Case Number 2500991 /19

EMPLOYMENT TRIBUNALS

Claimant ***Respondent***
Professor S. Cang University of Northumbria at Newcastle ("the University")

RESERVED JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at Newcastle **On 6-8 &10-20 September 2021**
Deliberations 1 October 2021
Before Employment Judge Garnon **Members: Ms C. Hunter and Mr S. Moules**

Appearances

Claimant	Dr. H.Yu	her Husband
For Respondent	Ms C. Millns	of Counsel
Interpreter	Ms J.Wu on 7,8 and 17 September and Ms.J. Griffin on the other days	

JUDGMENT

The unanimous judgment of the Tribunal is:
1. The claims of wrongful dismissal, failure to pay some expenses and compensation for untaken leave are well founded to the extent explained in the reasons.
2. The claims of discrimination and harassment based on race are not and are dismissed.
3. Remedy will be decided on a date to be fixed.

REASONS (bold print is ours for emphasis italics are quotations and numbers in brackets pages in the trial bundle)

1. Introduction and Issues

1.1. Shaung Cang ("the claimant"), born in China on 7 October 1962, is fluent in Manderin. Whilst she and Mr Yu coped with a preliminary hearing (PH) before Employment Judge (EJ) Speker in English with what appeared to be sufficient understanding, an interpreter was provided for this hearing. We asked the claimant at the outset whether she wanted everything translated or to ask for translation if she had difficulty understanding questions or formulating replies. She chose the latter.

1.2. She was employed by the University from 1 February 2018 as a Professor in the Faculty of Business and Law. She was summarily dismissed on 28 January 2019. By a claim presented on 5 May 2019, following Early Conciliation from 15 March to 3 April, she complained of (i) direct and indirect discrimination resulting in dismissal and other detriment and harassment contrary to the Equality Act 2010 (EqA) based on the protected characteristic of race, (ii) breach of contract (wrongful dismissal and unpaid expenses) (iii) compensation for untaken annual leave.

1.3. On 26 November 2018 the University received a complaint regarding her relationship with two of her PhD students (Mr ZW and Ms DC). On 30 November she was suspended by a letter signed by Professor ("Prof") Andrew Wathey, the Vice Chancellor (VC), and her conduct reported to the police. An investigation was undertaken by Prof John Wilson which resulted in a disciplinary hearing on 21 January 2019 before Prof John Woodward on two allegations (1) inappropriate relationships

with students and (2) failing to provide proper academic support. Prof Woodward upheld the first allegation and, partially, the second and she was dismissed, without notice, for gross misconduct. She appealed. Her appeal was heard by a panel of Governors on 8 April 2019 and rejected. She says she was treated less favourably because of her Chinese origin, indirectly discriminated against as a person whose main language is not English and subjected to harassment related to race. She claimed she was not paid all her expenses, wrongfully dismissed both a breach of contract. She also claimed "holiday pay".

1.4. There was a PH before EJ Sweeney on 18 October 2019 to identify the issues and give directions for hearing. He explained what she must prove under the EqA rather than things she considers to be unfair. EJ Garnon reiterated the difference at this hearing many times.

1.5. The claims she confirmed to EJ Sweeney she was pursuing are:

Direct race discrimination

She was treated less favourably than the University treated or would treat a non-Chinese person in similar circumstances as follows:

(i) it reported her to the police on 30 November 2018
(ii) it suspended and investigated her for misconduct
(iii) Prof Wathey failed to correct an error in the letter of suspension
(iv) it prevented her from asking questions during the investigation meeting on 17 December 2018
(v) it dismissed her on 28 January 2019
(vi) it failed to investigate her complaint about Prof Wilson's behaviour at the meeting on 17 December 2018 (post employment discrimination under section 108 EqA);
(vii) it delayed in arranging her appeal hearing

Indirect Discrimination

The University discriminated against her in the way it conducted the disciplinary hearing on 21 January 2019 and the appeal on 8 April 2019 in English without an interpreter. That practice put, or would put, employees of non English speaking origin at a particular disadvantage, compared to those who are, in that such employees would find it more difficult to understand some language and articulate clearly their responses. She was put at that disadvantage. The University cannot show this practice to be a proportionate means of achieving a legitimate aim.

Harassment

At the meeting on 17 December 2018, Prof Wilson shouted at her *'this is the UK, not China'*, would not allow her to ask questions, saying the meeting was finished and he was going home. The claimant says, if this was harassment , or if not direct discrimination.

Breach of contract and " Holiday pay"

There is no dispute she was entitled to 3 months' notice unless the University was entitled to terminate without notice because she was guilty of gross misconduct. She went to Germany in connection with her work and says she was not paid all her expenses for the trip. The issues will be what was her contractual right to have expenses reimbursed and whether the University failed to pay, or only partially paid, them and her entitlement to compensation for untaken annual leave.

1.6. At a PH before EJ Sweeney on 10 December 2019, the claimant was represented by Dr Yu. The final hearing was originally listed in May 2020 but postponed due to the Covid 19 pandemic. The claimant referred to emails in her University account which had been deleted and which its I.T. department said were not recoverable. She said the emails could prove the accounts of the two

students were not true. Dr Yu did not identify which issue these documents might support or undermine. EJ Sweeney felt unable to make an order for specific disclosure as the claimant wanted to see a wide range of information in the hope of proving a false account by the students. Dr Yu made the wider point they have relevance to academic probity outside the remit of the tribunal.

1.7. The University had made an application for a deposit order in respect of certain paragraphs of her amended claim form. The parties had agreed the final iteration of the claims to be advanced before the deposit order hearing in December 2019. EJ Sweeney's conclusions and reasons made many important points including:
As is recognised by the courts a person may unconsciously discriminate against another — we all have the capacity to treat others less favourably without even appreciating it.
At the heart of the .. complaint of direct discrimination, is that she was the victim of racial stereotyping: when two Chinese students complained .. about the way the claimant was treating them, albeit the claimant accepts the rrespondent was obliged to take the allegations seriously, she says the respondent readily assumed her guilt, suspended and reported her to the police on suspicion of modern day slavery, whereas .. they would not have done so had she not been Chinese. It is the fact all concerned in the allegations - the parents, the students and the claimant are Chinese, that makes her say this is a case of racial stereotyping. Had she not been Chinese, had she been a White, British professor, allegations of the sort made against her would not have been dealt with as the respondent did in her case by suspension, reporting to the police and dismissal. .. That is in essence .. the claimant's case on direct discrimination.
The claimant's key assertion is the respondent assumed her guilt because all involved in the allegations were Chinese, and it tended to believe the allegations on the basis ***it is the sort of thing they perceive might happen in Chinese culture****; that they attributed sinister meaning to things which, had they properly understood Chinese culture, they would not have done.*

1.8. EJ Sweeney considered some of the claimant's allegations or arguments had little reasonable prospect of success. She was ordered to pay a deposit in respect of each. The allegations allowed to proceed without any deposit were:

a. Para 9.1. (suspension and reporting to police)
b. Para 9.4. (prevented from asking questions at meeting on 17 December 2018)
c. Para 9.5. (the decision to dismiss)
d. Para 9.6. (failure to investigate her complaint regarding Prof Wilson)
e. Para 11.1-11.5. (Indirect discrimination in arrangements for the disciplinary proceedings)
f. Para 12.1, 12 .2 and 12.5. (harassment at a meeting on 17 December 2018)

1.9. At a PH to deal with the finalisation of an agreed bundle, exchange of witness statements, orders for specific disclosure, an application for witness orders and a request for the claimant to provide information as to new employment, EJ Speker ruled various documents the respondent felt were unnecessary be put in a supplemental bundle with each page prefixed by the capital letter "S". He decided a witness order should be made against Prof Wathey only.

1.10. Some events occurring during this hearing must be recorded. As is normal in a discrimination case the claimant gave evidence first. For some reason she had expected the respondent would start but EJ Garnon ruled in the week before the hearing the conventional order would be followed.

1.11. Frequently during her evidence, the claimant started to answer a question before Ms Millns finished asking it and/or answered a different question from the one asked, so cross examination

took longer than it should. EJ Garnon warned her this would reduce the time she and Dr Yu had to cross examine the University's witnesses. On Friday 10 September the interpreter did not arrive due to having been told the hearing was by CVP. We lost the morning of that day because we were not content for cross examination of the claimant to continue without an interpreter. That afternoon, Prof Wathey gave evidence as a witness for the claimant. Dr Yu's questions to him were very close to being cross examination of his own witness which we had explained was not allowed. There was little Prof Wathey could say which Dr Yu could not have put in cross examination to other witnesses but Dr Yu persisted for over 2 hours. He was not happy when EJ Garnon intervened. He said he may raise matters "*in a higher place*" by which he meant on appeal.

1.12. Rule 2 of the Employment Tribunal Rules of Procedure 2013 ("the Rules") provides their overriding objective is to enable Tribunals to deal with **cases** fairly and justly which includes, in so far as practicable (a) ensuring the parties are on an equal footing (b) avoiding delay and (c) saving expense. Parties and representatives must assist the Employment Tribunal (ET) to further the overriding objective and in particular co-operate with each other and the ET. There is a balance to be struck between giving a non legally represented claimant some leeway and permitting her or her representative to stray into matters which help no-one. In Davies-v-Sandwell Borough Council Lord Jsutice Mummery(Mummery LJ) said "*The ETs are responsible for ruling on what is relevant and what is irrelevant. The parties and their representatives are under a duty to co-operate with the ETs by sticking to **relevant issues, evidence and law**. The ETs are not obliged to read acres of irrelevant materials nor do they have to listen, day in and day out, to pointless accusations or discursive recollections which do not advance the case. On the contrary, the ETs should use their wide-ranging case management powers, both before **and at the hearing**, to exclude what is irrelevant from the hearing and to do what they can to prevent the parties from wasting time and money and from swamping the ET with documents and oral evidence that have no bearing, or only a marginal bearing, on **the real issues**.* Lewison LJ said: *If the parties have failed in their duty to assist the tribunal to further the overriding objective, the ET must itself take a firm grip on the case. To do otherwise wastes public money, prevents other cases from being heard in a timely fashion, and is unfair to the parties in subjecting them to increased costs ... An appellate court or tribunal .. should, wherever legally possible, uphold robust but fair case management decisions.*

1.13. Chapman-v-Simon held we cannot find in favour of a claimant on a ground which has not been put forward in her claim ("pleaded"). The list of issues is not determinative of the claims we can find proved. In Price-v-Surrey County Council Carnwath LJ observed "*even where lists of issues have been agreed between the parties, they should not be accepted uncritically by employment judges at the case management stage. They have their own duty to ensure the case is clearly and efficiently presented. Equally the tribunal which hears the case is not required slavishly to follow the list presented".* We do not agree with Ms Millns that something implicit in the pleadings cannot be run at hearing by the claimant **just because** it is not in a list of issues.

1.14. The most serious event occurred on Monday 13 September when Mr Yu re-examined the claimant. Due to social distancing and perspex panels in front of the Tribunal desk, we did not see the claimant was looking at a document she had taken to the witness chair. Ms Millns asked we see it. The claimant reluctantly handed it over and copies were taken. It was a "script" of the questions Dr Yu would ask and the answers, with page references, the claimant should give. It revealed she and he must have discussed her evidence even though she had been warned at every break not to do so. On examination the document revealed nothing we had not noted earlier but put matters in a more logical order. We expressed the initial view strike out would be a disproportionate sanction but further re-examination would not be permitted. Ms Millns said she would need to take instruction

overnight on whether to apply for a strike out. She did so on 14 September. It was a well made application which we considered very seriously but refused.

1.15. Rule 37 includes
(1) *At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim .. on any of the following grounds—*
(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant .. has been.., unreasonable …;
(c) for non-compliance with any of these Rules or with an order of the Tribunal;
(2) A claim … may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

1.16. In Bolch-v-Chipman 2004 IRLR 140 the Employment Appeal Tribunal (EAT) held (1) there must first be a conclusion by the ET not simply that a party has behaved unreasonably but the proceedings have been conducted unreasonably by her or on her behalf (2) the ET will need to go on to consider whether a fair trial is still possible, albeit there can be circumstances in which a finding of unreasonable conduct can lead straight to a strike out where there has been "*wilful, deliberate or contumelious disobedience*" of an ET Order De Keyser Ltd-v-Wilson 2001 IRLR 324 or conduct so serious it would be an affront to the ET to permit the party in question to continue Arrow Nominees Inc-v- Blackledge 2000 EWCA Civ 200.

1.17. Bolch suggested strike out should **only** be ordered where a fair trial is no longer possible. The Court of Appeal appeared to agree Blockbuster Entertainment-v-James 2006 IRLR 630. However, some conduct is so serious strike out may be merited as held by the Court of Appeal in St Albans Girls School-v-Neary 2010 ICR 473. Lady Smith said in Balls-v-Downham Market High School 2011 IRLR 217 *: "to state the obvious, if a Claimant's claim is struck out, that is an end of it. He cannot take it any further. From an employee Claimant's perspective, his employer 'won' without there ever having been a hearing on the merits of his claim. The chances of him being left with a distinct feeling of dissatisfaction must be high. If his claim had proceeded to a hearing on the merits, it might have been shown to be well founded and he may feel, whatever the circumstances, he has been deprived of a fair chance to achieve that. It is for such reasons 'strike-out' is often referred to as a Draconian power. It is. There are, of course, cases where fairness as between parties and the proper regulation of access to Employment Tribunals justify the use of this important weapon in an Employment Judge's available armoury, but its application must be very carefully considered and the facts of the particular case properly analysed and understood before any decision is reached."*

1.18. For all the reasons given by Ms Millns, we were satisfied the claimant has conducted the proceedings unreasonably, she was warned, even via the interpreter, she should not do exactly what she did. Her being told she could not take an annotated bundle to the witness table on day one re-inforced that message and her reluctance to hand over the "script" showed she knew she had done wrong. However, we should not strike out when firm case management might still afford a solution if conduct does not have irreversible effects, Bennett-v-Southwark Borough Council 2002 IRLR 407 . To determine if irreparable damage has been done, we must assess the nature and impact of the wrongdoing and whether there was, in truth, any real risk to fair disposal of the case, Bayley-v-Whitbread Hotels EAT/0046/07. Where credibility and integrity of the party is called into question, we may still decide issues of credibility, Zahoor-v-Masood 2009 EWCA Civ 650).

1.19. The ET in Chidzoy-v-B.B.C. EAT 0097/17, found the claimant's conduct was such that it no longer had the necessary trust in her ,which had been "*irreparably damaged*", and her behaviour had given rise to a "*substantial risk of corrupting the evidence*". Its conclusion a fair trial was no

longer possible was inevitable,Sud-v-London Borough of Hounslow EAT/0156/14). This conduct was serious and deliberate but we could not find a substantial risk of corruption of evidence as there was nothing in the script we had not heard and was well tested in cross examination. Ms Millns said, rightly, the script was an attempt to repair the damage the claimant had done to her own case by her responses in cross examination. **This was especially so as she often did before us exactly what she was accused of doing at internal hearings**. Although we had read the "script", we did not feel unable to continue to hear this case fully and decide it on its merits.

1.20. The final matter arose on 20 September and is covered in an order EJ Garnon issued that day which we need not repeat. Basically, the claimant took it upon herself not to attend on the day fixed for submissions because Ms Millns's son had tested positive for Covid, though Ms Millns was negative and could have gone ahead by CVP. The claimant had agreed to provide the written submissions by 9 am that day, but took it upon herself not to. EJ Garnon ordered her to by 9am on 22 September which she did by email. EJ Garnon had said if both sets or submissions were adequate the case would be decided without oral submissions. They were adequate so, having given the parties the option to object, we deliberated and decided on 1 October,.

2. Issues

2.1. What Mummery L.J. in Davies-v-Sandwell called the **real** liability issues, put very briefly, are

(i) Did the University treat the claimant less favourably than it would treat an employee of non Chinese origin?
(ii) Did it apply a practice which would put persons not of English speaking origin at a particular disadvantage, compared with persons who are, by conducting internal hearings in English under its usual procedures? If so, did it put her at that disadvantage? Was the practice a proportionate means of achieving a legitimate aim?
(iii) Was dismissal, or subjection to any other detriment, at least in part, discriminatory?
(iv) Did it subject her to harassment related to race?
(v) Did it not pay her (i) expenses she was due (ii) holiday pay (iii) proper notice pay?

2.2. Ms Millns prepared a longer list which we reproduce, slightly reworded, below. Without departing from para 1.13 above we accept pages 97-99 are the final version of a working document (**WD**) agreed in December 2019 as the claimant's final position as to the complaints to be pursued at the hearing. The list, cross referenced to the paragraph numbers in WD, is:

Direct Discrimination: S.13 EqA

Allegations:

1. The Respondent reported the Claimant to the police on 30 November 2018 (para. 9.1 WD)
2.The suspension of the Claimant was arbitrary and was not communicated in line with the Respondent's policy. The Respondent (Lesley Lee Deputy Director of Human Resources) did not speak to the Claimant about suspension at the time (para. 9.1 WD)
3. The Respondent, through Professor Wathey, failed to correct a deliberate error in the letter of suspension dated 30 November 2018 (the error being the reference to a conversation between the Claimant and Lesley Lee,) (para. 9.2 WD)
4. The Respondent prevented the Claimant from asking questions during the investigation meeting on 17 December 2018. (para. 9.3 WD)
5. The Respondent dismissed the Claimant on 28 January 2019. (para. 9.4 WD)
6. On or after 8 February 2019 the Respondent failed to investigate the Claimant's complaint about Professor Wilson's behaviour at the meeting on 17 December 2018. (para. 9.5 WD)
7. The Governors refused to conduct a basic investigation when the Claimant reported Prof. Wilson had discriminated against her because of race and harassed her. (para. 9.6 WD)

Indirect Discrimination: S.19 EqA

Allegations

8. The Claimant was indirectly discriminated against in the way the Respondent conducted the disciplinary hearing on 21 January 2019 and the appeal on 8 April 2019. The 'PCP' relied on is the practice of conducting hearings in English without an interpreter (paras. 11 -11.5 WD)

Questions for the Tribunal to consider

a. Did the Respondent apply a practice of conducting hearings in English without the provision of an interpreter?

b. If such a practice is found to have been applied, did or would it put employees of Chinese origin at a particular disadvantage compared to persons who are not Chinese? The Claimant asserts such employees would find it difficult to understand and follow the discussion and the allegations and to articulate clearly in English so that the Respondent could understand their responses.

c. If so, was the Claimant put at that disadvantage?

d. If so, was such practice a proportionate means of achieving a legitimate aim?

Allegations the Respondent say are unclear how they are put as indirect discrimination

9. The Claimant alleges the Respondent failed to identify the written policy which the Claimant was alleged to be in breach of. The Claimant requests the written policy is identified. The Claimant states it is not clear from the dismissal letter which findings of fact have been made in respect of which alleged event (para. 11.6 WD)

10. The Claimant alleges the appointment of Prof Wilson as the investigation manager is a conflict of interest since he received the letter from a student's mother and had engaged in reporting the Claimant to the Police. (para. 11.7 WD)

Harassment: S.26 EqA

The following acts constituted unwanted conduct:

11. At the meeting on 17 December 2018, Prof Wilson shouted at the Claimant 'this is the UK, not China' (para. 12.1 WD).

12. At the meeting on 17 December Prof Wilson would not allow the Claimant to ask questions, saying the meeting was finished and he was going home. (the same allegation as in paragraph 4 above. The Claimant says if this was not direct discrimination it was harassment (para. 12.2 WD).

13. The conduct of the disciplinary procedure and the management meeting amounted to unlawful harassment e.g. the Claimant was interrupted, not allowed to ask any question during the management meeting, and the Dismissal Letter refers to her responses being unstructured and unclear which is clearly as a result of her being ethnic minority (para 12.3 WD).

Questions for the Tribunal to consider

a. Are the allegations at 11-13 above, factually correct?

b. If so, was such conduct related to race?

c. If so, did it have the purpose of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant, or that effect taking into account: her perception, the circumstances of the case, and whether it was reasonable for the conduct in question to have that effect?

Breach of contract: unpaid expenses

Allegation

14. The Respondent failed to reimburse expenses for a work trip to Germany. The Respondent has set out what it had paid the Claimant as expense for the same trip at para 31 of its Amended Grounds of Resistance (91-92) (para 13-14 WD) and denies any more expenses are payable.

Questions for the Tribunal to consider

a. What was the Claimant's contractual right to have expenses reimbursed?

b. Has the Claimant proved that the Respondent was in breach of that contractual right by failing to pay her expenses?
c. If so, in what amount?

Holiday Pay
Allegation
15. The Respondent failed to pay holiday pay (para 15 WD) for 1 Sept 2018- 28 January 2019.
Questions for the Tribunal to consider
a. To what holiday pay was the Claimant entitled for the period?
b. Did the Respondent pay the Claimant that?

Wrongful dismissal
16. It is agreed the Claimant was dismissed without notice pay. The Respondent will rely on the Claimant's interactions with students DC and ZW as amounting to gross misconduct (para 16 WD), as set out in the letter of dismissal (page 485-487).
Question for the Tribunal to consider
Has the Respondent proved on balance of probabilities the Claimant was guilty of gross misconduct such that it had the right to terminate her contract of without three months' notice pay?

3. Relevant Law
3.1. Section 13(1) EqA says:
*A person (A) discriminates against another (B) if, **because of a protected characteristic**, A treats B **less** favourably than A treats or would treat others.*
Section 23 adds
On a comparison of cases for the puroses on s13.. there must be no material difference between the circumstances of each case "

3.2. Section 19 headed "indirect discrimination" says

*(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.***

3.3.1. Section 40 makes harassment unlawful and section 26, which defines it, includes:
A person (A) harasses another (B) if—

*(a) A engages in unwanted conduct **related to** a relevant protected characteristic, and*

(b) the conduct has the purpose or effect of—
(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

Before harassment was unlawful in itself, if a person engaged in conduct towards another which was related to a protected characteristic but did not do so **because of** it, there was no discrimination Porcelli-v-Strathclyde Council**.** Under section 26 the link is now between the protected characteristic

and the conduct, not the "reason why" the conduct occurred. Section 212 prevents a finding acts which constitute harassment can **also** be a detriment under section 39.

3.3.2. In deciding whether conduct has the effect referred to in s 26(1)(b) each of the claimant's perception; the other circumstances of the case; and whether it is reasonable for the conduct to have that effect must be considered. The test has subjective and objective elements. The subjective part looks at the effect the conduct had on the claimant. The objective part requires the tribunal to ask itself whether it was reasonable for the conduct to have had that effect **on her**. Richmond Pharmacology-v-Dhaliwal 2009 ICR 724 gave guidance on how the 'effect' test should be applied. In Pemberton-v-Inwood 2018 ICR 1291 Underhill L.J. President of the EAT in Dhaliwal, revised his guidance thus: '*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 ..whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and ..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, 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*.'

3.3.3. The EAT agreed in Ahmed-v-Cardinal Hume Academies EAT 0196/18 'other circumstances' will usually shed light both on the claimant's perception and on whether it was reasonable for the conduct to have the effect. The EHRC Employment Code notes relevant circumstances can include those of the claimant and the environment in which the conduct takes place. In HM Land Registry-v-Grant 2011 ICR 1390 Elias L.J. said '*When assessing the effect of a remark, the context in which it is given is always highly material.* The cases **do not mean** harmful consequences of incompetent or insensitive conduct cannot be harassment, simply because no harm was meant. The objective test is intended to exclude liability where the claimant unreasonably takes offence. As Underhill L.J. said in Dhaliwal '*While it is very important employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct .. it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.."* and '*Whether it was reasonable for a claimant to have felt her dignity to have been violated is quintessentially a matter for the factual assessment of the tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question*.' Private Medicine Intermediaries Ltd-v-Hodkinson EAT/013/15 said "*In order to be unlawful, the conduct must be related to a protected characteristic. It is not sufficient for the ET to conclude merely that unwanted conduct had been "**in the circumstances**" of the employee's disability* (in this case race) – *this is not necessarily the same as "related to".*

3.4. Section 39 includes an employer must not discriminate against an employee by dismissing her or by subjecting her to any other detriment, the latter meaning anything which places her at a disadvantage. Section 109 says anything done by a person in the course of employment must be treated as also done by the employer and it does not matter whether that thing is done with its knowledge or approval. In proceedings against the employer in respect of anything alleged to have been done by its employees in the course of employment it is a defence to show it took all reasonable steps to prevent the employee from doing that thing, or anything of that description. The Univrsity does not plead that , rather it denies its employees have done the alleged acts.

3.5. In direct discrimination we must determine the **reason why** the claimant was treated as she was. The protected characteristic need not be the only or even the main reason. It is sufficient it is a significant, i.e. more than trivial, factor Shamoon-v-Royal Ulster Constabulary. Unreasonableness of treatment does not show why acts were done (Glasgow City Council-v-Zafar) neither does incompetence (Quereshi-v-London Borough of Newham). Detecting the "reason why" involves a process of fact finding and inference drawing see King-v-Great Britain China Centre

3.6. The right not to be unfairly dismissed in section 94 of the Employment Rights Act 1996 ("ERA") does not apply if an employee has less than 2 years service. Sir Patrick Elias was, in the EAT in a case of race and sex discrimination, Law Society-v-Bahl ,said

93. There is clear authority for the proposition that a tribunal is not entitled to draw an inference of discrimination from the mere fact that the employer has treated the employee unreasonably. This is the important decision of the House of Lords in Glasgow City Council v Zafar

94. The reason for this principle is easy to understand. Employers often act unreasonably, as the volume of unfair dismissal cases demonstrates. Indeed, it is the human condition we all at times act foolishly, inconsiderately, unsympathetically and selfishly and in ways we regret with hindsight. It is however a wholly unacceptable leap to conclude that whenever the victim of such conduct is black or a woman then it is legitimate to infer our unreasonable treatment was because the person was black or a woman. All unlawful discriminatory treatment is unreasonable, but not all unreasonable treatment is discriminatory, and it is not shown to be so merely because the victim is either a woman or of a minority race or colour. In order to establish unlawful discrimination, it is necessary to show the particular employer's reason for acting was one of the proscribed grounds. Simply to say the conduct was unreasonable tells us nothing about the grounds for acting in that way…….. .

100. By contrast, where the alleged discriminator acts unreasonably a tribunal will want to know why he has acted in that way. If he gives a non-discriminatory explanation which the tribunal considers to be honestly given, that is likely to be a full answer to any discrimination claim. It need not be, because it is possible he is subconsciously influenced by unlawful discriminatory considerations….

101. The significance of the fact the treatment is unreasonable is that a tribunal will more readily in practice reject the explanation given than it would if the treatment were reasonable. In short, it goes to credibility. If the tribunal does not accept the reason given by the alleged discriminator, it may be open to it to infer discrimination. But it will depend upon why it has rejected the reason .. given, and whether the primary facts it finds provide another and cogent explanation for the conduct. Persons who have not in fact discriminated on the proscribed grounds may nonetheless sometimes give a false reason for the behaviour. They may rightly consider, for example, the true reason casts them in a less favourable light, perhaps because it discloses incompetence or insensitivity. If the findings of the tribunal suggest that there is such an explanation, then the fact that the alleged discriminator has been less than frank in the witness box when giving evidence will provide little, if any, evidence to support a finding of unlawful discrimination itself.."

3.7. Following Bahl, the law changed. Section 136 says
(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, a person (A) contravened the provision concerned, the court must hold the contravention occurred.*
(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

3.8.1. This so called “reversal of the burden of proof” was explained in Igen-v-Wong. A claimant must prove on balance of probabilities facts from which the tribunal **could** conclude, in the absence of an adequate explanation, the respondent has committed an unlawful act. In Royal Mail Group Ltd-v-Efobi, the Supreme Court held s.136 does not change the requirement on the claimant to prove such facts, on balance of probabilities. Tribunals should then be free to draw, or decline to draw, inferences using their common sense. Stereotypical assumptions about races, may point to sub-consciousdiscrimination particularly when good equal opportunities practice is not followed.

3.8.2. On 18 September 2021 the EAT published Hylton-v-Institute of Directors. The claimant had been a Member Relationship Manager before being dismissed in July 2017. He did not have the continuity of employment for an unfair dismissal claim, but claimed direct race discrimination on the basis he had experienced racism and harassment. He argued he was at “an immediate disadvantage” due to the racial stereotype applied by the respondent and he had been dismissed on false allegations. He drew attention to the respondent’s race demographic. The EAT dismissed his appeal. His contention he was disadvantaged due to racial stereotyping was not supported by evidence. His dismissal had taken place because the respondent **believed** he had failed to respond to false commission claims. It was found he had not satisfied the standard of proof to establish the respondent treated him less favourably than it treats others **because of** race. Also, the EAT held the respondent was not obliged to raise issues depended upon for the dismissal with the claimant in advance, even if the approach was “*not necessarily best practice*”.

3.9. In Ladele-v-London Borough of Islington Elias L.J. gave an excellent summary of the current law at paragraph 40 which includes

(1) In every case the tribunal has to determine the reason why the claimant was treated as he was. As Lord Nicholls put it in Nagarajan v London Regional Transport [1999] ICR 877, 884E – "this is the crucial question". He also observed that in most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator.

(2) If the tribunal is satisfied the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient it is significant in the sense of being more than trivial..

(3) As the courts have regularly recognised, direct evidence of discrimination is rare and tribunals frequently have to infer discrimination from all the material facts. The courts have adopted the two-stage test .. set out in Igen v Wong. That case sets out guidelines in considerable detail, touching on numerous peripheral issues. Whilst accurate, the formulation there adopted perhaps suggests the exercise is more complex than it really is. The essential guidelines can be simply stated and in truth do no more than reflect the common sense way in which courts would naturally approach an issue of proof of this nature. The first stage places a burden on the claimant to establish a prima facie case of discrimination:

"Where the applicant has proved facts from which inferences could be drawn that the employer has treated the applicant less favourably [on the prohibited ground], then the burden of proof moves to the employer."

If the claimant proves such facts then the second stage is engaged. At that stage the burden shifts to the employer who can only discharge the burden by proving on the balance of probabilities that the treatment was not on the prohibited ground. If he fails to establish that, the Tribunal must find that there is discrimination

(4) The explanation for the less favourable treatment does not have to be a reasonable one; it may be the employee has treated the claimant unreasonably. That is a frequent occurrence quite irrespective of the race, sex, .. of the employee. So the mere fact the claimant is treated unreasonably does not suffice to justify an inference of unlawful discrimination to satisfy stage one. As Lord Browne Wilkinson pointed out in Zafar v Glasgow City Council [1998] ICR 120 :

"it cannot be inferred, let alone presumed, only from the fact that an employer has acted unreasonably towards one employee that he would have acted reasonably if he had been dealing with another in the same circumstances."
Of course, in the circumstances of a particular case unreasonable treatment may be evidence of discrimination such as to engage stage two and call for an explanation… and if the employer fails to provide a non-discriminatory explanation for the unreasonable treatment, then the inference of discrimination must be drawn. As Peter Gibson LJ pointed out, the inference is then drawn not from the unreasonable treatment itself .. but from the failure to provide a non-discriminatory explanation for it. But if the employer shows the reason for the less favourable treatment ***has nothing to do with the prohibited ground,*** *that discharges the burden at the second stage, however unreasonable the treatment.*
(5) ***It is not necessary in every case for a tribunal to go through the two-stage procedure. In some cases it may be appropriate for the Tribunal simply to focus on the reason given by the employer and if it is satisfied this discloses no discrimination, then it need not go through the exercise of considering whether the other evidence, absent the explanation, would have been capable of amounting to a prima facie case under stage one of the Igen test: see .. Brown v Croydon LBC [2007] ICR 897 paras.28-39. The employee is not prejudiced by that approach because in effect the tribunal is acting on the assumption that even if the first hurdle has been crossed by the employee, the case fails because the employer has provided a convincing non-discriminatory explanation for the less favourable treatment.***
(6) It is incumbent on a tribunal which seeks to infer (or indeed to decline to infer) discrimination from the surrounding facts to set out in some detail what these relevant factors are: see the observations of Sedley LJ in Anya v University of Oxford [2001] IRLR 377 esp.para.10.

3.10. Sedley LJ said in Anya a finding an employer would behave as badly to people of all races should not be based on the hypothetical possibility it might, but on evidence it does. Malice towards the claimant is not a requirement provided the necessary causation between race and the treatment is established, Amnesty International-v-Ahmed. What if the evidence of a non-discriminatory reason comes from a source other than the respondent, including the claimant herself? In Eagle Place Services Ltd-v-Rudd Judge Serota Q.C. after reversal of the burden of proof was introduced, cited the Court of Appeal in Bahl with approval: ***"****The inference may also be rebutted – and indeed this will, we suspect, be far more common – by the employer leading evidence of a genuine reason which is not discriminatory and which was the ground of his conduct. Employers will often have unjustified albeit genuine reasons for acting as they have. If these are accepted and show no discrimination, there is generally no basis for the inference of unlawful discrimination to be made. Even if they are not accepted,* ***the tribunal's own findings of fact may identify an obvious reason for the treatment in issue, other than a discriminatory reason****."*

3.11. In all aspects of this case. it is important to explain proof on balance of probabilities means more likely than not, i.e. 51%, 50/50 is not enough.

3.12. Discrimination occurs when an employer treats employees whose circumstances, apart from the protected characteristic, are the same, differently (direct discrimination) **or** treats those whose circumstances, because the protected characteristic, are different, the same (indirect discrimination) In indirect discrimination we are not concerned with why the respondent acted as it did. The inquiry is into whether members of a group have not in fact had equal treatment protection as a result of the disproportionate adverse impact of a neutrally worded provision, criterion or **practice** (PCP). In Essop-v-Home Office and Naeem-v-Secretary of State for Justice 2017 UKSC 27 Lady Hale confirmed there is no requirement the PCP puts every member of the group at a disadvantage.

3.13. The practice relied on is conducting meetings in English without providing an interpreter. A claim of indirect discrimination will succeed if the practice was not a proportionate balance between legitimate needs and disparate impact. Unlike claims for unfavourable treatment of a disabled person under 15, the practice itself, not the treatment of the individual, must be proportionate. Showing a proportionate means of achieving a legitimate aim used to be called " Justification". In Hardys and Hanson plc-v-Lax Pill L.J. provided an overview

*" **In other words, the ground relied upon as justification must be of sufficient importance for the national court to regard this as overriding the disparate impact of the difference in treatment, either in whole or in part. The more serious the disparate impact .. the more cogent must be the objective justification**.*

3.14. Pill LJ cited with approval Sedley LJ in a sex discrimination case Allonby-v-Accrington and Rossendale College 2002 ICR 1189 who stated:

27. The major error, which by itself vitiates the decision, is that nowhere, either in terms or in substance, did the tribunal seek to weigh the justification against its discriminatory effect.
28. Secondly, the tribunal accepted uncritically the college's reasons ... They did not, for example, ask the obvious question why departments could not be prevented from overspending on part-time hourly-paid teachers without dismissing them. They did not consider other fairly obvious measures short of dismissal which had been canvassed and which could well have matched the anticipated saving of £13,000 a year. In consequence they made no attempt to evaluate objectively whether the dismissals were reasonably necessary – a test which while of course not demanding indispensability, requires proof of a real need.
29... Once a finding of a condition having a disparate and adverse impact on women had been made, what was required was at the minimum a critical evaluation of whether the college's reasons demonstrated a real need to dismiss the applicant; if there was such a need, consideration of the seriousness of the disparate impact of the dismissal on women including the applicant; and an evaluation of whether the former were sufficient to outweigh the latter.

3.15. Returning to direct discrimination Ms Millns correctly submits the case largely turns on the thought processes of certain individuals. When we look for why they acted as they did, we must note corporate employers do not have mental processes,human beings do. In an age discrimination case CLFIS (UK) Ltd-v-Dr Mary Reynolds where the **only** act complained of was dismissal, one looks at the thought process of the person who took that decision. Dr Reynolds was about 70 years old and, although the quality of her work was impeccable, her working style did not fit in with the new working methods of CLFIS. The manager who took the decision to dispense with her services, Mr Gilmour, did so because he believed she was not capable of changing her working practices. A stereotypical assumption often made about older people is they are unwilling or unable to change their ways. Other managers may well have held and expressed such views but the ET found Mr Gilmour based his view on personal knowledge of how Dr Reynolds herself worked. Reynolds is a good example of a case where a witness gave a full and cogent explanation, which was accepted, he was not motivated by her age. Underhill LJ spelled out how the case could have been put to give the claimant the remedy she sought, if others were motivated by her age:- *(1) By making an adverse report about the claimant , someone (Y) subjects her to a detriment (2) If Y was motivated by her age, his act constitutes discrimination (3) If that discriminatory act was done in the course of Y's employment it would be treated as the employer's act; and it would be liable (4) Y would also be liable for his own act (5) The losses caused to the claimant by her dismissal could be claimed for as part of the compensation for Y's discriminatory act, since they would have been caused or contributed to by that act".* The claimant has pleaded her case widely enough to cover the mental processes of all involved in the steps which culminated in dismissal.

3.16. A contract of employment may be brought to an end by reasonable notice. Dismissal without such notice is termed "wrongful" unless the employee is guilty of "gross misconduct" defined in Laws-v-London Chronicle as conduct which shows the employee is fundamentally breaching the employer/employee contract and relationship. Whether misconduct constitutes a repudiatory breach depends on whether it so undermines trust and confidence that the employer should no longer be required to retain the employee in employment, Neary-v-Dean of Westminster 1999 IRLR 288. An example is **wilful** failure to obey lawful and reasonable instructions, which may be "standing orders" made known clearly as essential for employees to follow. Sandwell & West Birmingham Hospitals NHS Trust-v-Westwood EAT 0032/09 held gross misconduct should include either "deliberate wrongdoing or gross negligence." There need be no intention to make personal gain. In Adesokan-v-Sainsbury's Supermarkets. Mr Adesokan was a very senior manager who knew Sainsbury's had a policy which excouraged staff to be frank about certain matters which, if they occurred, were totally opposite to its culture.He took no action to deal with an HR officer who encouraged others to breach that policy in a fundamental way. He knew, or must have known, what that HR officer had done was very wrong and did nothing to correct it. The claimant in this case says she did not appreciate the University took such a serious view of ceratin acts and applied standards the like of which she had never encountered in the UK, still less in China. In wrongful dismissal a Tribunal may take into account matters not known of at the time (Boston Deep Sea Fishing Co-v-Ansell). Unless the employer shows on balance of probability gross misconduct has occurred, dismissal is wrongful. Damages are pay or other benefits lost during the notice period (Addis-v-Gramophone Company)

3.17. Regulation 14 of the Working Time Regulations 1998 (WTR) includes:
(1) This regulation applies where –
(a) a worker's employment is terminated during the course of his leave year, and
(b) on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13 and regulation 13A differs from the proportion of the leave year which has expired.
(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).
(3) The payment due under paragraph (2) shall be –
(a) such sum as may be provided for the purposes of this regulation in a relevant agreement, or
(b) where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula –
(AxB) -C
where -
***A** is the period of leave to which the worker is entitled under regulation 13 and regulation 13A*
***B** is the proportion of the worker's leave year which expired before the termination date, and*
***C** is the period of leave taken by the worker between the start of the leave year and the termination date.*
The leave year **is agreed as 1 September to 31 August and the annual entitlement at 35 days plus all bank holidays.** If a party is entitled to contractual leave there is no implied right to be paid in lieu of any untaken (Morley-v-Heritage plc) but in this employment there is an express right to pay in lieu on termination of the 15 days of contractual as well as statutory leave. Strictly speaking, the calculation of compensation under the WTR should result in one award and of untaken contractual leave in a separate award for breach of contract but the sum total will be the same.

4. Findings of Fact

4.1. We heard the claimant, Prof Andrew Wathey (called by her under witness order) and read the statement of her former colleague Dr. Lai Xu. For the respondent we heard Prof John Wilson, Prof John Woodward, Mr Thomas Harrison, Ms Elaine Conroy and four HR Officers Ms Lesley Lee, Ms Tracey Henderson, Ms Molly Bridge and Ms Louise Johnson. We had an agreed bundle over 1000 pages long and a separate bundle of 290 pages produced by the claimant.

4.2. Reasons normally make **findings** of fact without setting out the different versions of the parties, but in this case those differences and how they were dealt with are relevant. We appreciate some points are repeated at each stage of the internal process leading to these reasons being lengthy , but consistency, and small differences, go to credibility, reliability and the Universiy's witnesses reasons for preferring the version given by the students to the claimant's denials . As EJ Sweeney explained, and EJ Garnon repeated, this is not an unfair dismissal case, but some decided cases on that subject illustrate ways in which we found the respondent's handling of certain aspects unfair and unreasonable to the extent it required an explanation, which was given. The subtle differences also go to the wrongful dismissal claim.

The claimant's appointment and relevant background

4.3. Prof Wilson was Pro-Vice Chancellor (PVC) of the Faculty of Business and Law. He stepped down in May 2021 having held the position since 1 January 2017. He chairs all Professor appointment boards in the Faculty including the one which interviewed and appointed the claimant. Her credentials were impressive, she had an excellent professional reputation and had published extensively in English in the best academic journals. She communicated well in English at the interview. From 1 June 2007 to 31 January 2018, she was a Senior then Principal Lecturer at Bournemouth University. She supervised over 100 Masters students and nine PhD students (including many Chinese). She received no complaint at Bournemouth. She had been in the UK for about 30 years working mainly in universities. The University has many international students and staff. The claimant started there on **1 February 2018.**

4.4. Mr ZW came to the UK in 2010 and studied his Masters in 2011. The claimant has known him since May 2012 as his MSc project supervisor, between **1 May and 1 September 2012 and** one of his PhD supervisors with Dr Philip Long and Dr Duncan Light between **14 May 2014 – 31 May 2018** at Bournemouth. Ms DC came to the UK in 2012 and studied her Masters in 2013. The claimant was her MSc project supervisor between **1 May and 1 September 2014**, then a friend during her gap year, and then one of her PhD supervisors with Dr Viachaslau Filimonau and Professor Keith Wilkes (Dean at Bournemouth) between **1 January 2017– 31 May 2018**. ZW and DC formally transferred to Northumbia on **1 June 2018**. Between 6 August and 5 October 2018, DC spent two months in China (S13-15). Between 10 and 31 August 2018, ZW took holiday (S12).

4.5. The claimant informed her PhD students at Bournemouth she was moving to Northumbria in mid-January 2018 (223) and provided them the option of continuing at Bournemouth or coming with her. ZW and DC chose to transfer to Northumbria. Another Ms Xi Wu decided to continue at Bournemouth. She later provided a short written statement (437) saying nothing like what DC and ZW alleged happened to them and other Chinese students happened to her. An email (223) the claimant sent to Prof Michael Silk (Deputy Dean in Research at Bournemouth) on 6 December 2017 indicates she had no intention of bringing ZW to Northumbria.

4.6. When DC commenced at Northumbria, the claimant, as her only supervisor initially approached Dr Jie Ma, then Dr Sharon Wilson to act as second supervisor. PhD students should have at least two supervisors. In July 2018 ZW submitted his main finding Chapter (S222-273) to his supervision

team at Northumbria being the claimant and Dr Gendao Li.(S274-295) **His PhD thesis submission deadline was 30 November 2018** (237-245).

4.7. Both students and the claimant were born in China. After transferring to Northumbria, ZW could continue as a student until the end of 2019. If students stay 10 years in the UK they might qualify to stay permanently. Both had already extended thesis submission dates by 6-7 months by transfer from Bournemouth. They could stay in the UK for a year after finishing PhD study. The claimant's case is they had motives to lie. Her being removed as their supervisor helped ZW a) by extending his study without paying tuition fees which Northumbria waived b) escaping from her an experienced, but firm, supervisor. She says he obtained his PhD by academic cheating which would have been more likely to be spotted at Bournemouth. They could not make this allegation successfully there since people knew the claimant better than to believe it.

4.8. The claimant's treatment of DC and ZW was the topic of an email Prof Wilson received from a Dr Helena Liu on **Monday 26 November** 2018 who said she was the sponsor and mother of a PhD student at the University and wished to complain about a professor in the business school regarding 'serious misconduct behaviour' (137). Dr Liu accused the claimant of:
(i) failing properly to supervise students.
(ii) failing to be available for them as a result of the time she continued to spend in Bournemouth where she had purchased a house.
(iii) oppression and exploitation of students by forcing them to carry our physical work in her house such as furniture moving, garbage disposal, garden clearance, cleaning and painting rooms. The claimant would not support the students to graduate unless they completed the tasks for her.
(iv) forcing the students to handle her private affairs such as returning or exchanging purchased items, house rental activities, accompanying her on shopping trips, carrying items, accompanying her on house viewings, office cleaning and installing office furniture.
(v) requiring ZW and DC to be available at all times, on the basis this was a University requirement.
(vi) not paying out of pocket expenses incurred by the students on her behalf, eg. the cost of travel to Bournemouth to carry out the work, and the travel cost of accompanying her to house viewings.
(vii) forcing students to undertake administrative tasks, carry out research and help writing reports related to the claimant's own research, not that of the students.
(viii) rudeness towards students, shouting at them in public in Chinese.

4.9. Dr Liu also said "*Until now, one of her PhD students has no second supervisor after enrolled in Northumbria University for 6 months*." (138). That was DC, indicating the letter was written with knowledge of her situation too. It said, "*I can hardly imagine a university professor have three to four days a week to live with her husband and children in a city that is very far away from the city where she works" and "I do not know how you can allow this happen*" (138). *'She often blames students in Chinese language, which is full of vulgar and insulting words. " 'All of her communications with her PHD students are in Chinese. According to the feedback from students who attend her class in Northumbria University, her presenting was much lower from even a lecturer standard.*

4.10. Prof Wilson received the complaint through a GMX mail address. It referred to ZW as "She". He is a **male** aged about 34. It said "…*It is hard to imagine that this happens not in Germany in the 1930s, not in the Chinese Cultural Revolution in the 1970s, but in a British university in 2018"* (140). The letter used the term "*force* ' many times referring to the claimant forcing ZW to do things.

4.11. Dr Liu wrote about the impact of the situation on ZW, and other 'victims' adding "*Furthermore, if the University of Northumbria **keeps ignoring*** (we know of no earlier complaint) *my complaint covering the Shuang's dishonourable behaviour, I reserve the right to seek **judicial solutions** and to **disclose the truth and evidence to media and social media***" (141).

4.12. The claimant's husband was alleged to have done the same eg, "…*Shuang and her **husband** both have students engaged in cleaning or wall painting in the rooms*" (139). DC later expanded on this saying "*Yan Wang, Chinese student in Bournemouth is supervised by her **husband** Dr Yu, same treatment as me and ZW" (194); "… run errands, gardening shopping etc for her and for her **husband** Dr Yu*" (196). Although the claimant made several requests (537), the University refused to provide a copy of Dr Liu's letter for the investigation or disciplinary meetings . The claimant was provided part of the contents (539-540) on 30 Janaury 2019 after dismissal.

4.13. Prof Wilson acknowledged receipt of Dr Liu's email and asked whether she had any corroborating evidence. She responded with two emails. The first included a list of the private work the student claimed to have carried out for the claimant (145-146) and indicated more evidence could be provided. The list included entries relating to work allegedly carried out at the claimant's house in Bournemouth and payments to others connected with a house move and rubbish clearance, plus online shopping related activities. Some entries related to the period following the commencement of her employment with Northumbria, some activities allegedly carried out for her in Newcastle eg. house viewings, assisting her to find temporary accommodation, replacing a phone battery at a cost of £25, data analysis, and office move furniture installation and cleaning.

4.14. The second attached a PPT file (147-177) which included screen shots of text messages from 'WeChat', a social communication tool mainly used in China, written in Chinese with translations, which appeared to contain **instructions** to undertake personal activities, plus photos of receipts, and emails relating to data research. The claimant believes the letter and the PPT file were created by ZW. Without having both the claimant's and his mobile phone or the service provider's historic record, she says anyone could do so.

4.15. Prof Wilson forwarded what he received to Dr Hesham Al-Sabbahy, Head of Department, Business and Management, and Tracey Henderson, an HR Manager who has worked for the University for over 20 years. Ms Henderson forwarded it to **Ms Elaine Conroy** to check whether Dr Liu was an official sponsor of the student not just a parent. Ms Conroy is the University's Student Conduct Manager (at the time titled Student Progress Manager). She has been with the University for over 20 years working in student support and progress. She is involved in investigating complaints made by students in relation to their course, against another student or staff member. She is used to working confidentially and impartially with students who are upset or under stress.

4.16. Ms Conroy asked the Graduate School Manager, Tim Baxter, for details of PhD students currently being supervised by the claimant because Dr Liu's complaint had not been identified them by name. He identified the claimant was supervising two students, DC and ZW. Mr Baxter noted the supervision records were up to date and indicated completion by both student and supervisor. He also noted only ZW had a second supervisor (181-190).

4.17. Ms Conroy emailed Ms Henderson and Dr Al-Sabbahy on 26 November 2018 (142-143) noting Dr Lui did not appear to be the "official sponsor" of either student. The University are obliged to provide some information to official sponsors, but not at liberty to divulge information about any students without their explicit consent. She spoke to Dr Al-Sabbahy and agreed it would be better if she invited the students to meet with her individually and in confidence to find what they themselves wanted to do and to check on their wellbeing. This step would then determine the next steps and the possibility of investigating the complaint formally. As Dr Al Sabbathy noted in his response (143), they needed to make sure they did not contravene data protection obligations if the complaint was from a parent rather than a sponsor. As he noted, the allegations were very serious and it was important to handle the matter appropriately. Prof Wilson said in an email " ***I sincerely hope there is no evidence to support these claims but an investigation is essential***"

4.18. Ms Henderson was contacted by Lesley Lee, Deputy Director of Human Resources who had been called to a case conference and wanted to discuss the matter with her. Ms Henderson was on her non-working day. On her return she was asked to support Prof Wilson, who was appointed as the investigation manager. As the Faculty Pro-Vice Chancellor, the most senior person in the Faculty, for an investigation into a complaint received against a senior member of academic staff the University procedures say he would be the normal choice.

4.19. Ms Conroy contacted the Head of Student Progress to ask who could verify the English translation of Chinese text. Rob Carthy, Director of International Development, asked Trista Huang to assist. Ms Conroy emailed both students asking to meet with them about a communication from someone outside the University which expressed concern for their respective wellbeing in relation to the claimant. Both replied saying they would like to meet (178-9 and 191-2)

Thursday 29 November 2018

4.20. Ms Conroy met each individually on 29 November DC at 10 and ZW at 11:00 am. DC is a mature student aged over 30 and married. The typed note of her meeting (194-195) shows DC said

(a) the claimant had told her she would not complete her PhD if she did not transfer to Newcastle. DC did not have a second supervisor in Newcastle and the claimant did not provide her support or feedback on her work. The claimant knew how to control Chinese students because part of their culture is to respect their "teacher" and older people and to do what they say. The claimant was very controlling and stopped DC speaking to her second supervisor at Bournemouth.

(b) DC was made do housework, gardening, decorating, shopping, and ironing for the claimant and her husband. She had fallen from a ladder at the claimant's house but the claimant was unconcerned and made her stay to finish the work.

(c) the claimant had asked her to buy WiFi extenders when she was in China in the summer but only reimbursed part of the cost. DC incurred the cost of travel to Bournemouth to set up the WiFi in the claimant's house. DC did not want to go to the house when the claimant's husband was at home but was made to.

(d) the claimant shouts and yells at her in public and, despite DC saying she felt uncomfortable, had made her go on a shopping trip to buy underwear including helping the claimant to undress and expressing an opinion on the underwear she was trying on. DC said she was made to accompany the claimant in her search for flats in Newcastle incurring taxi fares and this prevented her from studying. She attended 5 appointments in June and 6 in July. DC had to do shopping for the claimant, accompany her and pay for meals. She was required to be available every day, including weekends so the claimant knew where she was in case she needed anything. This continued in Newcastle even though the claimant spent time in Bournemouth and was not always in Newcastle.

(e) DC said "*She always wants to be in control, she treats all Chinese students like this, not Pakistan or Thai students"* (194) However, witness statements later provided by other Chinese students, Ms Xi Wu (437) who shared an office at Bournemouth with DC and ZW, Ms Yana Yang and Ms Liuliu Zhang (448), Ms Xiaomei Wang (583) said otherwise. DC was not sleeping properly and her husband had noted she cried in her sleep. As of 9 November she had registered for mental health counselling at the University. Ms Conroy asked DC "*if there was any* ***violence or other behaviour*** *which she was worried about*".

4.21. ZW is from Shanghai. He qualified in Law in China and practiced specialising in Criminal law (196) but became disillusioned so came to the UK to do a Master's degree in hospitality management at Bournemouth. Ms Conroy's typed note of the meeting (196-198) shows him saying

(a) the initial email of complaint had originated from his mother who was working at a university in Germany and funded all of his studies and living costs.

(b) the claimant had asked him to complete manual work for her and her husband and he met DC while working at the claimant's house and garden. He said in China students are expected to respect teachers and do whatever they tell them. The claimant did not provide feedback on his work and deliberately delayed his progress to ensure he stayed with her. She had said he would not be able to finish his PhD unless he transferred to Newcastle where she could get him a fee waiver.

(c) ZW had been given a second supervisor whose specialism is not relevant to ZW's thesis and whom the claimant overrules. ZW submitted a first version of his thesis in June . He had only one formal meeting relating to his thesis on 31 October 2018 after he submitted version 3. The claimant had only looked at version 1 and her feedback was *'your work is rubbish I have no comments*'. (We learned there was a earlier supervision involving Dr Li whose account differs).

(d) he was asked to enter his own supervision records as if he and the claimant had met when they had not. (It is the student who is supposed to enter the "e-vision" record and the supervisor confirms it .) He felt guilty about this as it amounted to cheating the University. He was also asked to make up a reason for extending his deadline.

(e) the claimant owed him a lot of money relating to repairs and her house move. He was invited for meals out with the claimant and often DC also. He would have to pay for the claimant and often would not eat himself as he could not afford to. When asked by her to look at rental properties he and DC had to walk a long way at night or DC paid for taxis. The claimant asked him to find Chinese students to rent her property in Bournemouth, paying in Chinese currency, to avoid tax.

(f) the claimant had made him undertake research for her, not related to his own, involving many of questionnaires in Italian. It took him 20 hours to enter the data and he was then asked to analyse it for her. When the claimant was asked by EJ Garnon to explain her position on this she said she promised ZW to allow him to publish jointly with her which would benefit him. As on other points the claimant had an explanation, but was slow to give it.

(g) he was threatened, screamed at and treated, in his words, 'as a servant'. He was not sleeping. He needed to avoid making the claimant angry or she would make trouble for him. He was worried she would not let him finish his thesis. He was told not to go to Church and the claimant made disparaging remarks about his religion (Jehovah's Witness) and his mother, calling both 'stupid'. He repeated he and DC were 'just servants' and risked not being allowed to complete their PhDs if they did not do work for the claimant, describing the situation as a 'nightmare'.

Both students must have known their allegations would, if accepted have a devastating effect on the claimant's career. Had they just been discontent with her supervision and her shouting at them, all they needed to have done was ask for a change of supervisor at Bournemouth or Northumbria. They added far more allegations and, if they were untrue, doing so would be an act of malice. That must have crossed the minds of decision makers and made them doubt the students would be so wicked.

4.22. Ms Conroy remembers both were visibly upset when she met them, and became more upset as the meeting progressed, but seemed relieved to have an opportunity to talk about the problems adding" *I am accustomed to dealing with students who are upset. It was clear both students were very unhappy*." ZW was especially upset and embarrassed about how the claimant had been treating him. Ms Conroy was concerned about ZW's welfare and asked the University's mental health counselling team to prioritise an appointment with him. Ms Conroy said to ZW "*If you have any immediate concerns for your safety off campus at any time ring the police on 999*" (237).

4.23. **The claimant says both must have put on a good act as there is little truth in what they said and no chance she could have controlled them to the extent they alleged.** DC said for example "*She says we have to be here in University all day every day in case she calls us to help her*". The claimant says this could checked on the university security system. "*I bought the wifi extenders from China and she only gave me some of that money*". The claimant says she paid DC 200 Yuan while the three Wi-Fi extenders cost 180 Yuan (441-443, S55). She also rejected a gift worth over £30 from DC which in Chinese culture is viewed as a rejection and sign the claimant would not help DC in future. DC said "*She is rude and impolite to people she did not have good relationships in Bournemouth that is why she came here*". The University knew the claimant joined for promotion to Professor and there is no evidence of poor relationships in Bournemouth.

4.24. ZW (196-198) said she asked him to do manual work, run errands etc for her and Mr Yu. If this is true, the claimant does not understand why had he or his mother not raised this at Bournemouth. His second supervisor Dr Li was subsequently appointed as his first supervisor by Prof Wilson and took him through to completing his PhD. ZW said "*She … threatens us, she shouts at us in the 4th floor hub, I don't just mean shout, I mean screaming. She needs me here as a servant*". If this happened surely someone else would have heard.

4.25. Ms Conroy is clearly "on the side of "DC and ZW. We do not criticise that, it is her role. The claimant's point is there was no-one on her side. Someone at some stage needed to examine critically what the students were saying. On 29 November ZW told the claimant he was sick. She emailed him "*Have you got the medicine yet? It is fine for two days off, take the rest. If University requests to fill the form, then you can fill the form afterward*" (180). ZW replied at 14.06 "*Thanks for your attention. I've some medicine with me. Will do it after I feel better*." This does not read like an exchange between a "servant" and someone who oppressed him.

4.26. Ms Lesley Lee began working for the University in May 2002 and was the Deputy Director of HR from 5 September 2007 until she retired on 3 April 2020. The University has a Critical Incident Management Plan (952) which has Bronze, Silver and Gold Teams. She was on the Silver Team. Dr Liu's complaint triggered the Plan. A member of the Silver Team, John Anderson Head of Security, contacted the police to consider whether any of the allegations potentially amounted to criminal activity. A decision was taken to suspend the claimant whilst the complaint was investigated. Staff members are suspended infrequently, in situations in which it is considered unsafe for the person to remain on site or where he or she may try to influence others. Prof Wilson says the decision to suspend was taken **by Ms Lee** in consultation with others. It and the decision to refer the matter to the police was actually taken at an unminuted discussion of the Silver team on 29 November.

Friday 30 November 2018

4.27. As Vice Chancellor and Chief Executive of the University Prof Wathey is responsible for signing off any decision to suspend a senior member of staff. Ms Lee prepared a letter for him to sign (207) drafted on the assumption she would have an opportunity to explain the decision to the claimant before handing it to her,so it begins "*Further to your conversation with Lesley Lee, Deputy*

Director of Human Resources, I write to confirm the decision to suspend you pending an investigation into a serious allegation of inappropriate relationships with students".

4.28. As the claimant's line manager Prof Wilson asked her to a meeting at 11.30am on 30 November 2018. In fact he was not going to be present. Ms Lee, Melanie Davis, Faculty Registrar and Mr Anderson would meet the claimant with the police, she would then be informed she was being suspended and the police would arrest her. Ms Lee was on her way to the meeting with the letter in her hand, when she received a call to say the police were on site. The claimant had arrived early and been asked to sit in the area outside Prof Wilson's office. Ms Lee, Ms Davis and Mr Anderson met briefly with the two plain clothes officers. Ms Lee said she was planning to explain the claimant's suspension to her before handing her the letter. The police officers said they did not want her to do this. They agreed to take the letter and hand it to her. Ms Lee had made brief notes explaining to the claimant she should not contact the students, what to say if anyone contacted her and that her IT account would be suspended. Mr Anderson agreed to pass the note to the police so they could tell the claimant.

4.29. Ms Lee was present in the room when the claimant was arrested on suspicion of modern-day slavery and bribery. She was visibly shocked. She said she needed to collect her coat and bag. As she turned towards the door she was told by one police officer to remain in the room and the other left the room to collect these for her. The claimant started to ask Ms Lee questions about why she was being arrested, but the police officer asked them to stop speaking. Ms Davis contacted Prof Wilson to let him know what had happened. He understood the claimant was handed the letter but later realised Ms Lee had been unable to explain matters. We are not satisfied anyone did , but the claimant would have been in no fit state to understand it anyway.

4.30. At a Silver Team Meeting (216-218) on 30 November present were Sue Broadbent, in Ms Conroy's department, Jay Wilson, Vashti Hutton, Rachel Lippe, Rik Kendal, Lesley Lee, John Anderson, Melanie Davis, Rob Carthy, Karen Waterson. Ms Broadbent said "*There has been a similar investigation by Dorset Police in relation to Bournemouth University*" (218) and "*Students can be notified that an academic is released under investigation and has been told not to contact them —any contact should be reported to Police under crime ref number*" (218). Mr Anderson said "*Steve Leggetter (SL) had been contacted to freeze Shuang Cang's IT access and email. Any access required by the Police would be facilitated*" (234).

4.31. The claimant does not believe the University should have informed the students she was arrested before proving she was guilty. We disagree, they had to be told something. **In our view, the University's acts up to this point cannot be criticised on any level , let alone be found to be discrimination on racial grounds. We accept it all had a devastating effect on the claimant but, as EJ Garnon explained to her, there are countless examples of employers being heavily criticised for either "brushing aside" allegations made against its senior staff by others and/or themselves attempting to investigate and resolve matters which should be left to the police or some other independent body. We will return to this point.**

4.32. On **30 November 2018**, the Police arranged for a duty solicitor, English not Mandarin speaking, to advise the claimant. He sat beside her assisting her to answer the Police questions on specific allegations including forcing the two students (a) to come from Bournemouth to Northumbria University with her(b) to do gardening, decorating and other work for her and threatening to fail them if they did not (c) buying meals and other things for her. She was released late that day without charge. Her solicitor said it could take months for a decision to be made. Her GP later stated "*I can see she has been affected significantly with what happened at work and she finds this is*

affecting her health quite badly. She's on medication for anxiety and depression at the moment (she's taking Sertraline which has recently been increased to 150mg once a day" (930-833).

4.33. The police must have known English was not her main language. If they, or the duty solicitor had thought she had difficulty understanding questions or giving her answers, an interpreter would have been provided, whether she asked or not. No police officer would risk her interview being ruled inadmissible or found unreliable in any criminal proceedings due to there being no interpreter.The Police had her laptop and mobile phone for a week (392) and may have validated the screenshots. We do not know if they spoke to ZW or DC but it is likely they did.

Week Commencing Monday 3 December

4.34. On **3 December 2018**, at a Silver Case Conference (232) with mostly the same people present Mr Anderson said "*The police have not arrested the husband of the Northumbria staff member. The police are also keen for us to share information with Bournemouth*" (232). Ms Broadbent said she had made contact with the Head of Student Support (Mandy Barron) at Bournemouth University. Mr Carthy confirmed a member of his team had reviewed the screenshots and they had been translated accurately (233). If the allegation was reported to Bournemouth University where Mr Yu was working, no one there mentioned it to him. We infer the allegations made by Dr Liu and later the two students must eventually not have been pursued by Northumbria Police (536), Dorset Police (232), or Bournemouth University. Ms Davis said Prof Wilson, and Dr Al Sabbahy, who was appointed as ZW's 2nd supervisor, were fully briefed **and the claimant had been advised not to contact the students** (233) which was not strictly true at the time.

4.35. On **3 December 2018**, the claimant sent an email to Prof Wilson which simply said *'please look at this'* (222) accompanied by attachments (223-230) including (a) Email exchanges between the claimant and Prof Michael Silk at Bournemouth regarding the claimant 's leaving and possibility of ZW and DC relocating (b) Email exchanges relating to feedback on DC's work in 2017 and an email exchange in January 2018 noting ZW was behind in his progress,had planned to submit by April 2018 and be examined around May 2018 with submission of a draft by the end of February 2018 (c) A note from the claimant explaining it was ZW's and DC's decision to transfer to Newcastle and her role was to help and advise them without any right or power to fail them. She said she had meals out with them on no more than three occasions and never forced them to pay for her. She invited them to dinner at her home and gave DC food she cooked many times, including for her husband. The claimant described their allegations of extensive work carried out for her as '*weird*' saying they may have done some such as cleaning dishes or helping to tidy up but it was all by their own choice, they were never forced. (d) She described DC as a 'good friend' who was invited to parties, along with her husband, at the claimant's home during her gap year. The claimant noted she had treated both students like her own children.

4.36. We often encounter situations where an accused person provides their employer, and the Tribunal, with a vast number of documents expecting the recipient to work out what is relevant and why. It is a very unwise way to put forward a defence as the reader may be put off reading everything by the sheer volume and not be able to understand and separate what matters from that which does not. These situations occur equally with all races. At this point what she knew of the allegation must largely, or solely, have come from the police questions.

4.37. On **3 December 2018**, the claimant called ZW's father "*to clear my name*" and clearly said to him it was better not to tell his son. She found his number because she knew the University at which he worked (though not, as ZW alleged, as Vice Chancellor). She says she only called his father once, which should be capable of being checked by phone records or asking the father. Prof Woodward told us for the claimant to contact ZW's father was not appropriate for any reason in his

view and may breach data protection obligations to do so. **ZW could easily have been asked to agree to the University contacting his mother and father direct to give their versions of exchanges. Had he refused for no good reason, an appropriate inference could have been drawn he had something to hide. No-one ever asked the father what was said**.

4.38. The claimant freely accepted she had once phoned the father , but not " *to ask for the case to be dropped*". A vital issue was whether, as ZW alleged, he had been coerced into transferring to Northumbria. Having recalled advising ZW to discuss the move from Bournemouth with his father and him saying he had, and the solicitor who advised her at the police station saying she needed to find evidence ZW moved voluntarily, she thought the father might confirm that. She did so before being told she should not. **We accept this is likely to be true**, but we have explained her reason more clearly than she ever did. The only evidence of what was said between the claimant and ZW's father is ZW's account of what his mother told him his father had told her the claimant had said, **a third hand version of the call. One call or ten never explored.**

4.39. On **4 December 2018**, Ms Lee emailed the claimant (235-236) attaching a copy of the suspension letter and saying who not to contact, which the letter itself did not. Ms Lee gave the claimant further details of the allegations of inappropriate relationships with two students eg requiring them to be on campus and available to her between 10am and 10pm each day. Ms Lee also forwarded the email to Ms Henderson asking her to update Prof Wilson (233).

4.40. On **4 December 2018**, ZW emailed Ms Conroy attaching a Post Graduate Research (PGR) Circumstances Affecting Progress form showing an application to extend his submission deadline saying "*Unfortunately, I come across some difficulties in the PHD progress*" and asking them to refer to Ms Conroy for details (317). The claimant says this was just what he wanted. Without this allegation, ZW would have to provide a good reason (239) for a further extension.

4.41. On **5 December 2018** Ms Conroy received an email from ZW with a further PPT (247- 279) including screen shots of text messages in Chinese with translations, which appeared to contain **instructions** to undertake personal activities for the claimant. Ms Conroy emailed this to Ms Henderson who, in turn, forwarded it on 7 December 2018 to Prof Wilson. The claimant said one text was not translated accurately so we asked the interpreter who confirmed the correct translation of, "**你知道有**谁有两间房8**月初可租一周**" => is "*Do you know who has two rooms for rent a week at beginning of August*?" (**a question**). However, ZW had translated "*Do you know who want to rent a two room flat? Find it for me*" (333) (**a command**).

4.42. On **6 December**, the claimant informed Ms Lee the Police had returned the mobile phone and the laptop. Ms Lee asked Ms Henderson "*if it would now be reasonable to restore IT access*" (280). We have not been taken to any response to this request.

4.43. On **7 December** Ms Conroy received an email from ZW in which he reported his mother had told him the claimant had called his father many times on Tuesday 4 December (if she called late on 3rd, it would be early on 4th in China) trying to explain what had happened, **asking for forgiveness**, saying she is a good teacher and ZW and DC "*should not take these contradictions to the University level and police issue*". ZW said to Ms Conroy "*The last week email from Joy told me we should not have any contact with Shuang and she is under investigation*" (283) Ms Conroy replied "*You are right to report this to us, I have passed this information on to relevant colleagues. Enjoy the break with your mother and please be reassured you have done nothing wrong, the University will support you and ensure you are able to continue your studies*." (285)

4.44. Ms Conroy forwarded ZW's email to Mr Anderson, Ms Broadbent, Ms Lee, Ms Henderson and others saying "*DC had reported that ZW mentioned to her that there had been around 10 phone calls to his father*"(283). Later the management case alleged she called his father requesting support to encourage ZW to withdraw the allegations against her; this is also used in the appeal decision letter in the statement by Prof Woodward (778).

4.45. On **7 December 2018**, Ms Lee emailed the claimant regarding her contact with ZW's father. The claimant partly explained the reason she had and promised "*Since I read your mail, I haven't contacted anyone who have the relationships with the students. I can assure you I will not do in the future until the case is closed*" (281). A letter (302) by Jane Embley (Director of Human Resources and Organisational Development) on **11 December** said "*You should not contact the students or their friends or family regarding this matter".*

Week Commencing Monday 10 December

4.46. Ms Henderson accompanied Prof Wilson when he interviewed DC and ZW on 10 December 2018. She met with him before to agree the questions to be asked. Ms Conroy attended to "support" the students. **It was absolutely right for Prof Wilson himself to interview the students** but we did not understand why Ms Conroy needed to be there until it was explained her role is to support them throughout. There is nothing wrong with that. At the end of Day 2 of evidence, when we were not sitting on the next day and Prof Wathey was due to give evidence for the claimant under witness order on the day after that, EJ Garnon advised Dr Yu no professional advocate would do what he was proposing to do that day by calling a witness he could not cross examine when he could not predict what he might say. Dr Yu elected to do so regardless and , among other matters, challenged the **"support" the students had had in comparison the the claimant . When EJ Garnon asked Prof Wathey whether he was effectively saying the claimant, and any other staff member of whatever race, are expected to find their own "support", Prof Wathey answered they were, that is the University's normal policy.**

4.47. Ms Henderson typed notes (287-295) and agrees, as does Ms Conroy, Prof Wilson's witness statement are an accurate summary of the points discussed. The students were agitated and distressed, ZW in particular.She says "*they **seemed credible** and the statements they provided **seemed plausible**. What each student said when they were interviewed separately corroborated what was said by the other student and what they said was supported by the documents produced by ZW*". The main points discussed with ZW (287-291) were as follows.

4.48.1. The claimant and Prof Long supervised ZW when he did his Masters and helped a lot. Prof Long retired so ZW transferred to Northumbria as the claimant told him she could arrange a free transfer. At a formal meeting at the end of October he submitted a third draft. Dr Li described what he thought of ZW's thesis for about 20 minutes. The claimant talked through 5 or 6 points but she was referring to the first, not the latest, draft. She had said his work was rubbish and she could not find an examiner, as all would fail him. This account is **not** corroborated by Dr Li.

4.48.2. He said the claimant accused him of preferring British to Chinese and said she was not respected as she ought to be as a Chinese professor which created the atmosphere in which he was expected to respond if summoned. He carried out research for her, including data analysis not relevant to his PhD.

4.48.3. He carried out work for the last 2 years. He would receive a message via 'We Chat' to go to the claimant's office and she would tell him what to do. **None have been drawn to our attention.** If he was going back to Bournemouth he would be told to go to her house on Saturday at 10am to

clear rubbish. ZW said at the start he thought it was help between friends and respect to his teacher is in accordance with Chinese culture. ZW thought if he did the work he may get better academic support. He said *'if she wants you to help and you don't, then you have disobeyed and you would never graduate'*. She told ZW he was expected to be available for 10 hours a day and weekends otherwise he would not get his PhD. He helped her to move office and cleaned for her.

4.48.4. ZW said he had tidied and cleaned "the old house" and had to take pictures to send to the claimant. **None have been drawn to our attention**. ZW paid twice to go to Bournemouth and paid for taxis and metros in Newcastle, including looking for houses for the claimant on more than 10 occasions. He also paid £380 for removals and £70 for rubbish clearance. She paid him £340 and he did not say it was not all of the money as he did not want to make a fuss as the claimant *'minds money a lot'* and gets angry if she feels she has paid more than she should. No money was offered or paid for work done. She wanted ZW to find her someone Chinese to rent her house so she could say they were friends and not pay tax. ZW said he kept records as he was concerned it was illegal. **None have been drawn to our attention**.

4.48.5. ZW said he had eaten with the claimant perhaps 5 times, once she had paid for herself but on other occasions he and DC had paid for her. The claimant had said she would pay them back some other time but did not do so and never paid for meals in return. ZW did eat once at her house at the end of a day in which he had spent 12 hours cutting trees to make the CCTV clearer and moving heavy furniture. ZW also bought a new battery for the claimant's phone which cost £25, she said she would pay him back but never did. In ZW's words "*she minds the money very much and we look forward to getting feedback so we can't make her angry or unsatisfied*". ZW thought he could not refuse the claimant or it might affect his studies in the UK.

4.48.6. ZW said the claimant had shouted at him many times, for example when he did not tell her he was going back to Bournemouth one weekend she said he should be studying and shouted at him in Chinese saying that he was not working hard, was the worst student and would never graduate. To prevent ZW and DC being friends with each other the claimant had told ZW that DC hates him as he is nearly finished his PhD, and she may not finish her PhD. She had told DC ZW's data is not good and she could report him to the University. The claimant told ZW attending church was a waste of time and he should be working on his studies.

4.48.7. ZW was injured at the claimant's house (he does not say which house or when) including a table top dropping on his neck and burning his hand. He was told he should continue to work with a bandage. She contacted him to help find someone to rent a property even when he was unwell with a fever. ZW said he now does not sleep. He worries about the payments his mother is making and how long it will take to complete his studies. The claimant told him to apply for an extension but he was concerned about making incorrect statements on the form.

4.48.8. ZW said the previous Tuesday and Wednesday (4 and 5 December) the claimant had called his father 10 times on a number he had provided to Bournemouth University as an emergency number. His father said the claimant was crying on the phone saying she is a good teacher and they should not do this to her. She called the following day and said not to tell ZW. ZW's said his father is the Vice Chancellor (VC) of a University in China and feels a student should not question a teacher, so ZW was put under pressure from his father as a result. **Nothing directly from the father or Dr Liu has been drawn to our attention.**

4.49. The notes of the meeting with DC (292-295) include her saying:

4.49.1. the claimant had provided feedback on her Masters degree which was useful. On her PhD the claimant discussed the topic with her at the start and suggested she study elderly people as it is currently interesting. She helped her once or twice at Bournemouth but the second supervisor was very helpful. The main reason DC had transferred to Northumbria was because the claimant told her her second supervisor was looking for another job and Northumbria has a very good healthcare team so she would get a lot of support. DC said she asked the claimant about getting a second supervisor many times. She replied she was trying to find someone but DC thought she wanted to find someone who would be in her control and not question her.

4.49.2. "*Yes she expects me to be here until 8 or 9 pm every day and sends message to check where I am*" **No messages have been drawn to our attention**.

4.49.3. she washed dishes, decorated and gardened, the claimant asked her to do things *'as the students are free'* and said one student did not help her so she would not give that person academic support. We have not been told who that was. DC was asked whether such a relationship was usual or expected in Chinese universities. She claimed it was not. A few Chinese supervisors may ask their students to help with personal affairs but would offer academic help. The claimant treated DC as a personal assistant.

4.49.4. DC paid travel costs to Bournemouth or when house hunting with the claimant and once or twice DC paid for the claimant when she said her Metro card was not working or when taking an Uber taxi as the claimant did not have the Uber App on her phone. DC did this as she wanted to make the claimant happy as *'if she is angry she goes crazy, her face goes black'*.

4.49.5. DC had a dentist appointment in Bournemouth on a Wednesday and the claimant said to go to her house on the Friday to set up the Wi-Fi so DC had to stay an extra night. DC had bought the Wi-Fi extenders from China and the claimant had only given her part of the money. DC said she did not want to go to the house as the claimant's husband was there and she did not feel comfortable.If this is the same trip as the claimant mentions at paragraph 4.54 below, the two versions are inconsistent but, as DC was not pressed for dates or details, we cannot tell.

4.49.6. she went to Italy for a month using funding the claimant had for her own project, she felt she had no choice although it was **nothing to do** with her PhD which is about elderly people in China not Italy. DC was given 20 questionnaires to analyse the claimant was not happy with her report, was angry and yelled at DC saying it was rubbish. This could have been checked as the claimant says her thesis originally compared Italy and China, then changed to China only.

4.49.7. she had attended 21 house viewings with the claimant since transferring to Northumbria, some of which ZW also attended. DC had told Ms Conroy she attended 5 in June and 6 in July, she was in China from 6 August to 5 October, so when did the other 10 occur and where were they?

4.49.8. the claimant asked to meet her for lunch in June/July, sometimes DC paid and sometimes they shared the cost but the claimant never paid for DC. Once she said she would pay then asked to borrow the money and did not repay it. DC said sometimes she did not eat but just sat with the claimant who was happy when DC paid. DC confirmed the claimant made her a meal after she had been working at the claimant's house all day. DC also went shopping with the claimant for furniture and clothes but felt uncomfortable shopping for underwear with the claimant.

4.49.9. On the question of supervision, DC said she presented two chapters of her thesis to the online system in July and asked for feedback. The claimant told her she did not have any feedback for her. There were no academic meetings from June to September and although meetings took

place in October and November they were all about personal things. One must remember DC was in China from 6 August to 5 October. When DC asked the claimant for help she was told to search on YouTube for reading lists. We should point out the claimant gave to us a different and clearer account when EJ Garnon asked about this(see 4.68 below). DC was asked to complete the review sections of the progress reports with the claimant telling her what to include and claiming this was the British style. As Prof Woodward explained the system at Northumbria is that the student makes the initial electronic entries and the supervisor checks and/or comments on them. **We must emphasise when we pressed the claimant for clearer explanation, she did not use the interpreter and did not need to. She rarely did so when Ms Millns asked her questions. In both instances, the questions were targeted and specific and the answers clearer as a result.**

4.49.10. she felt worried about her work due to the delay and the fact she did not have a second supervisor. She found it very stressful and the situation was getting worse. If she had questions about her work she felt a need to make the claimant happy first so she could ask her. She did not feel she had progressed or had appropriate support. Her sleep quality was bad. She did not want to work with the claimant again.

We have mentioned above, in bold print, points on which Dr Yu could profitably have cross examined Prof Wilson asking why he did not challenge the student's accounts. Instead, despite EJ Garnon advising him not to waste time on hopeless points eg Prof.Wathey's letter of suspension, he continued to, and now complains he had insufficient time.

4.50.1. The claimant feels her treatment was unfair and unreasonable. Although this is not an unfair dismissal case, some cases help us explain why we agree with her to an extent. In A-v-B 2003 IRLR 405 Sir Patrick Elias said *"In determining whether an employer carried out such investigation as was reasonable in all the circumstances, the relevant circumstances include the gravity of the charges and their potential effect upon the employee. Serious allegations of criminal misbehaviour, where disputed, must always be the subject of the most careful and conscientious investigation and the investigator carrying out the inquiries should focus no less on any potential evidence that may exculpate or at least point towards the innocence of the employee as on the evidence directed towards proving the charges. This is particularly so where, as is frequently the situation, the employee himself is suspended and has been denied the opportunity of being able to contact potentially relevant witnesses. Employees found to have committed a serious offence of a criminal nature may lose their reputation, their job and even the prospect of securing future employment in their chosen field. In such circumstances, anything less than an even-handed approach to the process of investigation would not be reasonable in all the circumstances.*

4.50.2. Linfood Cash & Carry Ltd-v-Thomson concerned a situation in which witnesses refused to be identified. That is not the case here. ZW and DC could have attended the disciplinary hearing if asked by the University but no-one asked. The guidance applicable to any situation in which a "live" witness will not be present includes:

2. The following are important in taking statements: (a) Date, time and place of each .. incident. .. (d) Whether the informant has suffered at the hand of the accused or has any other reason to fabricate.

3. Further investigation can then take place either to confirm or undermine the information given. Corroboration is clearly desirable.

6. ……, it is desirable at each stage the member of management responsible for the hearing should himself interview the informant and satisfy himself that weight is to be given to the information.

9. It is particularly important that full and careful notes should be taken.

4.50.3. Santamera-v-Express Cargo Forwarding held*".. cross-examination of complainants by the employee whose conduct is in question is very much the exception in workplace investigations of misconduct….There may be cases, however, in which it will be impossible for an employer to act fairly and reasonably unless cross-examination of a particular witness is permitted.*

4.50.4. In Strouthos-v-London Underground Pill LJ said *It is a basic proposition, whether in criminal or disciplinary proceedings, the charge against the defendant or the employee facing dismissal should be precisely framed, and evidence should be confined to the particulars given in the charge.*
4.51.1. During oral evidence we ascertained the claimant bought a house in Dunbar Road Bournemouth but retained one she already owned in Norton Road. She moved most of her furniture then but the plan was to clear and place Norton Road on the market later in the year. ZW says he moved furniture but not when, where from and where to. The claimant spoke of an estate agent having people who would otherwise be homeless ready to move into Norton Road when the claimant was away in China so clearing it had to be accelerated. She accepts she asked ZW to help then. In cross examination she said it would be not right in 'normal circumstances' to accept offers to help move from students, except in an emergency. Ms Millns submits the situation was not an emergency, ZW was convenient so she used him. There are pictures of the house (149-152 and some text messages in Chinese). We can see why the claimant would think it was an emergency as being in China she could not make arrangements herself. Ms Millns adds her saying she did not know anyone else to assist seems incredible given how long she had been living in Bournemouth. Again we disagree. The claimant's evidence revealed she has little social interaction outside work especially with non-Chinese people, and ZW lived close to her house.

4.51.2. Ms Millns adds the claimant said what she means by Chinese culture, is, in part, a system of friends doing each other favours – *you help me, and I'll help you next time*, but agreed for a student and teacher relationship that would be wrong. Ms Millns put to her".. *this is how you viewed them. You didn't view them as students. You viewed them as friends*". She replied" *You can't change the topic. They are friends **and** students*". We can see that view without, as Ms Millns suggests, the claimant thinking she could **demand** assistance because of the power she held over them as their teacher. Such conduct differs from standards in the UK where, as both Prof Wilson and Prof Woodward seemed to think a teacher should not **put herself in a position where allegtions could be made** of her treating them like servants. We accept the validity of that argument but it goes to the heart of her wrongful dismissal claim if she thought otherwise.

4.51.3. The claimant told us of an occasion when she was in China and ZW, who lived close to her in Bournmouth, contacted her to say a window of her house had been broken in a storm. He volunteered to get it fixed but she told him to leave it until her return but he got some quotes. In many respects the evidence on both sides was full of ambiguity as to where and when events happened, and no-one, including the claimant, took the time and trouble to clarify obvious gaps in the evidence. When we did, we could see different accounts of the same incidents ZW and DC described as treating them like servants , being seen by the claimant as favours between friends .

4.51.4. Ms Millns rightly says we must consider the nature of the relationship between the claimant ZW and DC and in cross examination the claimant claimed not to understand there is an "imbalance of power" between student and teacher saying she saw the relationship as '*equal*.' Ms Millns submits that was a telling answer. EJ Garnon suggested to the claimant a teacher can **influence** a student to do things for her without asking them, to which the claimant replied "*No I don't think so as students at university are older. We don't have power to control students.*" When asked if she agreed teachers should **not ask** students to do personal tasks for them not related to their studies, she agreed tasks should be '*limited to their studies*.' When asked if she agreed that if a student

offered to clean her home, do garden work etc, it would be wrong to accept she agreed, but tentatively . However, Ms Millns does not take account of the claimant's view of DC and ZW as **both** friends and students. We can see both sides of the argument but that does not mean Prof Wilson and Prof Woodward's views were **because of race** if they did not.

4.52. The claimant says ZW made some false statements on 10 December, eg "*She wanted to move office here and I had to move her things and install her IT things*". The claimant says the IT assistant (Ian Clark) installed for her as the University could confirm with him. ZW's supervision team at Bournemouth were the claimant Dr Philip Long and Dr Duncan Light. **ZW never revealed Dr Light had arranged a new supervisor, Professor Adam Blake (416).** Both are experts in ZW's subject area and academic misconduct would not escape their eyes. ZW claimed his father is a VC in a University in China (291) which is not true (835).

4.53. The claimant says DC made misleading statements too. For example, "*Just once or twice in 1.5 years at Bournemouth she supported me as she very busy*" The claimant says her evidence (132, 226-229, 368, S7, S10, S11) shows otherwise. The 1.5 years are January 2017 to May 2018 when she had two other supervisors as well, Dr Filimonau and Prof Wilkes.

4.54. The claimant says she helped DC and ZW a lot in their personal life eg offering DC and her husband to stay at her home when they visited Bournemouth for dental treatment (374, 375, S16); giving DC and ZW cooked Chinese food since they were unable to cook dumplings and steamed buns (374, 375, S16) ; taking both to their homes at midnight when the returned to Newcastle which would have cost around £10 each for a late night taxi and taking DC and her husband to Bicester near Oxford from Bournemouth to go shopping which would cost at least £30 by taxi. She invited DC and ZW to her home to celebrate Chinese festivals and to dinner many times (439-440, 448, S280, S281). Once,when the claimant's bank card was not working , DC paid £6 travel cost and in return, the claimant took her for dinner at a Chinese restaurant in Newcastle which cost about £20 (411).**These various points on both sides needed time taken to investigate them properly, but the claimant needed to point the University in the right direction to focus its investigation.**

4.55. Prof Wilson and Ms Henderson felt each student was quite upset but presented themselves well. They had no reason to doubt either student. Although the information given by them did not match in all respects, they felt this illustrated they had not colluded. **Whenever anyone has to decide in a situation of one word against another (as Prof Wilson puts it a "he said, she said" situation) any sensible person looks for the presence or absence of other documentary or independent evidence tending to show which version is more likely to be true.** Often both versions contain some truth but a different interpretation or perspective on what was said or done. That said, the students described a consistent pattern of controlling and dominating behaviour by the claimant which goes beyond what could be called a different interpretation or perspective. If the choice between two versions appears not to be evidence based and/or obvious reasonable lines of enquiry are available but not taken, **it may be enough to infer some discriminatory factor crept subconsciously into the decision making**. However, the fact we can now set out, based on hearing days of evidence, gaps in the University's investigation does not **of itself** show any of its witnesses were consciously or subconsciously motivated by race at the time.

4.56. On 10 December 2018 Prof Wilson and Ms Henderson met with Dr Gendao Li, ZW's second supervisor (296). Ms Henderson says he "*didn't have a lot to say*". We find he said some significant things . Dr Li said he was not an expert in the research area but could understand the topic, was good at quantitative analysis and could help with the methodology. Dr Li saw a version of the thesis and stated "*I thought it was weak for a PhD, so wrote a few comments on the draft. We met with ZW and I clarified my comments*". The claimant gave comments section by section with significant

overlap with his comments and no disagreement with his opinion. He said ZW did not contact him much and he felt unable to express an opinion on ZW's lack of progress as he was not aware of how long ZW had been studying. Prof Wilson never mentioned those comments in his Management Statement (391-393) or the disciplinary hearing (466-476). Prof Wilson asked Dr Li "*Do you feel you are an appropriate choice with relevant subject knowledge for this student*?" (296) probably based on Dr Liu saying "*Gendao Li whose specialism in Statistics and modelling is not relevant to ZW's thesis*"(196). Prof Wilson later appointed Dr Li as ZW's 1st supervisor and Dr. Al-Sabbahy as 2nd supervisor . They took ZW to successful completion of his PhD in mid 2019. There is no note of Dr Li saying the claimant was looking at the wrong version of ZW's thesis, but Prof Wilson says he did.

4.57. After interviewing the students and Dr Li, Ms Henderson sent an email to the claimant on 11 December 2018 inviting her to an interview on 17 December (297-298) to investigate allegations of inappropriate relationships with students and failing to provide appropriate academic support to them as a PhD supervisor. The email said the possible outcomes were (1) no case to answer or (2) a case to answer with a recommendation for formal action. The email also said copies of relevant evidence and notes of completed investigatory meetings would be sent in advance of the interview. Should it be decided to invoke the Disciplinary Procedure, a link to it was included. A letter was also sent on 11 December 2018 confirming her suspension had been extended to 21 December (302). Also on 11 December 2018 she sent to the claimant by email the notes of the meetings with DC and ZW on 29 November and 10 December (194-198 and 287-295) the note of the meeting with Dr Li (296); and the PPT file and the schedule of work provided by ZW (248- 279 and 146). So far the criticism we have is of the short notice given to the claimant which, while complying with its own procedures, meant she had a lot to do and needed to spend a day to travel from Bournemouth.

4.58. Prof Wilson wanted to be properly prepared for the meeting, so emailed some suggested questions to Ms Henderson **and Ms Conroy** on 11 December (299-300). The claimant emailed Ms Henderson on 13 December saying she would like to meet with someone who can speak and write English and Chinese to record the meaning of something for the meeting the following Monday. Ms Henderson asked her if she wanted something translated from Chinese and she responded it related to the communications between the students and her. Ms Henderson understood she wanted someone to verify a translation which Trista Huang had previously done.The claimant did not raise the example in paragraph 4.41.above.

4.59. When Ms Henderson emailed (297) on 10th the specific allegations in the suspension letter (236) were changed to two vaguer ones of **inappropriate** relationships with students and failing to provide **appropriate** academic support as a PhD supervisor. If a charge is wide and unspecific as to dates times and places, the response is likely to be unspecific too. The terms 'inappropriate' and 'appropriate' beg the question "*appropriate by what standard and in what circumstance*".

4.60. On 11th at **14.42 pm**, Ms Henderson sent seven documents to the claimant (303) which were new to her. On 11 December 2018, Prof Wilson emailed to Ms Henderson and Ms Conroy *Given the e-mail she sent to me last week, it is obvious Professor Cang will* ***deny almost all/many of the accusations****. This could result in me* ***pressing her*** *for clarity, and specifically for her explanation of why the students have made these allegations. Again, I will also mention her `****phone conversation with ZW's father, in which she allegedly asked for forgiveness****." No doubt the meeting will be tense and confrontational,* ***but as long as we remain calm and seek the kind of clarity required, I think we can produce the desired result****."* (310). The claimant asks (a) why did Prof Wilson include Ms Conroy in his email (b) is it appropriate for him to say she would deny almost all/many of the accusations before investigating (c) what was his desired result. **Prof Wilson said the result "desired" was clarity one way or the other.We accept that from the wording.** The answers to

the other two points are obvious(a) Ms Conroy was the student support officer so needed to know what was happening (b) of course the claimant would deny them, she had said so in writing.

4.61. The meeting was to be from 1.30-5pm. On 13th at 11.29, Prof Wilson emailed Ms Henderson "*I'm afraid Peter has asked to see me at 4 pm, so we will have just 2.5 hours. I am going to try to keep the interview to 1.5 hours, leaving us with an hour to draw up conclusions.*" (308). Peter is the deputy Vice Chancellor and senior to Prof Wilson. Considering the claimant's job and professional reputation were at stake, it was not appropriate to rush such an important meeting in 1.5 hours. At 11.31. Ms Henderson replied to Prof Wilson saying "*That should be fine, let's see how we get on. Emma Jane Philips has just been on the phone — it looks like UCU will be representing her on Monday -- **which is good** "*(308). UCU is a union the claimant had only recently joined so it did not accompany her and she attended alone. Prof Wilson asked Ms Henderson "*is Cang's supporter allowed to ask/answer questions? Or are they there as an observer*?" (307). Ms Henderson replied a representative cannot answer questions for the claimant but can put forward points for her.

4.62. The claimant says she had provided "*lots of evidence*" including statements from other Chinese students and Dr Filimonau – DC's supervisor at Bournemouth (433). She refers to a form completed by Dr Light – ZW's supervisor at Bournemouth (416) but only she could explain to Prof Wilson, in Northumbria, its significance. The claimant does not explain to those receiving documents what elements go to which allegation against her. As before us, her approach was to provide a great volume of paper and expect the recipient to work out where to find what may help her case. That said, potentially career ending allegations had been made and important points **needed to be explored** including (a) why no other Chinese students had experienced similar treatment (b) why ZW and DC had not complained at Bournemouth and followed her to Northumbria if she was so awful to them (c) why they **now** felt so unhappy as to raise a complaint (d) what differences exist between behaviour acceptable between Chinese PhD students and their "teacher" contrasted with British PhD students and supervisors . Later, Prof Woodward used an English idiom of "a line being crossed" between acceptable and unacceptable interaction and a real issue is whether that notional "line" is in a different place depending on the race of the students and supervisor. The claimant accepts the most serious allegations, if proved, would "cross the line" whether it was drawn according to English or Chinese cultural norms.

4.63. For the claimant's answer to the allegations to be accepted, she needed to be clear, concise and consistent. She needed to avoid putting forward arguments which appeared to be attack as method of defence (it rarely is, but never if the attack does not work) or a denial of everything if **something like** what the students alleged had elements of truth but had been exaggerated.

The Investigation Meeting Monday 17 December (Ms Henderson's note 312 -316)

4.64. Prof Wilson first addressed "inappropriate" relationships with students. He asked the claimant about the circumstances in which students had carried out unpaid work at her house. She said DC never did any gardening or decorating at all, only washed dishes after dinner. She then debated whether her gardener had shown ZW how to use some equipment and whether DC had cut some plants to use in her own house. She said ZW came to her house with his cousin and asked whether she had any work for them to do,and in a gap between leaving Bournemouth and coming to Northumbria, had helped her to clean a floor. ZW moved furniture for her twice but not done any gardening or decorating. On an occasion when DC had gone to her house to talk about her PhD and the claimant said she did not have time as she was getting ready for her holiday. DC said she would help and did some ironing for half an hour. As for ZW's claim he cut down trees for the CCTV view she had paid someone else to do the work but ZW showed the worker where to put the CCTV.

4.65. She accepted the students had accompanied her when she was house hunting 10 or 12 times, originally only DC who wanted to go, as she may soon be looking for a house, but when she went in the dark ZW offered to go in future. She denied she had asked DC to accompany her when buying underwear but did not deny shopping with her.

4.66. ZW had paid for a phone battery and she said she would repay him as she did not have any cash at the time. DC agreed to buy the Wi-Fi equipment in China which cost 200 Chinese Yuan, the claimant gave her 300 with DC giving her 100 back as well giving her face cream as a gift which she returned. Once or twice they had used Uber and DC had paid as the claimant does not have Uber on her phone. She sent DC a message saying "*if you are free today I will give you the money back*". She had meals out with the two students twice, once at lunch and once at dinner. They paid individually once and then DC said she would pay as it was her turn. The claimant had invited DC to eat at her house. She had invited other Chinese students but not other nationalities.

4.67 As for academic support, Prof Wilson's statement paragraphs 41-48 is, unlike the rest of it a little disjointed, which suggests he was following the notes of the claimant's unclear explanations. The main points were:

(a) the claimant had not **wanted** the students to transfer to Northumbria. Once there, she had approached another Chinese supervisor for DC who agreed to do it but then discovered their ideas did not match well. She then asked Dr Sharon Wilson but Jonathan Scott (in PGR) said she "*needed to press another button which is why Sharon had not received the annual progression to review*". No one had chased the claimant about it.

(b) progression paperwork was completed by the students but she did give comments and fully supported both. DC had told her ZW had paid someone to write his main findings chapter, which she did not report to the University as she had no evidence, just DC's word. She and Dr Li in October reviewed ZW's draft thesis. She thought ZW had not made sufficient progress and had asked him to redo some chapters but he did not submit his 4th draft by the end of November. She had raised concerns with Dr Li about possible cheating by ZW (this does not appear to have been taken back to Dr Li for comment)

(c) Bournemouth gave students funds for flights to China. ZW had gone at a different time to when he was supposed to and asked the claimant to sign his expenses. She asked for the boarding passes but he could not provide them and withdrew the form so he did not get a refund.

(d) She did direct DC to YouTube for a reading list (we explain why in the next paragraph). She was initially comparing elderly people data for Italy and China, changing to China only in November.

(e) She denied shouting at the students but accepted sometimes she raised her voice higher and should be more patient. She said they would not have transferred with her if they were frightened.

(f) She had phoned ZW's father because she wanted to clear her name. She denied asking for forgiveness. Her explanation to us was far better than the one she gave Prof Wilson.

4.68. When asked why she thought the students had made these allegations the claimant's answer wandered off point before saying they perhaps were unhappy because she had rejected their work and **did not help them in the way they wanted, as she had done before**. Only when EJ Garnon pressed the claimant did she say DC wanted her to tell her where to find material for her thesis, ie the type of support one would expect at Masters level. The claimant told her she would not, but pointed her to YouTube as a source she should explore herself. As Prof Wilson explained a PhD

thesis is an **original** contribution to existing knowledge so at PhD level students are expected to find sources for themselves. **This is a good example of something the claimant needed to explain clearly. When she did here, she did not need the interpreter.**

4.69. At the end of the meeting the claimant took £30 in cash from her bag and asked for it to be given to DC to recompense her. Prof Wilson refused to accept the money as he considered it to be inappropriate. The money was for the phone battery ZW had paid for and an Uber fare DC paid on 22 November which the claimant had not had the chance to repay and by this time she knew of the prohibition on her contacting the students. She also asked if it would be possible for her to resign if she was going to be dismissed. Prof Wilson said she should wait until the investigation concluded.

4.70. The claimant said to us, but not to Prof Wilson or Prof Woodward, the University's PGR code of practice (890-900) says the Pro-Vice Chancellor of the Faculty, Prof Wilson, or a nominee undertakes to provide a full supervision team on the advice of the Faculty PGR Committee. Prof Wilson explained the Committee makes a recommendation to him which he normally approves. She now attacks Prof Wilson personally for blaming her for his own omission to get DC a 2nd supervisor. This is an example of her wasting time on hopeless points when she had better ones to make.

4.71. The claimant alleges when she mentioned Chinese culture Prof Wilson **shouted** "*this is in the UK, not in China*". He denies shouting but accepts words like that were used when he asked her a question about her attitude to her PhD students and she answered in the context of the way Professors treat PhD students in China. He says he intervened saying "*please remember Professor Cang we are working in a British University here and work in accordance with British University Regulations and expectations*". He says she had been working at Bournemouth University, a reputable institution and accepted Professors have a responsibility to nurture students, yet claimed the very different kind of relationship the students had complained about was somehow acceptable because she and they were Chinese. He says "*The point wasn't convincing because the students felt that they had not been nurtured and supported by Professor Cang. They did not consider the way they were treated to be acceptable*" and *" My recollection from the investigation meeting on 17 December is Professor Cang did not understand why she was being questioned about the issues raised with her. Her view appeared to be that they were her students and it was therefore up to Professor Cang how she chose to treat them. Professor Cang consistently refused to acknowledge the students' complaints as being credible; she either denied their accusations or played down their real impact.* We cannot find the claimant saying what the students had described was acceptable anywhere. Her case now is clear there are **some** differences in the relationship students have with "teachers" in China, but acceptable ones had been exaggerated by both DC, and especially ZW, to such an extent they sounded like slavery. We also see why her explanations sounded evasive to Prof Wilson. When the interpreter translated some texts from ZW the first word was " *Teacher*" as a form of address to the claimant. There is a difference between the way a school teacher interacts with younger pupils and the way a University Professor would with mature students.

4.72. Ms Henderson also says Prof Wilson did not shout*. He adopted a firm tone on occasion but was not aggressive".* In our judgment he probably raised his voice because he was becoming frustrated He says he *"tried to encourage Professor Cang to focus on answering my questions as the purpose of the investigation meeting was for me to ask questions of Professor Cang so I could then establish whether or not there was a case to answer. I found that because Professor Cang was not providing cogent answers there were a number of questions I had to repeat. If I did interrupt Professor Cang, it was to seek greater clarity in her statements as* ***she tended to jump between different subjects when answering and I wanted to be clear about her answer to one point before moving on to another point****. I gave her plenty of opportunity to answer questions as I was*

keen to understand her position" On that point, we largely accept his evidence because it was how she behaved before us even with an interpreter.

4.73. The last question Prof Wilson asked was "Why did you phone ZW's father ***when told not to contact anyone in the suspension letter*** (she had not been told that) ***and then ask for forgiveness***". She clearly denied asking for foregiveness but admitted the call.

4.74. At the end of the meeting the claimant says when she asked to ask questions Prof Wilson lost his temper and shouted *'your time is finished, no time for you to ask the questions, I am going home* did not complete the meeting and had taken against the claimant for contacting ZW's father. Prof Wilson denies preventing the claimant from speaking or cutting the meeting short. He says the meeting ended when they had run through the questions, not because he wanted to 'go home'. Ms Henderson says "*After we had gone through all of the questions Professor Cang indicated she wanted to go through papers she had brought with her. Professor Wilson brought the meeting to an end at that point. He had given Professor Cang a fair opportunity to respond to his questions and she had an opportunity to produce documentation in advance of the meeting and had done so. It had been considered together with all of the points Professor Cang had raised".* On this point we accept Ms Henderson's evidence. Again, we accept he may have displayed some annoyance and ended the meeting abruptly , but did not shout.

4.75. Prof Wilson adds: "*Towards the end of the meeting Professor Cang offered to resign.* ***I believe she did so as a result of the difficulty she felt in refuting the evidence produced by the students."*** On that point we do not agree, she viewed Prof.Wilson's as reluctant to accept the students had exaggerated, and told us she thought resignation, with notice, was preferable to dismissal. Of course, she could have resigned anyway.

4.76. As for the language issue, Ms Henderson says **"***It was difficult to follow what Professor Cang was saying in the interview. She had papers all over the place and jumped from one point to another, not always answering Professor Wilson's questions. There was no indication she had any difficulty communicating in English or understanding the points being discussed. She was clear in what she intended to say but .. jumped from one point to another which meant it was difficult to follow the logic of the points she was making at times.* Prof Wilson adds "*She didn't always answer the question she was asked but that was because she seemed keen to address different issues to those I was asking her about, or in addition to, answering my question,"* and later *"There was no indication .. she had any issue with the way in which the meeting was conducted at the time or when she subsequently annotated the notes (363-367).*

4.77. The claimant says she addressed all the questions asked by Prof Wilson adequately. The claimant's way of answering questions, even with a translator's help at this hearing, was not in her best interests. She interrupted Ms Millns questions and started forceful answers before the question had finished. She talked over others including Dr Yu. Prof Wilson says at her interview, no issue was raised by her about her ability to speak, teach or write in English and there was ***no hint of any language*** difficulty on her part at that stage. We accept her ability to teach in her subject area does not confer full understanding or expressive skills outside it but at this hearing there was no sign her understanding of English was poor.When an uncommon English word was replaced by another she understood. When she answered questions at times her accent, combined with the layout of the room, was hard to understand. When we asked her to repeat, we understood her too.

4.78. What we have set out at 4.64 to 4.68 above makes her better points clearer because we have omitted the weak or irrelevant ones and been as concise as possible. Her approach internally and

here gave the initial appearance of trying to evade questions she did not want to answer and distract everyone from the truth, even where the truth did her no harm or even helped her.

4.79. After the meeting Prof Wilson decided there was a case to answer. Ms Henderson agreed and considered it to be particularly significant the claimant offered to pay the students, thus underlining the fact she had not paid the students despite claiming she had done so. She had not claimed that.

4.80. Ms Conroy received an email from ZW on 17 December 2018 forwarding an email sent by Sophie Wellington at the graduate school to both him and the claimant noting ZW was due to submit his thesis on 2 January 2019 but there were no examiners in place so the submission would not be possible. Ms Wellington asked for a Nomination of Examiners form to be submitted or an extension request if ZW did not plan to submit on 2 January. Ms Conroy spoke to the graduate school who agreed to extend the submission date by 6 months until they established ZW's situation (317).

Meetings with DC and ZW on 18 December 2018

4.81. Ms Henderson met again with the two students. Prof Wilson was unavailable but Ms Conroy attended and took notes (319-321). They met DC at 3pm and told her the claimant had said DC did not do anything at her house other than wash dishes and some ironing for half an hour. DC insisted she removed wallpaper in 4 rooms and put up new paper in one, with a student in Bournemouth and ZW, who also did other decorating work. She was not pressed for details of which house or when or the name of the other student. Without appearing to be disbelieving the students, Ms Henderson could have asked which rooms they decorated, did they paint walls woodwork or both, what colour and how long it took them. DC said she cleaned the claimant's old house **all day**,supervised workers and sent pictures to the claimant. DC claimed to have received messages from the claimant to go to the house. **No photos or messages have been drawn to our attention.**

4.82. When asked whether she had told the claimant ZW had his main findings chapter written by a third party DC forcefuly denied this. Ms Henderson told DC the claimant had said she had given DC 300 Yuan for the Wi-Fi equipment and DC gave her 100 back. Again, DC said no. 100 Yuan is about £10 Ms Henderson did not put to DC three WiFi extenders cost less than 200 Yuan (445-447) When asked about the face cream gift DC agreed she had bought her a face mask costing £30. DC accompanied her to buy underwear in June or July and took a picture in Marks & Spencer as her husband texted to ask where she was. **No such picture was drawn to our attention.**

4.83. Ms Henderson asked whether the claimant had contacted DC to repay DC for Uber/Metro fares. DC said the claimant sent a message saying "*I will pay you next time*" which she did not. DC said in Italy at a meal the claimant's husband ordered a £70 bottle of wine but DC's husband paid. Had this ever been put to the claimant she says photographs she has produced show her husband was not at that meal. DC denied **asking** to come to Northumbria insisting the claimant had said if she did not she would have no supervisors as her second supervisor, Dr Filimonau, was leaving. Dr Filimonau has signed a statement that he told DC "*I was looking for a job outside BU but would be prepared to stay her second supervisor regardless*" (433). An email from Denise George, Reasearch Administrator at Bournemouth, told DC "*These will be the last allowable changes under the Code of Practice and if the revised document is not seen as meeting the standard, then steps may be taken to withdraw you from the PhD programme*" The claimant thinks DC knew the Bournemouth team had realised the poor quality of her work. Bournemouth had many experts such as Dr Jae Yeon (229) who would be very qualified to supervise DC. This evidence was presented to Prof Wilson on 3 December 2018 by the email which said only *'please look at this'* (222). Again, we are explaining the claimant's case now better than she did at the time.

4.84. DC also rejected the claimant saying she only raised her voice to DC when she was late with a deadline. DC said she was never late in submitting and the claimant shouted at her in her office and then in DC's office in front of other students. **We have seen no statements from any other student to that effect.** When Ms Henderson asked about support previously, DC said during her Masters project which was only 3 months the claimant was a good supervisor and very professional which is why DC asked her to supervise her PhD. The situation changed for the PhD.**This fits with the claimant saying she supervised her project May to September 2014 and the claimant saying DC did not appreciate the different expectations of her at PhD level**.

4.85. Ms Henderson met ZW at about 3.30pm. She told him the claimant had said he only moved furniture twice at her house and did no gardening or decorating. ZW said he moved all the furniture in the "big house" with 14 rooms and employed the house moving company but they only moved the furniture door to door. He did the rest including cleaning the furniture, as instructed by the claimant, installing the furniture and in December moving it to a different position. He said two friends had helped in December but he did the furniture moving himself in March, May and August. ZW said he also removed all curtains and carpets and cleaned things so had dust and dirt all over his face. He helped the installer to install the CCTV which involved climbing ladders. When asked if ZW had attended the house with his cousin and asked if there was work to do, he said in December his cousin visited from China. As ZW was at the house and only had 3 hours to spend with his cousin he asked if his cousin could visit him at the house while he was working there.

4.86. When asked if he had told DC he had part of his thesis done by a third party ZW said he had not saying his thesis was available and he knew the anti-plagiarism policy. ZW denied that he had **offered** to accompany the claimant house hunting for her safety. He accepted he had not refused, but felt he could not say 'no' as his thesis depended on it. He denied asking to move to Newcastle saying *"It is impossible, she kept everything secret before she arranged to go to, she kept it secret. She invited us and we had no choice really like we have said before if we want to finish PhD*". This fits with the claimant's evidence she told her students in January. ZW claimed it was Dr Duncan Light his 2nd supervisor at Bournemouth who provided good support, he could not say the claimant was never helpful but the help she provided was very limited. Dr Light had already arranged a new supervision team (himself and Professor Adam Blake) (416). Both are experts in the field and would spot any academic misconduct. This aspect of ZW's evidence needed to be probed. If Dr Light was a good supervisor Prof Blake was an expert and the claimant was not helping but making him do chores, why did he follow her? Ms Henderson sensibly asked, as she had of DC, whether the claimant had helped ZW more previously then changed the level of support she provided. ZW questioned why she would provide good support in Bournemouth but not in Newcastle?

4.87. ZW mentioned the phone calls to his father and the upset this had caused as his father was concerned going against his Professor would damage his reputation in China because of the Chinese ideas about respecting tutors. This aspect of ZW's evidence needed to be probed. Had ZW spoken to his father? If so when, what was said and would his father provide a statement?

4.88. Ms Henderson met with Prof Wilson after the interviews with the students to tell him what they had said. They agreed there was a case to answer and she sent an email to the claimant on 20 December confirming that (383). The disciplinary policy (211) provides four possible outcomes, (a) no formal action (b) stage1 - requirement to improve, (c) stage 2- final warning and (d) stage 3 - termination of employment. The HR witnesses all said the investigation establishes whether a case exists for consideration at a formal disciplinary hearing **and** at what stage of seriousness it is to be treated. We agree there was a case to answer, but deciding an outcome based on written accounts after an investigation is not usual in many employers. In a situation where the claimant's future was at stake and there were two conflicting versions the disciplinary decision maker would normally form

his or her view based on himself assessing the rival witnesses as to which was the more likely. That never happened in this case and, we accept, normally does not at the University.

4.89. The management recommendation was summary dismissal for gross misconduct. Having explained we are deciding a direct discrimination, not an unfair dismissal case, we asked Ms Henderson and other witnesses to imagine a letter being received purporting to be from the mother of a British female PhD student saying she was having sexual relations with her British male supervisor but only because he had told her if she did not he would not give her the supervision she needed to get her PhD, what would happen? She confirmed the steps would be

Ask the student first what had happened ,but not the supervisor
Report to police if rape was a possibility
Suspend the supervisor
Appoint an investigator, normally the PVC of the Faculty
Investigator would see the student with a supporter to get her account
Investigator would see the supervisor
If he denied any sex or admitted it but said it was consensual, they would **try to** find corroboration
HR would see the student again, put the denials to her and take a note
Investigator and his HR support would decide, without waiting for any police action, whether to hold a disciplinary hearing and make a recommendation
Normally, the student would not be **challenged** on her account or called to the disciplinary hearing. **All this is exactly what happened to the claimant.** Whilst we accept this, we doubt the wisdom of the approach. The decision-maker at the disciplinary hearing would make a judgment about the credibility of the accused supervisor appearing in person, but not of the female student. The decision maker might believe the supervisor and prefer his credibility to hers. What would it do if she claimed that was sex discrimination, as she had not had a chance to demonstrate her own credibility to the decision-maker at any stage? It is easy to see that argument succeeding. It would not be necessary for the student and supervisor to confront each other at the disciplinary hearing to avoid that but only speaking to one is a major risk.

4.90. The summary notes of the meeting were sent to the claimant on 19 December (322). On **20 December** the claimant emailed **at 10.03 am** eight documents (53 pages) to Ms Henderson **copied to Prof Wilson** (325-377). She claimed some of ZW 's comments were untrue or an exaggeration, eg the office move took a maximum of 30 minutes. She accepted both accompanied her to house viewings. All work was on a voluntary basis. There were two documents setting out details of the background to her relationship with DC and ZW and she questioned why they had not made the allegations sooner, the nature of the power she was alleged to hold over them and why she would hold back their progress when this would reflect badly on her. **At 10.54** Prof Wilson emailed the claimant and Ms Henderson saying he **would** look at what she sent. In fact he already had. **At 11.01 am**, Prof Wilson emailed to Ms Henderson "*Having now been through this material, and considering the two interviews with the students, I am not convinced of the need to change our decision, namely, that a disciplinary hearing is necessary, with a recommendation to dismiss. Cang simply fails to contradict the students' principal case, that her relationship with them was inappropriate and created major psychological problems for both of them. At the very least, this requires a Disciplinary hearing*" (379). Prof Wilson took less than one hour to decide this .The claimant's originally assertion he had decided in 7 minutes was shown to be invalid when Ms Millns pointed out her first email was copied to him. Again a hopeless point took time and attention away from the good ones.

4.91. At **at 15.50 pm**, Ms Henderson emailed the claimant "*We have arranged a disciplinary hearing for **Monday 21 January at 2pm**. The hearing will be chaired by Professor John Woodward, FPVC*

for the Faculty of Engineering and Environment, supported by another HR Manager" (383). Ms Henderson confirmed the claimant would be sent the full set of papers at least 7 days before and could be accompanied by a union representative or work colleague. The claimant's suspension was extended to 4 January as Ms Lee wanted to try and rearrange the hearing to take place sooner. It was extended again on 3 January until 21 January 2019 when it became apparent it could not be (387). At this point DC and ZW had been told what the claimant said and given a chance to comment. Their comments had not yet been relayed to the claimant.

4.92. Prof Wilson's prepared a statement of case with Ms Henderson's assistance, in advance of the Disciplinary Hearing (391-393).It is one sided saying (i) the students gave detailed descriptions of work they had carried out for the claimant totally unrelated to their studies (ii) they felt threatened in the sense they believed a refusal to undertake the chores would have interfered with their progress as PhD students (iii) there was "evidence" the claimant had asked the students to purchase items for her then failed to reimburse them (iv) they had incurred costs that had not been refunded(v) they said she had shouted at them, including in public (vi) she relied on Chinese students to work for her and treated them differently to other students. On the question of academic support(i) she had told the students there would be a lack of supervision at Bournemouth to persuade them to transfer (ii) months after the transfer DC still did not have a second supervisor while ZW had only been seen by his second supervisor once (iii) she did not arrange progress review meetings as expected, (iv) she failed to provide comments on ZW's latest draft of his thesis because she was working from a previous one (v) both students were behind in their studies ,ZW now five years into his PhD was still nowhere near completion (vi) she provided very limited feedback on their work to date, failing to develop them towards submission of an acceptable thesis.

4.93. Prof Wilson wrote the claimant's explanation appeared to centre on her accusation ZW had cheated on the analysis section of his thesis. ZW had denied this and Prof Wilson could find no evidence to substantiate the claimant's view. We cannot find he ever looked or asked someone who understood the subject area to do so. Prof Wilson explained any student submitting a thesis does so electronically using a programme called "*Turn It In*", which we have come across before. It checks for a "match" between the submitted thesis and a database of previously submitted works on a topic. If the author makes enough changes to the wording of the thesis from which he is copying, while retaining its meaning, any match may escape detection. Someone who understands the subject has a higher chance of detecting plagiarism as subtle changes by the author are more likely to be spotted. Prof Wilson added the claimant, whilst suspended, had contacted ZW's father in an attempt to get the case against her dropped which had caused ZW more distress. **No corroboration of this was ever sought from the father.**

4.94. Prof Wilson acknowledged in the statement of case an element of 'he said/she said' to some of allegations but says he held " *a genuine belief, based on the evidence, Professor Cang had acted completely inappropriately in her relationship with these two students and unprofessionally in her support of them as their PhD supervisor. Her behaviour has had a detrimental effect on the wellbeing of the students, affected their studies and potentially impacted the reputation of the University. It is recommended this case be heard under Stage 3 of the Disciplinary Procedure and tha Professor Cang be dismissed ffrom the University on the grouns of gross misconduct.*"

4.95. **The issue is why he held such beliefs. We find the answer is entirely his assessment of the apparent sincerity of ZW and DC and the claimant's apparently evasive replies. All those involved were Chinese. Race played no part in the choice. Neither did a stereotypical assumption this "sort of thing" happens in China. We will return to two possibilities (a) a bias towards protecting students rather than staff and (b) fear of what Dr Liu may do next impacting on the University's reputation. Neither are unlawful under the EqA.**

The Disciplinary Stage

4.96. Professor of Physical Geography, John Woodward, then Acting now permanent, Faculty Pro Vice-Chancellor for Engineering and Environment joined the University in 2003. He was at the same level of seniority as Prof Wilson. He had no connection with the claimant. He was appointed to hear the disciplinary. Molly Bridge, Human Resources Manager who provided support to him had been employed for 6 years and has over 20 years' experience in HR. She collated and sent to the claimant on Thursday **10 January 2019** documents (388-394) including the management statement of case, notes of the meeting with ZW and DC on 29 November and 10 December, the work list and PPT provided by ZW, notes of the meeting with Dr Li on 10 December, the interview with the claimant on 17 December and notes of the meetings with DC and ZW on 18 December The letter noted the allegations and the recommendation for dismissal but there may be other outcomes depending on the information presented at the hearing. The process was explained to the claimant and she was informed she could call witnesses or provide relevant additional information.

4.97. The claimant only accessed her personal email on 14th on 15th (405) so had less than a week to prepare and would spend a day travelling from Bournemouth. Ms Bridge had stated, "*It is important that I highlight that the hearing will go ahead in your absence if you choose not to attend* ***or you do not provide a valid reason why you are unable to attend on 21 January*****."** (389) . The claimant had a GP medical note (400) saying she was "*not fit for work*" from 15-28 Janaury but she did not provide it.

4.98.1. On 15 January at 13.44 she wrote *"Although my* ***health from physical and mental is very poor at moment****, I am planning to attend on the 21 hearing."* (405) . She asked for a copy of the letter of complaint from the parent and report to the police then requested "*Due to my* ***health situation****, is it possible for my husband coming along with me for the hearing?*" (405). Ms Bridge responded the investigation was not based on the letter but on the information provided by the students and the report to the police was by phone. On the first point , we find the University's stance was nothing to do with race,but was not fair, as the letter may have shown inconsistencies which would help the claimant's case, she should have seen it. The University's witnesses did not say data protection or the confidentiality of Dr Liu was the reason, though that probably played a part. Of course, Dr Liu could have been asked for her consent, but was never contacted.

4.98.2. On the question of accompaniment Ms Bridge said her husband could attend the University but not come in to the hearing, she could be accompanied by a trade union representative or work colleague. The Disciplinary Procedure states, "*In discussions on staff management problems a staff member has the right to be accompanied by the representative of a* ***recognised*** *trade union or a* ***friend***". All the HR witnesses said the University's practice is to read "friend" as "work colleague" and never a family member. We find, as did the Appeal Panel, this procedure needs re-wording. There is no need for a union to be recognised to enable its representative to attend and no way the word "friend" can bear the meaning given to it by the University. That said, her request was to bring Dr Yu was due to her health, **not** needing help due to Chinese being her main language, or, **at this point,** not knowing a Northumbria work colleague who would be prepared to come.

4.99. On **16 January** Prof Woodward wrote to Ms Bridge "*I have a grant to submit by 12 noon on Monday so yes I would like to meet, but it will have to be after grant submission and before the hearing. I flagged that it might be difficult for me to Chair this panel at the time and seem to remember being assured that the panel would most likely not happen,..... oh well. Can you do 12 noon on Monday?*" (401)**.** Ms Bridge and Prof Woodward needed to speak as it was his first disciplinary hearing for a staff member. They spoke by phone on 18 January and met on 21 January to go through the management statement of case and all available documentation to see if there were any particular questions he wanted to ask. Prof Woodward went through the procedure to

make sure he conducted the hearing correctly. Considering what was at stake, this was all very rushed. There is a possible reason for that, which Dr Yu did not put to any witness and would not have been a proper question for us to ask, that if dismissal happened before 31 January the claimant would have to repay her relocation allowance. Whatever the reason, we accept it was in no sense related to race.

4.100.1. In an email sent at 8.44 on 17 January, the claimant wrote to Ms Bridge

"*Can you also send me the hearing procedure document or guidance for me preparing hearing? How long will the hearing take?* "*Will I be given enough time to make my statement, ask my questions and address the questions*?" … *Since I joined UCU in a short time, UCU will not send a representative, and I am new at NU and it is difficult to have a work colleague with me. In this case, is there is any other person you can recommend for me to come hearing with me. I felt very stressed and not comfortable during the last meeting with Professor John Wilson" (404).* **Prof Wilson told us he could have recommended one of the many Manderin speaking staff members at the University**, the obvious one being Dr Li .

4.100.2. Ms Bridge did not recommend anyone but requested details of anything the claimant would be relying on by 10am on Friday 18 January 2019 (406). We accept her acts or omissions were in no sense related to race. The HR officers all said the University expects academic staff accused of wrongdoing, who are not Union members, to look after their own interests, that was standard practice. Ms Millns concedes the disciplinary policy's wording could be clearer and accepts the claimant did not have identical support to ZW and DC in terms of Ms Conroy's assistance, but was pointed in the direction of the Employee Assistance Programme (EAP). The claimant's evidence in cross examination was she did not want outside help but help from HR. That would never happen. HR's function is to advise the employer not support the employee. She was treated no differently to any other employee facing the disciplinary charges without union membership.

4.100.3 At the end of our hearing on 8 September 2021, cross examination of the claimant had not finished because she persisted in not answering the questions she was being asked. We were not due to sit on 9 September and Prof Wathey was under witness order to attend on 10 September in the afternoon. EJ Garnon explained to Dr Yu and the claimant no professional advocate would call a witness from who had not provided a written statement because it could not be predicted what the witness may say, and if it did the claimant's case harm, Dr Yu could not challenge his own witness. Dr Yu disregarded this advice and called him anyway. When EJ Garnon put it to Prof Wathey the University seemed to expect academic staff accused of wrongdoing, who are not Union members, to look after their own interests, he confirmed that was so. The Chief Executive was confirming the universal application of the policy, not justifying it. That is all that is needed to rebut that part of her direct discrimination claim.

4.101. On 18 January the claimant emailed a response to the students' allegations and her annotated version of the management statement of case (407-414). She sent a further five emails each with appendices (415-457) including statements from the other Chinese PhD student (437) and Chinese visiting students . Ms Bridge forwarded it all to Prof Wilson and Ms Henderson. Prof Wilson confirmed he would have time to consider it. Prof Woodward had less time.

4.102. The hearing stated at 2 pm with the claimant attending alone. Ms Bridge kept notes (466-478). Ms Henderson attended to support Prof Wilson but only spoke once to confirm a very minor point. We appreciate the claimant must have felt outnumbered with four management people present, but that is what happens to everyone who is not a union member and has no work colleague with her. Ms Henderson says the claimant was again disorganised and the way she

responded to questions unstructured. Her focus shifted in a way that made her thought process difficult to follow. She accepted she would not have treated a non-Chinese student in the way in treated DC and ZW. Ms Henderson says"*To me this illustrated Professor Cang was aware her treatment of the Chinese students would not have been considered to be acceptable in the UK. She felt she was able to behave in an unacceptable manner towards the Chinese students because they were Chinese*". We accept that is her genuine view, but, as the claimant probably meant she treated them better, we do not agree. Ms Henderson was making no decision at all so her private view, which we accept was not because of race, subjected the claimant to no detriment.

4.103. Prof Wilson summarised the management case, saying he was doing so "*with a heavy heart*" as he had been a member of the panel which had appointed the claimant. He said the two Chinese students had been visibly distressed when he had met them, clearly had a dependant relationship with the claimant, felt threatened and had to do work for her otherwise their PhD studies would have been affected. He described the number of hours they had worked as *'quite incredible'*. They had been required to purchase IT equipment which she had not reimbursed fully as she recognised when she had tried to give him money to pass on to the students. She had contacted the father of ZW, and made *strenuous* efforts to get the allegations withdrawn despite Ms Lee, HR Manager, having instructed her not to contact anyone in relation to the case. **Some of this was wrong, the rest was what DC and ZW had said**.

4.104. He added there was a "***hierarchical dependency***" and ***"unhealthy relationship"*** between the claimant and the students who felt they had to follow her to Northumbria or their progress was in jeopardy. She did not find a 2nd supervisor for DC and ZW only had one meeting with his. The students were clearly unhappy about the advice she provided on their theses. That they felt the need to go to this level of complaint "***is testament to"*** how effected they had been. He added there had been an unprofessional relationship to the detriment of the students which had affected their studies and impacted on the reputation of the University. Prof Woodward asked whether there was mention of any PhD students transferring with the claimant to Northumbria and Prof Wilson confirmed (i) she had asked if she could bring the two students after her interview, (ii) she had not received additional training on how to supervise PhD students, in recognition of her considerable experience. The reason we have emboldened some phrases is they are good examples of words and phrases which a non native English speaker may not understand. The claimant gave others in her submissions mostly of Prof Woodward eg "reprimanded"; "jeopardy"; "digressing"; "elapse"; "gist"; "to discredit", but all she needed to say at the time was " *I don't understand that word*".

4.105. Prof Wilson confirmed in the Faculty of Business and Law he would expect a PhD submission in 3 to 5 years and annual progression reports. He checked during a break that Dr Steve Patterson the department PGR Lead had contacted the claimant requesting she nominate a 2nd supervisor in **May 2018**. This was before DC or ZW had arrived at Northumbria and, as the claimant said, she had not been reminded.

4.106. Prof Wilson said he was still puzzled as to why the students had made the complaint and the claimant appeared to have no cogent explanation for this at the time. When given an opportunity to ask Prof Wilson questions the claimant made statements. There was a lot of discussion about Ms Lee and the meeting with the police The claimant was preoccupied with the error in her suspension letter. As EJ Garnon told her here, taking bad points only deflects attention from good ones, and wastes time which could be used better.

4.107. The Agresso system used at the University allows students and supervisors to see and record meetings regarding PhD students, of which there should be about 10 with at least one

supervisor and 2 with the full supervision team every year. The student completes a report which the Principal Supervisor signs off to confirm the student's record is accurate and add any comments. There were no Agresso reports, timing of meetings or second supervisor details in the case documentation. Prof Woodward says he would have expected a Professor moving to another University to read the PGR Regulations which are often similar to other universities but sometimes differ on details (890 -900). When Prof Wilson said ZW had only met with Dr Li once, three months after he had arrived, the claimant pointed out that was wrong there were two meetings, one in July and one in October. Prof Wilson said it was very unusual in the Faculty of Business and Law for a 2nd supervisor not to be appointed. The claimant said she did not know whether the Faculty nominated 2nd supervisors, or she did, she had spoken to the graduate school who did not respond. She chased as DC asked for feedback (this fits with DC's own statement) and was going to nominate *'the young lecturer'*. It should be noted a 2nd supervisor may be physically based at another University but continue to supervise remotely as Dr Filimonau offered to do for DC. Prof Woodward spent four paragraphs of his statement on these topics which are not remotely of the same seriousness as the allegations of exploiting two students. He appeared to us more comfortable with hard fact as contrasted with "impressions" of credibility.

4.108. Prof Woodward invited the claimant to respond to the management case. She said in relation to allegation 1 she felt those investigating had only listened to one side of the story , and that side was not true. She wanted to address the points in turn ("*we go down one by one*"). She insisted the students were not asked to do housework but washed dishes and DC did ironing for only half an hour. She denied the students did any gardening but DC came to her garden for special Chinese herbs. They both wanted to go to the John Lewis sale and DC bought some cashmere. When the CCTV was not working she needed to email the Chinese company which was difficult for her and the email was sent on her behalf by ZW. Prof Woodward asked at this point whether her issue was there were "small inconsistencies" in the student comments or whether she had not asked the students to do any of what they claimed. Her answer was ***'No. I never ask'***. She said she had many other Chinese students who, if they went to her house would ask what they could do for her. ZW and his cousin just turned up at her house. Prof Woodward felt she was again pointing out inconsistencies and so he asked again if the lack of consistency was the issue for her. She replied it was **not true and was not consistent**. We find that a sensible reply. Enough inconsistency can undermine the credibility of an entire set of allegations. The claimant's error of judgment was jump from one point to another. We repeat our recital of her answers to allegations puts her case more clearly and concisely than she ever did in the internal meetings or in her statement here.

4.109. The claimant said after the move to Newcastle ZW only went to her house once in August to show where workman where to install CCTV. She claimed she provided what she described as a 'social environment' for the students and they played Mahjong. The claimant became distressed and Prof Woodward adjourned the hearing. **Why would she become distressed? We think out of frustration at Prof Woodward not seeing the Chinese cultural tendancy to offer help and reciprocal favours. She was not being evasive, but doubtless appeared so, because, as she did here, she avoided direct questions.** As Ms Millns says in her submissions a credible witness typically gives straightforward answers to straightforward questions and actually answers the question posed. The claimant on many occasions, despite having a Mandarin interpreter available here, answered questions with "*the question is…*" being her attempt to direct the answer to the question she wanted to answer, rather than the one being asked. This was not because of any lack of understanding of language rather her wanting to say what she thought was important, which mainly related to what she felt had been unfair in her treatment. Whatever the race of a witness the impression that creates is of her trying to avoid the truth and the real issues.

4.110. Ms Bridge also says it was difficult to get clear answers to direct questions. There was a lot of repetition and statements that did not relate to the questions asked. Only when a question was asked a number of times did the claimant focus more on answering it. In the break she and Prof Woodward decided he would ask again the questions that had not been answered, specifying he needed clear and coherent answers so they could capture them for the record. The claimant continued as before despite indicating she understood the questions.

4.111. The claimant made some good points eg if the two students were forced why were other Chinese students not? ZW had a friend with a good removal company and when she had to move she asked if his friend could help and he could show the friend where the furniture should be located, not move it himself. Prof Woodward asked about her asking these students to do things she would not ask other students to do. She said ZW was sociable and knew many people. He asked whether she thought this was appropriate and she said she did not think it was inappropriate as it reflected Chinese culture. She insisted she paid all of the money for the move. Her position was the majority of what was in the student's statements was untrue or exaggerated.

4.112. Prof Woodward asked about house viewings in Newcastle. The claimant said she sometimes went on her own but other times ZW and DC went with her. He asked if she thought this was appropriate and she said she thought it was OK. If she thought it was not allowed she would not have done it. She referred to a shopping trip with DC who she said had similar taste to her. She did not read the University regulations as saying teachers are not allowed socialise with students. Prof Woodward says it was important he got a clear answer to the points about students buying things for her and whether the claimant thought this was appropriate. She gave a cogent explanation about the Wi-Fi extensions. Prof Woodward asked why she offered to give Prof Wilson some money if she had paid the students back? She said it was for the phone battery and she had "just borrowed" the money because the shop did not accept cards. She explained this far better here, the shop was small and only took cash, which she did not have with her.

4.113. He had asked a question about what was "*appropriate*" several times. He accepted the word involves a value judgment. It became clear to us Prof Woodward has values which err very much on the side of caution as to what degree of familiarity is acceptable in the UK even with mature PhD students. What the claimant accepted she had done may be more usual in China than the UK, but is not gross misconduct. If **everything** the students alleged was true it would be gross misconduct in any part of the world and the claimant does not say otherwise. The student's version is the one Prof Woodward accepted because, on paper, it read well and consistently while her explanations were, using his word, "chaotic". He made no stereotypical assumptions.

4.114. Prof Woodward asked the claimant whether she thought contacting ZW's father was appropriate. She said it was the first time she had been suspended and wanted to find evidence to clear her name, having recalled ZW said he had discussed the move from Bournemouth with his father. She did so before receiving the letter said she should not. She knew where he worked and they told her his phone number. **That is all true**. Prof Woodward says she rang "*to ask for the case to be dropped*". When EJ Garnon put to him that version only came from Dr Liu via ZW, he said for any staff member at the University to contact a parent was wrong whatever was said. He explained, and we accept, reasons include confidentiality and a University not being in a position of a parent as a school is to young pupils. If that is the standard applied, it was not the "charge" put to the claimant and, unless she had been told not to, comes nowhere close to gross misconduct.

4.115. Prof Woodward moved on to the question of student supervision and asked the claimant whether she thought she had supervised the students appropriately. She claimed she was always a

good supervisor and believed the situation had arisen because she maintains a high standard. He said the students' Agresso reports and annual appraisals were not up to date. The claimant said the other supervisor had similar comments to her and it was perfectly OK. She again had not responded to his question so he asked again. She accepted there was a delay on the annual appraisal but supervisions were clear with very clear tasks, ZW's supervision team was perfect, she had found someone for DC but no one had chased her from the graduate school. Again, the claimant's failure to use Northumbria's methods, not having been trained in them, is not gross misconduct.

4.116. Prof Woodward asked the claimant why she felt the students had orchestrated an attempt to discredit her. She claimed not to believe what was happening. She thought for DC it was perhaps because she had told her the language in her thesis was Masters level not PhD. She said she treated DC like a daughter. She thought ZW may have found she was too strict on him. Prof Woodward noted relationships with friends and children are different to treating the students as students. The claimant insisted there was an overlap: on an academic level she treated them like students but in other things as friends, He pressed her on what was appropriate for a Professor, and she said she treated them right, tried to support them but applied a very high academic standard.

4.117. Prof Wilson asked her why the students were so unhappy, a very relevant question. The claimant initially could not say but then indicated they may not really be unhappy but have a motive to act unhappy in the form of wanting to change their supervisor. She claimed the students had collaborated and were mostly lying. Such a serious counter allegation would mean two students she claimed to have treated well had conspired to make potentially career ending allegations against her. That would require to be supported by evidence if it was to be believed. She did not know why the students made the allegations but says ***the University needed to find the answer***. Prof Wilson asked about her shouting at the students in public. She claimed her voice is loud and a little bit high. There is no evidence from anyone apart from DC and ZW of her doing so. Lastly, Prof Wilson questioned how many reminders she needed as a professor of 20 years standing, **which she is not,** appoint a second supervisor**.** She said 'not many'. Her explanation a delay of 5 months was she found someone who was unsuitable and was going to approach someone else.

4.118. The hearing was adjourned at 16.05, and Prof Woodward consulted Ms Bridge. When we asked Prof Woodward why he did not speak himself to ZW and DC he said they had already been seen three times and given consistent versions and it may seem oppressive for them to be seen again. In unfair dismissal an employer does not have to prove, even on a balance of probabilities, the misconduct it believes took place actually did. It simply has to show a genuine belief. The Tribunal must then determine whether it had reasonable grounds for that belief and conducted as much investigation as was reasonable British Home Stores-v-Burchell. Khanum-v-Mid Glamorgan Area Health Authority held three basic requirements have to be complied with during an disciplinary process first, the person should know the nature of the accusation; second, she should be given an opportunity to state her case; and third, the decision maker(s)should act in good faith. Dr Yu did not ask what Ms Bridge advised but as an experienced HR officer it was probably along those lines. The plain fact is the claimant had **been given an opportunity to state her case, but done so badly.** Prof Woodward had to make a choice whether to believe the more serious allegations the Chinese students had made or the denials of the Chinese claimant. He chose the former. They **reconvened at 16.20**, so he reached his decision in 15 minutes. He said *"I can make a judgment on allegation 1 but can't on allegation 2 as I need to get some further information from the graduate school including the Agresso reports" (477), "So you understand what will happen next?"* The claimant did not understand. She thought Allegation 1 was not upheld since it was enough to dismiss so why seek further information from the graduate school, including the Agresso reports. He said he would write to the claimant with an outcome in 5 working days and in the

meantime recommend her suspension be extended for a further week. He says he could tell the claimant was upset and asked whether she had any questions. She insisted she was innocent, needed to improve but should not be dismissed.

4.119. Ms Bridge says Prof Woodward was clear during the hearing there was nothing wrong with celebrating Chinese culture or having Chinese meals with the students but elements of her relationship with the students amounted to unacceptable behaviour such as taking them on viewings for properties, having them purchase items for her without reimbursing them, and getting them to do domestic chores for her. There was also a concern about the standard of supervision. Ms Bridge received an email on 22 January from the claimant emphasising she phoned ZW's father once before receiving Ms Lee's email of 4 December 2018 and an email from Tim Baxter, Graduate School Manager on 22 January saying he had supervision records from June to October 2018 that appeared to have been completed by the student and supervisor (482).

4.120. Prof Woodward decided the claimant should be dismissed on the grounds of gross misconduct, for reasons set out in a letter (485-487) drafted by Ms Bridge amended and approved by him. In summary on the allegation of inappropriate relationships with students whilst there were some areas of inconsistency in the detail of the time the claimant, DC and ZW spent together, the students undertook tasks at her request frequently and over an extended period of time, for which no payment was made and which were not related to their PhD studies; they felt obligated to do them because of her position as their Professor and PhD supervisor; when asked if she thought it was appropriate she gave different answers including it was Chinese culture, she treated them as if they were her children, and they were adults who chose to do what they did; it remained unclear whether she thought it was appropriate behaviour and her view of what her relationship should be. We accept that was his genuine view formed without making any stereotypical assumptions.

4.121. Prof Woodward says answers the claimant gave were unstructured and unclear as to what she considered appropriate for someone in her position. He believes this was not because of any lack of understanding on her part. She had no difficulty communicating in English and understood the questions. We agree, but any person with perfect English but imperfect understanding of **his view** of what was " appropriate " may well give unclear answers. His statement reads: *It was clear to me that Professor Cang's relationship with the two students was not in line with the standard and behaviour expected of a Professor at Northumbria University. I believe that many aspects Professor Cang's behaviour fell short of the standards laid out in the University Code of Conduct [the relevant version of which is included as pages 1032 to 1039 of the bundle] in that: (i) Professor Cang failed to treat the students with appropriate dignity and respect (ii) that her behaviour was inappropriate with the conduct adversely affecting the students; (iii) that she failed in her professional and ethical responsibility to protect the interests of our students, (iv) that her relationships with them failed to engender trust, confidence and equal treatment; and that (v) Professor Cang failed to create an environment that is free from discrimination, bullying and harassment. It was also clear that the hierarchical and dependent relationship had had a negative impact on the student's studies and their wellbeing. I therefore upheld the first allegation.*

4.122. In his decision letter on the allegation of failure to provide appropriate academic support he said Agresso and progression reports for DC and ZW (488-528 and 183-190) showed despite the claimant undertaking supervisor training at Northumbria University **(which she had not)** and having experience of student supervision **(which she had)** there were incomplete and unsatisfactory components, including ZW being significantly behind schedule for his PhD. The claimant had indicated she intended to check the second part of his work only at the final revision stage of the thesis, which is unprofessional as students' work should be read and commented upon on monthly

during the writing of the thesis. DC did not have a second supervisor in breach of the PhD regulations which potentially enhances the vulnerability of a student to a controlling relationship with her 1st supervisor. He found **evidence** of loud and aggressive shouting at the students in public in front of other students, although she denied it stating she had a loud voice but was not shouting. **He does not say who the "evidence" was from other than the students themselves.**

4.123. He found "in mitigation" e-vision records suggested meetings had occurred, although they were often short on detail. ZW stated he had falsified the records at the claimant request when they had not in fact met, there was no corroboration of this but the fact ZW had put himself into a difficult position by admitting to falsifying records carried some weight. (We cannot see why if ZW was seeking to blame the claimant for his own shortcomings). He accepted the faculty PGR Programme Leader and Programme Director should have intervened earlier but the claimant's supervision of ZW and DC was not in line with professional standards expected of a Professor at Northumbria University so he concluded the second allegation should only be partly upheld.

4.124. In his decision letter he made the point the claimant responses to questions during the disciplinary hearing were not always clear and she did not coherently answer his questions. Where it had not been possible to gain clarity he had relied on the management statement of case, her written response and appendices, and additional information he had requested after the hearing. As a result he accepted the recommendation the claimant be dismissed for gross misconduct.

4.125. We accept Ms Bridge's evidence the procedure which was followed was the same as in all disciplinary matters. She has been involved in other cases involving student complaints against academic staff in which the same procedure was followed and says "*This involves **first of all student welfare**, and then, if there is some merit in it, an investigation process followed by a disciplinary hearing as has happened here. I have been involved in such cases involving allegations against male, white English academics where the same process has been followed. Professor Cang was not treated any differently to the way in which others who are not of her racial origin were treated in similar circumstances*." She emailed the outcome letter in its final form to the claimant on 28 January 2019 (484) drawing attention to the University's Employee Assistance Programme she could utilise for support at what she appreciated was a difficult time for her. She omitted to send the appeals procedure with the outcome letter but sent it on 1 February (543- 548).

4.126. On 28 January 2019 the claimant says Prof Wilson thanked Ms Bridge and Prof Woodward for their help and support in achieving his desired result (300) and said, "*Fingers crossed there is no appeal and we can all move on*" (533). Her putting together two unrelated emails sent weeks apart is misleading and wrong. The latter thanked them for how they had run the hearing, not its result.

4.127. On **29 January 2019** the Police decided **no action would be taken**(536). The claimant complains the University had not talked to her before her arrest. This is a hopeless point. Because of the gravity of the matters raised, the respondent was duty bound to report the allegations to the Police who arrested the claimant on 30 November 2018 on suspicion of modern day slavery and bribery. To make an arrest they must have had "reasonable suspicion". No properly run employer would contemplate dealing with the allegations internally as the claimant wanted. If the University accepted her version as opposed to that of the students in that way, it would be likely they would say it was a "cover up" and the academic profession "sticking up for each other".

4.128. The claimant says she had evidence in her university email account which is no longer accessible having been deleted from the system. We do not understand why it deleted her email account before this hearing but accept it did. On 29 January 2019 Ms Bridge received an email from her seeking a copy of Dr Liu's complaint letter, access to emails, and minutes of the hearing on

21 January 2019. The following day she sent the notes of the hearing and an extract of Dr Liu's letter saying it would be inappropriate to share the whole letter. She asked which emails were requested as she could not send all emails but could provide particular ones or, as an alternative, the claimant could come to the University to identify them. We find this a wholly reasonable reply.

4.129. On 30 January 2019 at 10.35 am, Ms Henderson emailed DC and ZW "*just wanted to advise you that Professor Cang has left the university this month. I would not expect her to contact you or your family in future, however if she does please can you let me know*" (541) Ms Henderson received an email from ZW on 4 February 2019 saying he had been informed by the University whilst on holiday he had been sent a letter from the claimant (551-552). DC contacted her saying she had received a letter including a £10 note for a taxi fare on 22 November 2018. DC said she was owed far more than £10 and if the claimant was intending to apologise DC could not *'feel the sincerity'*(652-655). Prof Woodward says this is an example of her *confirming the narrative provided by the students is accurate and of her failing to recognise the inappropriateness of her actions.* It is not, she had always accepted she owed that money but until her dismissal she was forbidden from contacting DC to repay it. Ms Henderson passed the emails to Ms Bridge. She adds the claimant had not sent a fit note saying she was not fit to proceed with the hearing. Whilst she was clearly upset she participated fully and there was no suggestion at the time she was unfit to do so.

4.130. The claimant says she had asked the respondent repeatedly "*What are their (students) motivations and interests*?" It had interviewed them 3 times but "*their motives and interests were unknown until **21 January 2021***". She now says ZW obtained his PhD using a thesis produced by academic misconduct which she raised on **26 January 2021** (S125-127). Prof George Marston, PVC in Research and Innovation, on 9 April 2021 emailed "*We continue to investigate the allegations you have made against ZW* " and "*I note the allegations made about Professor Wilson; the University will follow up these allegations using its internal procedures as appropriate*" (S177). The two investigations are still ongoing according to the most recent communication on 4 August 2021 (S185). The latter is not true. Ms Johnson asked Ms Henderson after the appeal if Prof Wilson had behaved as the claimant alleged, she said he had not, so the allegation was taken no further. Ms Henderson would say that. There could be a reason other than supporting her employer for saying something which was not true, but there is nowhere close to enough evidence to infer the difference between Prof Wilson's and the claimant's race played any part at all.

4.131. The ET1 **presemted on 5 May 2019** says the motivation of ZW is"…*his PhD's main finding chapter was done by a third party and the changing faking data (DC told me and I asked the evidence to report the University, DC said to me no evidence, she denied when the management asked her this question.* ***This led me to keep eye on ZW's main finding chapter and led to an inconsistency result which I had picked up when he re-did the main finding chapter. He might well have been worried he may not escape my eye and therefore made his complaint in advance***." If the claimant believed this then, she must have formed that view when she was actively supervising ZW. She should have said so at the disciplinary hearing.

4.132. One of her claims is "*on or after 8 February 2019 the Respondent failed to investigate Prof Wilson's behaviour at the meeting on 17 December 2018. The Governors refused to conduct a basic investigation into it*." She did not raise it with Prof Woodward and her appeal letter was not clear on the point. In her closing submissions she says "*One significant difference between me and the comparator (Prof Wilson) is the protected characteristic of race. So, it logically follows that a person who is not Chinese would not be treated the same way as me*." She cites Bahl but ignores what it says at para 94 and ignores section 23 EqA.There is a major difference in circumstance . The students' allegations were from two of them, with some, albeit inconclusive, corroboration and a partial admission of some events by the claimant. Her allegation against Prof Wilson was denied by

him and the only other witness. Ms Johnson's decision to take it no further was a simple recognition of the extremely slim chance of it being proved.

4.133. In so far as her complaint is of delay in investigating her allegations, as to those against ZW the case of Chief Constable of West Yorkshire-v-Khan , a claim of victimisation in which, as in direct discrimination one is looking for the "reason why" someone acted in a certain way, may, by analogy, relevant. In that case a police officer having accused the respondent of race discrimination applied for a job in another police force and the respondent refused to give any reference, good or bad. A closely comparable situation arose in Cornelius-v-University College of Swansea 1987 IRLR 141 of steps taken by employers to preserve its position pending the outcome of proceedings not to investigate a grievance the claimant had raised .

4.134. In Khan Lord Nicholls said *"Employers.. ought to be able to take steps to preserve their position in pending discrimination proceedings without laying themselves open to a charge of victimisation.. .. An employer who conducts himself in this way is not doing so because of the fact the complainant has brought discrimination proceedings. He is doing so because, currently and temporarily, he needs to take steps to preserve his position in the outstanding proceedings. …*

4.135. We accept the University has been slow to investigate ZW, maybe because they wanted this case over with first. It strengthens the University's case the claimant is saying now things she expected them to guess or discover at the time. However, it weakens the University's case that ZW's credibility was preferred to the claimant's **because** he fabricated supervision records, and thereby put himself in some jeopardy. The University has not, in eight months, answered the precise and detailed concerns raised by the claimant his PhD is based on academic misconduct that would invalidate it. **If, and we stress if,** the claimant is right, this would damage the reputation of the University and avoidable delay would only add to reputational damage, as ZW is able to rely on that PhD to compete for jobs. However, being slow to investigate ZW's alleged academic misconduct is not because of race, as both he and the claimant are Chinese, but may be because the University wishes to remain "neutral" for now.

The Appeal Stage

4.136. The claimant appealed on 8 February. **Louise Johnson,** Head of HR Business Services at the time, became involved at the appeal stage. She obtained the governors availability,that of Prof Woodward, Ms Bridge and Jay Wilson, the Head of Legal. A hearing was scheduled for 8 April 2019 and a hold placed on requests for the claimant to repay her relocation allowance. The appeal comprised a letter and list of 94 appendices (554-565) and the claimant sent a further 5 emails with numerous attachments. Hence it took weeks rather than 5 days for Prof Woodward with the assistance of Ms Bridge, to prepare a response (672-691) including appendices and a note in advance which summarised the position from his perspective (746-748). In her closing submission the claimant says Prof Woodward had almost zero contribution, Ms Bridge did the job for him. This is normal, drafting such documents is what HR officers are employed to do. The emails show she had done an updated draft by 4 March and sent it for approval. She had to remind Prof Woodward on 21 March. On 26 March 2019, Prof Woodward's Secretary sent to Ms Bridge "*only Couple of (tracked)edits attached*" (S73). The appeal documentation was uploaded to a file sharing site and the three governors also requested a hard copy. **Although the purpose of the appeal hearing was not to re-hear the case**, one of the grounds of appeal was the claimant did not feel she was listened to during the disciplinary hearing, so all documents went to the panel members and Ms Johnson told them to ensure the claimant had every opportunity to present her case as she wished. One option available would be to recommend a re-hearing if they deemed one was needed.

4.137.The grounds of appeal and a summary of Prof Woodward's responses taken from his statement, in italics, include:

Allegation 1 - The dismissal was due to a management misunderstanding of Chinese culture
Whilst Professor Cang explained aspects of her behaviour and interaction with the students by saying they were a result of 'Chinese culture' the standard she was being held to was that of a Northumbria University Professor. It would not have been appropriate to hold Professor Cang to a different standard as a result of her country of birth, nor to offer a different standard of supervision to the students because they are Chinese

Allegation 2 - There was no clear evidence for the dismissal
Student allegations were taken from the student statements and listed in the table. Professor Cang's response to each student statement was then listed.

Allegation 3 - The dismissal was based on a false allegation.

The table 680- 682 details the evidence supporting the allegations made.

Allegation 4 - The dismissal was due to being unable to hold cultural events and uphold the Chinese culture.
Professor Cang hadn't been advised she can't hold cultural events or uphold Chinese culture. The only challenge that had been made was where Professor Cang's definition of what constitutes 'Chinese culture' would be at odds with the standards of work and behaviour expected of a Northumbria University Professor.

Allegation 5 - The university refused to allow Professor Cang a companion at the Disciplinary Hearing.
Professor Cang was allowed to attend with a trade union representative or work colleague but chose to attend unaccompanied.

Allegation 6–Professor Cang was unable to understand the case against her, due to her ethnicity.
Professor Cang did not advise at any point that she did not understand the case against her. The papers were provided a week in advance of the Hearing and Professor Cang confirmed several times during the Hearing that she understood the process and what was being said.

Allegation 7 -Professor Cang's unstructured and unclear responses during the Hearing are a result of her ethnicity.
It is unclear why Professor Cang would be unstructured and unclear as a result of her ethnicity. There was no communication barrier, as far as language is concerned, and no apparent misunderstanding in the discussion that took place. ***Professor Cang understood the questions asked but was vague and unstructured in her answers. I would go as far as to say that her answers were evasive, as if she was avoiding answering the questions. I can see no reason why providing unstructured or evasive answers links to ethnicity.***

Allegation 8– Professor Cang was unable to ask questions and was interrupted during the disciplinary hearing.
Professor Cang was allowed to speak at length and ask questions. On the occasions she was interrupted, it was to remind her she had been asked a specific question and ask her to respond. An adjournment was held when Professor Cang became distressed, she agreed she was comfortable to reconvene after that adjournment and was advised that the Hearing could adjourn again if and when needed. The Hearing lasted for 2½ hours with 27 minutes of adjournment.

4.138. Prof Woodward emphasised he was aware of cultural differences across the staff and student body. The upholding of a culture is entirely up to them but should not lead to an inappropriate relationship. Activities such as house hunting are not cultural. The claimant had lived and worked in the UK in Higher Education since 2000. He would expect a good understanding of this. She failed to recognise her actions were inappropriate or the effect they had on the students either during the investigation or the hearing.

4.139. Prof Woodward felt there was a long list of allegations from the students, much of which was not disputed, he viewed their statements as credible and they clearly described the impact of Chinese cultural expectation in terms of respect for their teacher which led them to believe if they had not done what she wanted their studies would have suffered. In his note, and in reply to EJ Garnon, on the topic of why he did not interview them himself, he said they had been interviewed three times and he was "*mindful of their welfare*" (747). To him it was clear the claimant understood his questions but was unable to provide a suitable response or credible defence.

4.140. He only partially upheld the second allegation as she was not clear on some parts of the process and others had some responsibility. He considered other possible outcomes but decided dismissal was appropriate due to the nature of the misconduct. His statement says he was ***"additionally conscious of the risk of damage to the University to condone such behaviour on the part of a Professor"*** and ***"I believe she failed properly to answer my questions because there was truth in the allegations and she was therefore finding it difficult to respond in a way that did not involve her accepting that the allegations were correct****."*

4.141. Ms Johnson provided the claimant with Prof Woodward's response by email on 27 March, said she would have an opportunity to respond during the hearing and they only needed copies of any additional documents she wished to rely on 5 days before the hearing. We have criticised the short time given to the claimant to prepare, but this stage is far better. The time it took to arrange the appeal was reasonable taking into account how much needed to be done , which is why EJ Sweeney nade a deposit order on her allegation. The claimant requested Ms Bridge and the Head of Legal to be excluded from the Hearing. Ms Johnson said Ms Bridge needed to attend as the panel may have questions for her and the policy required the Head of Legal to be present but not as a decision maker. The claimant was entitled to be accompanied by a colleague or trade union representative. No decisions made by Ms Johnson were in any way because of race.

4.142. On 4 April 2019 the claimant sent a response (722-729) to the table in the Management Response to her appeal. The appendices she provided included 28 documents not seen before. She wanted to be accompanied by a colleague from Bournemouth University **which was allowed, Ms Johnson being senior enough in HR to waive normal practices**. Ms Johnson with the assistance of the Head of Legal, prepared a note setting out the key issues for the Appeal Panel (733-735) and a script for Mr Thomas Harrison a Governor of the University for about three years until December 2019 who was to chair the appeal panel. to provide clarification of the process during the hearing (737). Mr Harrison worked for 43 years for the global consultancy business, Turner & Townsend, held various senior roles culminating in Chief Operating Officer. He retired in 2017. He had experience of disciplinary matters at Turner & Townsend and has been a member of two other Appeals Panels at Northumbria University. He had no involvement in the investigation or her subsequent dismissal. He first became aware by a confidential email dated 4 December 2018 to Governors from Prof Wathey of an incident of potential modern slavery, and wider conduct issues – no names were mentioned. The other two members were Christopher Sayers and Craig Apsey. The

decision and reasons were unanimous. The letter confirming them (772-791) was circulated in draft and agreed before he signed. He made a handwritten note (928-943) later typed (944-951).

4.143. Before and during this hearing Dr Yu made frankly ludicrous points about the panel's "conflicts on interest" as a result or receivng Prof Wathey's email of 4 December and applied for a witness order to compel the other panel members to attend. That was refused before the hearing as it would have been pointless to hear them, and he could not have cross examined his own witness.

4.144. The appeal hearing took place on 8 April 2019. Mr Harrison checked everyone had read all of the background papers, which they had plenty of time to do. The hearing was scheduled to last two hours but took four, including breaks. The claimant was accompanied by Dr Lai Xu a former colleague in Bournemouth University who had known her personally as well as professionally since 2010. She says the claimant has high standards for her PhD students, is diligent in checking their work, can be very strict from the students' perspective but treats students as her children. Her English is more than sufficient for professional purposes, but not as good as a native speaker.

4.145. The claimant put her appeal forward first, saying she felt it was a *'witch hunt'* and the University had not fulfilled its duty of care to protect staff against false allegations, causing her physical and mental injury. She questioned how Prof Woodward could be confident Prof Wilson had properly questioned the students' evidence. Dr Xu added the claimant was disappointed with the questioning, for example as to the gardening, she would have expected him to ask questions about the garden and tools used. **So would we, and about the decorating , but he did not.**

4.146. The claimant's responses to questions by Panel, and with input from Dr Xu included:

(a) Mr Apsey asked if the claimant felt all her actions were appropriate e.g. DC paying for a taxi, and she confirmed she considered her actions were appropriate. Mr Apsey asked why she felt it was appropriate to ask a student to attend a house viewing when this was not connected with their studies. The claimant said she did not ask, they offered and DC wanted to go as she intended to buy a property. Dr Xu added often Chinese students will want to do something like that to gain experience and it is normal to help Chinese students establish themselves in a new environment by involving them in activities. She stated many Chinese students offer to do things for their supervisors, despite not being asked.

(b) Mr Apsey asked why the claimant thought it appropriate to contact ZW's father. She explained her solicitor had told her she needed evidence to clear her name which was the purpose of her call, not to ask him to get the allegations withdrawn. When ZW said he wanted to transfer to Northumbria she encouraged him to check first with his parents, and he said he had.

(c) Mr Apsey asked why she thought the students would make a false allegation. She said she did not know but it could be because they wanted to prolong their studies to stay in the UK. She queried why they would transfer to Northumbria with her if they were not happy with the relationship, particularly as ZW was given a 2nd supervisor in Bournemouth.

(d) Mr Harrison asked why new evidence was only being provided now. The claimant replied (i) the outcome of the police investigation was not confirmed until after the hearing (ii) she had more time to gather information such as references from former PhD students and information showing DC was ahead of her research timeline and it was not her fault ZW was behind (iii) she did not obtain an extract of Dr Liu's letter until after the hearing.

(e) Mr Sayers asked about (i) lack of access to e-mails to prepare her case (ii) not being accompanied at the disciplinary hearing (iii) evidence not being read by Prof Wilson at the investigation stage (iv) Prof Wilson not allowing her to ask questions during the investigation meeting (v) allegations being reduced from 4 to 2. All these have been explored already, but Point (v) may need more attention as part of her indirect discrimination claim.

(f) In response to questions by Prof Woodward, the claimant confirmed she did have the opportunity to ask and answer questions at the disciplinary hearing but Ms Bridge stopped her when she tried to explain the first allegation. She did not raise concerns about Prof Wilson's behaviour during the disciplinary hearing as he was her line manager and she would have to work with him again as she did not think she would be dismissed. **Mr Harrison said the suspension letter made it clear the allegations were so serious that if proven they could lead to dismissal**.

4.147. This was by far the best set of anwers the claimant had ever given, albeit she still made some weak points. **Mr Harrison's emboldened point in the last paragraph is important. What he is saying, in non-legal terms, is that an appeal of this nature is a review of the disciplinary hearing so any points the claimant failed to raise then cannot normally be raised for the first time on appeal. Therefore, she should not have held them back at the disciplinary hearing . The University's is a very common and valid procedure in many employers. In short, there is no "right to a re-trial". That is so in many legal systems across the world. It is only when new evidence could not have been discovered earlier that a re-trial may be ordered.**

4.148. Before asking Prof Woodward to present the management case they adjourned for a break. Prof Woodward 's points included:

(a) he had reviewed the papers in advance of the disciplinary hearing and prepared questions for both the claimant and Prof Wilson to establish the facts. The hearing lasted 2.5 hours.

(b) he had adhered to the disciplinary procedure, the claimant was given 11 calendar days' notice of the disciplinary hearing. Her questions raised by email were responded to in a timely manner.

(c) he concluded there was **sufficient** information to make a finding on the first allegation but not the second, until he had information from the Graduate School

(d) the record of the hearing was a summary of the matters discussed and it was not necessary for him to send it out for comment on accuracy before making a decision.

(e) the claimant was advised her husband could accompany her to the University but not into the disciplinary hearing in line with the disciplinary procedure and ACAS guidance. Prof Woodward checked at the beginning she was happy to proceed, and she was.

(f) the Faculty teach over 800 international students and have links across the world including China and the Far East. He knows of cultural differences across the staff and student body.

(g) his role was to hear the case for misconduct and make a decision in line with University policies and procedures and the conduct expected of a Northumbria University Professor.

(h) the police investigation was a separate matter. Again, this is clearly right. **In the UK and in many legal systems across the world in order for a person to be convicted of a criminal offence the prosecution must show all elements of that offence are present to a standard known as "beyond reasonable doubt", which means a jury must be "sure" of the defendant's**

guilt. A decision by the police not to charge someone means, in their view, that high test is not likely to be satisfied. It does not prove the defendant's innocence. Hence, it is very common and valid in many employers' internal procedures for a disciplinary hearing to take place without waiting for a police decision and/or even if the police have decided not to press criminal charges.

(i) **during the disciplinary hearing he made every effort to understand the claimant's responses to questions but they were 'chaotic' and it was difficult to make sense of them , although language was not a barrier.**

(j) he was concerned the claimant failed to recognise her actions were inappropriate and the impact they had had on the students. She had lived and worked in the UK many years mostly in higher education so it was reasonable to expect she had a good understanding of what was expected of her professionally as a Professor and PhD supervisor.

(k) he had reviewed the 28 additional appendices she submitted as part of her appeal as new evidence and they would not have changed his decision.

(l) he was of the view the students' statements and supporting evidence were sufficient to enable him to make a decision. They clearly described the impact of Chinese cultural expectations in terms of respect for teachers which led them to believe if they had not engaged with the claimant in the way she wanted them to, their studies would have suffered. ZW admitted to falsifying his e-vision records and that he incriminated himself gave credibility to his statement. We do not agree with that because he alleged it was done at her insistence, but Prof Woodward's view was tenable and not discriminatory . He acknowledged some of the evidence was inconclusive (based on he said / she said) but some aspects were supported by evidence which led to him decide dismissal was merited

(m) his understanding was the claimant had contacted ZW's father to ask for his help to get the allegations against her withdrawn.

(n) he was concerned the claimant sent money to DC after the hearing

(o) he could not comment on Prof Wilson's behaviour during the investigation but could not identify any gender or racial element in it .

(p) he only partially upheld the second allegation as some matters were not handled well in the Faculty but an academic with her experience of PhD supervision should know what was expected of her. **The allegations together, and the first on its own, were sufficiently serious to amount to gross misconduct and he decided summary dismissal was correct in the circumstances.**

4.149. Ms Bridge added the GP certificate was not provided prior to the hearing and would have been considered if it had been. Before inviting questions from the Panel Mr Harrison checked the claimant understood the points made by Prof Woodward and Ms Bridge and she confirmed she did.

4.150. In response to questions by Mr Apsey, Prof Woodward said supervisor training covered PhD supervision and anyway the induction for new staff signposts them to policies and procedures they need to read. There was no conflict of interest in Prof Wilson investigating the second allegation as PhD supervision is overseen by the PGR Director, not Prof Wilson who approves, or not, names recommended to him. It was not his responsibility, as the claimant repeatedly said, to monitor whether a 2nd supervisor was in place, so he would not be covering his own fault by investigating why DC did not have one.

4.151. In response to questions by Mr Sayers, Ms Bridge confirmed it was not normal practice to allow a family member to attend a hearing. Colleagues had the right to be accompanied by a trade union representative or work colleague consistently with ACAS guidance.

4.152. In response to Mr Harrison Prof Woodward said (i) there was a point in the hearing when the claimant became upset and in case she did not understand his questions, he adjourned and changed his style to assist her (ii) he felt her actions had the potential to bring the University's reputation into disrepute and **limit public confidence in the support given to students.**

4.153. The claimant and **Dr Xu (whom Mr Harrison confirmed he found helpful**) were given an opportunity to ask questions. Prof Woodward said (i) he did not just accept Prof Wilson's statement as accurate but prepared questions for both the claimant and him in advance and asked all he felt he needed to ask (ii) he asked about the police outcome as she had mentioned it and thought if the case had been dropped, and there was a statement saying why, she could have introduced this as evidence (iii) he had adequate information to reach a conclusion on the balance of probabilities from a misconduct perspective, the decision was made on information presented prior to and during the disciplinary hearing (iv) there was training for PhD supervisors and students. The claimant rightly said she only received hers on 27 November and Prof Woodward said he had considered this but felt it reasonable to expect her to know the requirements for supervising PhD students.

4.154. During this hearing we established Prof Woodward would not have treated mere failure to complete records such as Agresso as misconduct. Prof Woodward had experience of working with international colleagues and encouraged the upholding of cultural traditions but, in his view, the claimant's behaviour crossed the line between upholding the Chinese culture and maintaining professional conduct. He considered the student's evidence to be compelling as they were going against their own cultural beliefs by raising the allegations. **We have criticisms of the procedure followed by the University, but accept the claimant was not treated less favourably because of race or any stereotypical assumptions about Chinese people by any managers or HR officers involved or by the appeal panel.**

4.155. The claimant closed by saying (i) she did not feel the University cares about staff because she had already proved the student statements were incorrect (we find she had not, at that time) (ii) there had been a misunderstanding of Chinese culture, students only rent a small room, and feel lonely which is why she invited them to her house. **She had learnt lessons and in future she would not**. Prof Wilson's behaviour on 17 December was not acceptable. Dr Xu's statement says they discussed Universities, including Northumbria,encourage staff with an international background to provide extra support to international students in an unfamiliar country with an unfamiliar culture but with appropriate distance nonetheless. We agree that is a good thing and no-one from the University says otherwise. We agree with Dr Xu views "*While the university has a duty of care towards its students, it also does so towards its employees. Unfounded accusations by students are not uncommon, something the university should be well aware of, and safeguard against, also when the allegations are more serious than a case of alleged marking bias"… the disciplinary procedure was not followed as she was not allowed to bring a friend".* These were good points.

4.156. As she did before us, the claimant diluted their value by raising bad points. She asked what action would be taken against Prof Wilson which was not for Prof Woodward or the panel to decide. Crucially she said Prof Woodward accepted Prof Wilson's statement ***without validation and*** Prof Wilson "*did not attempt to ascertain the veracity of the complaints, by verifying facts…..* That phrase is important. If the claimant had said, as Dr Xu did, the questioning of the students by Prof Wilson, Ms Henderson and Ms Conroy, failed to probe or challenge their accounts, we would have agreed.

4.157. We disagree with Dr Xu views the claimant (i) *was treated as someone of whom it was reasonable to expect she would engage in modern slavery"* (ii) *"as an ethnic minority she should have been allowed to bring a companion* and (iii) "*when we provided the **potential** motivations for the students bringing a false charge the governors were **quite accepting of the possibility** but the staff in the university were never **interested to look** at the **potential possibilities**".* These points are best dealt with now rather than in our conclusions.

4.158.1 As for (ii) if one focusses on the word "companion", as contrasted with an interpreter, this is an argument for "positive direct discrimination" in favour of ethnic minorities regardless of need. That is generally unlawful. We will deal later with indirect discrimination.

4.158.2. As for (i), in the UK and elsewhere, 50 years ago if a pupil made accusations like these against a teacher, the teacher denying them would probably be believed. Reports to the police would rarely be made. Over the last few decades many high profile examples exist of people in some way "vulnerable" to other people in a position of "power" over them, accusing such people of serious wrongdoing and **either (a)** nothing being done because of an assumption "*someone like*" the person accused "*wouldn't do anything like that*" **or (b)** the recipient of the initial complaint taking steps to "verify" or disprove the allegations **before** involving the proper authorities.

4.158.3. As for (a) on the day before our deliberations a whole life prison sentence was given to a Metropolitan Police officer for the kidnapping rape and murder of Sarah Everard.The media had pointed to earlier suspicions, without conclusive evidence, of her killer being interested in violent abuse of women and such reports not leading to police action. On the day before we finalised these reasons , the Home Secretary announced an inquiry into why earlier suspicions had not been acted upon and the police officer remained in his position of power. When later evidence shows a person previously accused is guilty of serious wrongdoing against his accuser or someone else, it leads to the recipient of the initial complaint being criticised publicly and/or made legally liable for its inaction. As a result, many employers adopted the "safe course" of presuming **there may be truth** in the allegation and, if there is a possibilty of a crime having been committed reporting it to the police first.

4.158.4. As for (b) such a course can lead to any police action being hampered or prevented by steps taken, in good faith, by persons who do not understand their "meddling" may corrupt or devalue otherwise admissible evidence. If a decision is taken internally the allegations are not proved, those involved are often accused of a "cover up".

4.158.5. Where there exists what Ms Millns referred to in a question to the claimant as " an imbalance of power" so one person is more vulnerable to abuse of power by the other, eg a teacher and pupil or nurse and patient, any person with the authority to take action against the alleged abuser must ensure the alleged victim is not made to feel afraid or guilty when asserting abuse has taken place, as some authorities , including employers and the police, may well be accused of not "taking them seriously".

4.158.6. Often steps are taken to "support" those making allegations, eg someone reporting a rape to the police, because in the past some complained of being robustly challenged as to the truth of their allegation. Now, there is an initial assumption the allegation may have merit until proved it does not. Hence these students had formal "support" and, as Prof Wathey said, a professor is expected to look after herself, unless she has a union.

4.158.7. As for (iii), it overlaps with (i). The internal procedures are essentially "adversarial", which means the University having decided to investigate the claimant it was for her, not it, to find and

advance her defence. Showing the students had sufficient motivation to make false allegations was part of that defence and for her, not the University, to establish. **Moreover, ZW and DC as students have rights under Part 6 of the EqA. If they, having made a complaint the claimant was treating them less favourably because they, and she, were Chinese, they would be alleging unlawful discrimination. If the University embarked upon a close examination of ZW or DC, for academic misconduct, delayed or poor content, they would claim victimisation.**

4.159. In short, had the University not reported this to the police or tried to "verify" the students claims by conducting its own investigation first and/or not suspended the claimant and/or interrogated or investigated the students in the way the claimant and Dr Yu say they should have, the University would have been heavily criticised, and rightly so.

4.160. On more that one occasion during the hearing we explained these points to the claimant and Dr Yu. The claimant's submissions say questions remaining unanswered are (a) what evidence the Silver Team had (b) why did they not obtain more information from Bournemouth University or conduct some basic investigation before reporting her to the Police (c) how did they link this case with the term "modern slavery and bribery". We have already given the answers at 4.158 above. **Still** the claimant submits steps should have taken to investigate before informimg the police. It was the police, not the university who termed what the claimant was alleged to have done "modern slavery and bribery". She says the University "*treated me **less favourably** by reporting me to the Police without conducting some very basic investigation..because I am **Chinese***". That has no merit, what the University did at the start was right and not influenced by race at all.

4.161. Prof Woodward concluded the University's case by saying it seeks to promote high standards of conduct amongst all its staff in order to promote its reputation and to maintain public confidence. The claimant's lack of acknowledgement of wrongdoing, and her choices of how to interact with the students, some of which she accepted, in his view fell far short of what would have been expected of a senior academic and would bring the University into disrepute.

4.162. Mr Harrison closed the meeting confirming the Panel would need time to consider the outcome. Immediately after the hearing, they discussed for another hour and felt the appeal should be rejected but decided to consider further over the weekend. They had a telephone conference on Monday and affirmed their decision. The Panel did however make a number of observations that resulted in recommendations to the University, eg as to their policy on who could accompany someone at a hearing . We are in complete agreement with them.

4.163. The appeal was conducted in English without an interpreter. At no time did the claimant or Dr Xu ask for an interpreter nor was there any indication one was required. Ms Johnson says the hearing took a long time, partly because the Panel allowed the claimant to go through the background facts, which they normally would not, because of her allegation her case had not been considered properly at the disciplinary hearing. Ms Johnson says, and we fully accept, Mr Harrison did a really good job in checking she understood everything and we found his explanation of how he kept looking for visual signs, eg facial expressions of puzzlement, which indicated the claimant may be struggling with language or having difficulty understanding what anyone was saying, very impressive. After the hearing she said she could not understand Prof Woodward. He speaks with no regional accent and clearly but both he and Prof Wilson sometimes used words which we see could be challenging to person who had learned English as a second language. Mr Harrison asked Prof Woodward "*Did you believe SC understood process and questions?*" (817), and asked the claimant "*do you understand reply*?" (818) before giving Dr Xu time to help her explain. Mr Harrison sometimes put Prof Woodward's words into plainer English. The claimant refers to one of her GP's

writing "*moderate English. a little hard to understand", "English not first language, challenging consultation*"(832).That GP's name is Dr Atoosa Noroozi who also may not have English as a first language. All the claimant had to do during the disciplinary or appeal meetings, if she did not understand a particular word or phrase, was ask for it to be explained or re-phrased.

4.164. The panel took into account ZW and DC were going against their cultural beliefs by making a complaint about their 'teacher'. As for the suggestion they may have made the allegations to enable them to remain in the UK for longer, the Panel had been assured any extension to their studies was within the original visa end date at recruitment to Northumbria.

4.165. The panel decided (i) the police investigation explored different allegations with different burdens and standards of proof. It was not necessary to wait for, or take into consideration, the outcome of the police investigation (ii) the allegations were based on the students statements,so it was not necessary to investigate Dr Liu's letter (iii) positive references from previous students did not disprove the allegations of ZW and DC (iv) there was no evidence to prove or disprove whether the claimant coerced them to transfer but what occurred after transfer was unacceptable anyway (v) she provided some academic support but her feedback and record keeping was inadequate.

4.166. Prof Woodward acknowledged upholding cultural traditions is not inappropriate but the claimant's actions went beyond culture and acceptable behaviour. Both the claimant and Dr Xu, referred to a lack of understanding of Chinese culture as did the two students making the allegations who were also Chinese. Both Chinese students, felt the way she dealt with them went beyond normal cultural expectations. The Panel did not find any evidence of race discrimination in either the University's expectations of appropriate relationships between staff and students or in the disciplinary procedure or its application. **We agree.**

4.167. The claimant not being accompanied at the disciplinary hearing had nothing to do with her ethnicity. She had the same options as any other member of staff. Although Prof Woodward found it difficult to understand her responses this was due to their unstructured nature ie what she was saying rather than any language issue. The refusal of her request to be accompanied by her husband was consistent with all other staff hearings and the ACAS code of practice

4.168. In summary, the Panel concluded there was an adequate investigation and no evidence of Prof Wilson not allowing her to speak. The investigation was followed by a Disciplinary Hearing which confirmed the dismissal recommendation The panel found she was dismissed because of a finding of gross misconduct at a Disciplinary Hearing, a decision which the Panel did not find any reason to overturn as to outcome or sanction , or order a "re-trial".

4.169. We find the appeal was a good hearing **of its type**, well run by the Panel with no trace of direct discrimination. To explain the phrase "*of its type***"** is important. As in many legal systems in the world appeals can themselves be a re-hearing of the facts, but far more commonly are a review of what happened at an earlier hearing to check it was correctly conducted, but not to rehear the case. A Chief Justice of the United States Supreme Court put it perfectly "*We are not here to try the case, we are here to try the trial*" ie the earlier trial. If the result of the earlier trial was wrong in law or so far from what would be expected as to cause an appeal judge to say "*that is certainly wrong , no judge acting rationally could have come to that result*", it is termed " ***perverse***" and a re-trial may be ordered. Mr Harrison and the panel thought they would, in a case where there were two versions, have reached the same conclusions as Prof Wilson and Prof Woodward, but even if they were less certain the earlier conclusions were certainly not perverse. Hence the appeal had to be rejected. That decision in our judgment was right, and certainly not, in any sense, because of race.

4.170. It now fell to Ms Johnson to draft the outcome letter. In its final form it runs to 19 pages so this was not an easy task. On 9 April 2019, Ms Bridge emailed to Ms Johnson her note of the remarks by Prof Woodward and said "*Are you having fun?!"* (S87). The claimant's closing submissions say "*I am seriously concerned that Ms Molly Bridge enjoyed my suffering process while I was in the miserable life at that time. I would like to require if Ms Molly Bridge can provide other similar emails with the end "Are you having fun?!*". Ms Bridge explained it was a flippant remark between HR colleagues about the size of the task Ms Johnson had. We accept that. It was not intended to , and does not, minimise the impact on the claimant of being dismissed.

4.171. On 15 April 2019, the appeal decision letter indicated the appeal was only to see if the procedures were wrong. It said "*the Panel have not had an opportunity to ask Professor Wilson to respond to these allegations"* (785). We accept the claimant complained about the investigation meeting in her appeal letter albeit without naming Prof Wilson. The alleged deliberate failure to investigate his conduct, made after her dismissal, is a complaint of post employment direct discrimination. We find the panel did not investigate Prof Wilson because it was not their task to do so. His race and the claimant's played no part in that choices.

4.172. On 17 April 2019, the claimant emailed Ms Johnson (792) "*please send me the minutes of the appeal on 8th April, since most of times it is difficult to understand what Professor John Woodward said, it is extremely difficult to understand his English, and this is why Mr Tom Harrison explained his questions to me number of times during the appeal meeting. I had to answer his questions based on my guess most of time during the hearing meeting."* (792). Ms Johnson sent her handwritten note (794-810). The tribunal ordered on 15 December 2020, a typed version (811-820).

4.173. Ms Johnson's statement addresses the claims for holiday pay and expenses thus :

(a) the claimant was paid £5,266.92 gross her salary for the month ending 31 January 2019(1043). Her employment was terminated on 28th which means she received an overpayment of three days.

(b) in her final salary payment in February 2019 (1044) she was paid £1,326.80 for 40.39 hours (no-one could explain how that figure was reached) accrued untaken holiday. £686.99 was deducted for the overpayment of salary in January 2019.

(c) she was paid a relocation allowance when she commenced of £4,472.59 under the terms of the University's Relocation Policy (1040-1042) which provides for 100% of the relocation expenses to be repaid if the employment ends within 12 months and 50% if it ends before 24 months. This sum was also deducted from the sum otherwise payable in February 2019 and resulted in her owing £3,623.21 in respect of the remainder of the relocation payment. This has not been repaid.

(d) We asked Ms Johnson about holiday. The annual entitlement is 35 days plus bank holidays and by 28 January 150 days of the leave year, which starts on 1 September, had expired Ms Johnson confirmed for academic staff no records are kept which would enable her to say what leave other than bank holidays the claimant had actually taken. The dispute about whether some days she spent in China in September were holiday or research approved by Prof Wilson became irrelevant. Her unused entitlement is her annual salary divided by 52, multiplied by seven (35 days = 7 weeks) divided by 365 and multiplied by 150.

4.174. The only expense claim **she has evidenced** is a telephone bill £30.34 for the Germany hotel which will be paid. The claimant says the University sent one and half boxes of her personal belongs to her however, most are still missing. There is no claim for missing property. In an ET such matters can be dealt with if, but only if, there is an express or implied term of the employment

contract that the employer will safeguard employees property **and** the ET1 contains such a claim. It does not. If her wrongful dismissal claim succeeds her contractual notice would be three months pay, and only 50% of the relocation allowance would be repayable. All information which helped her in those claims came in reply to the Tribunal's questions rather than any from her or Dr Yu.

5 Submissions and Conclusions.

5.1. We need not set out the submissions fully as both were in writing. However, we comment on the claimant's to the extent they show her doing exactly what she was advised not to by EJ Garnon, which in turn goes to our assessment of the University's explanation for behaving as it did. We emphasise although we are critical of Dr Yu, nothing he could have done differently would have made the claimant's case more likely to succeed on the vast majority of points. Advocacy can make a difference, but even the best advocate cannot make a factually flawed claim good or change the legal principles we have to apply.

5.2. The particulars attached to her claim form run to 19 closely typed pages. Her statement runs to about 75 pages. On Friday 17 September 2021, the evidence on both sides finished. Ms Millns had already given the claimant a written outline of relevant law, and was going to send written submissions to the Tribunal and the claimant by 9am on Monday 20th. Dr Yu chose to prepare written submissions too, a very wise choice because he and the claimant are both more fluent in writing than orally. They could have added points orally if needed on 20th with the help of the interpreter. E.J. Garnon told them in submissions brevity, focussing on her best points, would help. Her submissions running to 23 pages wholly disregard that advice.

5.3. On Monday 20th, we had an aborted day, dealt with in our order, and the clamant was given until 22nd to send in her written submissions. The worst course to pursue would be to
(a) repeat points we had explained were hopeless as a matter of law **or** on the facts as she herself advanced them
(b) make sweeping allegations she could not prove
(c) make points relevant only to fairness not discrimination
(d) blame others for problems she had caused for herself.
Having read both submissions we said we could decide the case without oral submissions, fixed a date and gave the parties an opportunity to object with reasons to that course. Neither did.

5.4. The claimant's submissions did all the above, for example complaining (i) she was suspended , reported to the police and her IT access frozen because she is Chinese (ii) of the statement in the suspension letter that Ms Lee had spoken to her when it was admitted she had not but for reasons she could not control (iii) on 16 September 2021 Mr Harrison saying it was not for the panel to investigate the harassment allegation against Prof Wilson was direct race discrimination, when it was the plain truth (iv) the Tribunal rejecting the request to order Mr Sayers and Mr Apsey to give the evidence, when they could have added nothing (v) when the appeal panel were told she had attended the disciplinary hearing when sick they did not order a rehearing, which as explained at 4.169 above was evidence of ill health she could have produced but did not (vi) when her lost personal belongs were raised during the tribunal hearing, Ms Millns saying "*this is not in the claim*", **which is correct**. They add "*I reserve my right to follow this up in the appeal stage on this claim if this is not resolved in this tribunal hearing"* .

5.5. The claimant's submissions complain of "*techniques*" the University used saying Ms Millns consistently interrupted Dr Yu thus helping the respondent's witness by explaining the meaning of the questions, whereas when she was giving evidence, Dr Yu was not allowed to explain any unclear questions to her. Ms Millns questions were clear and there was an interpreter to help if the claimant needed her **and asked**. If Ms Millns had not interrupted Dr Yu's questions we would have,

as any witness must understand the question before it can be answered. Dr Yu's were often difficult to understand, not as a matter of language, but because he asked several questions in one. The submissions say "*I am concerned that the Respondent had the power (in controlling information) and funds in employing professional lawyers who are experts in using the above six tricks to help the Respondent to* ***bury the truth*** *and lead the tribunal to the wrong directions. Those typical lawyers' techniques may lead the tribunal to draw a collusion of 'not founds'. I hope that the tribunal adopts an evidence (fact) based approach, not a technique (trick) based approach ensuring the parties are on an equal footing*. We are well used to claimants being unrepresented and employers being represented. We are used to cases involving interpreters. Ms Millns did not use "tricks" but had she done so we are used to spotting them and stopping an advocate doing so.

5.6. The submissions complain Dr Yu had planned one day for each of Prof Wilson and Prof Woodward but was only allowed half day and, in comparison, Ms Millns had three days to question her. We told the claimant, repeatedly during her evidence, that interrupting Ms Millns questions and giving long replies to questions not asked was causing cross examination to last longer than it should and taking up time she and Dr Yu could spend on cross examination of the University's witnesses. Hers actually lasted two and a half days, but could have finished in a day and a half had she listened to and followed the advice we gave.

5.7. She adds Dr Yu felt he was not given enough "*quality time*" to **find** the truth, both Prof Wilson and Prof Woodward showed inexperience, incompetence and *lied all the times*. This was Prof Woodward's **first** disciplinary hearing and he had no experience and knowledge in how to conduct a fair one. When he was asked whether he had any training on disciplinary hearing, he said he was trained by Ms Bridge. The claimant submits Ms Bridge's role was to advise on procedure and take notes not to train Prof Woodward. All HR officers will meet with a decision maker before to give advice on the procedure to use, that is "training" at the time. During evidence, EJ Garnon tried several times to steer Dr Yu to better points on which to question, such as indirect discrimination but he took no notice and carried on as before. Any shortage of time was his own fault.

5.8. The claimant submits Prof Woodward when asked how he had upheld allegation 1 chose "*lying to the tribunal and said he had made the decision based on the submitted documents*" but when asked where the list of the questions he had prepared for the disciplinary hearing was, he said it was in the bundle but when asked where in the bundle, he could not find it. We accept this was said but no witness could remember the contents of documents read **over two years earlier** or be expected to know where they are in a bundle of over 1000 pages which he had not prepared without being taken to them. This is the type of baseless submission which the claimant makes.

5.9. The submission adds "*Prof John Woodward did not have ability and competence in conducting a fair disciplinary hearing and appointment of Prof Woodward as the disciplinary puts a minority staff like me less favourably."* **This ignores all the authorities** eg. Zafar and Quereshi. She adds *"the Respondent had failed to identify the written policy which the Claimant was alleged to be in breach of.* **There is no written policy tailor made to the facts alleged and there does not need to be.**

5.10. Making matters worse, the submissions say in January 2021 **"***The Respondent required me to develop a report of the academic misconducts of their student (ZW) thesis for them without payment (S174). This work spent me for over 20 days*". Prof Wathey said, in response to Mr Moules, not the claimant or Dr Yu, such an "*investigation should be completed within two weeks*". More good was done to the claimant's case by questions the Tribunal asked than any Dr Yu did. ZW's thesis was completed in about June 2019, yet the claimant, having read it in July 2020 after finding it in the British Library, only produced evidence which may show plagiarism nearly two years after she was dismissed. The claimant accepted in cross examination **if** she had reason to believe any of her

students had plagiarised she must report it. At 4.131 above we say how she must have suspected plagiarism before the allegation were made against her but she did not report until January 2021.

5.11. Her weakest point is "*All respondent witnesses (except Mr Tom Harrison and Prof Andrew Wathey) talked towards the Judges when she and Mr Yu asked them the questions"* . The Tribunal are sitting at right angles to the witness table but opposite the advocates and, during the pandemic behind Perspex screens. It is normal to tell witnesses to direct replies to the Tribunal not the advocate asking the question. If Dr Yu or the claimant had problems hearing or understanding a witness they could have asked him or her to repeat answers, as we did to Ms Johnson who was very softly spoken, or asked the interpreter help to translate. They did neither.

5.12. Her submissions say *During the tribunal hearing on 10 September 2021, Prof Andrew Wathey revealed that the University had about 25% international students and about similar percentage of BAME (Black, Asian and minority ethnic) staff. However, there is* ***no BAME in the university executive team*** *in 2018.* In some cases such evidence is significant, a good example being one EJ Garnon decided 20 years ago upheld by the Court of Appeal, Rihal-v-London Borough of Ealing , That claim was from a Sikh man who had not secured promotions for which he was qualified . The evidence showed a notable absence of BAME staff at the higher levels which tended to support Mr Rihal's argument race had an influence on his lack of success, which we found it had. In this case, such evidence is irrelevant. It certainly does not support the proposition that Dr Yu advances which is that no fair investigation can be made by a University without there being BAME members in its executive team. Anyway, Dr Al Sabbahy is a BAME head of department.

5.13.1. What we term an "own goal" is a point which, while it may be true, does more harm than good to the case she is advancing. The best example is her submission "*reading the disciplinary procedure I do not understand why I was suspended. The practice adopted by the Respondent will put academic staff,* ***in particular minority staff****, who are fighting to maintain the University academic standard in a very risky situation. The Respondent committed a fundamental breach of good faith, not cured by the inquiry (Buckland-v-Bournemouth University Higher Education Corporation 2010 EWCA Civ 121)*. Buckland was a constructive unfair dismissal case. Prof Buckland had marked exams in which he had failed most of the students. The chair of the board of examiners then had the scripts remarked by another member of staff, who broadly matched the original marks. Prof Buckland complained of what had happened saying in effect student dissatisfaction or complaints about marking should not result in his competence and intergrity being challenged. An internal inquiry was undertaken but Prof Buckland claimed this inquiry was not sufficiently independent and was dissatisfied with its report so he resigned and issued proceedings for constructive dismissal. The Employment Tribunal (ET) found for him. **He was not from an ethnic minority** but had been treated **unfavourably** due to Bournemouth University apparently caring more about students' results than respect for his marking which was a breach of the implied term of mutual trust and confidence between him and it. On appeal, the EAT concluded the inquiry and report cured any breach. The Court of Appeal disagreed saying the ET's decision was legally sound and factually tenable so its decision was restored.

5.13.2. The worst error a claimant can make, in a direct discrimination case, is to give **a reason other than race** for treating her less favourably than students. The reason the claimant suggests is a more sympathetic view of allegations made by students than denials by staff. In paragraph 4.156 we mention Dr Xu view "*Unfounded accusations by students are not uncommon, something the university should be well aware of, and safeguard against, also* ***when the allegations are more serious than a case of alleged marking bias".*** We suspect, but could not ask her, whether Buckland was the case she had in mind. Another non discriminatory reason is fear Dr Liu would take steps externally against the University such as those threatened at the end of her letter.

5.14. Turning to our conclusions, we agree with Ms Millns her 'list of Issues" reflects careful thorough case management by EJ Sweeney, but disagree "racial stereotyping" is outside its scope. Unlawful discrimination can be established if treatment was significantly influenced by stereotypical assumptions. A stereotype is defined in the Oxford English dictionary as a '*widely held but fixed and oversimplified image or idea of a particular type of person or thing*". The danger is in equating treatment "because of race" with treatment because of **the claimant's** race i.e because she is Chinese, which does not sit comfortably with Prof Wilson and others giving her a Professor job in the first place. An old case under the Race Relations Act 1976, Weathersfield-v-Sergeant, involved a white British employee being told not to rent vans to "Asians" and being treated less favourably if she did. That was conduct "on racial grounds", now termed "because of race", but not **her** race.

5.15. The plain fact is the claimant, Dr Xu, ZW ,DC and Dr Liu all referred to "Chinese culture" . A stereotypical view of that culture may result in making a choice based on whether a certain" type of thing" would happen between Chinese people wherever they happen to be living and working . Subconscious stereotyping is common, but is only when the stereotype sways a decision maker's judgment by making him think something is more likely to have happened that it becomes direct discrimination. Our reason for citing CLFIS-v-Reynolds at 3.15 above is that we must look at the mental processes of all persons who influenced the outcome. If, as in Reynolds ,a stereotype exists but the decision maker, for reasons not otherwise because of race, formed his view based on knowledge and beliefs not any stereotype, a direct discrimination claim will fail even if we find the investigation and disciplinary process was flawed as a matter of fairness.

5.17. Before we deal with that, the easiest decisions are on the claims of harassment. The main one is Prof Wilson **shouting** '*this is the UK, not China'.* The words used relate to race. The context of those words, and how they were said is vital. We find they did not have the **purpose** of violating the her dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her, may have had that effect, but was it reasonable they should? Prof Wilson's context makes sense. Ms Henderson stated he had a 'firm tone.' The claimant says he shouted *many times* which we do not accept. She having raised Chinese culture, reminding her, even tactlessly, she is in a UK University not in China does not reasonably constitute harassment. She says he would not allow her to ask questions, saying the meeting was over and he was going home. He was not, he was attending a meeting with the Deputy Vice Chancellor at 4pm. In any event this conduct did not relate to race. Neither did Ms Bridge interrupting to assist in the running of an efficient disciplinary hearing. The claimant says "*I was .. harassed indirectly by Prof Wathey's misconduct which had an important impact in the decision made by Prof Wilson,* As a claim of harassment this does not satisfy s. 26, and our findings of fact do not support the conduct "relates to" or was "because of" race.

5.18. The direct discrimination claim is best dealt with using the method approved in para 40(5) of Ladele. **For reasons we have already given we accept the University** acted entirely correctly in reporting her to the Police **and** there was nothing arbitrary about her suspension or preventing access to her email account. Ms Lee wanted and intended to talk her but was prevented by the police. The error in the letter was clearly not deliberate. Correcting it may have prevented some misunderstanding but none of these acts were influenced by race**.** The delay in arranging her appeal hearing had nothing to do with race either.

5.19. Not investigating her complaint about Prof Wilson's conduct at the meeting on 17 December 2018 is, in her view, less favourable treatment of her as a Chinese Professor than of him as a Britsh Professor. When one applies the requirement in s.23 that the circumstances be the same or broadly similar (i) her complaint involves her word alone against that of Prof Wilson and Ms Henderson as to

whether he shouted, stopped her asking questions and ended the meeting prematurely in temper, which both denied, whereas the complaints against her were by two students saying broadly the same with some, albeit inconclusive, corroboration and a partial admission by her (ii) there was a very obvious reason for her to be untruthful as a way to help her case, whereas **at that time** there was no obvious reason for the students to be untruthful or exaggerate. Ms Johnson's view it would be futile to embark upon a formal investigation was entirely because there was no chance of it being found Prof Wilson had misconducted himself. Further, the claimant speaks of *"the double standard adopted by the hearing and appeal panels . Prof Woodward did not ask any question to Prof Wilson. It is clear Prof Woodward and Ms Bridge treated me **less favourably** comparing they treated Prof Wilson".* Prof Wilson's management statement of case was one sided but concisely put in less than three pages. The students' interviews were attached. There was no need to, or point in, asking **him** questions. He said he believed the students. We have already said there were many questions which should have been put **to them**. The difference in race between her and Prof Wilson played no part in the choice of whether to ask him questions or not.

5.20. The claimant adds "*The Respondent had never provided me any support during their internal investigation although I was their employee, the Respondent conducted 'witch-hunt' of me. I was treated less favourably*". This is the deeply flawed logic explained in Bahl, which the claimant cites, but of which she ignores the key message "*It is however a wholly unacceptable leap to conclude that whenever the victim of such conduct is black or a woman then it is legitimate to infer our unreasonable treatment was because the person was black or a woman. All unlawful discriminatory treatment is unreasonable, but not all unreasonable treatment is discriminatory, and it is not shown to be so merely because the victim is either a woman or of a minority race or colour".*

5.21. Dismissing her on 28 January was the end of a process involving several people all of whose mental processes we must examine. The claimant says she was subjected to detriment (which case law defines as placing her at a disadvantage) of a flawed investigation with a recommendation made by Prof Wilson for summary dismissal which was followed by Prof Woodward, both because of race. She says it was at least in part because of race due to misunderstanding (i) of Chinese culture in the relationship she had with the 2 students (ii) her responses in a stressful situation due to English not being her first language and she not understanding Prof Woodward clearly during the hearing or appeal due to the language he used.

5.22. If this were an unfair dismissal claim we accept all the University's witnesses have shown the reasons for dismissal and any prior decisions which placed her at a disadvantage are what they genuinely and reasonably believed being that the students' allegations were more likely to be true that her partial denials. They would struggle to show the other limb of the Burchell test, which involves the quality of the investigation as well as some aspects of general fairness such as the imprecision of the charges formulated (Strouthos) and the failure of Prof Woodward to speak to ZW and DC himself (Linfood).The key issue is whether matters we have found to be unfair are so unreasonable as to point to an ulterior reason (as explained in Bahl). Ms Millns submits she was dismissed **purely** because the respondent **genuinely believed** she had committed gross misconduct and that belief was in no sense influenced by race or the stress she was under or any language problem but because she came across as evasive and untruthful. **We accept that**.

5.23. The claimant's case is the University accepted the students' complaints at face value even though they had only been at Northumbria with her for a few months. She questions why (a) they did not make this allegation at Bournemouth where they had studied with her for years (b) the University did not consider their credibility and motivation (c) her other Chinese students say differently. The answer to (a) and (c) may be the extra work she asked or expected of ZW and DC

coincided with a move of house in Bournemouth and another when she moved to Newcastle.The answer to (b) is that they did **consider** both but found no basis to doubt their credibility and motivation **at the time**. In his investigation Prof Wilson formed the view the claimant **asked or expected** ZW and DC to work for and/or help her on matters completely unrelated to their studies, including decorating, cleaning, house hunting in Newcastle, purchasing IT items then failing to reimburse them fully or at all. Asking and expecting are different. The worst of these charges the claimant denied, while admitting her relationship with the students may look unusual to British people. The claimant's criticisms of the thoroughness of the investigation have merit but there is no evidence any member of academic staff subject of similar serious allegations would have been treated any better. An investigating officer making a recommendation to dismiss seems unusual but all five University witnesses asked said, to our complete satisfaction, it is standard procedure for it. Rightly or not, Prof Wilson and Prof Woodward read into the claimant's poor account of her actions and evasiveness an imputation of guilt, not because of race or stereotypical assumptions, but because they did not find her, as an individual, believable.

5.24. They understood her to be saying Chinese culture permits her to ask for or accept a level of help which went well beyond the occasional favour. If she had explained better they may not have reached that conclusion, but she did not. Rather she sent many documents expecting Prof Wilson to work out why the students had made what she said were false or exaggerated allegations. When she asked if £30 cash could be given to DC and if it would be possible to resign, Prof Wilson saw that as acceptance of inappropriate past behaviour. Anyone or any race would have had the same treatment and not be viewed as any more believable .

5.25. **The disciplinary decision maker not interviewing or questioning ZW and DC** was a normal process. A decision would often be made at the disciplinary hearing by considering the evidence from the investigation on paper. The analogy put by EJ Garnon to Ms Henderson of how it would treat an English professor accused of sexual misconduct with a student elicited a detailed reply of a process which was no different.

5.26. Prof. Woodward thought the volume of allegations, the partly admitted conduct and **two** students making similar allegations was compelling. Ms Millns says "*the effect of those allegations on the students' welfare also had a significant impact on the decision-making process and in weighing up the credibility of each account*". Rightly or not, Prof Woodward read into the students apparent unhappiness evidence of the claimant's guilt. Also he understood her to be saying Chinese culture permits her to ask for or accept extensive personal service from her students which he does not believe it does. Neither do we. Nor does the claimant, but that is how she came across. Prof Woodward held strong views about what is "appropriate" and would prefer Professors not to put themselves in a position where allegations could be made, but he did not decide the case on that basis. He simply preferred the student's account. As with Prof Wilson, the treatment was not because of race or stereotypical assumptions.

5.27. The claimant's "own goals" are her assertion the University was afraid of the threats in Dr Liu's letter to go to the media and take legal action damaging its reputation and that the University cares more about supporting students than protecting its staff against false allegations. We conclude there is an element of truth in both those, but neither is because of race.

5.28. The claimant submits " *it is not true in China, so it is not possible for me to say things as they said. One Child policy was implemented in China since 1979. A child is a 'king' in their home and was looked after by 6 people (2 parents, 4 grandparents). Normally, they do not do much housework at home, their only task is to study. Due to one child policy in China, the teachers take a*

huge care and responsibility for their students, if something happened to their students, the teachers will be in trouble. So it is impossible for me to ask my students to work for me. Instead, I have to be very careful to avoid the trouble. This is another "own goal". When giving evidence the claimant pointed out, ZW and DC are **not children** but mature students with minds of their own. Also, the claimant again gives the appearance of arguing abuse of the kind alleged against her just would not happen. Unfortunately it sometimes does, as shown by Onu-v-Akwiwu heard together with Taiwo-v-Olaigbe 2014 IRLR 448, where persons vulnerable because of their immigrant status were treated as slaves.Such allegations must be taken seriously, no matter how improbable they initially appear to be, and even if they are after investigation shown to be unfounded.

5.29. Ms Millns submits this case turns on credibility of the witnesses we have heard and all her witnesses' evidence bore all the hallmarks of credibility. In contrast, the claimant **was evasive**. Prof Woodward said she was in the disciplinary hearing and Ms Bridge that her "…*contribution strayed significantly from the point*" and she "*tends not to listen and ignores that question because she is determined to say what she wants to say rather than engage in a two-way conversation*." That explains why no-one believed her account. Baseless allegations eg Prof. Wilson had something to do with the UCU Union not representing her, despite her being told their decision was based on her late membership application do not help her. Good points are weakened by bad ones. In the end, everyone for whose acts the University is liable formed a view the claimant had expected ZW and DC to act as servants, doing forced labour in study time, not paying back expenses they had incurred, taking financial advantage of them in other ways and shouting at them in public. **No-one subjected her to less favourable treatment because of race or stereotypical assumptions.**

5.30. In the wrongful dismissal claim the credibility issue is between her and the students, **from neither of whom we have heard, though DC at least could have been called .** We found the claimant's credibility was damaged in our judgment refusing to strike out. Her contention she did not understand the warning not to discuss her evidence was wrong as it was translated. However, we have not reached our conclusions on that basis. By taking more time, being trained in spotting what the claimant is really saying, as opposed to what she appears to be, and knowing facts now about the students no-one knew then, we come to a result in favour of the claimant.

5.31. Ms Millns submits the University has proved, on a balance of probabilities, the claimant in her interactions with DC and ZW committed gross misconduct by asking and expecting them to do gardening, decorating, housework, CCTV positioning, house viewings**.** She encouraged them to spend time on her personal affairs or **at very least did not stop them**. She adds the claimant seeks to justify her conduct via the favours system, while previously accepting this should not apply to the teacher student relationship. She quotes her note of what the claimant said in cross examination of why ZW did work and would have been offended had she stopped him
Claimant - '*he is willing, he cares'*.
Ms Millns – *it doesn't matter if ZW thinks you are strange* (if you turn down help)
Claimant -- *I told him many times*
Ms Millns – *Was it becoming a problem, him helping you many times?*
Claimant - *it is common in Chinese culture, we try to return favour to his teacher*.
Ms Millns – *it was an act of standard Chinese culture?*
Claimant-- *he was willing to do so, it's his problem not mine*
Ms Millns – *that's where you get it very wrong. You are a teacher in a UK university*
Claimant – *according to your logic, all university teachers will have problem.*

5.32. The fact Ms Millns spends several paragraphs on this claim indicates she knows it is her problem area. She submits the claimant's relationship with the students caused serious distress to

both and crossed the line in a relationship where there is an obvious and accepted power imbalance saying the claimant *"should not avoid being held to account by hiding behind the excuse this is a Chinese cultural issue.That suggestion is a smokescreen for the truth.* The claimant took advantage of both students' willingness to please and inability to say no. In her letter of appeal she says '…*now I accept those activities would not be acceptable*…' Further, her attempt to resign was tacit acceptance of the untenable position in which she had placed herself. These are well made points but we disagree.

5.33. First, if the serious and persistent abuse of power which the students alleged was true, the claimant herself says it would be wholly wrong. We would find that to be gross misconduct. The key issue then is whether **we can be satisfied** it is **more likely than not the most serious allegations are true**. We cannot for these reasons
(a) Dr Li took ZW through to completion of his thesis by mid 2019. Prof Wilson does not know where ZW is now. ZW has been proved to have lied about certain things like his father being a Vice Chancellor in China. The claimant has put forward now evidence which raises serious concerns about plagiarism which have not been dispelled and may have been his motive to lie or exaggerate.
(b) DC is in the fifth year of her thesis, still at the University, but has not been called as a witness here, or even provided a written statement. She too obtained the extensions of time she wanted. She too may have had motive to lie or exaggerate.
(c) there are **huge gaps** in the questioning of the students and areas of their evidence which needed to be investigated further to look for real corroboration or the lack of it but Prof Wilson and, in reliance on him Prof Woodward too, formed their views on impressions of their credibility and the upset the students appeared to have felt. Both rushed the preparations for and holding of their meetings with the claimant.In effect, the University's position is they had, 2 years ago grounds to prefer the students' allegations to the claimant's denials , so we should do likewise now.

5.34. In an unfair dismissal case, Weddel-v-Tepper, Stephenson LJ: said *"Employers suspecting an employee of misconduct justifying dismissal cannot justify their dismissal simply by stating an honest belief in his guilt. There must be reasonable grounds, and they must act reasonably in all the circumstances, having regard to equity and the substantial merits of the case. They do not have regard to equity in particular if they do not give him a fair opportunity of explaining before dismissing him. And they do not have regard to equity or the substantial merits of the case if they jump to conclusions which it would have been reasonable to postpone in all the circumstances until they had, per Burchell, "carried out as much investigation into the matter as was reasonable in all the circumstances of the case". That means that they must act reasonably in all the circumstances, and must make reasonable inquiries appropriate to the circumstances. If they form their belief hastily and act hastily upon it, without making the appropriate inquiries or giving the employee a fair opportunity to explain himself, their belief is not based on reasonable grounds and they are not acting reasonably."* **The burden and standard of proof in wrongful dismissal is very different to a discrimination or unfair dismissal claim. Based on what we know now and with the obvious gaps in the questioning of ZW and DC, we are not satisfied the respondent has shown the serious allegations of the claimant taking advantage of them to be more likely than not to have happened. They may be true, they may not be. 50/50 is not enough.**

5.35. While it is not discriminatory to expect the claimant working in Northumbria to act according to its expectations, she said she would now, knowing the different approach both as to conduct and methods of supervision, the University expects. We accept she had not acted in wilful disregard of her obligations **by allowing ZW and DC to do the limited tasks she accepts they did**. The Adesokan case is relevant. A key feature of gross misconduct is wilful or grossly negligent acts by the employee. What the claimant accepted she had done was no different to the way she had

behaved at Bournemouth for years and in accordance with a culture she and the students adopted and practiced without complaint, not only in China but in the UK. While we respect Prof Woodward's view she should have known better, she did not see herself as having done anything fundamentally wrong. Neither do we. For example, allowing a student to incur an Uber fare and later paying her back, in cash or by a returned favour, may not be wise, but is not gross misconduct.

5.36. The indirect discrimination claim is of the disciplinary hearing on 21 January and the appeal on 8 April 2019 conducted entirely in English without an interpreter. We disagree with Ms Millns this was not a practice but a one-off event as in Ishola-v-Transport for London. Ms Millns agrees such a practice put or would put employees of Chinese (and other non English speaking) origin at a particular disadvantage compared to persons who are not, in that such employees would find it **more** difficult to **understand** some language and **articulate clearly** their responses. She says **the claimant was not put at that disadvantage** because, as became clear in cross examination, she did not need a Mandarin speaking interpreter, but someone to assist her in formulating her defence to the allegations so her claim **must** fail on that basis. We disagree to an extent because whilst it is clear she needed someone to help her put forward her case better than she did, the language may have been an additional problem for her. A failure to understand not only words but value judgments which underpin the words eg "appropriate" may be a disadvantage. The claimant's submissions give examples of English words she may not understand, but all she had to do was ask.

5.37. Her submissions then go a step further saying *the dismissal letter refers to her responses being unstructured and unclear* ***which is clearly as a result of her being ethnic minority****. It was unwanted conduct which related to race, which had the purpose or effect of violating her dignity and/or creating a hostile, degrading, humiliating or offensive environment.* She strays into harassment, but what she says has some relevance. We accept, as mentioned in 4.146 (e) above the change of allegations from specific to 2 vaguer ones meant broader concepts made it harder to focus her replies. However, that is not because of language. Here she was still *unstructured and unclear.*She had an interpreter and asked when she needed help. She did not when interviewed by the police and her solicitor did not advise one. She was in a stressful situation then, but got her explanations across adequately with the help of a solicitor who spoke only English. Her amended minutes of the disciplinary hearing, in comment boxes, say she felt either she misunderstood the question or her answer was misunderstood. **We do not accept anyone misunderstood her linguistically.**

5.38. It is the PCP itself, not the treatment of the claimant, which the respondent must try to justify. The University's HR witnesses confirmed it would have provided an interpreter **if** she had requested and needed one. In practice everyone teaching or studying in a UK university will have a good level of understanding of English so it would not be patently obvious anyone needed an interpreter. The respondent's legitimate aim is to conduct its internal procedures effectively so everyone involved can understand. It would not be a proportionate means of achieving that aim to take no steps to help non native English speakers **if they said they needed it**. We find the full PCP is to do all hearings in English according to procedure **unless** the employee asks for an interpreter.

5.39. The claimant had worked in the UK for many years teaching at UK universities, published extensively and lectured in English and supervised non Chinese students. She communicated well at interview. Had anyone of behalf of the University asked "*do you need an interpreter*" that would have been conduct related to race, which, if unwanted, may have had the effect of creating a degrading or humiliating environment for her if she took offence at the suggestion that having achieved all she has to become a professor at a UK University, she could not cope with an internal process in English. For the University to make such a suggestion may then have been harassment.

Therefore, we find is is **proportionate to expect people to ask for an interpreter if they need one**. The claimant did not ask . She asked for Dr Yu to be with her at the disciplinary meeting for health reasons and Ms Bridge to recommend a work colleague as a companion, not to help with language. Dr Xu's suggestion at paragraph 4.158.1. makes the same error. In short, if language was the problem all she had to do was say so. She never did. The full PCP is, in our view, a proportionate means of achieving a legitimate aim.

5.40. Paragraphs 4.173 and 4.174 above incorporate our conclusuions on the expenses and holiday pay claims. As for remedy, this was always listed as a liability only hearing. We cannot think of any god reason why remedy cannot be agreed. The claims we have found proved only require correct arithmetic calculation.

EMPLOYMENT JUDGE T M GARNON

AUTHORISED BY THE EMPLOYMENT JUDGE ON 6 OCTOBER 2021