited to ask CT more details but couldn't as meetings were cancelled.

499. Our findings of fact are at paragraphs above. In respect of the first sentence we find the unwanted conduct did not happen. It was not Professor Tucker's job to fill in all of the paperwork. HR specifically advised the Claimant that she had to complete the first section and she did not. The first meeting was cancelled as the Claimant had not completed this paperwork and sent it to Professor Tucker, as well as Professor Tucker also not being ready with her paperwork and it suited the Claimant as she was having her washing machine repaired.

500. In relation to the second sentence Professor Tucker did raise with the Claimant that students had complained some paperwork was not ready for a new module (see paragraph 152). The covert recorded transcript shows Professor Tucker raised issues with the Claimant in a reasonable way. Even if Professor Tucker had criticised the Claimant we did not understand why the raising these issues were related to the Claimant's disability. We dismiss this claim.

501. Paragraph 51(n) - (o)

02.2017 - 24 month report contained unfair and exaggerated claims. PR did not assign his students work and relied on MJ to provide written work in the previous year , but MJ was criticised for not having all the materials 2 weeks before term had started. CT knew this and treated MJ differently because of her disability. Even though MJ had done all the possible items on the

"action plan" by 15 Feb CT claimed that MJ had not engaged in the process, nor satisfied the terms of her probation.

502. There was no evidence that Dr Roche had not assigned his students any work or that he had relied on the Claimant to provide his students written work the previous year. We also do not understand how this could amount to disability related harassment of the Claimant. The reference to being criticised for not having material 2 weeks before term started was not accurate. Professor Tucker raised with the Claimant that the students had complained the paperwork for the module was not available after the start of term (see paragraph 152). We find this cannot have amounted to disability related harassment. it was a legitimate matter to have raised with the Claimant.

503. In relation to the last part of this complaint (CT claimed that MJ had not engaged in the process, not satisfied the terms of her probation) this appears to be about Professor Tucker's conduct at the probation review meeting on 18 May 2017. We conclude as follows. Professor Tucker did inform the meeting as such – see findings at paragraph 265 above. She did also include a probation document which did not contain the Claimant's comments from May 2014 to the investigation. We find this was an error rather than a deliberate attempt to portray the Claimant in a bad light.

504. We consider whether, in making these comments, Professor Tucker engaged in unwanted conduct relating to the Claimant's disability.

505. Professor Tucker informed the meeting that the Claimant was not satisfying the conditions of her probation. There were in our judgment reasonable grounds for Professor Tucker to have made those assertions given the student feedback and the trip organisation. In relation to not engaging with the probation procedure, the comments were made because other than the first probation review the Claimant had not engaged in the probation procedure by completing the section on the form where she was invited to make comments. Professor Tucker may not have been timely in holding meetings and returning the paperwork but even when the paper work was returned the Claimant did not make any comments other than on the first review form.

506. We find therefore the reason these comments were made was because they reflected the reality of the situation as seen by Professor Tucker namely that the Claimant was not meeting the required probation standards. They were not related to the Claimant's disability.

507. This claim therefore fails.

Paragraph 51 (p)

508. This was set out in the schedule as follows:

08/03.2017 - CT received feedback stating student had been told by another member of staff that MJ was "useless". CT failed to investigate this, which

she would have had MJ not been disabled. (MG was also aware of these statements by the students but he also did not investigate)

509. The relevant findings of fact are at paragraphs 204, 236, 253, 296. Professor Tucker and Professor Griffin accepted they did not investigate which member of staff was said to have called the Claimant "useless" according to the student feedback.

510. We consider whether this was unwanted conduct relating to the Claimant's disability. Neither knew at that stage the Claimant was disabled. No-one within the Respondent appears to have even considered investigating this at the time. There was an intention to meet with the Claimant to discuss the feedback but the Claimant left the university before that could happen. We agree with the Claimant that this should have been investigated. The concerns about student confidentiality simply do not hold up given Professor Tucker immediately proceeded to organise a meeting with the students to discuss the questionnaires however the question we must ask ourselves is whether this failure to investigate the "useless" comments was related to the Claimant's disability. At the relevant time no-one knew the Claimant was disabled. Having regard to what was in the mind of Professor Griffin and Professor Tucker there are no grounds or reasons to conclude that the failure to investigate these comments could be related to the Claimant's disability and as unsatisfactory as their explanations were to the Tribunal they were plausible in so far as the reasons did not relate to the Claimant's disability. This claim therefore fails.

Paragraph 51 q

Paragraph 51q – in response to an email from Patrick Sutton Professor Tucker made a joke about the Claimant.

511. The schedule expanded the alleged harassment as follows:

CT ignored reviews from other students from same lectures who gave good reviews, and made a joke about MJ to the training quality officer ("TQO").

512. There was no evidence to support the allegation that Professor Tucker ignored the good reviews. The meeting to discuss the feedback never went ahead and it cannot be said that it was therefore ignored.

513. The Claimant's witness statement did not deal with what the alleged joke was said to be. There was one email in the bundle where Professor Tucker replied to Patrick Sutton in the context of paragraph 51q (see paragraph 205 above). We heard no evidence on what the joke was alleged to have been and it was not apparent from that email either. We therefore dismiss this claim as it is not factually made out.

Paragraphs 51 (r) – (t)

514. This was set out in the schedule as follows:

09.03.2017 - MJ was shocked and upset when she received the negative feedback as she had not previously been complained about. This confirmed

PR was coaching students to give poor feedback, as MJ had suspected since the previous year. TQO or CT redacted positive comments, and the proof that PR had told students she was useless. This was to put MJ at a disadvantage. (It is now clear that MG was also involved in the redaction of the comments that indicated another colleague's misconduct, effectively covering up that misconduct)

515. We have assumed that the alleged unwanted conduct amounting to harassment was the redaction of the positive comments. We have already dealt with the removal of the useless comments. (See above at 508-510 and our findings of fact at paragraph 209 above).

516. Firstly we should say the redacted comments did not confirm Dr Roche had been coaching students to give poor feedback nor did they contain any "proof" that the member of staff who told the student the Claimant was "useless" was Dr Roche.

517. In respect of the removal of the positive feedback we found there was an intention to include them as can be seen by the reference to them in the covering email. We accepted the Respondent's submission that the likely explanation was human error rather than the removal being related to the Claimant's disability. This claim therefore fails.

Paragraph 51 (u)

518. This is set out in the schedule as follows:

MJ alleged harassment by students and PR to the head of school, and was upset by the lack of concern.

519. This is a duplicate of the alleged sex related harassment at paragraph 51 (u) (see our conclusions at paragraph 446-447 above). We have assumed the unwanted conduct was a lack of concern. We found there was no lack of concern and Professor Griffin did not engage in any behaviour at this meeting related to the Claimant's disability. This claim fails.

Paragraphs 51 (x) – (y)

Paragraph 51 (x) and (y) – actions of Dr Roche when he made the "module dis-organiser" comments and the R1's alleged failure to do anything about it

520. This paragraph is also alleged to be direct disability discrimination (see below). In relation to the harassment claim we conclude as follows. There are two elements to this allegations.

521. Firstly, the comment made by Dr Roche at the lecture on 27 January 2017 which the Claimant discovered on 8 May 2017.

522. In relation to disability related harassment we first of all consider whether the conduct was unwanted and related to the protected characteristic of disability. We consider this to be a similar issue to the allegations against Dr Richardson. Dr Roche did not know at the time he made a comment

relating to the Claimant being dis-organised that the Claimant was disabled or that ASD may cause issues with organisational skills.

523. Further, the Claimant's case was that her ASD did not affect her organisational skills (see findings of fact at paragraphs 22-24). Indeed the Claimant's case is put very much the other way. When we considered the PowerPoint the Claimant had collated identifying all the steps she had taken to organise the trip we concluded that the Claimant's case is argued very much on opposite terms that she was not dis-organised. Although the Claimant's perception is not relevant (we must focus on the perpetrator) the "module dis-organiser" comment cannot be related to the Claimant's disability if even the Claimant does not accept that her ASD is related to organisational skills.

524. For these reasons we find that the comments made by Dr Roche were not related to the Claimant's disability and the claim fails.

525. The second element of the harassment claim (R1's alleged failure to do anything about it) relates to a decision taken by Professor Griffin on 6 June 2017 following recommendations by Professor Morley in his addendum to his original investigation.

526. We therefore consider whether this was unwanted conduct related to the Claimant's disability. We have assumed that the unwanted conduct was R1's alleged failure to do anything about Dr Roche's comments.

527. The first point to make is that factually this claim was not made out. There was not a failure to do anything. Dr Roche was reprimanded and given a number of instructions about future behaviour. It is correct to say that he was not subjected to formal disciplinary action. There was a remedy by way of a letter of apology however for reasons more relating to incompetence this letter was not sent to the Claimant until later in July 2017.

528. The second point is that we did not have any evidence that R1 decided on their actions for reasons related to the Claimant's disability. The conduct related to relation to Dr Roche's actions. For these reasons the harassment claim fails.

Paragraph 51 (z)

529. This is set out in the schedule as follows:

CT continued to allege MJ's teaching was not of the required standard, even though she never observed a lecture herself, and failed to give credit to first year ratings before PR started and before her disability disclosure. PR discredited MJ in front of the students which ultimately caused her to lose her job because student feedback is used exclusively to evaluate teaching performance.

530. By cross referencing paragraph 51 (z) to the further and better particulars we can see this claim relates to an allegation about Professor Tucker's conduct at the probation review meeting on 18 May 2017.

531. The unwanted conduct appears to be:

a. Professor Tucker alleging the Claimant's teaching was not to a required standard;
b. Professor Tucker had not observed the Claimant's lectures;
c. Professor Tucker failing to give credit for first year ratings.

532. Whilst all of the above conduct did take place again there was no evidence that it related to the Claimant's disability. Professor Tucker did not know that the Claimant was disabled. The conduct was related to concerns Professor Tucker had in respect of the Claimant's performance which fed into her not achieving the standards required for her probation. This claim fails.

Paragraphs 51 (aa) – (bb)

533. This was also advanced as a sex related harassment course of conduct (see paragraphs 448 above). We find it fails as a disability related harassment claim for the same reasons that the alleged unwanted conduct did not happen.

Paragraphs 54 – 56

534. This is set out in the schedule as follows:

CT discussed MJ with others in a negative light, using mocking terms

Paragraph 55 – comments made by Professor Tucker dated 21 October 2015 ("Miranda encounter" and "run in")

Paragraph 56 – the Third Respondent used the term "on the warpath" to describe the report by the Claimant about LD2.

535. We find that these comments were not related to the Claimant's disability. The use of the word "run in" is an every day phrase and there is no basis to conclude it is related to the Claimant's ASD. The phrase "on the warpath" may be used less frequently but equally we were unable to understand how it would relate to the Claimant's disability. We agree that the use of the phrase "Miranda encounter" denotes that Professor Tucker had given a descriptive label to an interaction with the Claimant but no more than this; there is no evidence or basis to conclude that this label related to the Claimant's ASD.

Paragraphs 58

536. This is set out in the schedule as follows:

CT made her dislike of MJ, because of her disability, obvious through correspondence and body language, even though MJ has difficulty recognising this.

537. There was no evidence to support these allegations that Professor Tucker behaved in this manner even less so that she engaged in this conduct as it related to the Claimant's disability. This claim fails.

Paragraph 63

538. This is set out in the schedule as follows:

Referee reports show a huge discrepancy in ratings from before and after PR was hired.

539. This appears to be regarding the difference in the scores the Claimant was given in job applications before and after Dr Roche was hired namely the MSc Co-ordinator role in February 2015 and the T&S role in February 2017. These were different roles. Whilst there may have been some factors that were the same there were a number of different individuals involved and the assessments were some years apart. There are no grounds to conclude that the assessment of the Claimant was unwanted conduct relating to her disability. This claim fails.

Paragraphs 64 – 65

540. This is set out in the schedule as follows:

PR did not support MJ. He encouraged students to believe that she was useless and incompetent. PR and CT had several meetings about MJ. and CT lied to MJ stating that several colleagues and not just PR had complained about her. CT also claimed on performance evaluations that several members of staff had complained about MJ, when it was actually mostly PR.

541. We found that Dr Roche did not solicit and manufacture complaints against the Claimant and did not encourage students to believe she was useless and incompetent. We would further add that there was evidence that Dr Roche supported the Claimant in the planning of the trip and the Quark Net project as well as when they worked together in the summer of 2016 on the Obs Tech module. When students raised issues with him he tried to approach the Claimant and respect her wishes to instruct the students to complain directly to her even though the students had said they found the Claimant unapproachable. That is not to say Dr Roche did not make unguarded and inappropriate comments about the Claimant on a number of occasions but he did not do so for reasons related to the Claimant's disability.

542. Professor Tucker did not lie to the Claimant stating several colleagues had complained about her. It was clear that Dr Lewis was also complaining to Professor Tucker about the Claimant latterly as had Dr Richardson and the lab demonstrators in 2015.

543. This allegation is not factually made out and we therefore dismiss that there was unwanted conduct as alleged relating to the Claimant's disability.

Paragraphs 66 – 67

544. This is set out in the schedule as follows:

PR made fun of MJ in emails and to students. The apology was only given to MJ in a bundle of other documents and was not genuine as PR stated his actions were MJ's fault. PR should have made a public apology due to the public humiliation. PR was remanded because he was caught on video, not for the actions himself.

545. In respect of Dr Roche making fun of the Claimant to students, we have already deal with Dr Roche's actions of when he called the Claimant the module disorganiser to students – see paragraphs 521-525 above. We consider this to be a duplicate of that allegation.

546. In respect of Dr Roche making fun of the Claimant in emails we consider this to be in respect of the allegations at paragraphs 67 (d) and (f) which we deal with below.

a. *Paragraph 67 (d) – in an email dated 13 June 2016 Dr Roche made it clear to Professor Tucker that he was not going to provide his personal contacts to organise the trip "because of traits related to her disability".*

b. *Paragraph 67 (f) – in an email dated 7 October 2016 Dr Roche complained about having to spend a week with the Claimant saying he would need a medal.*

547. See our findings at paragraph 137,138,139 above. Dr Roche accepted he had expressed misgivings to Professor Tucker about providing his contacts as the Claimant and had wanted to be confident in her personal skills. The content of his emails set out at paragraphs x above are not in dispute.

548. Was this unwanted conduct related to the Claimant's disability?

549. It is axiomatic that issues with the Claimant's personal skills / social interactions were behavioural traits of her ASD. Again, as with the other allegations of a similar nature, Dr Roche was not aware of this at the time. This was even before the conversation they had in the car when Dr Roche suggested the Claimant's behaviour might have 'an element' of autism. We find that these email comments differ factually from the "module dis-organiser" comments as the link regarding her social interactions with the Claimant's ASD is well established with the evidence and our findings of fact whereas issues with organisation are not.

550. It does remain the case that as with the other allegations against Dr Roche he did not know at the time he made these comments that the Claimant was disabled. There was no intentional discriminatory motive by Dr Roche. He did not set about to make these comments as he knew that the Claimant had ASD. We acknowledge this may not be necessary. We are back to considering the evidence as a whole and that the perception of the person making the remark may not be relevant but it must not be conclusive.

551. Dr Roche was in our judgment made the comments because he found the Claimant's behaviour difficult and was concerned about handing over personal contacts he had established and the potential impact on those connections. We find objectively that the comments were made again relating to the effect of the Claimant's ASD but not were not related to them. We find this to be an important distinction. This is a link that is too tenuous to establish the necessary association. We find that knowledge and intention in these circumstances was relevant. In **Hartley** it was submitted that having found a direct link between ASD and rudeness it would have been perverse to find it was not related to the disability but this was rejected by Judge Richardson and the case was remitted back to the Tribunal.

552. For these reasons we find that the conduct was not related to the Claimant's disability and this claim fails.

Paragraph 69

CT made jokes about MJ in emails, and made it clear she wanted to end MJ's contract way before the 2 year contract was due to expire. She did not want to provide support at the level it was provided to others.

553. The further and better particulars cited the email dated 21 October 2015 (the "Miranda encounter" email). This is a duplicate of paragraph 56 see above at paragraphs 536 for our conclusions.

Paragraph 70

CT would set MJ up for failure, fail to provide information, and instruct MJ not to perform certain tasks in order to criticise her later for not doing them.

554. Factually we do not find that Professor Tucker has engaged in this unwanted conduct. This claim fails.

Paragraph 70 (a) – (b)

June 2016 - CT gave MJ the job of organising and observing student trips. PR failed to do it the year before so the previous year group could join. MJ was not told that she would not have help from anyone else, and would have to handle all matters, even insurance. CT implied that employment at CU would depend on success of these trips. After, CT and PR went to considerable efforts to ensure failure.

555. Our findings in respect of the trip organisation are at paragraphs 143-148, 169-173. There was an expectation that the Claimant would be responsible for organising all aspects of the trip and we found this to be a reasonable expectation. If this is said to be the unwanted conduct relating to her disability this must fail. Designating a lecturer a task or organising a trip for students cannot amount to unwanted conduct even less so can it be said to relate to the Claimant's disability.

556. There was no evidence to support the allegation that Professor Tucker and Dr Roche went to considerable effort to ensure failure. This is wholly without merit.

Paragraphs 70 (d)

On 13.06.16, PR told CT that he would not give MJ contacts and that she would have to organise on her own because of traits related to her disability. CT took no action.

557. This is a duplicate allegation of paragraph 67 (d). See our conclusions at paragraphs 548-553 above.

Paragraph 70 (e) to (f)

PR insisted on a trip to France to check suitability for student but refused to arrange his own room. PR then complained to several staff about having to spend time with MJ.

558. Dr Roche did not insist on a trip to France. There was no evidence that Dr Roche refused to arrange his own room even less so that this related to the Claimant's disability. We were unable to understand this allegation of disability related harassment and it was without any merit. This claim fails.

559. The second sentence (complaints about spending time with the Claimant) is a duplicate of paragraph 67 (f) see above at paragraphs 548-553) for our conclusions.

Paragraphs 70 (g) to (r) and (u) to (v):

560. We do not propose to set out all of these paragraphs as they are duplicates of matters already advanced in paragraph 70 (a), (b) and (s) and (t). Further the allegations that Professor Tucker and / or Dr Roche criticised the Claimant regarding the trip organisation, refused to provide information or gave false information in order to discredit the Claimant are factually not proven and cannot have amounted to unwanted conduct relating to the Claimant's disability. These claims fail.

Paragraph 70 (i)

08.11.2016 - CT cancelled a meeting with MJ on less than 15 mins notice but told PR earlier that day that she would be out of office.

561. There was no evidence that Professor Tucker told Dr Roche she would be out of the office. Even if she had done so the contention that she did so amounted to unwanted conduct related to the Claimant's ASD was wholly without merit.

Paragraph 70 (s)

Paragraph 70 (s) – at a meeting on 20 February 2017 Professor Tucker and Dr Roche humiliated the Claimant in front of colleagues accusing her of not

performing tasks such as arranging insurance. Thereafter other colleagues started treating the Claimant in a disrespectful manner.

Professor Tucker later accused the Claimant of being "monosyllabic and aggressive" at that meeting.

562. Our findings of fact are at paragraphs 168-172 . The notes of the meeting and the follow up emails do not support any contention that Professor Tucker humiliated or made accusations against the Claimant at that meeting. They show a degree of support in that Professor Tucker stepped in, pulled together outstanding tasks and allocated ownership of those tasks to various people.

563. We did not understand what was said to be the link of the alleged conduct at that meeting and the Claimant's disability. This claim therefore fails.

564. The second element occurred on or around 18 May 2017. Professor Tucker did refer the Claimant as being "monosyllabic and aggressive" in her probation report to that meeting. We do not find that in doing so, this was conduct related to the Claimant's disability rather the conduct was arising from the Claimant's reactions to her legitimate and serious concerns about the trip organisation. Furthermore the Claimant denied that she had behaved on a monosyllabic and aggressive manner and as such even on the Claimant's own case this was not conduct related to her disability.

Paragraph 70 (t)

Paragraph 70 (t) – in an email dated 1 March 2017 Professor Tucker humiliated the Claimant stating it was not unreasonable to expect the Claimant to compile the list of students attending the trip herself.

565. We find that this was not conduct relating to the Claimant's disability and had no evidence or submissions to explain why it would be so related. It was a reasonable comment to make and was made as a line manager expressing concerns about the trip organisation. There was no link to the Claimant's disability (noting the Claimant did not assert she was disorganised in respect of the trip organisation in any event). It is correct that Professor Tucker had jointly designated Dr Roche and the Claimant with collating the information in her follow up note after the meeting on 20 February 2017 however she had not designated Dr Roche to pull together all of the final information. She had a reasonable expectation in our view that the Claimant as the MO of the trip would by that stage know what students and staff were coming on the trip. The Claimant had copied in the other staff member herself and therefore to complain that Professor Tucker also copied in this staff member when replying was not in our judgment a reasonable complaint to make.

Paragraphs 76 – 77

Clear that PR and CT made negative comments to students to bias them against MJ in order to discredit her with regard to her reputation and

employment, yet the employer failed to take appropriate action and sought instead to end MJ's employment.

566. Our findings of fact about the alleged solicitation of comments are at paragraphs 115-122 and 219-220. This related to meetings in April 2016 with the second year astronomy students (Dr Roche was present) and the meeting on 10 March 2017 with the MSc students (Dr Roche was not involved).

567. Firstly, at the meeting in April 2016 there was no evidence that Professor Tucker and Dr Roche made negative comments to students to bias them. This claim therefore fails as no such unwanted conduct has been established.

568. As to the second meeting we found that it was clear from the pre email that Professor Tucker was telling the students she had received unfavourable feedback and wanted additional feedback to confirm the results. The Claimant has established the unwanted conduct took place. Again what was lacking was any grounds to conclude this was related to the Claimant's disability. The conduct was related to Professor Tucker being gravely concerned about the student feedback on the module. She did not know at that time of the Claimant's ASD or traits arising or connected to the ASD. For this reason this claim fails.

Paragraphs 79 – 80

Actions of PR and CT as raised above have led to devastating and undeserved damage.

569. We are unable to identify the alleged unwanted conduct relied upon from this paragraphs. We dismiss this claim for lack of particulars.

Paragraphs 90 – 92

MJ was often criticised rather than supported with her disability. The toxic environment made her condition worse.

570. We are unable to identify the alleged unwanted conduct relied upon from this paragraph. We dismiss this claim for lack of particulars.

Paragraph 93

Paragraph 93 – in July 2017 R1 engaged in harassing behaviours designed to intimate her into withdrawing her Subject Access Request

571. There was no evidence to support this allegation. We do not know who is alleged to have intimidated the Claimant or how. We therefore dismiss this claim.

Paragraph 100

Probation process is subjective, not objective, and the process is unfair. MJ made all the adjustments suggested but CT still petitioned for her dismissal. Claims against MJ were untrue and unsubstantiated.

572. We have dealt with disability related harassment allegations in respect of the probation procedure above.

Paragraph 101

Any traits related to ASD should not give rise to jokes or humiliation. CU failed in its duty of care but failing to take action in the situation. Did not follow its own dignity at work policy.

573. We have dealt with disability related harassment allegations in respect of the alleged jokes and the dignity at work policy above.

Findings on purpose or effect

574. Notwithstanding our finding that the conduct above was not was not disability related, we record our conclusions regarding the other necessary elements to establish a harassment claim namely whether the conduct had the 'purpose' or 'effect' of violating a person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

575. In relation to the remarks in all of the emails, the Claimant was unaware of the remarks until she received the documents disclosed under the subject access request in August 2017. The Claimant has made a general assertion that as remarks about her character were being made in emails between staff this still resulted in a violation of her dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment, even though she did not know about it at the time. She did of course later become aware of the emails and so it is possible that when she knew about the email it had the effect as set out in S26.

576. We consider there are two problems with this submission.

577. Firstly, we do not consider that there was any such secret undercurrent or atmosphere that violated the Claimant's dignity created by the email communication amongst the staff we had sight of in the bundle. Whilst some of the emails commented on the Claimant's character, the emails the Claimant has focused on should be balanced with the other emails which showed a support and respect for the Claimant. For example Dr Richardson's defence of the Claimant to Swansea University and the expressions by him and Professor Tucker of the need to support her through her stress episode.

578. At the highest, in our judgment the Claimant can only have felt the effect of the unwanted conduct when she read the emails in August 2017.

579. Having regard to whether it was reasonable for the conduct to be regarded as having that effect (the objective question) we must take into account the other circumstances.

580. We conclude that it is not reasonable for the reference to a breakdown in communication, lack of organisation and the Claimant as having "poor people skills", "Miranda encounter, "run in" and the other comments made about her character to be regarded as violating the Claimant's dignity or creating an adverse environment for her. In no sense can the comments be held to have been targeted against people with ASD generally. The comments may in some cases have been unguarded and lacked judgment but it did not amount to unlawful disability related harassment as it did not reach the necessary degree of seriousness.

581. We reach the same conclusion in respect of the behaviour at the meetings. Had Dr Richardson known the Claimant had ASD and that the behaviour at that meeting was disability related we have no hesitation is saying we do think Dr Richardson would have dealt with the Claimant "over speaking" in a different way. His email communications have also showed a degree of support to the Claimant. It would not be reasonable having regard to the other circumstances to conclude that this behaviour to be regarded as having the effect. Further the Claimant did not perceive that behaviour as disability related as again her case was that she had not spoken inappropriately or unreasonably and had been perfectly entitled to raise the topics as she had done so. If the Claimant's perception was that her behaviour was as such we do not see how we can find Dr Richardson to have engaged in unlawful discrimination.

Direct sex discrimination

582. This was set out in the schedule at occurring at the two meetings involving Dr Richardson.

583. We find this claim fails as the Claimant has not met the burden of proof to establish facts of a difference in treatment or status.

Direct Disability Discrimination claims against the second, third, fourth and fifth Respondents

584. We have concluded that Professor Tucker, Dr Roche, Dr Richardson and Professor Griffin did not know and could not reasonably have been expected to know the Claimant had the disability at any relevant time.

585. We have concluded that all of direct disability discrimination claims against the second, third, fourth and fifth Respondents fail and are dismissed. All direct disability discrimination claims against the First Respondent where the date of the act is before 18 May 2017 fail and are dismissed.

586. The second, third, fourth and fifth Respondents did not know the Claimant was disabled at the time of the alleged acts of direct discrimination. The reason why the alleged less favourable treatment occurred was not because of the Claimant's disability, as is required by

S13 (1) EQA 2010. For the same reasons the claims prior to 18 May 2017 against the First Respondent also fail.

587. There were 77 acts of alleged less favourable treatment relied upon by the Claimant in her further and better particulars and schedule of claims. Given our primary finding that any acts prior to 18 May 2017 was not because of the Claimant's disability we consider it disproportionate to set our conclusions about any alleged acts that occurred before 18 May 2017. For the avoidance of doubt we are not setting out our conclusions regarding the following direct discrimination claims, with reference to the paragraph numbers in the Claimant's further and better particulars / schedule of claims:

Paragraphs 5, 9, 10, 14, 19a – 19d, 31, 32, 37, 42, 43, 45, 46, 47, 48, 49, 50 (a) to (f), 51 (i) - 51 t), 51 (p), 51 (t),51 (z), 52, 53, 58, 59, 63, 64-65, 66-67, 68 and all sub paragraphs, 69, all of paragraphs 70 and the sub paragraphs except for (j,m) 71, 73, 74, 76, 77, 78, 81, 82-84, 85, 101.

588. This leaves the following claims to be addressed:

17, 18, 21, 27, 33 – 34, 35-36, 51 (v-w, y) 51 (aa-bb), 70 (j,m), 72, 75, 79-80, 89, 100

589. Having heard all of the evidence and made the findings of fact above we wish to record that our findings of fact would not support the direct discrimination claims in succeeding in any event. Even if the Respondents had known about the disability the treatment complained about either did not happen in the way the Claimant asserted, did not happen at all or was not because of the Claimant's disability but for another reason supported by the evidence.

<u>Direct discrimination claims remaining to be determined – conclusions</u>

590. We now turn to our conclusions in respect of the remaining direct discrimination claims that have not failed because the First Respondent did not know about the protected characteristic. We have addressed these in a chronological order by reference to the Claimant's further and better particulars of claim.

<u>Paragraph 17 – the Claimant's contract was not renewed – 26 June 2017</u>

591. This claim is in time. We also made relevant findings under our unfair dismissal conclusions. There was no requirement on the Respondent to renew the contract. It was for a fixed term for a determined purpose, to cover Ms Gomez. The reason it was allowed to expire was that Ms Gomez was returning to her substantive post. It was not because the Claimant had disclosed her ASD.

592. The Claimant's union representative was of the view there was no way to challenge the termination of the contract. He was unable to put forward any reason why the contract should be renewed.

593. As far back as November 2016 there was evidence that Professor Griffin wanted the Claimant's contract to expire as he said as much in his email to HR (see paragraph 130 above). Professor Tucker also told HR in January 2017 she did not want to renew the Claimant's contract.

594. We were particularly persuaded by the contemporaneous evidence of emails that were intended to be private communications. In our judgment these demonstrated that the decision not to renew the Claimant's contract was not because of her disability. No such decision, conscious or unconscious had been taken by the First Respondent, Professor Griffin or Professor Tucker. In his email to HR Professor Griffiths states that he did not see how the issue raised by Dr Wright [that he believed the Claimant to have Asperger's Syndrome] was germane to the FTC review. This is persuasive evidence that there was no bias, conscious or unconscious because of the Claimant's disability on the part of Professor Griffin when considering the fixed term contract review.

595. Further in Professor Griffin's email dated 12 June 2017 he pondered a number of scenarios relating to the Quark net project which included two of three outcomes where the Claimant would continue to be employed by the University and on the project.

596. The First Respondent faced the following scenario. The Claimant was on a fixed term contract which was due to expire. Ms Gomez was returning to her substantive post. There was no evidence of other vacancies available to the Claimant. The Claimant had been absent since March 2017 and had vacated and taken all of her belongings. The feedback from students had been such that she had been removed as the MO in June 2016 and in the Spring of 2017 there were further significant issues raised by students. We reject the contention that these students were influenced by Dr Roche to write the comments. The more likely conclusion as to why the students wrote the comments about the Claimant was that they genuinely held these beliefs. There were multiple occasions where student feedback about the Claimant had been negative. It is implausible to conclude these all came about as Dr Roche in some way influenced the students. Some of the comments came form students who were nothing to do with Dr Roche.

597. We therefore conclude that the reason why the Claimant's fixed term contract was not renewed was not because of her disability. This claim therefore fails.

<u>Paragraph 18 – the First Respondent has failed to tell the Claimant whether she passed her probation.</u>

598. The Claimant alleges that the reason the Respondent did not tell her the result of her probation was due to her ASD disclosure and also the proof of harassment by Dr Roche she provided at the meeting on 18 May 2017.

599. There was certainly an initial intention by the Respondent to progress the probation procedure following Professor Morley's recommendations

the Claimant was not meeting the standards as can be seen by arranging the probation review meeting on 18 May 2017.

600. The Respondent did not progress the probation procedure past the 18 May 2017 and therefore did not reach a conclusion on whether she had passed or failed.

601. We have considered whether the failure to tell the Claimant whether she had passed her probation amounted to less favourable treatment. It was not clear why the Claimant asserted this put her at a disadvantage. We heard no evidence about what the disadvantage might be. We have therefore concluded there was no disadvantage to the Claimant in not being told the probation outcome. We also heard no evidence about comparators, actual or hypothetical and whether they would have been afforded different treatment.

602. We go on to consider the reason why the Respondent effectively stopped the probation procedure. We do not agree this was because the Claimant was disabled. We can accept that the procedure was paused as the Claimant raised allegations about Dr Roche at the meeting on 18 May 2017 but no one at that time understood those allegations to be disability related. The Claimant is now labelling the allegations as disability related harassment on the basis of how it now appears rather than what everyone thought at that time. Dr Roche had called her the “module dis organiser” to students. We found above that the module dis-organiser comments were not related to the Claimant’s disability in any event and the same must be said in relation to the “reason why” test for direct discrimination. The Respondent told the Claimant they would put the process on hold whilst these allegations were investigating but this was not because the Claimant was disabled it was because there needed to be an investigation into Dr Roche’s conduct.

603. Ultimately the probation was not progressed as there was no good reason to do so given the impending expiry of the fixed term contract, the return of Dr Gomez and the fact that the Claimant had effectively departed from the university and there was no real prospect of her returning. The reason why was not the Claimant’s disability. This claim therefore fails.

604. The claim is also out of time. This must amount to a failure to do something under S123 (3) (b) EQA 2010. The Claimant knew that the Respondent were not going to progress the probation on 6 June 2017 as Dr Wright informed her so. This gives a primary limitation date of 5 June 2017.

Paragraph 21

The basis for non-renewal was the disability disclosure and the unfair negative claims against MJ personally, making the dismissal unfair. The employer did not truthfully state the actual reason for non-renewal of MJ's contract, which violates the mutual trust and confidence of employer and employee.

605. This is a duplicate of paragraph 17. We refer to our conclusions above.

Paragraph 27

Previously diagnosed with stress condition, which interfered with ability to work, and had similar effects on daily and working life. Condition recurred as a result of a workload that exceeded that of many of her colleagues and unfair treatment of MJ.

606. We were unable to understand what the less favourable treatment was said to be in this paragraph. If it was that the Claimant was given a higher workload than comparators (unspecified) then this claim was not supported by the evidence. This claim therefore fails.

Paragraphs 33 – 34

CT breached Equality and Human Rights Commission Code of Conduct paras 5.14 & 5.15. CT is a representative of CU and so has a duty to consider if the illness could be regarded as a disability, given the knowledge she had, which was that MJ had a condition that caused her a substantial detrimental impact on her ability to perform day-to-day activities, and that it had recurred on a long-term basis. As well as failing to make reasonable adjustments, CT and BR blamed MJ for quality of work, and the health condition. CT is either incompetent, not trained, or ignored the code of conduct because MJ had a disability. CU did not take steps to rectify this, but claimed they had no way of knowing that MJ had disability or that she never had a disability. They failed to uphold MJ's basic human rights. Actions taken by the respondents were related to MJ's stress condition and disclosure thereof, and therefore to the disability. Therefore this constitutes discrimination and harassment.

607. The less favourable treatment appears to be Professor Tucker and Professor Griffin blaming the Claimant for quality of work and the health condition and that Professor Tucker ignored the code of conduct because the Claimant had a disability. As we have found that Professor Tucker did not know the Claimant was disabled it must follow that she cannot have ignored the code of conduct because of the disability. This claim therefore fails.

Paragraphs 35 – 36

MJ was again diagnosed with stress in 25.07.2017 because of the harassment by CT and PR. Further harassment was directed at MJ after she reported the treatment to CU.

608. This claim fails under a S13 heading as it is pleaded as a harassment claim and there are also no details of what the less favourable treatment was said to be.

Paragraph 51y

By failing to do anything about the actions of the fourth Respondent or provide any remedy to the Claimant thus failing to uphold their dignity at

work rules, the First Respondent is guilty of harassment and direct discrimination

609. This was relied upon as a disability related harassment claim – which we found above fails.

610. This claim is out of time. It is pleaded as a failure to do something and as such the time starts to run when the person in question decided on it (section 123 (3) (b) EQA 2010).

611. We also find that the direct discrimination claim fails. The reason why Professor Griffin and the First Respondent settled on the reprimand and the apology was not because of the Claimant's disability. This would require us to conclude that because the First Respondent knew the Claimant was disabled that they decided on this course of action. There was absolutely no evidence to support this contention. The Claimant has not proved facts from which the Tribunal could conclude in the absence of an adequate explanation the First Respondent had failed to do anything about Dr Roche's behaviour because of her disability and as such has failed to establish a prima facie case.

Paragraphs 51 (v-w) and 72

612. We consider paragraphs 51 (v-w) and paragraph 72 together as they both complain about the investigation.

Paragraphs 51 (v-w) - An investigation was initiated, but it was primarily of MJ's performance, and only distantly related to MJ's allegations, and did not allow MJ to respond to allegations made by CT and PR. CT failed to mention that students had alleged that MJ's colleague had badmouthed her to students and the only negative feedback was from students also supervised by PR, and had heard the colleague badmouthing MJ. TQO testified on the mismatch of ratings and that he saw no evidence from lecture he observed to warrant the negative comments, but the TQO's statements were also ignored, as were the positive comments from the students who had not been coached.

Paragraph 72 –over the course of the investigation and grievance process, representatives of the First Respondent accepted the statements of the Second and Fourth Respondents without proof, and did not even consider the Claimant's assertions, even when she provided conclusive proof.

613. The grievance procedure was conducted by Professor Morley. The first section of the process was conducted during March and April 2017 with the final report being produced on 17 April 2017. At this point we remind ourselves that no-one within the Respondent had actual or constructive knowledge of the Claimant's disability. Even more removed from this would have been Professor Morley. It cannot have been in his mind to accept statements of others over that of the Claimant because of her disability.

614. We also have no evidence to conclude that anything changed when Professor Morley revisited the investigation later in May 2017. There was

no evidence that he was aware of Dr Wright's opinion expressed on 18 May 2017. Indeed we note that at that time the Claimant was asserting less favourable treatment on the basis of her gender and national identity.

615. Turning now to the grievance procedure. By the time this was underway, the First Respondent had knowledge of the Claimant's disability. Professor Stephen did not uphold the Claimant's allegations that she had been treated less favourably. A failure to uphold a grievance can amount to less favourable treatment. However we did not hear any evidence from the Claimant as to why Professor Stephens would have decided not to uphold her grievance because she was disabled. In the absence of this we conclude that the reason was the face value reason provided that Professor Stephens had not found grounds to conclude the Claimant's treatment was due to any protected characteristic. He does appear to have been particularly swayed by the lack of a diagnosis and it followed he concluded that her disability could not have reasonably been known to her colleagues at that time. This accords with the findings of the Tribunal.

616. For these reasons this claim fails.

Paragraph 51 aa – bb

617. This claim fails as the less favourable treatment did not happen. See our conclusions above.

Paragraphs 70 j,m

In the probation meeting, CT claimed that MJ had failed to make arrangements for the trip by the deadline, but failed to acknowledge that MJ was waiting on CT's approval, or that PR refused to help with the trip. MJ submitted the several-page proposal on her own. CT provided false and misleading information regarding this process on the probation paperwork, in order to discredit MJ and to suggest that MJ had not done the trip organisation job properly.

618. For the avoidance of doubt, although this conduct took place on 18 May 2017 (and leading up to that date), it cannot have been because of the Claimant's disability as Professor Tucker did not know the Claimant was disabled at the relevant time.

Paragraph 75

The Claimant was treated less favourably than Dr Roche. When she provided evidence on 18 May 2017 of Dr Roche making inappropriate comments to students he was not given a similar instruction to the one given to the Claimant not to have contact with students. This was the case even though there was any investigation in progress and no evidence of wrong doing on her part.

619. Firstly we say that this claim is out of time. The allegation is put as a failure to do something, namely instruct Dr Roche not to have contact with students. The Respondent became aware of the video on 18 May 2017

and acted upon it, as the probation process was halted and Professor Griffin decided there would need to be an investigation and formally instructed Professor Morley on 22 May 2017. By 6 June 2017 we know Professor Griffin had decided to reprimand Dr Roche so this must be the latest point that the failure to prevent contact with students could be said to have happened. The Claimant contacted ACAS on 8 September 2017.

620. We further find the claim fails as there was not less favourable treatment. There are material differences between the circumstances of the first Respondent's treatment of the Claimant and Dr Roche and the comparison must therefore fail.

621. In the Claimant's case she was informed on 17 March 2017 not to have contact with students until further notice. It is correct to say at that stage she was not under investigation and there was no evidence of wrong doing on her part.

622. The Respondent had valid reasons for this instruction. The Claimant had left the university taking all of her belongings. Her teaching duties had had to be reassigned. The First Respondent had no idea when or if the Claimant would be returning. Of more importance in our view was the Claimant's emotional fragility and what she had said about the students at that time. The Claimant was upset and angry and described the student comments as "hateful". She had told the First Respondent she was considering taking legal actions against the students. She also was picking and choosing what aspects of her employment she would be involved in and sought to continue contact with third year students and attend the outreach visit arranged to a school before it was cancelled at the last minute by Professor Tucker.

623. The third year students had also witnessed and been brought into an uncomfortable situation in the car park (see paragraph 231 above). This situation arose through lack of clarity on the Claimant's status at that time and the First Respondent was in our judgment right to subsequently set boundaries as to what duties the Claimant could be involved in given her departure and absence from her work duties.

624. This was a challenging situation for the First Respondent to manage and in all the circumstances we do not consider consider this can sensibly be compared with the circumstances surrounding Dr Roche. There was no evidence of similar concern on the part of the First Respondent as to how Dr Roche might behave towards students and no evidence that such an instruction would be necessary.

625. Lastly we have concluded that the reason the Claimant was given the instruction and not Dr Roche was nothing to do with the Claimant's disability. The reason was because the First Respondent was reasonably concerned about the risk to students of contact with the Claimant following her behaviour after receiving the student feedback

Paragraphs 79-80

Actions of PR and CT as raised above have led to devastating and undeserved damage.

626. This paragraph sets out the effect of the treatment on the Claimant rather than any acts of less favourable treatment.

Paragraph 89

Ms Martin claimed the delay in the grievance process was caused by the Claimant's alleged refusal to engage and a vague implication that she had refused to attend a meeting which was an example of scapegoatism by the First Respondent.

627. Our findings of fact are at paragraph 316 above.

628. The date of this act was 15 February 2018 and as such post dated the ET1. There had been no application to amend to add this claim but given it was in the schedule of claims that was extensively case managed to ensure live claims were before the Tribunal we deal with it as follows.

629. This claim fails on two grounds. Firstly it is not factually made out. This claim appears to be in relation to the content of the grievance outcome letter where Ms Martin did not claim that the Claimant had refused to engage. She asserted that it "had not been possible" to engage and attempts to engage "had not been successful". We do not agree that these words amounted to scapegoatism or less favourable treatment. The Claimant had refused, with good reasons due to her health at that time, to attend further meetings. Secondly, there is no evidence that because of the Claimant's disability that Ms Martin and or the First Respondent decided consciously, or unconsciously to subject the Claimant to less favourable treatment by labelling her as refusing to engage. All of the email correspondence demonstrated a degree of civility and co-operation between the parties.

630. As regards to the allegation that there was a "vague implication" the Claimant had refused to attend a meeting. We agree there was an implication in the wording of the letter that part of the reason the grievance procedure had taken so long was that the Claimant had not attended a further meeting which would have been the usual process. This was not the only reason; we know the parties were engaged in without prejudice discussions also. However a vague implication cannot in our judgment amount to less favourable treatment.

631. We also heard no evidence about a comparator that may have been treated more favourably in similar circumstances. For these reasons this claim fails.

Paragraph 100

Probation process is subjective, not objective, and the process is unfair. MJ made all the adjustments suggested but CT still petitioned for her dismissal. Claims against MJ were untrue and unsubstantiated.

632. These allegations pre date knowledge and as such cannot be because of the Claimant's disability.

S15 – Discrimination Arising from Disability

633. REJ Davies Order dated 5 May 2020 provided that the S15 complaint set out in the agreed schedule of claims and issues was a relabelling of already pleaded facts with a different form of discrimination thus allowing the claim to proceed.

634. The S15 claims were clarified in the said schedule as being pleaded in the following paragraphs of the further and better particulars of claim:

9 – 10, 14, 19 (a) and (b), 19 (d), 21-24, 27, 30 – 37, 42 – 43, 45 – 47, 49 – 50, 51 (d) – (g), 51 (i) – (w), 51 (z) – (bb), 52 – 53, 57-58, 63 – 70 (b), 70 (d) – (f), 70 (n) – (p), 71, 73-74, 90-92, 101.

635. A number of these allegations pre date the date we have found the First Respondent should have reasonably known that the Claimant had a disability (that date being 18 May 2017 – First Respondent only). As S15 does not apply if the Respondent does not know or could not have been reasonably expected to know that the Claimant had the disability we will only be considering the following paragraphs under our conclusions:

21, 23, 24, 35, 36, 67 and 101

636. The Claimant relied upon the following as arising in consequence of her ASD:

difficulty interacting, difficulty forming social relationships, difficulty communicating, tendency to experience difficulties related to stress, health concerns raised because of stress suffered, autistic meltdown suffered as a result of poor treatment by the Respondents, any other symptom trait related to the Claimant's disability as listed in her impact statement.

637. The Respondent accepted all but the latter two sentences arose in consequence of her disability. We agree that there was no evidence to conclude that the Claimant experienced "autistic meltdowns" due to poor treatment by the Respondent. We find they were more likely the stress manifestations as described by Dr Rajpal. We also agree that "any other symptom trait related to the Claimant's disability as listed in her impact statement" should not be accepted as a blanket description to find anything listed in the impact statement arose from the Claimant's disability.

Paragraph 21 - this is set out as follows:

638. *Because the basis for the nonrenewal of the Claimant's contract was not that which was given by the First Respondent, the dismissal was unfair. The dismissal was actually based on both the Claimant's disability disclosure and on unfair negative claims made about her performance by the Second and Fourth Respondents, claims which the Claimant has never been given the opportunity to defend against, as is her right according to UK law.*

639. The unfavourable treatment relied upon in this paragraph is the non renewal of the Claimant's contract. We have already found that the reason for the non renewal of the Claimant's contract was that it was for a fixed term with the previous incumbent Ms Gomez returning to her post. The reason for the unfavourable treatment was therefore not because of anything arising in consequence of the Claimant's disability. This claim therefore fails.

Paragraphs 23 and 24 relate to the withholding of the holiday pay. As noted above that we have had no evidence as to the details of the holiday leave the Claimant accrued for which she has not been paid (despite being ordered to insert this into the schedule by REJ Davies in her order dated 9 March 2020).

640. We therefore are unable make any determination that there has been unfavourable treatment as the Claimant had led no evidence on this claim. This claim therefore fails.

Paragraphs 35 and 36 - this is set out as follows

The Claimant was again diagnosed with the same stress condition on 25 July 2017, because of harassment perpetrated against her by the Second and Fourth Respondents, as well as the way she was treated after reporting harassment to the First Respondent.

Furthermore, given that the treatment the claimant received from the first respondent when she reported the harassment caused to again become ill, this constitutes victimisation under section 27 (1) of the Act

641. The unfavourable treatment was clarified in the Schedule as follows:

"MG sought to end my employment after I experienced an autistic meltdown in his office, and gave my behaviour at that time as the reason to end my employment. It is also clear that MG and certain people from the HR department were treating me without any consideration because of information received from CT, who had a long-standing negative attitude toward me because of my social difficulties and my susceptibility to stress."

642. We have found this S15 claim very difficult to understand. The pleaded paragraph suggests the unfavourable treatment was "the way she was treated after reporting harassment to the First Respondent" but we do not know what that unfavourable treatment is alleged to have been, specifically. Turning to the Schedule does not assist either as this suggests the unfavourable treatment was Professor Griffin seeking to end the

Claimant's employment because of her autistic meltdown but this must have been in reference to the discussion on 9 March 2017 which pre dates any knowledge of the disability.

643. We dismiss this claim as we do not know what the unfavourable treatment is alleged to be. If it is said to be the dismissal we have already dealt with that in the context of a S15 claim above.

Paragraph 67

The fourth respondent was allegedly reprimanded for his actions by the first respondent (this information was left out of the response, for some reason, but the reprimand seems to have been more about the fact he was caught on video than about the actions themselves.

644. The schedule did not set out any particulars of unfavourable treatment or what the something arising" was said to be. We cannot see any allegation of unfavourable treatment of the Claimant in this paragraph; the Claimant is complaining about the treatment of Dr Roche in this paragraph. We therefore dismiss this claim.

Paragraph 101

The first respondent has failed to follow its own dignity at work policy which put the claimant at a disadvantage when compared with non-disabled employees.

645. The schedule of agreed claims the unfavourable treatment is set out as follows:

"Because of my social difficulties, I was vulnerable to being ridiculed and harassed."

646. If we assume the unfavourable treatment is that the First Respondent failed to follow the dignity at work policy we have concluded below that this is not factually made out. Therefore the same reasons we conclude that the First Respondent has not treated the Claimant unfavourably. This claim therefore fails.

Indirect Discrimination

647. The schedule of agreed claims set out 47 PCP's, 46 in respect of indirect disability discrimination and 1 in respect of indirect sex discrimination. The indirect disability discrimination PCP's contained a great deal of overlap. We found these claims on the whole very difficult to understand in the way they had been set out in the schedule as it seems to have significantly widened the pleaded claim. Further the vast majority of PCP's were not actually PCP's but complaints about the Claimant's individual treatment that had been pleaded elsewhere as direct discrimination claims.

648. We therefore have approached our conclusions on the indirect discrimination claims as follows.

649. We firstly deal with the claims expressly pleaded in the ET1 and further and better particulars. We will then go onto consider any further claims set out in the agreed schedule of claims in a proportionate manner in accordance with the overriding objective.

Indirect Sex Discrimination

Paragraph 95

The PCP was: *traits of ASD are more socially acceptable in males than females. Therefore any method of evaluating performance that relies upon personal opinion rather than more objective measures naturally disadvantages females on the ASD more than any other group.*

650. The PCP was articulated as "expecting a different standard of social behaviour of women than men".

651. This claims fails as we find that the First Respondent did not apply this PCP.

Indirect disability discrimination

Paragraph 96

The PCP was:– *hiring practices – creating one or two year temporary contracts puts persons with ASD at a disadvantage compared with those who do not share that characteristic.*

652. The Respondent applied this PCP. It was common ground they employ people on fixed term contracts.

653. The disadvantage is said to be that employees with social issues such as ASD are not liked as much as popular employees and therefore more likely to be "got rid of".

654. The Claimant was not subjected to this disadvantage. The Claimant's fixed term contract did not come to an end because she was not liked whether it be due to her ASD or otherwise. The reason the Claimant's contract was not renewed was that her fixed term contract expired and there were no grounds to "renew" it as Ms Gomez was returning to the substantive role.

655. *A further PCP is set out in paragraph 96 (a) as : the contracts for no justifiable reason limit the employee's rights as they near the end of term (regarding redeployment and conditions sufficient for termination of a contract for example) allow the line manger to cherry pick certain individuals and offer them contracts without them going through an application process whilst in turn getting rid of those who are not liked.*

656. R1's fixed term contract terms did contain a term that the Claimant would not be eligible for redeployment. This PCP was applied by the Respondent.

657. There was no evidence led by the Claimant as to what the group or individual disadvantage was said to be in respect of this PCP. Anyone who was employed under a fixed term contract would not be eligible for redeployment. We therefore dismiss this claim.

658. R1 did not apply a PCP of allowing line managers to cherry pick certain individuals and offer them contracts without them going through an application process. The Claimant led no evidence on this issue. It is not for the Tribunal to try and guess what facts the Claimant relies upon to show the Respondent applied this PCP. We therefore dismiss this claim.

Paragraph 96 (c):

The PCP's were: *all contract renewals are not decided fairly based on performance and merit rather than popularity and;*
Temporary contracts allow employers to circumvent UK employment law regarding termination.

659. The Respondent did not apply either of these PCP's. We found that the Respondent did not pursue the probation procedure and further that the reason the Claimant's contract was not renewed was that her fixed term contract expired and there were no grounds to "renew" it as Ms Gomez was returning to the substantive role.

Paragraph 97

The PCP was: – the methods used to evaluate teaching performance do not correspond with qualities and merit but are based on popularity

660. The disadvantage is set out in paragraph 97 (b) that persons with ASD will not be as popular with students.

661. We find that the Respondent did not apply this PCP. R1 did not solely assess teaching performance on how popular the lecturer was with students. This was a point made by Professor Morley in his conclusions to the grievance having regard to what he had been told by Professor Sutton. We therefore dismiss this claim.

Paragraph 98 – *R1 failed to provide line managers with sufficient training in working with those with ASD.*

662. We find that the Respondent did not apply this PCP. There was no evidence to support or refute this contention. Neither party addressed this in their evidence or submissions.

Paragraph 99

The PCP was: – *R1 has failed on numerous occasions to provide the Claimant with documentation relating to specific expectations. The main cause of concern was Professor Tucker's competence (99 a) and failed to approach the Claimant when her performance was criticised to give the Claimant the chance to tell her side of the story (99 (b)). Further that Professor Tucker is permitted to do her work in an incompetent fashion.*

663. We find that this is not a valid PCP. It is conduct relating specifically to the Claimant's situation. It is not of neutral application. Further, the allegation that Professor Tucker was incompetent was not factually made out.

Paragraph 100

The PCP was: – *the probation service is subjective rather than objective.*

664. The disadvantage pleaded in the further and better particulars was:

In the Claimant's case the probation process was unfair, especially given the Second Respondent's obvious negative feelings about her. Even though the Claimant made all the corrections and adjustments as recommended on her probation evaluations, the Second Respondent still petitioned for her dismissal based on performance issues that had not been previously addressed and those that were false or unsubstantiated. The nature of the probation process at the claimants at a disadvantage when compared with non-disabled employees and therefore constitutes indirect discrimination under section 19 (1) of the act.

665. In the schedule of agreed claims and issues the group disadvantage was put as follows:

"Due to their different perspectives and difficulties understanding expectation of others, those with ASD would have particular difficulty understanding requirements and fulfilling expectations which are not determined in a reasonable way, clearly stated fairly and objectively assessed"

666. In the schedule of agreed claims and issues the individual disadvantage also differed this was put as follows:

667. *"The Claimant was not given a fair chance to fulfil probation obligations and other expectations. Since the Claimant's entire background is from institutions outside of the UK, it simply was not reasonable for it to be assumed that she would be aware of procedures and expectations in place at Cardiff University, especially given the nature of her disability which makes it difficult to understand expectations.*

668. R1 accepted that their probation review procedure requires an element of subjective performance evaluation against objective targets. R1 denied that those with ASD were placed at the disadvantage as expectations and objectives were communicated clearly and in writing affording all staff including those with ASD and equal opportunities to succeed. Further the Claimant was not placed at a disadvantage as she was not dismissed as a result of her performance. Lastly assessing performance of staff is a legitimate aim achieved by proportionate means mainly the performance review process.

669. It was common ground that the Claimant was subjected to the performance review process. We turn now to consider whether the PCP put

the Claimant at a substantial disadvantage compared to someone without the Claimant's disability.

670. In relation to the first disadvantage that the Second Respondent had obvious negative feelings about the Claimant and she had made all corrections and adjustments recommended with the Second Respondent still petitioning for dismissal based on issues not addressed, false or unsubstantiated we find that this cannot amount to a group disadvantage. Anyone who was subjected to this disadvantage would suffer that disadvantage regardless as to whether they had ASD. This simply does not work as a disadvantage and is more about the Claimant's own treatment that an application of a PCP leading to a group disadvantage. We also find that this PCP was not applied by the Respondents.

671. In relation to the second disadvantage set out in the schedule regarding understanding requirements and fulfilling expectations which are not determined in a reasonable way, clearly stated fairly and objectively assessed, again, anyone who was subjected to this disadvantage would suffer that disadvantage regardless as to whether they had ASD.

672. In relation to the first element of the third disadvantage of the Claimant's background from institutions from outside the UK this has nothing to do with the Claimant's disability and cannot give rise to a particular disadvantage when compared to persons who do not have ASD.

673. In relation to the second element of the third disadvantage, that the nature of the Claimant's disability makes it difficult to understand expectations.

674. There was no evidence that the Claimant did not understand the expectations relayed to her during the probation procedure. The Claimant did not make any comment in the procedure that suggested to communicated she did not understand the expectations. For these reasons we find that the PCP did not put the Claimant at that disadvantage.

675. Further we agree with R's submission that the Claimant was not subjected to the disadvantage in any event – she was not dismissed and the probation procedure was halted as of 18 May 2017.

676. We would further agree that the assessment of staff through a probation procedure is a legitimate aim and it was achieved by proportionate means through a documented review process with meetings and targets. We do not consider that lack of timeliness in returning paperwork undermined the proportionality.

677. We therefore dismiss this claim.

Paragraph 101-

The PCP was: *R1 failed to follow its own dignity at work policy which put the Claimant at a disadvantage when compared with nondisabled employees and therefore constituted indirect discrimination under section 19 (1) of the act*

678. This was in relation to alleged humiliation and jokes about the Claimant's traits related to being on the autism spectrum. The Claimant asserts in paragraph 101 that the R1 failed to take action in the situation experienced by the Claimant.

679. The disadvantage set out in the agreed schedule of claims and issues was as follows:

"The work environment as described at people with protected characteristics at a substantial disadvantage because they are more likely to be ridiculed. This is particularly true for those with ASD, who social difficulties make them more vulnerable to this sort of treatment."

680. The Respondent submitted they do not implement such a PCP and the complaint is about the Claimant's perception of her own treatment. We agree with this submission. There was no evidence that the Respondent applied such a PCP namely that they had a Dignity at Work Policy but the actual policy was not to apply it.

681. Further, there was no failure to follow the Dignity at Work Policy. Dr Roche was issued with a reprimand. What the Claimant is really complaining about is that she did not agree with the issue of a reprimand and would have wanted a more serious form of action taken against Dr Roche. This cannot in our judgment amount to a PCP.

682. This claim therefore fails.

683. We turn now to the other PCP's set out in the agreed schedule of claims and issues we have not dealt with above.

684. In relation to the following PCP's we find they were complaints in respect of the Claimant's individual alleged treatment are not capable of amounting to PCP's and we dismiss the indirect discrimination claims as follows:

a. Assigning obviously biased people (who were biased at least somewhat because Dr Roche had been badmouthing the Claimant to them and to students) to evaluate the Claimant's application for employment in order to ensure she would not be hired; we also find the Respondent did not apply this PCP.

b. according to a statement made by Professor Griffin applicants who are known or suspected to have difficulty interacting with others would not be hired, implying that the employer would end the employment of employees who have difficulty interacting with others; or communication of expectations/requirements including additional requirements that have been imposed since the previous probation review. This PCP was not pleaded in the claim nor was it in the further and better particulars or schedule of agreed claims. The Claimant added it to the schedule in March 2020 on seeing the statement from Professor Griffin drafted for the purpose of the contested disability hearing. Further, we found that this statement was made for the purpose of conveying Professor Griffin's opinion that the

Claimant was able to interact with students and accordingly the Respondent did not apply this PCP in any event.

c. conflicting/inconsistent expectations e.g. different expectations conveyed verbally versus in writing, on one occasion to another, or by different people; we also find the Respondent did not apply this PCP.

d. a reasonable/unachievable expectations, e.g. assignment of too much work/work outside the realm of expertise/knowledge, expectations involving the satisfactory completion of work by others; we also find the Respondent did not apply this PCP.

e. Insufficient communication from the line manager;

f. Inappropriate communication with others regarding employees work performance; we also find the Respondent did not apply this PCP.

g. Insufficient feedback on work performance, withholding feedback entirely or failure to provide constructive feedback or useful advice; we also find the Respondent did not apply this PCP.

h. Little/no consideration of evidence/observation of good performance; we also find the Respondent did not apply this PCP.

i. Reduction of evidence of good performance e.g. favourable student feedback;

j. Consideration/disproportionate amount of weight given to already lastly exaggerated tainted/unreliable/spurious evidence of alleged poor performance; we also find the Respondent did not apply this PCP.

k. Tendency of the line manager to set the Claimant up for failure; we also find the Respondent did not apply this PCP.

l. Disproportionate effort made to gather evidence against employee, discrediting the Claimant to both colleagues and students in the process; we also find the Respondent did not apply this PCP.

m. Use of student feedback exclusively to evaluate teaching performance, giving disproportionate weight to opinions of persons with no experience or knowledge of best practice when evaluating work performance and making employment decisions; we also find the Respondent did not apply this PCP.

n. The reassignment of teaching duties without notice or warning-model was reassigned because the lead student complaints which the Claimant was not given the opportunity to address;

o. Failure to disclose true reason for reassignment of teaching duties evidence that there was a long-standing plan to reassign the module to Dr Roche;

p. Very little time given to present mitigating factors/defend against the long dossier of unfounded allegations manufactured for the purpose of ending

the employment of the employer; we also find the Respondent did not apply this PCP.

q. Unfair assignment of blame for issues that were the responsibility of others; we also find the Respondent did not apply this PCP.

r. Recording in the performance record issues when no/insufficient opportunity to address them had been given; we also find the Respondent did not apply this PCP.

s. Failure to provide the claimant with the proper guidance and support in the form of the mentor; we also find the Respondent did not apply this PCP.

t. Expectations the Claimant to find her own mentor; we also find the Respondent did not apply this PCP.

u. Lack of understanding of disability in general by line manager; we also find the Respondent did not apply this PCP.

v. Line managers inability or unwillingness to investigate whether disability was a factor (or even to take steps to ensure the Claimant was under proper medical care) when the line manager was constructively aware of the possibility of a disability and when health became a factor affecting work performance; we also find the Respondent did not apply this PCP.

w. Failure of the employer to properly investigate enquire into the Claimant's disability, while giving her the false impression that they had accepted the disability; we also find the Respondent did not apply this PCP.

x. Communicating with others to the exclusion of the Claimant regarding her illness, workload and needed support;

y. Failure to assign reasonable/fair workload, failure to respond to concerns in this regard raised beforehand by the employee; we also find the Respondent did not apply this PCP.

z. Failure to consider workload when health became an issue; we also find the Respondent did not apply this PCP.

aa. Failure to provide adequate teaching/work support, no communication from line manager when situation became a crisis, although line manager was communicating with others behind the claimant's back; we also find the Respondent did not apply this PCP.

bb. Claimant not Welcome/permitted to present information at certain meetings;

cc. General and unprofessional conduct and incompetence on the part of the Claimant's line manager, e.g. engaging gossip and jokes about the Claimant, permitting colleagues to badmouth the Claimant, badmouthing the Claimant herself, failing to respond to emails, missing meetings et cetera; we also find the Respondent did not apply this PCP.

dd. Personnel were less willing to transmit information by email and wanted to hold face-to-face meetings instead; we also find the Respondent did not apply this PCP.

ee. Reduction of evidence of misconduct on the part of another colleague, in order to cover up that misconduct. The misconduct (badmouthing the Claimant to students) resulted in very negative opinion of the Claimant on the part of those students; we also find the Respondent did not apply this PCP.

ff. Inconsistent required level of proof some people's statements are accepted without evidence, but even with evidence another person statements are not, depending on the desired outcome of the investigation, reflecting the employer's interests; we also find the Respondent did not apply this PCP.

gg. Failure to consider evidence fairly; we also find the Respondent did not apply this PCP.

hh. Failure to give adequate reasons for decisions and waiting assigned to evidence; we also find the Respondent did not apply this PCP.

ii. Failure to take appropriate action as a result of proven misconduct/violation of the equality act; we also find the Respondent did not apply this PCP.

jj. Failure to investigate compelling evidence that one of the claimant's colleagues had badmouthed her to students, which calls the students to say very negative things about her on the evaluations;

kk. Failure to investigate a valid grievance, possibly a result of the extraordinary lengths to which certain people whence in order to cover up evidence and described it the Claimant; we also find the Respondent did not apply this PCP.

ll. Expectation to provide information/answer questions on the spot with no prior indication of what will be expected. This occurred both during the final probation meeting and over the course of the investigations; we also find the Respondent did not apply this PCP.

mm. Conflicts of interest in the investigation/grievance process; insufficient time allocated for grievance meeting. we also find the Respondent did not apply this PCP.

<u>Failure to make reasonable adjustments</u>

685. The starting point for the reasonable adjustments claim is whether the Respondent knew or could it reasonably have been expected to know the Claimant had a disability. We have concluded that the First Respondent could have been reasonably expected to know the Claimant had the disability as of 18 May 2017. We note again this applies to the First Respondent only.

686. We have therefore only considered the reasonable adjustment claims that fall after this date.

Paragraph 17-
The Claimant's second contract at Cardiff University ended on 21 September 2017 and was not renewed.

687. This had been pleaded as a S13 claim but classified as a failure to make a reasonable adjustments claim in the schedule of agreed claims and issues. The problem was when we looked at the schedule no PCP had been set out. It was also not in the summary schedule before us in the bundle.

688. As we do not know what the PCP is said to be we dismiss this claim.

Paragraph 27

relates to allegations in respect of the Claimants workload.

689. As any issues in respect of the Claimant's workload and allocation thereof arose prior to the date we have concluded the First Respondent had constructive knowledge of the Claimant's disability as such this claim fails.

Paragraphs 33 and 34.

The PCP in the schedule was said to be as follows:

"The PCP is CT's inability or unwillingness to follow proper procedures in investigating whether the condition MJ disclosed to her could be a disability, particularly when CT herself perceived a deterioration in MJ's work performance at the same time MJ disclosed a medical condition which accounted for her inability to do her work."

690. The alleged PCP would have occurred before the date the First Respondent had constructive knowledge of the Claimant's disability. Factually this PCP did not happen either. This claim therefore fails.

691. Paragraphs 42, 43, 51 (g) and 51 (h), 81, 90- 92 are allegations about events in November 2015, March 2016 and the general work environment during her employment again prior to constructive knowledge. These claims therefore fail.

Paragraph 88

Furthermore, the fact that the Claimant was asked questions instead of being allowed to present the information as she requested meant not all of the information was considered for the grievance. If she had known beforehand that she would not be allowed to present the information in PowerPoint form, she would have had the opportunity to provide the information in a grievance documents prose form. That she was not given this opportunity per her at a further disadvantage and this constituted direct discrimination under section 13 of the act. A nondisabled person will not have been tricked into believing that the first respondent intended to provide reasonable adjustments, only to have them denied at the last minute.

692. The PCP was said to be as follows:

The PCP is that CU failed to slightly modify the meeting procedure to allow me to present the information without having to answer a lot of questions.

693. The disadvantage was:

People with ASD have difficulty with eye contact and with answering a lot of questions. I was subjected to over 1 1/2 hours of having to answer difficult questions. It was made worse by the fact that I had been promised I would be permitted to make a presentation covering many of the issues, but then when I was in the meeting I was not given that opportunity.

694. This claim is about the Claimant's complaint that she was not permitted to use PowerPoint at the grievance meeting with Professor Stephens on 20 September 2017. Our findings of fact are at paragraph 307-311 above.

695. The PCP is set out by the Claimant cannot amount to a PCP as it is a complaint about the Claimant's own treatment at the meeting rather than a provision criterion or practice. Factually this claim is not made out. Our findings of fact are that the Claimant did not present a PowerPoint at the meeting but she was not prevented from doing so. We also note that the PowerPoint was sent prior to the meeting. Based on Dr Rajpal's evidence concerning the difficulties in social communication we accept that the Claimant may have been disadvantaged by a meeting formatted in the manner described. However the notes of the meeting do not support the Claimant's contentions of the format of the meeting. They record that the Claimant did the majority of speaking. The Respondent was in possession and could consider the information in the PowerPoint. For these reasons we do not find that the format of the meeting put the Claimant to a substantial disadvantage in comparison to someone without ASD. We therefore dismiss this claim.

Paragraph 89

The Claimant requested s a reasonable adjustment that they continue to communicate by email.

This is in reference to the communication between the Claimant and Ms Martin as set out in paragraph 312 above.

696. We firstly note that this allegation post dates the ET1 and no application to amend the claim so as to include claims arising post ET1 has been granted.

697. However we deal with this for sake of completeness.

698. The PCP is set out in the Schedule as:

The PCP is that I was presumably expected to engage in further face to face meetings instead of communicating by email as I had requested.

699. The First Respondent simply did not apply this PCP to the Claimant. There was no obligation to engage in face to face meetings. The Claimant's request to communicate by email was readily agreed to.

700. This claim therefore fails.

701. Paragraph 93

07.2017 - MJ's GP wrote to CU to state that failure to provide relief would damage MJ's health. CU took no action and the harassment continued.

702. There was no PCP in the schedule. It was not clear what the failure was said to be. If it was failure to provide relief factually this was not made out as what the GP asked for was for was an amicable resolution to the situation as soon as possible. The Respondent sought to resolve the situation through progressing the grievance procedure.

Victimisation claims

703. In the schedule of agreed claims and issues the victimsation claims were set out in paragraphs 18, 35-36, 51 (u), (x), (y), (aa), (bb), 66-67, 68 (c) and 76 – 77 of the further and better particulars. REJ Davies' order dated 4 May 2020 clarified that the protected act for 51aa was the Claimant's complaint of discrimination made to Professor Griffin on 9 March 2017 and a follow up email in March 2017 to Professor Griffin and Tucker and others. In respect of 66 – 67 the protected act was made to Professor Griffin and Professor Tucker at the probation review meeting on 18 May May 2017. The protected act for 68(c) was made in or around February 2016. The protected act for 76 - 77 was made in the probation meeting in May 2017 to Professor Griffin and Tucker.

704. We also deal with the victimsation claims as set out in the consolidated pleadings schedule.

Paragraph 18 –

R1 withheld the Claimant's the result of her probation as a stated consequence of the disclosure of her ASD disability to the First Respondent at the probation meeting on 18 May 2017 and/or of the proof she provided at the same time of the harassment perpetrated against her by Dr Roche.

705. The protected act was set out in the schedule as:

The protected act was to make the allegation of harassment/discrimination by PR at the probation meeting on 18 May 2017.

706. The Respondent accepted the Claimant raised these issues but denies that they were raised as formal allegations of breaches of the Equality Act 2010 and so do not amount to a protected act. Further that there were no detriments in any event.

707. Our findings of facts as regards what was said at the probation meeting on 18 May 2017 are at paragraphs 263-274.

708. In relation to the disclosure of her ASD, it is clear that Dr Wright made an allegation at the meeting on 18 May 2017 (implied) that R1 or another person had contravened the Act in accordance with S27 (2) (d) and accordingly this amounted to a protected act.

709. In relation to the showing the video of the Dr Roche's comment we find that this did not amount to a protected act. The Claimant did not equate Dr Roche's "badmouthing" of her at the time with the Equality Act 2010. This is obvious for two reasons. Firstly, the Claimant's issues with Dr Roche's comments were all about her perception that he was responsible for the students poor feedback of her rather than anything the Claimant had done or not done in relation to the Act. Secondly, the Claimant actually alleged that the students themselves were contravening the Equality Act as they perceived lecturers differently due to gender etc (and not mentioning disability). This was a protected act but not the one the Claimant relied upon.

Detriment 1 – R1 withheld the results of the probation

710. We find that the Respondent did not withhold the outcome of the probation for the same reasons as we concluded above. It was never pursued beyond 18 May 2017. There was no conduct in our judgment that could be said to give rise to a detriment.

711. There were a number of further detriments set out in the schedule of agreed claims and issues in respect of this protected act. We deal with these as follows

Detriment 2 - The First Respondent did nothing meaningful about Dr Roche's misconduct and instead continue to act against the Claimant.

712. This can be broken down into two detriments; firstly that the First Respondent did nothing meaningful about Dr Roche's misconduct, secondly that they continued to act against the Claimant.

713. As we have found that the protected act relied upon (disclosure of the video of Dr Roche) did not amount to a protected act this detriment must fail and the First Respondent's actions against Dr Roche were not because the Claimant had done a protected act. Further, in the alternative, even if it was as a result of the disclosure of the video, there was no detriment. The Respondent did not fail to do anything about Dr Roche's comments on the video. Dr Roche was subjected to an investigation and a reprimand under the dignity at work policy. We are unable to understand how this amounted to a detriment suffered by the Claimant.

714. In respect of the detriment described as "continuing to act against the Claimant" we were not clear what this continuing act was said to be. No action was taken against the Claimant after the probation review was halted on 18 May 2017. This claim therefore fails.

Detriment 3 - Professor Griffin criticised the Claimant to others after the meeting, implying that she had behaved in an unprofessional manner (specifically the manner in which she reported the harassment and

discrimination she had suffered) and further sought to put the Claimant at a disadvantage and discredit her to others.

715. This took place on 19 May 2017. Professor Griffin did inform Ms Dukes in the HR that he did not agree the Claimant had behaved professionally at the meeting on 18 May 2017. Our findings of fact about this, paragraph 277 above. Professor Griffin stood by his comments.

716. We therefore consider firstly whether these comments could amount to a detriment. These were comments made privately between Professor Griffin and the HR team discovered by the Claimant when she received the documents under the subject access request in August 2017. We find that the comment that the Claimant had not acted professionally cannot amount to a detriment. There was no disadvantage. It was an expression of an opinion that had no consequences.

717. We also find that Professor Griffin did not make the comment because of the protected act (the disclosures by Dr Wright and raising the possibility of a disability discrimination claim). Indeed as we have noted elsewhere Professor Griffin firmly ruled out the suggestion that the Claimant's disability may have anything to do with the current situation.

Detriment 4 - shortly after the meeting the Claimant was informed that her contract was not going to be renewed. The Claimant has (as of 2020) never been informed of the results of the probation despite asked this several times.

718. We have already dealt with the allegation that the Claimant has not been informed of the results of her probation above.

719. In relation to detriment that alleges the Claimant's contract was not renewed we find that this could amount to a detriment. We therefore go on to consider whether the reason the Claimant's contract was not renewed or extended was because she had done a protected act. We conclude that a clean that the answer to this must be no. We have already made findings as to the reason why the Claimant's contract was not renewed or extended above. The reasons were not because Dr Wright had raised the possibility of the Claimant being able to bring the disability discrimination claim at the probation meeting on 18 May 2017.

720. This claim therefore fails.

Paragraphs 35 and 36

MJ was again diagnosed with stress in 25.07.2017 because of the harassment by CT and PR. Further harassment was directed at MJ after she reported the treatment to CU.

Furthermore given that the treatment the Claimant received from the First Respondent when she reported the harassment caused to again become ill, this constitutes victimisation under section 27 (1) of the Act.

The protected act was set out in the schedule as follows:

The protected act was to report the harassment and discrimination in March, May, and July 2017. I made allegations of sex, disability and national origin discrimination, and that is what the victimisation allegation in this case refers to. At no time did I limit my victimisation claim to just sex and disability, so it is not clear to me why the spreadsheet is limited to those heads of claim.

721. We firstly observe that the protected act in the schedule bears no resemblance to paragraphs 35 and 36 of the further and better particulars. Nonetheless we go on to deal with as follows.

722. The detriment was set out in the schedule as:

MG sought to end my employment after I experienced an autistic meltdown in his office, and gave my behaviour at that time as the reason to end my employment. It is also clear that MG and certain people from the HR department were treating me without any consideration because of information received from CT, who had a long-standing negative attitude toward me because of my social difficulties and my susceptibility to stress.

723. We were not clear what reports the Claimant was referring to in March, May and July 2017 as her protected acts. According to the Claimant's submissions (at paragraph 21) the March report was the conversation with Professor Griffin on 9 March 2017. We found the Claimant had not mentioned the words harassment or allege the students were discriminating against her. We conclude that there was no protected act arising from this discussion.

724. We were unsure what was the "May 2017" report referred to unless it was the disclosure of the Dr Roche video which we have already dealt with above and found that was not a protected act either.

725. We have assumed the July 2017 report was the Claimant's grievance.

726. The Respondent accepted that the grievance amounted to a protected act. Professor Griffin and / or the First Respondent did not seek to end the Claimant's employment because she had done the protected act (of raising a grievance). The decision to end the fixed term contract had already been made before the Claimant issued the grievance. Further we have found above that the reason the Claimant's contract was not renewed or permitted to expire was that Ms Gomez was returning to her substantive post. This claim therefore fails.

Paragraph 51 (u)

MJ alleged harassment by students and PR to the head of school, and was upset by the lack of concern.

The protected act was: informing MG (and later CT in writing) of the harassment by PR and his students (which was not limited to just sex and disability).

727. The detriment was set out in the schedule as:

Even though MG knew from reading the student comments that one of my colleagues had claimed to them that I was "useless", he did nothing to assure me that this would be properly investigated when I brought my concerns to his attention. I was not aware of those particular comments at the time, nor was I aware of the video showing PR badmouthing me to students, but I still knew that PR had been influencing the students to complain about me. MG clearly wanted to ignore the evidence and blame me instead, and this was clearly because of his own feelings with regard to the autistic meltdown I suffered as a result of the unfair student ratings and comments I had just received, and of MG's response to my allegations that he knew were justified.

728. This paragraph made no mention of a later report to Professor Tucker in writing and we also do not know what that report was. The paragraph does not mention any later report in writing. It is all about the meeting with Professor Griffin on 9 March 2017. We have already found that the discussion at the meeting did not amount to a protected act. We therefore dismiss this claim.

Paragraphs 51 (x) and (y) and (aa)-(bb)

729. This is a duplicate of paragraph 18 as it relies upon showing the video of Dr Roche at the meeting on 18 May 2017 and alleged withholding of the probation results. We therefore dismiss these claims for reasons already provided.

Paragraphs 66-67

PR made fun of MJ in emails and to students. The apology was only given to MJ in a bundle of other documents and was not genuine as PR stated his actions were MJ's fault. PR should have made a public apology due to the public humiliation. PR was remanded because he was caught on video, not for the actions himself.

730. The protected act set out in the schedule was "to make the employer aware of PR's harassment".

731. The protected act was not properly particularised. We did not know what the protected act was said to be unless it was the showing of the video on 18 May 2017 which we have already dealt with. We were also unclear as to what the detriment was said to be from these paragraphs. We therefore dismiss this claim.

Paragraph 68

The Second Respondent failed to take any action when the Third Respondent harassed the Claimant because of her disability and gender at least four times. The failure of the Second Respondent to take action is victimisation under section 27 (1) of the Act.

732. According to the consolidated pleadings schedule there were 5 protected acts in relation to this victimisation claim. We deal with these in turn:

Protected act 1 – the Claimant confided in Dr Cartwright that Dr Richardson had discriminated against her because of her sex. This occurred in April 2016. Dr Cartwright was one of the appointed contacts and information of this nature shared with her supposed to be kept strictly confidential.

733. This must have after the female academic meeting on 11 May 2016 and not in April 2016 as the Claimant suggests.

734. We find that it was a protected act as the Claimant raised that she believed that she had been less favourably treated by Dr Richardson because of her gender.

735. The detriment relied on was as follows:

Dr Cartwright revealed the Claimant's confidential disclosure during investigation initiated in March 2017 (Dr Cartwright made her contribution when the investigation was reopened in May) and the information was given as justification or mitigation for Dr Roche to have badmouthed the Claimants to students and to discredit the Claimant. The Claimant was not ever given the opportunity to respond to the allegation.

736. It was not at all clear that Dr Cartwright's comment at the investigation meeting with Dr Roche was about the disclosure in 2016 at all. Dr Cartwright could not recall what the comment referred to but neither can the Claimant say with sufficient certainty in our Judgment that this comment was referring to her earlier disclosure regarding Dr Richardson.

737. Even if Dr Cartwright was referring to that comment we fail to see how this amounted to a detriment. No action was taken against the Claimant for allegedly making disparaging comments about staff. It was not pursued or taken any further than a comment made at an investigation meeting.

738. There was also no evidence that Dr Cartwright made this comment because of what the Claimant had told her in 2016 nor that she believed it was a protected act.

739. We therefore dismiss this claim.

Protected act 2 – the Claimant had pointed out to Professor Tucker that she was upset about Dr Richardson's treatment of her in a meeting and told Professor Tucker she believed Dr Richardson's behaviour towards her was because of her gender. The protected act was made in February 2016.

740. We find this amounted to a protected act as the Claimant alleged she had been treated less favourably by Dr Richardson due to her gender.

741. The detriment was set out as follows:

The first time this happened, Professor Tucker behaved dismissively towards the Claimant. Professor Tucker finally promised to speak to Dr Richardson about his behaviour and later claimed that she had, but no apology was received by the Claimant.

742. We understand the detriment to be the alleged dismissive behaviour and lack of apology. The Claimant's own evidence contradicted this allegation. The Claimant's evidence was that Professor Tucker had agreed Dr Richardson had behaved inappropriately. That coupled with Professor Tucker's evidence that she spoke to Dr Richardson about it leads us to conclude that this detriment is not made out and she was not dismissive.

743. We further find that the lack of an apology cannot amount to a detriment. We heard no evidence as to why this would be a disadvantage to the Claimant. She did not raise the issue any further at that time.

744. There also must be a causal link between the protected act and the detriment. We did not understand what that causal link was said to be. If Dr Richardson was said to have subjected the Claimant to the detriment the situation may have been different but the perpetrator of the alleged detriments was Professor Tucker.

745. We therefore dismiss this claim.

<u>Protected act 3</u> – a similar situation took place at a meeting with Dr Richardson in September 2016, which was also reported to Professor Tucker a day or two later.

746. This was the "mouth zipping" incident that took place on 5 September 2016. The Claimant's evidence did not support her contention that the report to Professor Tucker a day or two later amounted to a protected act. As we can see from the findings of fact, the Claimant did not report the incident to Professor Tucker herself but relied on an email from Dr Roche to Professor Tucker in which he reported that the Claimant was very unhappy about Dr Richardson "shushing" the Claimant at that meeting. In the circumstances we do not consider that the Claimant has proven that the conveyance of that information by Dr Roche amounted to a protected act. There was no mention of any gender -related issues in that communication.

747. Any detriments in respect of this particular protected act therefore fail. We do however seek to comment on the detriment that the Claimant alleged as a result of this protected act as the Claimant made a very serious allegation against Professor Tucker. The Claimant asserted in the schedule that on this the second occasion Professor Tucker chose to completely disregard what the Claimant had told her and essentially called her a liar even though she had already received written confirmation of what had happened from Dr Roche (as a joke at the Claimant's expense) on the day that it happened. When pressed Professor Tucker eventually told the Claimant that she had no intention of addressing the issues with Dr Richardson.

748. This allegation was without foundation and contradicted the Claimant's own evidence as set out in her witness statement at paragraph 65.4. The

Claimant's own evidence was that she had not told Professor Tucker about this incident but sought to rely on Dr Roche emailing Professor Tucker about this incident. It is a very significant leap to then allege that Professor Tucker disregarded what the Claimant told her (as the Claimant had not told any such thing) and make allegations that Professor Tucker lied and said she had no intention of addressing the issues with Dr Richardson. These are in our judgement completely unfounded allegations which contradicted the Claimant's witness evidence and were without merit.

Protected act 4 -The Claimant was very upset when it happened the second time that she mentioned it to Dr Roche with Dr Lewis in the room just after the meeting.

749. For the same reasons as set out above (747) we do not find that this amounted to a protected disclosure. Therefore we do not deal with the alleged detriment following the disclosure that Dr Roche sought to discredit the Claimant by claiming she had "badmouthed" Dr Richardson because of the disclosure she had made to Dr Roche.

Protected act 5 and 6

750. This is again the discussion between the Claimant and Professor Griffin on 9 March 2017 which we have found does not amount to a protected act.

Protected act 7 - this was followed up by an email to Professor Griffin and Professor Tucker a few days later, containing several allegations of harassment and discrimination, along with (some) evidence and reasoning.

751. Our findings of fact are at paragraphs 224. The Claimant raised issues that she believed because of her gender and different national origin she was being perceived and judged differently. The Respondent submitted that this was not a protected act as the Claimant had not suggested the actions were disability related. This is irrelevant. S27 does not require a correlation between the protected characteristic pursued in the claim. The Claimant clearly raised issues that We find this amounted to a protected act.

752. The detriments are said to be as follows:

Detriment 1 - the email the Claimant had submitted was promptly dissected by Professor Griffin with the help of Professor Tucker and all of the Claimant's allegations were dismissed or ignored.

753. There appears to be two elements to this detriment – firstly the "dissection" and secondly ignoring or dismissing the Claimant's allegations.

754. We have considered whether the act of "dissecting" the Claimant's email can amount to a detriment. The Claimant took the view that the use of this word denoted an intention to pick apart her email to dismiss her concerns. If this was the case we agree that would amount to a detriment. However we do not agree that the content of that email demonstrated that purpose. The email was a reasonable commentary from Professor Tucker who was responding to serious allegations that had been made. It was reasonable for Professor Tucker to provide those comments to HR in that context. We

agree the use of the word “dissect” could be open to interpretation but the content of the email does not support such an interpretation.

755. We therefore dismiss this claim.

756. We have already dealt with the second detriment. The Claimant’s allegations were dismissed but not because she had done a protected act.

Paragraphs 77 – 77

Clear that PR and CT made negative comments to students to bias them against MJ in order to discredit her with regard to her reputation and employment, yet the employer failed to take appropriate action and sought instead to end MJ's employment.

757. The protected act was clarified as having been made in the probation meeting on 18 May 2017. We did not understand this victimsation claim. The detriment appears to be that Professor Tucker and Dr Roche made negative comments to students to bias them etc. This was not proven by the Claimant and it pre dated the protected act in any event. If the detriment was said to be seeking to end her employment we consider this to be a duplicate pleaded elsewhere and we have already dismissed this claim.

758. To conclude, all of the Claimant’s claims fail and are dismissed.

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Employment Judge S Moore

Date: 19 July 2021

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

.....20 July 2021.....

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FOR EMPLOYMENT TRIBUNALS