EMPLOYMENT TRIBUNALS

Claimant: **Jonathan Linton**

Respondent: **University of Sheffield**

Heard at: **Leeds by CVP**
On: **22, 23, 26-30 July and (deliberations only) 24 August 2021**

Before: **Employment Judge Maidment**
Members: **Mr DW Fields**
Mr Q Shah

Representation
Claimant: **Prof L Fradkin, lay representative**
Respondent: **Ms R Barrett, Counsel**

RESERVED JUDGMENT

The claimant's complaints of unfair dismissal and disability discrimination fail and are dismissed.

REASONS

"Note: these issues are taken from the Annex to EJ Cox's Order of 16 February 2021, supplemented where indicated in that list by the further particulars supplied by the Claimant on 26 February 2021.

A. Constructive unfair dismissal

Was there a dismissal?

1. Did R do the following:

a. Send C a letter dated 23.05.19 relating to his wife undertaking teaching. This is not in dispute.

b. Fail to investigate C's grievances and complaints, namely:

i. From August 2018, several informal attempts to make a Public Interest Disclosure, none of which were addressed. C cites §12, 13, 20 POC and notes he wrote the clearest email on the subject on 14.09.18. The POC paragraphs cited say:

1. §12 POC: "*In several emails written between 8 August 2018 and 20 September 2018 C voiced his concern with this WAF policy, stating that in his view, 1) charging the external funder for more hours than spent on research the respondent was failing in its legal obligation to that funder and 2) it was inappropriate to apply a policy like this to grants already received, retrospectively*."

2. §13 POC: "*The concerns have never been addressed by management; on 9 August 2018 D1 advised a relevant colleague to ignore C on WAF issues, the third issue involving straightforward mistakes in allocation*."

3. §20 POC: "*Between 28 March 2019 and 24 July 2019 C attempted in vain to arrange a PhD studentship that the respondent undertook to support as an in-kind contribution to one of the externally funded research projects SUSTAIN. Again, all complaints that the respondent was failing in their legal obligations fell on deaf ears*."

ii. A complaint initiated through the Dignity at Work procedure on 26.04.19.

iii. A complaint initiated through the Dignity at Work procedure by letter of 17.10.19.

iv. A grievance against Rachael Finn, Interim Dean, submitted on 24.04.20 (§43 POC) and dismissed by Craig Watkins, Vice President and Head of Faculty on 13.05.20 (§45 POC).

v. An associated grievance against Craig Watkins, Vice President and Head of Faculty dismissed on 17.05.20 (§45 POC).

vi. A formal Public Interest Disclosure on 20.08.20 (§50 POC – "*regarding the irregularities in the WAF policy and failure to fund the PHD studentship*"), no investigation took place and the procedure was dismissed without giving reasons on 05.11.20. (R notes this post-dated C's resignation).

vii. Complaints as per § 13, 14, 16, 17, 18, 19, 20, 21, 23, 25, 26, 27, 28, 37, 38, 42, 48 POC, dismissed by Craig Watkins, Vice President and Head of Faculty as per §30 POC (**NB §30 POC**

does not appear to relate to the dismissal of a complaint.)
The POC paragraphs cited say:

1. §13 POC: "*The concerns have never been addressed by management; on 9 August 2018 D1 advised a relevant colleague to ignore C on WAF issues, the third issue involving straightforward mistakes in allocation*."

2. §14 POC: "*On 27 November 2018 D1 met with C. However, instead of addressing his concerns, D1 started the meeting by accusing C of having harassed multiple staff members. D1 claimed that this pattern of behaviour was well established and that it had to stop immediately. If not, formal action would be taken. This was the first time C was confronted with such allegations. He advised D1 that he was uncomfortable with continuing the meeting without proper accompaniment and left*."

3. §16 POC: "*D1 and HR agreed to a four-way meeting with C and his TUR2 to discuss all concerns. The meeting took place on 10 January 2019, but no disciplinary hearing was initiated, and at least part of C's work assignment on WAF was agreed to have been inappropriate and removed. C's concerns regarding the new WAF policy on teaching buy-out were not addressed*."

4. §17 POC: "*On 26 March 2019 another meeting between D1 and C took place, but C's concerns were not addressed*."

5. §18 POC: "*On 5 April 2019 C advised HR that he was ready to initiate the Dignity in Work procedure to deal with his complaints... On 26 April 2019 C had a long telephone conversation with HR, seeking ways to deal with his perceived mistreatment by the D1. He alleged that not only he himself felt bullied, he witnessed other employees with protected characteristics being discriminated against. Eventually it was decided that C would be in touch with VP*."

6. §19 POC: "*On 23 May 2019 D1 and HR arranged for a Signed Disciplinary Note to be put on claimant's file, accusing him of inappropriately hiring his wife as a substitute teacher. C's emails justifying his actions were ignored. All subsequent attempts by C to demonstrate that he followed the appropriate procedures were ignored, leading to great distress*."

7. §20 POC: "*Between 28 March 2019 and 24 July 2019 C attempted in vain to arrange a PhD studentship that the respondent undertook to support as an in-kind contribution to one of the externally funded research projects*

SUSTAIN. Again, all complaints that the respondent was failing in their legal obligations fell on deaf ears."

8. §21 POC: "*On 24 June 2019 C met with VP, who instead of addressing his concerns focused on whether C's performance warranted continuation of his market supplement. C was advised that his concerns would be addressed by the new line manager D2. He was told not to contact her though, but wait for her to contact him. Thus the Dignity at Work procedure was effectively dismissed*."

9. §23 POC: "*In a now disclosed email to a colleague, on 2 September 2019, D2 described C's WAF concerns as "still rumbling on"*."

10. §25 POC: "*On 18 September 2019 C met with VP again. Similarly to the June meeting, the focus of the meeting was not on claimants' grievances and complaints, but on the performance expectations*."

11. §26 POC: "*On 19 September 2019 - in a now disclosed email – D2 provided VP with C's latest SRDS form. D2 mentioned that the form documented claimant's concerns over "a number of 'live' issues" and this was "wearing thin among a few" staff members. In this email she promised VP that she would invite C to come to her with perceived issues*."

12. §27 POC: "*On 20 September 2019 - in a now disclosed email – VP advised D2 that she "should probably go ahead and meet" with C*."

13. §28 POC: "*She did not and in frustration on 4 October 2019 C submitted his first ET1 – claiming victimisation*."

14. §37 POC: "*On 13 February 2020, having received a reply from the HR that his questioning of her behaviour was unclear and could be discussed at the next meeting, C despaired and asked her to recluse herself from further proceedings. He wished to continue conducting SRA with D2 – as prescribed by the Sickness Absence Management procedure, with the help of a mediator – as suggested in the OH report*."

15. §38 POC: "*Despite this, on 17 February 2020 another four-way SRA meeting took place. Lack of compliance with the Sickness Absence Management procedure was not discussed*."

16. §42 POC: "*Throughout March and April C made many unsuccessful attempts to meet with VP or D2, without HR but hopefully with a mediator*."

17. §48 POC: "*In mid-July, in preparation for discussion of C's grant related concerns C and D2 exchanged some information and D2 promised to check hers and respond in a few days. However, on 29 July 2020 C was advised that the Sickness Absence Procedure had now entered the formal stage and there would be a hearing; with dismissal as one possible outcome*."

And further:

18. § 3.2.2 b (i) FP: On 19 September D2 promised VP to see C about his concerns (§ 26 POC), and yet, the same day she advised a redacted correspondent to redirect to her C's WAF concerns revealing that she would then redirect them to VP - after reading description of how, in a vain attempt to resolve WAF issues, C contacted one manager after another many times over (there are several emails confirming that often C did that on advice of the managers involved);

19. § 3.2.2 b (ii) FP: When C attempted to initiate a grievance procedure against Craig Watkins, who did not want to consider a grievance against Rachael Finn, Gill Valentine, Provost and Deputy Vice-Chancellor, advised C that all complaints should be directed to Rachael Finn (§45 POC).

c. § 3.4 FP: Introduce spurious performance targets for C: unlike the Craig Watkins's letter of 23 October 2019 to C (§ 30 POC), Performance standards produced by Rachel Finn in mid-July 2020 (§ 48), included no quantitative targets;

a. Make allegations of poor performance at a sickness absence hearing on 16.10.20, when it is alleged that Rachael Finn made a suggestion that C did not attract enough research income or published enough quality papers and accused C of not being a good member of the teaching team.

b. In October 2019, ask its Occupational Health advisor when C would return to work, and propose to ask the same question in November 2020.

c. Fail to follow its own Sickness Absence Management Procedure by:

   i. Not following the University Flowchart Guidance on the Maybe-fit-to-work assessment process:

      1. Not undertaking a detailed discussion of the GP recommendations;

      2. Rachael Finn avoiding direct communication with C till December 2019 (§31 POC);

      3. Holding 5 sporadic meetings on 06.02.20, 11.02.20, 17.02.20, 28.04.20 and 06.06.20 as per §33, 38, 44, 47 &

48 POC (**NB §42, 43 also cited but do not appear to relate to meetings**).

4. C's March 2020 attempts to meet with VP were unsuccessful (§42 POC).

5. C's concerns were never fully addressed at a meeting on 28.04.20 (§44 POC) and a second Stress Risk Assessment meeting did not take place (§48 POC).

6. C was expected to return to work before the Risk Assessment was completed.

7. Risk assessment meetings were often confused with return-to-work meetings.

ii. There was a suggestion of termination even before the first formal sickness absence meeting (§48 POC).

iii. It was not taken into account that C was an accredited Trade Union representative.

d. Indirectly discriminate against C as set out below.

2. If so, did such matters above as the Tribunal finds proven amount to a breach of the implied term of trust and confidence in C's employment contract?

   a. Was there a 'last straw'? C relies on R asking C on 03.11.20 whether he would agree to undergo another Occupational Health assessment to establish when he could return to work (§52 POC). R says this was an innocuous act.

3. If so, did C resign in response to the breach? C resigned on 04.11.20.

4. Did C affirm the contract prior to resigning?

If there was a dismissal, was it an unfair dismissal?

5. Was there a fair reason for dismissal? R relies on capability, a potentially fair reason.

6. Did R act reasonably in treating capability as a sufficient reason for dismissal?

7. Was C's dismissal fair in all the circumstances of the case, including having regard to R's size and administrative resources?

If there was an unfair dismissal, are there findings that will affect the remedy?

8. If C was unfairly dismissed, would he have been fairly dismissed by reason of capability in any event and if so when?

9. If C was unfairly dismissed, did C contribute to the dismissal by his own conduct?

B. Disability discrimination

Disability status

10. The Tribunal has found at a Preliminary Hearing on 04.09.20 that C was disabled from 26.09.19 onwards by virtue of his condition of work-related stress and anxiety.

Did R indirectly discriminate against C?

a. Did R apply the following provision, criterion or practice ('PCPs') the provision, criterion or practice ('PCPs) of dismissing C's grievances and complaints without investigation by Comitting acts set out at paragraph 1(b) above.

b. Using meetings meant to deal with C's grievances and complaints to discuss his performance or return to work, namely using the meetings meant to deal with the work issues and thus stress risk assessment to discuss C's return to work instead (as confirmed by confusing the names of such meetings in many emails from R by C).

c. Redirecting C's complaints from one manager to another, see para 1 vii 19 above,

d. Accusing C of being vexatious when dismissing his grievances, as per §45 POC.

e. In October 2019, asking the Occupational Health advisor when C would return to work.

f. Accusing C of failing to co-operate with the Occupational Health expert in a letter of 23.10.19 from Craig Watkins.

g. Refusing to follow or discuss the Sickness Absence Management Procedure, as set out at paragraph 1(f) above.

h. Refusing to follow or discuss the Occupational Health report and GP recommendations, namely:

i. Arranging no regular meetings with Rachael Finn or Craig Watkins;

ii. Making only half-hearted attempts to conduct the stress risk assessment;

iii. Refusing to arrange mediation with Rachael Finn;

iv. Refusing to arrange meetings with Rachael Finn sensitively without HR;

v. Matthew Wood refusing to be sensitive to C's requests to be accompanied by his lay representative at the Sickness Absence Management Meeting.

11. Did or would R apply the above PCPs to persons with whom C does not share the characteristic of work-related stress and anxiety?

12. Do or would the above PCPs put persons with work-related stress and anxiety at a particular disadvantage when compare with persons who do not have work-

related stress and anxiety? (C says the particular disadvantage was: "*Having their concerns ignored is particularly difficult for persons with mental health issues and in particular for those with depression. Persons who are depressed have low self worth and a poor opinion of themselves. Ignoring their concerns is the worst response the management can give, making them question their own sanity and reinforcing despair*".)

13. Did or would the above PCPs put C at that disadvantage?

14. Were the PCPs a proportionate means of achieving a legitimate aim, namely managing R's operations efficiently and fairly and successfully managing sickness absence?

Did R discriminate against C because of something arising from his disability?

15. Did the following things arise in consequence of C's disability of work-related stress and anxiety?

    a. C alleges that because of his impaired ability to express himself clearly and succinctly in consequence of his disability he was unable to express his complaints and grievances in a clear, concise and assertive manner.

    b. C alleges that because of his increased emotional vulnerability in consequence of his disability he was upset at the Respondent asking the Occupational Health advisor in October 2019 when he would return to work.

    c. C alleges that because of his increased emotional vulnerability in consequence of his disability he needed his trade union representative to be present at any meeting where Catherine Merrywest, whom he viewed as hostile to him, was in attendance.

16. Did R treat C unfavourably by:

    a. Dismissing C's grievances and concerns without investigation, as set out at paragraph 1(b) above.

    b. Failing to follow the Occupational Health advisor's recommendations that R should address C's work-related issues.

    c. Viewing C as refusing to co-operate, namely by:

        i. In Craig Watkins' letter of 23.10.19, treating C's negative reaction to being asked by the Occupational Health advisor when he could return to work as a refusal to keep an appointment.

        ii. Presenting a Management Case at a sickness absence hearing which put blame on C for failure to have regular meetings with Rachael Finn without addressing C's response that he did not feel comfortable attending meetings with Catherine Merrywest unless he had a trade union rep.

17. Was the unfavourable treatment at 17(a) and / or (b) done because of the 'something arising in consequence of disability' at 16(a)? Was the unfavourable

treatment at 17(c) done because of the 'something arising in consequence of disability' at 16(b) and / or (c)?

18. Was the treatment a proportionate means of achieving a legitimate aim, namely to manage R's operations efficiently and fairly and successfully manage sickness absence?

19. Did R know or could R reasonably have been expected to know that C was disabled, and if so from what date?

Were C's discrimination claims brought in time?

20. In relation to allegations dating over 3 months prior to the presentation of the ET1, namely before 07.12.20:

    a. Did these events form part of a continuing act of discrimination, the end of which fell within the three-month time limit?

    b. If not, would it be just and equitable to extend the time limit?

Evidence

1. The list of issues set out above constitutes the final list agreed between the parties and discussed at the outset of the hearing. There was some dispute/debate as to exactly how the issues were accurately and fully to be framed until, during the course of the hearing, this definitive version was agreed.

2. Tribunal had before it an agreed bundle of documents numbering in excess of 1200 pages. A small number of additional documents were added in evidence during the course of the hearing, again by agreement between the parties.

3. The tribunal heard firstly from the claimant. On behalf of the respondent, it then heard from Prof David Oglethorpe, former Dean of the School of Management, Prof Craig Watkins, Vice President and Head of the Faculty of Social Sciences, Prof Rachael Finn, current Dean of the School of Management, Dr Catherine Merrywest, Human Resources Manager for the Faculty of Social Sciences and Prof Susan Fitzmaurice, Vice President and Head of the Faculty of Arts and Humanities.

4. The tribunal heard and refused an application for the anonymisation of the claimant's identity within the tribunal's reasons on the basis that the grounds put forward were insufficient on balance to outweigh the principle of open justice. The claimant's issue regarding how matters might affect his future employability was one which could be raised by very many claimants in the employment tribunals. Nor was any anonymisation appropriate in circumstances where the claims involved the claimant as a disabled person and, in particular, one who had suffered mental health impairments. Disability status had been determined at an earlier hearing and the tribunal was of the view that there was likely to be no need to refer to the claimant's medical and personal history in particular detail.

5. Having considered all relevant evidence, the tribunal makes the factual findings set out below.

Facts

Introduction

6. The claimant was employed by the respondent from 1 September 2016 as Professor in Operations and Technology Management in the School of Management. He accepted that this was a leadership role with a focus on research and an expectation that this would be at a level which was recognised internationally and generated income. In doing so, he was expected to act collaboratively with colleagues and other institutions. In addition, his duties included undertaking teaching and contributing to the running of the Management School. He reported to Professor Oglethorpe, Dean of the School of Management until he left the respondent on 9 August 2019.

7. The claimant was issued with a series of offer letters which constituted his terms of service. The final one, dated 15 September 2016, recognised that the appointment was as a Band 2 Professor at Point 12 with a salary at the rate of £91,448 per annum and an annual salary supplement in addition of £11,460. Whilst guaranteed for the first 2 years of his employment, the salary supplement was then subject to performance and a yearly review against agreed objectives. Those objectives, it was said, would primarily relate to major grant capture and the claimant's publications. The letter went on that the respondent expected significant ambition in grant winning in terms of size and the building of research networks. Publications would be expected to be of international quality, published in 4 star, 4 and 3 ranked journals and in sufficient volume to ensure that he made a full submission to the next national research audit ("REF").

8. 70% of the claimant's time was to be protected for research activities for the first 2 years and after that he would revert to the standard for the respondent's professors of 40%, albeit percentages could vary depending upon the grants obtained.

9. The claimant's hours of work were set out and split up between relevant activities in an annually completed document known as the Work Allocation Framework ("WAF"). His initial WAF reflected a target of 1540 hours of which 1128 (70%) were allocated to research. A subsequent WAF for 2018/19 provided for 741.4 research hours which represented his protected 40% research hours (591) together with an additional 150 hours in respect of a research project known as PITCHIN. Together with other elements, including a teaching allocation, this gave an allocation for the year of 1348.4 hours against a personal target for the year of 1478.4.

10. It is clear that the claimant had a problematical relationship with Prof Oglethorpe which caused him significant concerns on an ongoing basis. There are no claims in these proceedings based upon the claimant's perception that he was being bullied by Prof Oglethorpe and the tribunal makes no findings on the issue.

11. It is noted that the claimant raised a complaint that a grant bid the claimant wished to put forward was being unfairly held back by colleagues. Prof Oglethorpe replied on 20 May 2018 seeking to explain that it was likely that several of the respondent's bids were competing for the same external funding. Prof Oglethorpe explained to the tribunal that this is not unusual and there were always internal and external "rounds" to get through in any application. The claimant's bid related to social housing post Brexit and Prof Oglethorpe's suspicion was that the claimant's bid had simply been superseded by others. The issue generated significant discussion and email traffic in circumstances where there was a reluctance for the claimant's bid to be simply withdrawn as that risked damaging the respondent's reputation with external partners. As a result, Prof Oglethorpe gave approval for it to proceed. He was then contacted urgently by the claimant on 22 May. He understood from his PA, Kathryn Hewitt, that the claimant was insisting he be got out of an interview to discuss the issue and that Ms Hewitt was upset at how the claimant had spoken to her. Prof Oglethorpe emailed the claimant that afternoon describing the issue as "a debacle", continuing that he now needed to talk to him about his conduct in dealing with members of staff. He said that demanding that he was pulled out of interviews to discuss a problem of the claimant's making was not acceptable. Prof Oglethorpe told the tribunal that he had seen for himself how upset Ms Hewitt had been. The tribunal finds that he was raising a genuine concern.

12. Discussions took place in July 2018 prompted by the claimant asking to buy himself out of teaching to support research projects. When put in cross-examination to Prof Oglethorpe that, in an email of 26 July, the claimant was seeking guidance on the limitations on buying-out teaching allocation, Prof Oglethorpe responded (accurately) that the claimant was asking if he was comfortable with a buy-out of all teaching. The respondent permitted research buy-outs on occasions but only if the research project funded the academic's costs and overheads. In an email of 27 July 2018, the claimant referred to a partial change of policy regarding his WAF from the previous two years. Prof Oglethorpe confirmed that, as his first two years were expiring, the claimant would revert to the 40% of hours to be dedicated/ringfenced to research. He explained that, if the claimant won a grant with sufficient funding, he would consider a buy-out of teaching hours, but in the absence of that he needed the claimant to commit to the teaching Prof Genovese, as Head of Division, was requesting of him.

Early concerns

13. The claimant's case is that he made informal attempts at making a protected disclosure from 8 August to 20 September 2018 regarding the WAF,

expressing concern about the way hours had been calculated and what had been charged to grant funders.

14. The claimant received an email on 8 August 2018 from within the School of Management stating that Prof Genovese had asked which grant the claimant had been referring to in earlier correspondence. The claimant replied on 9 August, not, he told the tribunal, any form of protected disclosure, saying that 4 items had been missed from a list of grants, copying in Emma Williamson, of the School's Finance Office. She then communicated with Prof Oglethorpe on 9 August saying, with reference to the claimant: "we are all finding it increasing difficult to work with him, as we are not included in the planning stage for any of his grants and cannot get a straight answer from him when requesting further information. Do you have any advice?" Prof Oglethorpe replied that his advice was "to just ignore him on these issues" or to say that she had sent the correspondence to himself and Prof Genovese. Prof Oglethorpe's evidence was that the issues being raised had nothing to do with Ms Williamson. Prof Oglethorpe commented to Prof Genovese in his response that they had better meet with the claimant as soon as possible commenting that he was "clearly trying everything he can to wangle more WAF for research now that his introductory 'protected time' had ended." The claimant did not see this correspondence until much later, albeit prior to his resignation, but commented in his evidence that there had not been a discussion with him as Prof Oglethorpe suggested ought to occur.

15. There was certainly further email correspondence. The claimant emailed Adam Ross, Learning and Teaching Quality Support Officer and Prof Genovese on 3 September thanking them for an update and saying that he was expecting a buyout of 50 days to give him more research hours. The claimant accepted before the tribunal that there was no protected disclosure he was making in this communication.

16. The claimant further emailed Prof Genovese on 14 September in a response to a message thanking the claimant for his patience, with a breakdown of funding allocated to him, Prof Genovese also saying that the hours credited to those grants had already been accounted for in his workload and that any additional time could not be used for any teaching buy-out. The claimant commented that it was "wonderful" that Prof Genovese was trying to get a better financial deal for the School, but that the respondent had agreed with the grant funder to provide a replacement lecturer and to pay for it and that doing something different could get everyone into trouble at the time of accounting and audit. He said that Prof Genovese was being personally creative. Whilst not accepted by claimant, the tribunal considers his reply to demonstrate an element of sarcasm and was likely to be regarded as personally offensive by Prof Genovese. The claimant considered that in this communication he was making a protected disclosure, which required investigation.

17. The claimant accepts before the tribunal that he was mistaken as to the respondent's approach and this being a decision taken by Prof Genovese. He accepted that he had not spelt out what his concerns were, saying that he was trying to understand what was going on.

18. Prof Oglethorpe emailed Prof Vorley, Associate Dean Impact, Engagement and Innovation on 16 September regarding the claimant's WAF allocation saying that once there was a resolution of the hours allocated to each type of work category, it be presented to the claimant as "a fait accompli" and that he did not want to get into a further round of emails – the next stage he said would be a face to face meeting with the possibility of matters going down a conduct or capability route if matters remained unresolved. He told the tribunal that the claimant had been shown his WAF calculation a number of times, that a consistent formula was applied to everyone and people couldn't simply negotiate their hours of work. That evidence is accepted.

19. The claimant says that he met with Prof Oglethorpe on 27 November 2018 who did not, however, address his concerns. Prior to that meeting the claimant emailed Prof Oglethorpe on 21 November. He referred to a history of communication difficulties with Prof Genovese. He looked forward to working with Prof Oglethorpe "for the purpose of removing all hindrances to well-being and a healthy and effective work environment." When put to the claimant in cross-examination that he did not say he was wishing to complain, he said that Prof Oglethorpe was aware that he had a list of concerns.

20. Prof Oglethorpe responded saying he wished to meet with the claimant face-to-face, to which the claimant agreed. In an email of 22 November, Prof Oglethorpe set out what he would like to cover at the meeting which included the claimant's frequency of communication, physical availability in the School, expectations of his role, teaching responsibility and his presence at events. The claimant agreed before the tribunal that there was no suggestion that Prof Oglethorpe would deal with any complaints and the claimant said that it had been his intention that, once they have gone through these issues, he would go through the concerns he had.

21. Prof Oglethorpe emailed the claimant after their meeting to record what had happened. He said that he attempted an explanation that this was an informal meeting, but before he could get into any detail on the issues the claimant told him he was uncomfortable discussing any of these matters without union representation. That is what indeed occurred. The claimant before the tribunal said that he had asked for a halt to the meeting when it had been raised that he had been harassing people. Prof Oglethorpe's summary was not accurate. Certainly, however, the meeting ended early before claimant had raised any complaints or concerns. The claimant said that he had raised improper accounting practices in August/September (a reference it seems to his 14 September email to Prof Genovese) involving charging of hours to a grant funder and that was one of the issues he was going to (but didn't in fact) bring up.

22. The claimant emailed Dr Merrywest, the School's HR Manager, on 27 November saying that Prof Oglethorpe's record of the meeting was different from his understanding.

23. The claimant raises an issue regarding a meeting involving Prof Oglethorpe on 10 January 2019. Dr Merrywest attended and a union representative accompanied the claimant. The original agenda provided that this was an informal meeting to address concerns about academic conduct and external commitments and also about concerns the claimant had in respect of workload. It was said to be a reasonable expectation that the claimant undertook the teaching assigned to him through the work planning process and engaged with that without the need to raise disputes with other members of staff. The question was to be raised as to whether the claimant had ongoing concerns about his workload and for there to be discussion about the claimant's current responsibilities. The claimant agreed that this meeting was in part to consider his concerns, but said that the agenda changed prior to the meeting.

24. Prof Oglethorpe emailed the claimant after the meeting referring to its informal nature. He recorded that the claimant identified that he had wider concerns around the process of workload allocation and much of their conversation had focused on that. He recorded a discussion about several useful issues and thinking that he understood where the claimant's frustrations lay. He hoped that going forward the claimant felt that channels of communication were now opened up.

25. The claimant agreed that the course MGT136 (which the claimant had an issue regarding teaching, relating to relevant expertise) was discussed. The claimant was directed to explanatory documents regarding workload allocation. The claimant told the tribunal that the guidance, however, was incomplete. He agreed that he was given the opportunity to put any other concerns he had in writing. He said, however, that he had received responses which he found intimidating and wouldn't discuss. When suggested to him that the email was not consistent with that, he said that it was not representative of the meeting. He agreed that there was a plan and to meet in February. Prof Oglethorpe wrote to the claimant again on 15 January saying that he had met with Prof Genovese who had agreed to rearrange the aforementioned teaching module, but that this had left an even bigger gap in his workload so that additional work would have to be found, presumably more suitable to the claimant's subject area. The claimant was asked if he wished to re-present his case to Prof Vorley in support of him being due an additional research buy-out from his workload.

26. The claimant met with Prof Oglethorpe again on 26 March 2019. When it was suggested that Prof Oglethorpe tried to ascertain his complaints, the claimant said that he was told not to raise any complaints, but was instead asked for solutions. Everything he raised, he said, he was told was not possible. The claimant wrote to Dr Merrywest on 5 April saying that on 26

March he had provided a series of minimum items that would allow for a potential "reset". He said that Prof Oglethorpe indicated that he was unwilling to consider most of what was requested and did not offer alternative solutions. He then stated his understanding to be that the existence of widespread bullying was recognised as being a current characteristic of the work environment. He made further comments regarding Prof Oglethorpe's unhappiness with him, Prof Oglethorpe being uncomfortable acknowledging positive behaviour and being aware that the claimant's name and reputation was being used inappropriately by other members of the department. He said that what had not been discussed was that he had been under external care for work-related stress for well over a year. The claimant accepted before the tribunal that this was the first time he mentioned work related stress. The work situation was worsening, and he said it was time to start by addressing the most straightforward concerns through "the formal process". Dr Merrywest responded that day noting that the situation was of a more serious nature than she had anticipated. She referred the claimant to the respondent's well-being support services. She said that it would be helpful to talk through what he would see as the best next steps and his desired outcome and if he would be happy for her to share his concerns with Prof Oglethorpe. The claimant agreed that this was a supportive response, although he felt it did not say that the respondent would investigate if bullying was found.

27. A telephone call was arranged then with Dr Merrywest on 26 April 2019 which lasted around one hour. The claimant accepted that she gave him some of his options, including raising a formal complaint. He accepted before the tribunal that he said he was not looking to raise a grievance at that time. He agreed that he had said that he wanted disciplinary proceedings to be taken against Prof Oglethorpe, but that he now recognised that his wording had been poor and what he wanted was an examination to see if there had been bullying. He understood now why Dr Merrywest said that it was not for him to instigate disciplinary proceedings. She had explained that at the time. The claimant's evidence was that she had said that he could put in a grievance, but that it was appropriate to try to resolve matters without one and urged him to speak to Prof Watkins, Vice President and Head of the Faculty of Social Sciences. He did not recall whether she had said that a grievance could lead to disciplinary action if bullying was found to have taken place. On balance it is more likely that she did. Mediation was also raised as a possibility, but the claimant had said that he did not think it was helpful at that point.

28. Dr Merrywest emailed the claimant on 3 May as a follow-up to their conversation. She had tried to contact Prof Oglethorpe, but he was currently away. She told the claimant that he could request to speak to or meet with Prof Watkins and she would be happy to update him. She was happy to meet with him herself again. She noted that he did not wish to raise a grievance, but said that this remained an option and provided a link for the claimant to access the grievance procedure. He was also provided with a link to the respondent's Dignity at Work Guidance. He was told that mediation remained an option as well.

29. The claimant has alleged that the respondent failed to follow up on a dignity at work complaint. The respondent's dignity at work policy provided for an informal process which might include talking to the person concerned, writing to the person concerned, talking to the next level of manager, seeking support from the respondent's Dignity at Work Network, involving a third party to assist, seeking advice from HR, seeking advice from a trade union, investigating options for a formal mediation or accessing workplace health and well-being support. The policy then provided that, if attempts to resolve unacceptable behaviour informally proved unsuccessful or if the matter was sufficiently serious to address formally, it would be dealt with through the respondent's formal grievance procedure.

30. Prof Oglethorpe left the respondent's employment around 9 August 2019 having announced his resignation in early May.

PhD studentship

31. The claimant's case was also that he had made protected disclosures regarding the issue of a PhD studentship from 28 March 2019 to 24 July 2019.

32. On 28 March 2019 he emailed Prof David Petley, Vice Principal of Research, seeking guidance as to how to recruit a PhD student on a significant project known as SUSTAIN, led by the University of Swansea, but with the respondent as a partner. The claimant accepted before the tribunal that this communication was not any form of protected disclosure. The claimant was told to contact Deborah McClean, an administrator in Research Services. The claimant did so on 10 May which, he accepted, was a request for assistance. He chased for a reply on 22 May and then received one that day saying that she hadn't forgotten about the issue and was trying to locate the "make up" of the funding. The claimant subsequently asked for an update by email of 5 June. She responded on 13 June. She said that there was still a need to know who was funding the student before the claimant went ahead with an advert and referred to difficulties in contacting Prof Mark Rainforth who was the lead within the respondent on this particular project.

33. The claimant emailed Ms McClean on 21 July asking if he could "belatedly stop the recruiting process". He said he was saying that they were probably going to be late in fulfilling their commitments and he was concerned. The PhD studentship was supposed to have been in place by the autumn. He told the tribunal that he was not intending to raise a protected disclosure – he was encouraging the respondent to do what was necessary to comply with the grant. He said at this point it would have been too early for the respondent to investigate anything.

34. Ms McClean replied on 22 July saying that she had tried repeatedly to contact Prof Rainforth, but without success. They couldn't proceed without him shedding light on the matter. The claimant responded on 24 July saying: "I'm sorry to hear that the SUSTAIN program is creating an inconvenience for you." He referred to the message which this might send to the project partners. The claimant told the tribunal that at this stage his concern was maintaining the respondent's reputation. When asked if he was raising a protected disclosure, he said that he was attempting to do his job and to represent the respondent – effectively, to prevent embarrassment if the respondent did not appear to know what it was doing. When asked if he was suggesting that this last message would prompt an investigation, he said that he would have done some sort of enquiry if he had been Ms McClean. At this point he didn't think there had been any breach of any legal obligation but just "some little mistake". He did not expect an investigation.

Engagement of the claimant's wife

35. A particular issue had arisen when Prof Oglethorpe became aware that the claimant's wife had undertaken some teaching on an undergraduate module assigned to the claimant. He said that he had previously approved her as an atypical worker on a research only contract. The tribunal notes that the claimant had emailed Prof Genovese on 8 June 2017 attaching his wife's CV on the basis that she might be able to assess in filling in some gaps in lecturing. The claimant accepted that this significantly predated the staffing request for her sent in November 2018. He accepted that the CV had not been sent to the Associate Dean for Teaching.

36. The case put to Prof Oglethorpe was that in August/September 2018 the claimant had brought up the issue of hiring his wife to carry out some teaching. Prof Oglethorpe was adamant that this conversation did not take place. He would have recalled if that had been requested and he said he was consistent in all other communications that this would not have been appropriate. He was adamant that there had never been any approval for this as the claimant's wife was not an appropriate resource to use for this teaching and he would not have agreed. The conversation he said did not happen. The tribunal accepts Prof Oglethorpe's evidence, as corroborated by correspondence and the completion of subsequent documentation described below which omitted any reference to the claimant's wife being used for teaching.

37. Indeed, on 1 November 2018 the claimant emailed Prof Oglethorpe asking if he could use some funds for the recruitment of an atypical worker (no reference was made to his wife) to directly and indirectly support work on a research grant known as PITCHIN. He said that this would involve the utilisation of such a worker "to look after some grading requirements". The claimant accepts that he made no reference to teaching.

38. On 28 November an employee from the Operations Team of the Management School emailed the claimant's wife with what she termed to be "an Atypical Worker Approval Form for the work you are undertaking for Jonathan." She said that it would be appreciated if she could check the details, sign and return it. She was told that she could use the section C of the document as a timesheet to claim for hours worked. She was told the applicable rate of pay for a grade 8.1 worker. The claimant had previously accessed this form and completed the first section which referred to a proposed start date of 3 December 2018. Under the heading of description of work the claimant had entered: "Research, Interviews, Data Collection, Analysis and Report Writing, Support for Associated Course Related Activities." The claimant told the tribunal that, to him, the term "course related" encompassed teaching as it would indeed grading. It could mean any of those things and his evidence was that he was accustomed to that meaning from his work at universities in Canada from where the claimant originates. The tribunal considers that such terminology was insufficiently precise to cover teaching and that the claimant would have referred to teaching if he has been openly seeking approval for his wife to teach. He gave the aforementioned specifics of other aspects of her proposed work.

39. The claimant did send an email to Matthew Willett of the respondent on 18 January 2019 where, amongst other things, he said that Prof Oglethorpe had approved an atypical contract a few months previously in the name of his wife and saying that she could provide assistance both with research, lectures, tutorials and grading. He said that she would be covering particular lectures, tutorials and grading associated with that. When put to the claimant that it was wrong for him to say that he had Prof Oglethorpe's authority to engage someone to provide teaching, he said that he had had a discussion with him the previous September.

40. In any event, the claimant knew that he was seeking approval in circumstances where he ought reasonably to have awaited the issuing of such approval which in fact never came. Of course, the claimant maintains that he believed that the respondent contacting his wife in respect of the completion of the application form and setting out rates of pay constituted that approval. The tribunal accepts Prof Oglethorpe's evidence that there was a policy which required Associate Dean for Learning and Teaching approval for the use of any temporary teachers (to ensure compliance with quality standards) and that the claimant ought to have ensured that he understood that policy. The tribunal has seen the respondent's policy on engaging external teaching resources which was readily available on the School's intranet. Such approval is required under it.

41. Prof Oglethorpe emailed the claimant on 9 May 2019 saying that it had been brought to his attention that classes which had been assigned to him and which were reflected on his workload allocation had been covered by his wife, who was employed on a temporary research only contract. He said that the issue was not that he had employed his wife but that, whilst he had authorisation to employ her, this was not for teaching activities and certainly not to displace teaching assigned to him without prior agreement and

authorisation. He went on that it was a matter of quality assurance and School policy that anyone hired, for however long, to teach must be approved by the Associate Dean for Learning and Teaching via the Head of Division. He said that neither had approved her to teach. There were then he said three serious breaches of process in that, firstly, someone on a research only contract had been used in teaching, secondly there was no approval by the Associate Dean and, thirdly that the claimant had autonomously decided to replace his assigned teaching with "this unauthorised and unapproved teaching cover." Prof Oglethorpe said that he was on leave but would pick this up on his return and would be advised in the meantime by Dr Merrywest as to whether this constituted any breach of process or policy beyond breaches at School level and how they needed to take the issue forward. Prof Oglethorpe's concern was genuine and not invented.

42. The claimant did not respond. It was put to him that if there had been a discussion of the type he now maintained with Prof Oglethorpe in September 2018, approving the claimant's wife to carry out teaching, he would have responded swiftly correcting him. The claimant rejected that proposition, saying that Prof Oglethorpe said that he would pick the matter up on his return and he understood that he would discuss the matter with Dr Merrywest.

43. Given other email correspondence debating various issues of concern and disagreement, the tribunal is surprised by the claimant's lack of response if Prof Oglethorpe was misrepresenting the situation so significantly.

44. Prof Oglethorpe emailed a letter to the claimant on 24 May dated the previous day. He repeated his issues regarding the employment of the claimant's wife. He added a fourth concern that, since the replacement teaching was not taken off the claimant's workload, the claimant's household had in effect been paid twice for the work. He said that whilst the claimant might have some explanation around these events, he had not offered any since the earlier email. He went on that it was "agreed" that what had occurred did represent a breach of process and good practice "so hence me sending this informal note to you now and also stating that the circumstances involved must not happen again."

45. The claimant said in evidence that he believed that the respondent had carried out proper due diligence. He had filled out and submitted the appropriate form and if this due diligence had not been done, it was outside his scope. He said that he had followed the process he had been given. When put to the claimant that, if the allegations were unfounded, he would have replied and raised his purported September 2018 conversation with Professor Oglethorpe, he said that a disciplinary letter had been issued without investigation. He queried how it could be suggested that he should have refuted Prof Oglethorpe's account directly, saying that he had just raised that he was being bullied. He then tried to get the letter withdrawn. When put to him that no September conversation had taken place in the

way he suggested, he said that was incorrect and that Prof Oglethorpe knew that the claimant's wife was approved for "course related activities".

46. Dr Merrywest corresponded with the claimant about the letter which was placed on his file. The tribunal notes that had a formal disciplinary warning been issued, it would not have been physically removed from his file after the expiry of its "live" period. She had advised Prof Oglethorpe that this was not part of any formal process which had to be made clear to the claimant. She explained that to the claimant and encouraged him to discuss the issue with Prof Watkins to which the claimant agreed. She wrote on 16 August 2019 that Professor Watkins would discuss the letter at their next meeting and that it would be removed from his file if he could demonstrate that the correct procedures had been followed in the engagement of his wife. She recognised that he could raise a grievance about this at any time, but advised him not to do so as he might wait to see if the matter could be resolved with Professor Watkins.

Further concerns and discussions with Prof Watkins

47. The tribunal notes that on 5 June 2019 the claimant emailed Adam Ross, saying that he had undertaken trade union training of which he had reminded Prof Genovese and wondered whether there was a reason why it had not shown up on his WAF. Mr Ross replied that his current WAF did not cover union activities. The tribunal notes that whilst the claimant had been accredited internally by the union as a representative, he was not an active employee representative at this or any other time. The claimant replied on 13 June saying that his goal was to understand his assigned workload and there remained many outstanding questions. The matter was referred upwards by Mr Ross to Emma Williamson of the Finance Office and then from her to Prof Vorley, who responded saying that there was no way the claimant should be engaging with Mr Ross like this and that the issue should be dealt with via the Head of Division.

48. The claimant emailed Prof Newsome, Associate Dean for Research, saying he had just received the proposed WAF for the upcoming year and was unable to reconcile the allocations with the grants he had received. He asked for all the relevant process documentation showing how the grants had been assessed for allocation to WAF for the forthcoming and preceding 2 academic years. Internal communication noted that the claimant appeared to be seeking the same information from a number of sources. Prof Newsome emailed Prof Genovese saying that she had told the claimant that he should direct concerns to him and that efforts were already in place to deal with the issues.

49. The claimant agreed that he met with Prof Watkins on 24 June. Prof Watkins wished to review the market supplements payable to a number of senior academics. Dr Merrywest had sought information from Prof Oglethorpe on 18 June noting that 7 market supplements were due for annual review in the School. Prof Oglethorpe's reply was that "Of the Profs on the list, all

performing… with the exception of Linton". He referred to the claimant's record on publications not achieving the targets set out in his appointment letter. The review of market supplements was the reason for Prof Watkins arrangement of this meeting. However, the claimant was unhappy about the letter he had been sent by Prof Oglethorpe in respect of the claimant's wife being involved in teaching and had expressed concerns that he was being blocked from doing some aspects of his role. The meeting, therefore, became one to discuss those concerns as well as the market supplements. Prof Watkins did not understand the claimant to be raising a dignity at work complaint. The meeting had been arranged before the claimant's 13 June email and he thought that they would do the best they could in what had been scheduled as a 30 minute meeting – the meeting did in fact overrun. He could understand that the claimant might have felt the meeting to have been "hijacked" by talk of the market supplement, if the claimant had not appreciated that this was the purpose for which the meeting had been originally arranged. The meeting was never intended to determine the subsequent year's supplement, but simply to discuss the claimant's expectations and those of the respondent.

50. Prof Watkins discussed his expectations of the claimant. His performance was expected to be across teaching, research, leadership and management and professional standing. Although on Band 2, the claimant's market supplement took him into the Band 3 professorial salary range. He was certainly expected to perform at that level in research. There was discussion of the levels of research income achieved by Band 3 Professors – initially Prof Watkins had only an early version of the claimant's contract which referred to band 3 not 2. There was also a discussion about different ways to assess the quality of output. The claimant expressed the view that he was being blocked from meeting his objectives with particular reference to grant applications. As regards publications, Prof Watkins did not consider that the claimant was publishing in the highest rated journals. On checking the publication spreadsheet, of 9 papers listed which had been reviewed in the internal REF audit, 3 were at 3 star quality (publications produced prior to his arrival at the respondent). Of the other 6, 2 were at 2 star, 3 at 1 star and 1 was unclassified. On that basis Prof Watkins considered that the claimant's outputs fell below the standards set out in his offer letter. Prof Watkins was clear that the claimant was not expected to perform at the same level of an ordinary Band 2 professor. The market supplement recognised a focus on research, as did the protected research time of 70%. He was paid more than a band 2 and had more time to deliver research outcomes. As regards research performance, he was expected to operate at band 3 level as reflected by a package at band 3 level. The enhanced expectations did not apply to the other pillars of his professorial role. As regards publishing, the general expectation was that the claimant would perform at the very highest level. The claimant was one of 25 professors at the respondent at the highest level out of a total of 720, but around a third of all academics in the School had been able to publish at 4 star level. The claimant therefore ought to have been achieving that level, considered Prof Watkins.

51. The claimant considered that his meeting with Prof Watkins had originally been to discuss concerns between himself and Prof Oglethorpe. Prof Watkins perspective was that it had been arranged to discuss the claimant's market supplement. As referred to, there was discussion of the 23 May letter, albeit quite briefly. There was discussion regarding the respondent's expectations of the claimant in terms of research output. The claimant's evidence was that Prof Watkins' focus was that he possibly hadn't met the respondent's requirements and that Prof Watkins needed more information. There was discussion of how quality might be measured and expectations in terms of research income. Prof Watkins did not reach any conclusion on the market supplement and it was decided that there would be a further meeting with the claimant in September. The claimant was told that Prof Finn would soon be taking over from Prof Oglethorpe and Prof Watkins asked the claimant not to contact her about his concerns yet and said that she would contact him. When put to the claimant in cross-examination that it was reasonable to suggest that he hold off calling Prof Finn as she was not yet in post, he responded: "He could do that".

52. The claimant emailed Prof Watkins after the meeting giving his summary of the meeting and attaching his contract of employment which confirmed his status as a Band 2 and not a Band 3 professor. Prof Watkins' view was that the requirements set out in the offer letter clearly set expectations and rewards at Band 3 level in terms of research.

53. After their 24 June meeting, Prof Watkins emailed the claimant on 5 July saying that he had sought to understand the nature of the letter sent by Prof Oglethorpe regarding the claimant's wife's teaching. The claimant had been given assurances that it was not part of any formal process and it should therefore be viewed in that light. He said that if the claimant could explain to him that he did in fact comply with the normal processes and practices of the School he would personally ensure the letter was removed from his personnel file. He said that he would like to know more about why the claimant felt he had been blocked in some aspects of his role and would like to explore this further in a longer meeting in September.

54. The claimant replied on 14 July. He said that Prof Watkins' summary contained numerous incorrect statements. He said that Prof Oglethorpe had not met with him to discuss the allegations about his wife's teaching. In cross-examination, when put to the claimant that he did not say to Prof Watkins that he had adhered to the School's processes, the claimant accepted that he had not responded very well to Prof Watkins' email. He had misunderstood what was being requested. His focus had been on the process leading to the file note being issued.

Initial health issues

55. On 20 August the claimant provided a fitness to work note to Dr Merrywest signifying that he "may be fit for work". The claimant was still at this point working. Dr Merrywest replied saying that she was sorry to hear that he was

unwell and that she would forward his note to Prof Finn. She said she was unclear if at this current time he was in work and felt able to work and asked for clarity. She also addressed what the forthcoming meeting with Prof Watkins would cover. She said that a stress risk assessment could be arranged and a referral to occupational health. She offered to speak to the claimant by phone if it would be helpful to discuss those options. The claimant was also provided a link to well-being services. She asked that if there was any other support he felt would be helpful, to let her know. The claimant did not accept before the tribunal that this was a supportive response. It was.

56. On 22 August the claimant expressed concerns about workload allocation and a lack of explanation. He could not therefore comment on his ability to work. He questioned whether a stress risk assessment or referral to occupational health would assist with the concerns he had raised. He referred to previous contact with the helpline and counselling services which, he said, had not been helpful.

57. Dr Merrywest replied on 23 August including some information as to what would be involved in a stress risk assessment or referral to occupational health. The claimant's position before the tribunal was that this was a departure from the respondent's policy on sickness management and that he should have had a meeting with his line manager. Again, Dr Merrywest offered to discuss matters further by telephone. On 28 August the claimant emailed saying that he had been working and was currently at a conference. He said he was still unclear how her suggestions would support the resolution of his concerns. Dr Merrywest replied on 29 August suggesting that he waited until he met with Prof Watkins on 18 September to revisit the options she had described and any other measures which needed to be put in place. The claimant thought that response inappropriate, he said, as that meeting was on an issue separate from the sources of stress.

18 September 2019 meeting with Prof Watkins

58. He did, however, meet again with Prof Watkins on 18 September 2019. The claimant was told that the issue of lack of support needed to be dealt with at School level, Prof Finn would contact him and she would take steps to clarify the expectations in terms of the claimant's research portfolio. The claimant's view was that his concerns were addressed by him being told they would be discussed at a later date by someone else. At this meeting he produced a printout of some PowerPoint slides he had prepared. In what was a meeting to discuss a number of issues, Prof Watkins did not have the opportunity to study the information provided in detail. It was noted that by this point in time Prof Oglethorpe was no longer working for the respondent and the claimant accepted that this was the first time he responded to the content of the 23 May letter/file note.

59. The claimant agreed in cross-examination that he did not provide any documentation showing that he had authorisation for his wife's teaching

services. In his slides the claimant repeated his concern regarding lack of investigation. He told the tribunal that he was waiting for an investigation. He said that he felt that if he had provided documents to Prof Watkins, it would look like he was being confrontational. Now that he was no longer suffering from anxiety issues, he realised this was an incorrect approach. He then made the point that the contract was for research and course - related activity and that no one asked for clarification. He went on that his wife's CV had been submitted to the Associate Dean for Teaching as far back as 27 February 2017. The claimant's slide next maintained that discussion had occurred on classes his wife would teach with Prof Oglethorpe. His final point was that, as his WAF indicated a surplus of hours, Prof Oglethorpe's comment regarding double payment was incorrect. The claimant agreed before the tribunal that he now appreciated that his own point was not correctly made.

60. Separately, in September, the claimant's SRDS (annual appraisal) had been carried out by Prof Andrew Simpson. Prof Finn asked Prof Simpson to carry out the appraisal as he had relevant subject expertise and was, therefore, she felt, in a better position to aid the claimant in terms of his future development needs, an integral part of the appraisal process. It was not unusual for her to delegate the conducting of appraisals to academics more closely aligned to the appraisee in terms of subject area. Such a review is in part developmental and the tribunal accepts that the considerations were wider, longer-term and not so specific as the performance issues which related to the continuance of a market supplement. Prof Finn had subsequently asked Prof Watkins if there was anything in conflict with what he had told the claimant and the SRDS. He felt that there was no conflict. In relation to publications it noted in the SRDS that the claimant had published 2 papers in 3 star ranked journals. This was based upon ABS rankings of publications and higher than the peer review scores which arose out of the aforementioned internal audit. Prof Simpson recorded that the claimant had recounted experiencing blockages in achieving more success.

61. Prof Watkins emailed Prof Finn on 20 September saying that he had put more emphasis on the claimant achieving 4 star papers and said that he expected to see significantly more income. He said that the claimant needed to be looking at attributed income of £500,000 in 5 years or £100,000 per annum. The claimant's level of attainment had been around £220,000 over 3 years. He referred to the claimant having a narrative about being blocked from grants and that he was going to contact Prof Vorley and Prof Newsome to prepare a bid development plan. He said that it would probably be the following week as he wanted to hear back from the claimant before he did this and that: "you should probably go ahead and meet on the other matters." When put to the claimant in cross-examination that Prof Watkins wasn't dismissing any complaints, he said he assumed his intention was that Prof Finn should meet with him.

Continuing concerns and overlapping attempts to clarify WAF

62. The claimant had emailed Prof Newsome on 12 August 2019 in her capacity as Associate Dean Research saying that he had just received the proposed WAF for the upcoming year and could not reconcile the allocations with the grants he had received. He requested the exact manner, with all relevant process documentation, in which grants had been assessed for allocation to WAF over the current and preceding two years. She responded on 13 August saying that she was surprised by the email as she understood that Prof Vorley, Prof Oglethorpe and Prof Genovese had spent a considerable amount of time last year reviewing his WAF against grant allocation. She said that she was also now aware that Prof Genovese had asked Adam Ross and Emma Williamson to conduct a review and that Adam had emailed him the outcome that morning. She suggested that, rather than duplicating activity and staff time, he directed issues relating to his WAF allocation to Prof Genovese. The claimant responded agreeing that it was best not to duplicate activity, but still requiring the written policy requested previously and asking that that any related policies, practices and documents be sent to him. Prof Newsome emailed the claimant on 28 August saying that the formula for calculating WAF hours in relation to grant capture was available in the School handbook on the intranet pointing him to the relevant sections and setting out a formula.

63. The claimant raises an email sent by Prof Finn of 2 September 2019 to Prof Kirsty Newsome, Associate Dean Research, having been forwarded by Prof Newsome her 28 August response to the claimant. Prof Finn responded to Prof Newsome with the comment: “So this is still rumbling on?…” The claimant was aware of this communication around March 2020 and, whilst it was not addressed to him, considered it to be dismissive of him.

64. The claimant responded to the 28 August email on 18 September asking for verification that Prof Genovese would be responding regarding his concerns about insufficient WAF allocation for existing and past research grants and that there were no other relevant policies applicable from 2017 onwards other than the one she had mentioned. She replied suggesting he addressed his concerns to Prof Genovese and Prof Finn. Prof Genovese was copied into the chain of communication and responded to his colleagues saying that he had clarified about 20 times to the claimant both in written and oral form that the allocation of WAF hours to research projects was not his responsibility since it was the result of a calculation from a publicly available formula which he did not have the power to modify. He was just informed of the end result because he might need to perform some adjustments. He did not have the power he said to make discretionary allocations. He described the claimant’s presentation of, what he termed as, an alternative version of reality as frustrating and said that the management of the claimant was becoming a full-time job. Prof Vorley emailed on 18 September to say that he was happy for the claimant to be directed to him.

65. Prof Finn emailed the claimant’s SRDS form to Prof Watkins on 19 September for him to check it for consistency, as already referred to. She

referred to the claimant continuing to make demands of multiple staff around the WAF and grant allocations saying "to be frank patience (and time!) is wearing thin among a few" She said that she was going to tell the claimant to come directly to her with any further perceived issues. Prof Watkins, as noted, responded on 20 September saying that there was no inconsistency, that the claimant "had a narrative" about being blocked from grants, that a bid development plan was going to be prepared and that she should probably go ahead and meet "on the other matters".

66. The tribunal has then been referred to an email of 19 September from Prof Genovese to Prof Vorley, Prof Newsome and Prof Finn on the subject of research grants and the WAF. In this he described what he perceived as a never-ending loop in terms of him directing the claimant to Prof Vorley, the claimant saying he is not happy with what Prof Vorley tells him, emailing Prof Genovese but at the same time emailing others, including the whole of the workload team, Emma Williamson and the workload team (legitimately) emailing Prof Genovese because they felt harassed and then: "Go to Point 1 and repeat." He went on that they had probably had "10 iterations of this so far" and him distinctly remembering the exact same process 12 months ago saying: "do we really need to continue?" He went on that he hoped a strong message could be conveyed to the claimant about the functioning of the WAF but also the need to have "a collegiate, respectful and, most of all, human behaviour…". He ended with a quote in Latin which translated as: "for how long will Linton exercise our patience without driving us mad."

67. Prof Finn in cross-examination said that at this stage she had been in the role of Dean for around 6 weeks. Clearly, she understood that the issue of work allocation had not been resolved, but felt it was being properly handled by people according to their roles and responsibilities. She acknowledged that the issue had become protracted and that Prof Genovese was expressing frustration at a lack of resolution despite steps taken to clarify matters. The whole issue was causing him some stress. She did not understand why the issue was of such difficulty in that, on obtaining any particular grant, an academic could sit down with the School finance manager and model how this would be reflected in work allocation. A new policy had come into place from September 2018, but she said that this had been discussed at executive board level in January 2018 with the minutes published, that it applied to everyone within the School and everyone knew about it. The new policy did introduce a formula for calculating work allocation, but she maintained that this was transparent and whilst the claimant had been entitled to ask questions, the emails reflected then protracted discussions with senior academics. She was clear that she was unaware that the claimant was alleging that there was something illegal about the new principles applying to the WAF (unsurprisingly) and said the School was operating in accordance with the wider principles of the respondent university.

68. Prof Finn emailed Prof Genovese on 19 September referring to the meeting Prof Watkins held with the claimant the previous day, that some expectations had been agreed regarding grant capture and publishing and

that there was also to be a referral to occupational health. She said that she would email the claimant to state that the allocation of WAF would be applied in line with School policy continuing: "if he has any further issues he should come to me (and then I will send him to Craig)." Prof Finn's evidence was that there was no significance to the final phrase being in brackets. She was simply setting out how matters would be dealt with in accordance with the line management chain i.e. the claimant should go to her and if she could not resolve the matter it would be elevated to Prof Watkins. Whilst the claimant reads the email as suggestive of Prof Finn intending not to engage with the claimant, but just to send him to Prof Watkins, Prof Finn's explanation is accepted by the tribunal as corroborated by her subsequent dealings with the claimant and attempts to resolve his issues. It is noted that Prof Genovese responded to the email raising a concern about "how certain individuals can waste everybody's time, in a deliberate way."

Sickness

69. The claimant met with Dr Merrywest on 25 September. He agreed that his health and a stress risk assessment were discussed - he was given a copy of the risk assessment framework. There was a decision to wait until the claimant had discussed matters further with his GP. The claimant was, however, then signed off as unfit to attend work from 26 September 2019 and did not return to his normal duties thereafter.

70. Prof Finn told the tribunal that as the claimant had presented a sick note referring to work-related stress, she didn't rush to get in touch with him as it would not have been appropriate to approach him about any work related matters and she was concerned that might have exacerbated his ill-health.

71. The tribunal has been referred to a flowchart which forms part of the respondent's sickness management policy. This includes a section dealing with where a "may be fit to work" note was received. It provided that the employee would contact his manager who would discuss his options with him. The question would be raised as to whether a return to work was possible at this stage, with a suggestion that the matter be raised with HR if appropriate. There were then further reviews envisaged between the employee and manager, with the manager undertaking a risk assessment. The claimant's interpretation of this policy is that all of those steps had to be undertaken by his line manager. The respondent's position is that there was no breach of policy in various stages being undertaken by an appropriate HR manager. Prof Finn's view was that when an employee was off sick, the conversation should be primarily around the individual's health and she also wished to wait for occupational health advice so that there could be an informed conversation and constructive steps taken regarding possible adjustments. She did not want to discuss with the claimant complex work issues which could exacerbate his stress and did not feel it appropriate for the claimant to have multiple points of contact. She was content that Dr Merrywest should liaise with the claimant regarding his health and arrangements to assess it. When put to her that the claimant wanted his issues addressed as soon as possible and that she wouldn't

address them until he was back at work, she said that this was because he was signed off as being unwell and she did not want to exacerbate his condition without an occupational health assessment. Occupational health and stress risk assessments were designed to facilitate a return to work and were not matters to be completed only after such a return to work. She believed that the respondent had responded sensitively when in email correspondence telling him that he should not be working and should be focusing on his health. For example, the claimant had emailed Prof Newsome on 23 December 2019 asking about guidance on grant capture and she had responded understanding that he was currently on sick leave and suggesting he raised the issues with Prof Finn when he returned to work.

72. Dr Merrywest emailed the claimant on 26 September following receipt of the fit for work note suggesting they make a referral to occupational health and that he considered the stress risk assessment. The claimant asked her to make the necessary arrangements by email of 2 October. Dr Merrywest emailed on 3 October asking the claimant to give some thought as to what would come under each section of the risk assessment and saying a meeting in respect of this and the occupational health report would be with Prof Finn and herself. The claimant was given the right to be accompanied by a colleague or union representative.

73. The claimant responded that he was being seen by his GP on 10 October and would be in touch thereafter. Dr Merrywest therefore made contact with the claimant on 11 and 12 October. The claimant's position was that this contact should have been from Prof Finn.

74. A referral to occupational health was made using the respondent's standard form. One of the questions asked of occupational health, through ticking the appropriate box, was a likely date for a return to work. The tribunal has been referred to the respondent's sickness policy which, under the long term sickness absence section, provides that advice might be sought from occupational health on fitness for work, a likely return date and where relevant a rehabilitation programme. The claimant disagreed that there was nothing out of the ordinary in the referral made.

75. The claimant had a telephone consultation with occupational health on 15 October 2019 which he recorded (without informing the physician). The claimant objected to a question being raised regarding a date for a return to work. He told the tribunal that it was his understanding that they would ask questions to help determine what he needed, so that the respondent could make appropriate adjustments. The claimant said he was upset because he expected questions to help them deal with his problems and instead was just asked when he was getting better by someone who was not a psychiatrist and had no training. He felt he was being asked questions he couldn't answer, commenting that he was very depressed, felt very hopeless and that occupational health was supposed to help. He said his reaction was perhaps stronger than it would normally have been because

of him being depressed, however he was not angry at the occupational health physician. He said he now felt, having seen the referral, that the physician had not been allowed to ask him questions due to the way the respondent had filled out the referral. Clearly, the tribunal having read the transcript of the conversation, this was not a constructive appointment and the claimant was challenging and confrontational towards the physician.

76. It was put to the claimant in cross-examination that he had a tendency to fall out with people before he suffered from work-related stress, reference being made to an email sent by Mike Simpson to Prof Oglethorpe about a presentation in Spring 2018. In this he described the claimant's attitude as "arrogant, rude, offensive and ill informed." He had noted that everyone at the meeting was "thoroughly appalled and angered" by the claimant interrupting and not allowing himself to be interrupted. The claimant did not accept the accuracy of this communication or the general proposition put to him.

77. Occupational health produced a report, sent to the claimant and respondent dated 15 October 2019, which stated that the claimant had not wished to proceed with the assessment and wished to discuss the referral with the respondent in more detail.

78. The claimant wrote to Dr Merrywest on 17 October 2019 referring to unhelpful actions which had occurred. He asked that he ceased to receive letters attempting to make him responsible for workload assignments during his sick leave. He also referred to the dynamic and inappropriate application of the WAF continuing to be a serious problem in terms of his stress and asked her to initiate an investigation into the use of WAF to cause distress to him during 2016 – 2019. Disciplinary investigations, he said, ought to be into Prof Genovese, Prof Vorley and Prof Oglethorpe. His meaning, he told the tribunal, was for an investigation under the respondent's dignity at work policy. He accepted that his reference to "disciplinary" was incorrect, agreeing that he had had a conversation with Dr Merrywest on 24 April where she explained that he could not instigate a disciplinary process. He went on that "as I was instructed by Craig Watkins not to contact Rachael Finn untold otherwise", he was limiting his correspondence to Dr Merrywest.

79. The claimant, as already referred to, had met with Prof Watkins on 18 September. Prof Watkins provided a summary of the meeting by letter of 23 October 2019. Within this he noted that the claimant had "declined" an appointment with occupational health and asked the claimant to contact Dr Merrywest to rearrange this or his own GP for further information. In response to a question in cross-examination the claimant suggested that he was being accused of a failure to cooperate. Prof Watkins' belief was reasonably derived from the brief content of the report. Otherwise, Prof Watkins confirmed that the expectations of his role were in line with those at professorial band 2 taking into account that the expectations of those at the top of the band were greater. He recorded an agreement that the claimant aim to secure funded grants in excess of £100,000 per annum

based on a five year running average. As regards publications, the intent was to support the respondent with a strong REF submission. It was agreed that research should be "seminal and/or make a contribution that is clear and is valued by the target audience." The claimant was invited to suggest one or more ways of evidencing research quality for his consideration by the end of November. He recorded again, as agreed, that the claimant's market supplement would continue for the 2019/2020 academic year. If the above objectives were not achieved, taking into account relevant circumstances at the time, it might be removed in subsequent years. Prof Watkins recorded that they had discussed possible sources of difficulty relating to support within the School. He advised that he would be making contact with Prof Finn and the Associate Dean for Research to explain the claimant's role. He said that the intent was to create an environment where the claimant received the appropriate support and to encourage the claimant to develop a clear action plan. If he encountered barriers to his grant submissions where School or faculty processes were not followed, he should advise Prof Flint (Faculty Director of Research and Innovation). He said that he had investigated the letter of advice sent by Prof Oglethorpe in May 2019 and was satisfied that it was the correct way to address the issue that arose and that it would not be retracted.

80. Prof Watkins told the tribunal that if the claimant had not been absent due to sickness he would have had more conversations with him to develop a clear understanding of what counted as research grants attributable to the claimant and the appropriate level of income expected from him. Obviously, he did not remove the market supplement and said that, if he had been proposing its removal, he would have obtained a more forensic analysis of performance. The same would apply to the need still to clarify how to measure success in terms of the claimant's publications.

81. Dr Merrywest replied to the claimant's 17 October email on 28 October, saying that there was no expectation that he read or responded to emails or undertook any other work whilst he was absent due to sickness. He was advised to focus on his personal well-being. She said that, if he did not wish to engage with occupational health, she would like his consent to obtain a written report from his GP. She said that they needed to take this step to assess his fitness for any likely return to work and plan his work as well as consider any short-term measures that could be put in place for a phased return. Once that process was completed, she said that a meeting would be arranged to discuss the doctor's findings and possible next steps. She clarified that it was not possible for the claimant to invoke disciplinary proceedings, including investigations, against other employees. She said that she clarified with Prof Watkins that the claimant could be in contact with Prof Finn. He was asked to continue to use herself, Dr Merrywest, as the primary point of contact for his absence and support for a return to work. She noted that separate proceedings (in the employment tribunal) had been brought against the respondent and that his point of contact for them should be the respondent's solicitor.

82. The claimant responded on 4 November saying that Dr Merrywest's letter included a number of misunderstandings, including suggesting that he did not want to participate in an occupational health assessment. He expressed a wish to speak to Prof Finn. Dr Merrywest replied on 5 November saying that she would contact occupational health for them to make for another referral and would contact Prof Finn and ask her to be in touch.

83. The claimant contacted Kathryn Hewitt, now Prof Finn's personal assistant, on 8 November saying that he had seen his GP and was not yet fit to return to work. He said that he was looking forward to hearing from Prof Finn as he felt very disconnected from the School. He said that as he was receiving too many work requests which were stressful, he had stopped reading his university emails and gave an alternative contact address. No early date, however, could be found for a discussion and Prof Finn was then out of the office from 27 November.

84. The claimant emailed Prof Watkins on 19 November. He referred to confusion over his occupational health referral. He also then raised his involvement on the SUSTAIN project led by Swansea University. He referred to an agreement (as already described above) to fully support a PhD candidate under his supervision starting last September and the respondent's partners wanting to know what progress had been made. He referred to expecting to hear from Prof Finn soon so as to be able to "remove you from these sort of inquiries". In cross-examination, Prof Watkins said that the appropriate person for the claimant to pursue was Prof Mark Rainforth as he was the respondent's lead on this project. It was up to him to ensure compliance with the requirements of the project and its funding. He said that Deborah McLean had referred the claimant to Mr Rainforth and did not understand why the claimant was maintaining that he did not have access to him. Prof Watkins said that the claimant had gone to Prof David Petley, the most senior employee in the respondent with responsibility for research, who would have no idea of the details of a specific grant and had been referred back down the management chain. Prof Watkins had not previously seen the detail regarding the terms of the recruitment of a PhD student, but it appeared to him, having been referred to relevant documentation, that there had been some confusion about the number of PhD studentships approved. It was probable that the approval process for the studentship went through the Engineering School rather than the School of Management, although he accepted he was speculating. The way to address this was within the project team. He was not suggesting that the claimant had not followed any procedure required under the grant funding arrangements. It was up to Prof Rainforth to ensure the procedure was followed, not the claimant. Whatever was contained within the grant didn't necessarily mean that that was what Prof Rainforth had permission for and the conversation always had to be with him.

85. Prof Finn did speak to the claimant over the telephone on 5 December. The claimant recorded this conversation, without her being aware.

86. Prof Finn explained that she'd been away and prior to that there had been some industrial action she had become involved in managing, as well as confusion as to when the claimant was expecting a call. She apologised. The claimant said that he had been told back in June that he was not supposed to contact her so that he was now really happy to hear from her. Prof Finn referred to the transition between Deans and her knowing that he was having conversations with Prof Watkins. She said that when he was ready to come back, that was really the time to be addressing some of the work-related issues. She did not want to get into that whilst he was not in work. The claimant responded that what she was describing was a bit of a Catch 22 situation. His doctor had indicated the appropriate thing to do was to get the occupational health assessment and stress risk assessment, but his difficulty was with the work environment he was going to come back into. Prof Finn said that that was exactly the sort of thing they would discuss once they had the occupational health report and the stress risk assessment had been completed. Reasonable adjustments would be considered. She said that she would chase up the arrangement of the occupational health assessment.

87. Occupational health produced a summary of an assessment of the claimant conducted on 19 December 2019. Their opinion was that the claimant was fit to continue in his current role if his workplace issues could be addressed. It was recounted that the claimant reported his current mental health issues being due to perceived work based stress due to his interpersonal communication issues with his line manager, reporting that during previous meetings he had been humiliated in front of his peers by his line manager who felt his communication/work was not good enough. The report recommended that a meeting be arranged to allow him and his second line manager to discuss the matter which would enable him to move forward. The claimant was said to be currently unfit for work and that the perceived issues at work were a barrier to him returning. If these could be addressed, he would be likely to become fit to return. A phased return, it was said, would be beneficial as was a stress risk assessment. It was then important to monitor workload. Mediation was advised between the claimant and his line manager to address his perceived issues and assist in building a better working relationship. Regular contact should be continued for welfare purposes. It was advised that the claimant was likely to be a disabled person.

88. The claimant's evidence was that he was describing issues with Prof Oglethorpe at the meeting, but said that he had left and he had a new line manager, Prof Finn had been out of contact which had created new problems for him. That is not discernible from the report. The tribunal on balance believes that the occupational health advisor was recounting issues described regarding Prof Oglethorpe and that is why it was suggested that the claimant speak to the second line manager, a reference which would have been to Prof Watkins rather than Prof Finn. The tribunal does not consider it likely that the term 'second line manager' was being used to refer to a subsequent or successor line manager. There was no reference to concerns regarding a lack of contact from a subsequent or successor manager and the tribunal considers on balance that, if that had been said,

it would have been included within the report. The tribunal does not think that occupational health was anticipating mediation with a line manager other than Prof Oglethorpe.

89. The claimant had emailed Prof Watkins on 18 December regarding a previous instruction to wait for Rachael Finn to reach out to him, as she would at the appropriate time. He said that that differed from what Prof Finn had indicated during their recent phone call. He asked for clarity of what his and Prof Finn's roles were in terms of line management. Prof Watkins replied on 23 December confirming that Prof Finn was his line manager and remained his main point of contact regarding a return to work and that Dr Merrywest could provide advice on the support available. He said that when the occupational health report was produced Prof Finn or Dr Merrywest would be in touch. The claimant said that he was happy to see the reference to Prof Finn being his main point of contact.

90. Prof Finn emailed the claimant on 8 January 2020 having received the occupational health report. She said that as the current doctor's note expired on 8 January "and you are due back to work on 9 January" she suggested they met on 13 January for a return to work meeting where they could discuss the report, plan and agree a phased return to work and discuss the stress risk assessment. The claimant agreed in cross-examination that there was no suggestion that Prof Finn was refusing to discuss the occupational health report.

91. The claimant responded on 9 January saying that he had met his GP that day and was in general agreement with the contents of the occupational health report. A further fit note was attached covering the next 4 weeks. He asked her to confirm that she accepted the recommendations of the report and when they would be able to start communicating and taking steps towards reintegrating him back into his role. She replied noting that his fitness for note suggested a phased return and amended duties. She said that in a return to work meeting with the completion of a stress risk assessment they would be able to discuss the nature of any required amendments and a planned phased return. She asked for confirmation that he could attend the meeting on 13 January. Again, the claimant confirmed before the tribunal that in this communication there was no refusal to discuss his GP's recommendations.

92. The claimant emailed Prof Finn on 13 January seeking a postponement of the meeting until his union representative was available. He said it was unclear to him what the agenda was and, other than the brief conversation in December, the only communication received from the Department was unwanted tasks whilst he was on sick leave. She replied on 14 January stating that she had previously conveyed the meeting plan to welcome him back to work, clarify his health status, if he was back at work, and to discuss the outcome of his occupational health appointment. This would involve a discussion regarding a phased return to work. They could then have completed the stress risk assessment or identified another time to go

through it, if that was his preference. She said that he had previously been advised not to engage in work matters whilst absent due to sickness.

93. The claimant understood the communication as meaning that he had to have returned to work before a stress risk assessment could have been completed. That is not what the email said nor what Prof Finn intended. He agreed that the tone of her communication was polite and supportive. However, the earlier telephone discussion had been brief and hurried, he said.

94. The claimant responded on 15 January thanking her for her note "advising of the agenda of the meeting that did not occur". He went on that his impression from the note was that there were very large communication gaps between them. That made him feel uncomfortable. His impression was that until he was completely fit to work, she felt that there was no need for communication in either direction.

95. Prof Finn then sought to reschedule the meeting for 21 January. The claimant's reply of 17 January referred to an accusation that he had failed to attend a return to work meeting as being "really distressing". The claimant in cross-examination appeared to have taken that from Prof Finn expressing that she was sorry he had been unable to attend the meeting. The tribunal does not find that he was ever accused of a failure to attend.

96. Prof Finn responded on 17 January saying that she was keen to facilitate a smooth return to work and wanted to meet to discuss the support he needed. If he wished, he could be accompanied by a union representative. Prof Finn emailed him again on 22 January in the absence of a response seeking to arrange now a meeting for 29 January. She said that the meeting would cover his current health and doctor's advice, the occupational health report and recommendations and the issue of the stress risk assessment. They were to discuss the monitoring of his workload and how to structure future support.

97. The claimant responded on 23 January expressing confusion and suggesting that her earlier emails were disrupting his sleep. He emailed again on 24 January asking for alternative dates to allow him to be accompanied. He asked her to comment on his earlier question saying: "it feels as if you are not reading anything I've written to you. This is very uncomfortable."

98. Prof Finn responded on 27 January with an assurance that she was reading and considering his messages. She again outlined what the meeting would be to discuss. The claimant responded on 29 January describing the manner in which she was dealing with his health situation as "very stressful". He went on: "we have no personal prior history that explains the isolation that you have imposed on me or the long-term damage you are doing to my viability as a professor, researcher and a colleague by ensuring that my

responsibilities remain unaddressed and my grants out of compliance during my absence. I really have no idea what is going to happen to me, but you are making it pretty obvious that no matter what I do it is going to be pretty awful." The tribunal finds no objective basis for the claimant's position. The claimant went on to refer to recommendations for some form of mediation.

99. Prof Finn wrote to the claimant to arrange the meeting now for 6 February. Again, it was said that the meeting was necessary to discuss support for a return to work and to consider adjustments recommended by his GP and occupational health. Failure to attend without good reason might be treated as a disciplinary matter. The claimant did not regard this as an effective communication he told the tribunal because she did not address his concerns. The tribunal considers objectively that Prof Finn was seeking to do so.

100. Prof Finn repeated her agenda for the meeting. She said that she would be accompanied by Dr Merrywest. The claimant agreed that he did not object to Dr Merrywest being at the 6 February meeting. That meeting took place as did a follow-up on 11 February. The claimant was accompanied by his union representative, Mr Oakley, on both occasions. The claimant agreed that there was discussion of the recommendations made in the occupational health report. By the end of the second meeting, it was agreed that there was still the need for more discussion and it was agreed to reconvene on 17 February.

101. The respondent's position is that there had been an agreement not to pursue mediation, but the claimant considers this was still something he was pursuing.

102. Dr Merrywest emailed the claimant 12 February to summarise where they were at after the meetings. She said that the next meeting would focus on completing the stress risk assessment "as far as possible" which the claimant had already begun to consider. If the claimant did not feel able to return to work, there would be further discussion about how they could best allay any continuing anxieties the claimant had regarding the management of his grants. The claimant had emailed Dr Merrywest shortly before her own message asking her to remind him of actions taken over the last year in response to his negative experiences and for a reminder of actions taken since he had submitted his first work related fit note in August 2019. Dr Merrywest commented that she was unclear on his final two questions but was happy to discuss them when they met. The claimant was not making a straightforward enquiry but seeking to expose a (perceived) lack of effort on the respondent's part.

103. The claimant subsequently expressed concern that the message sent by Dr Merrywest, which referred to a salary reduction, had been forwarded to the other attendees at the recent meetings. He also said that

she had made statements regarding the last two meetings where they had a difference in opinion and said that she declined an opportunity to respond to a reasonable request for an explanation of what actions had been taken to assist him. The claimant also emailed Dr Merrywest on 13 February stating: "Under the circumstances, my belief is that we will both be better off if you recuse yourself from my long-term work-related illness case at this point in time." Dr Merrywest did not understand why the claimant felt she should stand back. She did not feel it appropriate to do so given the complex background with which she was familiar and given her position as the senior HR Manger for the School.

104. The claimant attended the further meeting on 17 February with Prof Finn and Dr Merrywest. It was put to the claimant that Prof Finn asked how she could help regarding his grant concerns. He replied that she had "in a sense" but, as regards her offer to contact the Principal Investigator if he wished, he said he was "not sure her message would be helpful". He agreed it was left that he would consider his options in that regard. The claimant tabled his contract of employment at the meeting. This was to demonstrate that he was a band 2 professor. The claimant agreed that he expressed confusion about the stress risk assessment. When put to him that Dr Merrywest had offered to start to populate it, he said that she may have, he was not sure but he did not agree to that. He said that he had wanted to work on it with Prof Finn. When put to him that he said to Dr Merrywest that this would be helpful, he said he did not recall.

105. On 2 March Dr Merrywest emailed to the claimant a populated version of the stress risk assessment. This included comments and examples under the types of stress, specific causes of workplace stress, existing workplace precautions, further action to be taken and by whom and when it would be ensured that action was taken. It is clear that whilst Dr Merrywest may not have captured the claimant concerns exactly, she based the information in the assessment on what she understood the claimant's concerns to have been following discussion with him. In her covering email, which was copied to claimant's union representative, Dr Merrywest referred to discussion on the stress risk assessment and asked if he could review the document so they could aim to conclude it when they next met on 6 March. It would be discussed then. She also stated that as they were looking forward in terms of his relationship with Prof Finn and his concerns around management related to the previous Dean, they would not be looking to arrange any mediation with Prof Finn at this stage.

106. The claimant's position was that, on seeing what was within the stress risk assessment, he saw it as "a repetition of a nightmare from the past". He needed to sit down with Prof Finn and a mediator he told the tribunal. When put to them that he had the opportunity to amend the form that had been sent to him, he said that today he would have addressed it, but at the time he felt worse from the effects of his depression which had made him feel more hopeless and withdrawn. He did not think that he was being dealt with in a considerate way and the respondent's actions made it less likely that he could complete a stress risk assessment.

107. After the meeting on 17 February, the claimant emailed Dr Merrywest expressing a current understanding that mediation "as recommended by occupational health" was going to be arranged. He presumed a mediation eliminated the need for a further 4 way meeting. Dr Merrywest responded on 18 February saying that another meeting would be arranged when she was back from a period of annual leave. The claimant responded on 20 February saying that, as he and Prof Finn were moving over to interacting without the assistance of her and his union representative, her annual leave should not be an issue. When put to him that he was just ignoring the conversation, announcing what he wanted, he said that he felt Dr Merrywest appeared to demand what she wanted and he was reacting in the same way.

108. The claimant also emailed Prof Finn on 20 February saying that he was looking forward to meeting her in the near future with a mediator. Again, the tribunal concludes that the claimant was in fact saying what he would like to happen, rather than what had been agreed. The claimant in cross-examination said that he had indicated what he wanted and there was no clear statement that the respondent would comply. He said that he felt he needed to be more clear.

109. In a subsequent email to Prof Finn of 24 February, he again said he was looking forward to meeting with her and a mediator.

110. The claimant sent a chasing email of 28 February, which Prof Finn acknowledged. He further emailed Dr Merrywest on 28 February saying that he remained very confused. He felt he was being kept in the dark and isolated. He went through many of his concerns relating to the matters which had caused work-related stress.

111. The claimant responded to the stress risk assessment on 5 March but omitted Dr Merrywest from the correspondence. He expressed difficulty in discussing the matter with his union representative due to his lack of availability. He referred to there being time for the respondent to clarify its position on issues he had raised. He told the tribunal was concerned that he had been told to return to work before taking annual leave. Dr Finn replied that day saying there was no issue regarding postponing the next meeting.

112. The claimant emailed Dr Merrywest again on 13 March saying that she had overlooked his email asking that she recuse herself from the case, saying that the reasons for recusing herself were even more compelling. He did not explain what those reasons were. It was clear on questions from the tribunal that the claimant's predominant issue was that he believed he was supposed to be interacting with his line manager and that everything appeared to revolve around Dr Merrywest.

113. The claimant emailed Prof Watkins on 13 March saying that a recommendation of occupational health had been that they met soon (in this instance he seems to be recognising Prof Watkins as the 'second line manager'). The claimant is not consistent on the meaning he attributes to the occupational health report. The tribunal has already addressed that this was in the context of occupational health believing the first line manager to be Prof Oglethorpe with whom the claimant had a number of issues. He said that he was reaching out to Prof Watkins directly and looked forward to seeing him in the not too distant future. Prof Watkins responded on 16 March saying that he was aware that the claimant had met recently with Prof Finn and that a further meeting was shortly to be arranged to continue this. He said that if, on his return to work, there were unresolved issues that would mean a meeting would be helpful, he would be able to meet with the claimant then. The claimant said to the tribunal that this was not a reasonable approach as the occupational health report had suggested speaking to the second line manager.

114. The claimant emailed Prof Finn on 19 March saying that the proposed stress risk assessment had been put forward without his involvement. He again urged regular contact and mediation.

115. Prof Finn sought to rearrange a meeting with the claimant for 27 March to continue to consider the stress risk assessment. The claimant told the tribunal that they hadn't started considering this on 17 February. He said, however, that he had not looked over the template at that meeting as they were discussing some items to include.

116. As it was unclear, he said, whether Prof Finn was suggesting a 4 way or 2 way meeting, he could attend if the meeting would just involve the two of them but, if a third party was going to be involved in any way, he needed to be accompanied. The claimant accepted that there had never been an issue about him being accompanied. He said to the tribunal that Prof Finn, however, seemed unwilling to meet him alone. He did not consider there should be an assumption of the same format of meeting continuing because he had asked Dr Merrywest to recuse herself. He accepted that he was unwell and that this was "not the best email".

117. Prof Finn responded on saying that she had anticipated that Dr Merrywest would be present and therefore of course it was appropriate that the claimant's union representative also joined. The claimant responded the next day describing her response as unexpected in that she would understand that he was uncomfortable with the manner of Dr Merrywest's past involvement and had asked her to recuse herself. He agreed that he did not give any explanation as to why he did not wish Dr Merrywest to be present, there having already been 3 meetings when she was present. He did not seek to explain what might have changed.

118. The original scheduling of the meeting passed and 3 April was then proposed as an alternative date. The claimant emailed Prof Finn on 2 April asking again whether she was only prepared to meet with him in the presence of Dr Merrywest. Prof Finn responded that day saying that it was due process to have HR involvement and that the meeting needed to include Dr Merrywest. The claimant responded on 3 April stating: "I have really tried hard, but have no idea why and what you are doing to me. Your email makes me feel that you feel I am not worth your time."

119. Prof Finn emailed the claimant on 6 April rescheduling the meeting and saying that it would be to look at the stress risk assessment and any other outstanding issues to facilitate a return to work. The claimant accepted by this point there was clarity that there would be a stress risk assessment before any return to work, albeit he maintains that this had not been the case back in January.

120. The claimant responded after the time that the meeting had been scheduled to commence asking for verification that the meeting would involve only himself and Prof Finn. The claimant told the tribunal that he felt they were in a loop which he was trying to break. Whilst he had never given Prof Finn any reason why it was inappropriate for Dr Merrywest to attend, he said that she could have asked. Prof Finn responded on 16 April saying that, as previously, the meeting would include Dr Merrywest. He responded saying that he was uncomfortable with her participating and asking when Prof Finn had time for the two of them to speak. He chased up a response on 21 April.

121. On 24 April the claimant wrote to Prof Watkins raising a formal grievance about Prof Finn saying that she was unwilling to meet him by herself. He asked to know when they could meet to talk about his grievance. Prof Watkins responded saying that the claimant should contact HR about the grievance process.

122. In any event, the claimant did in fact meet with Prof Finn on 28 April on a one-to-one basis. They spoke for around 1 hour. It was left that the claimant agreed to consider the stress risk assessment again - he told the tribunal that he said he would try to look at it.

123. An email of the claimant's, following the meeting, crossed with one of Prof Finn's and she thereafter responded populating the claimant's email with her own comments where there were divergences of opinion as to what had been said or agreed. One of the claimant's comments was that Prof Finn had said she was unable to contact him as University policy forbids employees being contacted during sick leave by other employees. She clarified that she did not say that was forbidden but that line managers would not be holding work-related meetings when someone is off sick and this needed to be handled very sensitively. She clarified that HR would be present in processes which involved a stress risk assessment and return to

work and that she and the claimant would have regular meetings themselves in the period of a phased return to work.

124. Dr Merrywest emailed the claimant on 27 April following up on his grievance letter to Prof Watkins. She noted that he wished to raise a formal grievance, but that the procedure provided that an attempt should always be made to resolve matters informally first. He was asked to outline clearly the basis for his grievance if he wished to raise a formal grievance and to send this in writing to Prof Watkins. She said that she understood that Prof Finn had been in contact that day and he might therefore feel that this would resolve the issue. The claimant did not reply. He told the tribunal that this was because he would not deal with Dr Merrywest. In his view, the grievance procedure did not require the involvement of HR. Dr Merrywest emailed on 30 April saying that given he had now spoken to Prof Finn and discussed the way forward, she was asking if he wished to pursue a grievance or deemed the matter resolved. Again, the claimant did not reply.

125. On 6 May the claimant raised a grievance against Prof Watkins for not pursuing his grievance against Prof Finn. In cross-examination he disagreed that the subject matter of the complaint had been resolved.

126. Prof Watkins wrote to the claimant on 13 May 2020 as a follow-up to in fact 4 separate complaints submitted. The first was the written complaint dated 24 April 2020 addressed to Prof Watkins regarding the perceived unwillingness of Prof Finn to meet with him. He noted that he had subsequently met with her on 28 April during which she believed she had resolved his concerns. She then arranged a meeting for 7 May which he did not attend. He noted that this complaint followed 6 meetings that she had arranged but he had not attended and ongoing email correspondence since their last attended meeting on 17 February. He referred to the claimant having been contacted by Dr Merrywest to check if he still wished to pursue this complaint, particularly given that he had since spoken to Prof Finn. He noted no response had been received.

127. He then referred to the complaint of 6 May addressed to Gill Valentine, Deputy Vice Chancellor, regarding Prof Watkins himself. He noted that the claimant had sought to escalate his concern when fully aware that it was already being directly addressed and that this could be seen as vexatious conduct.

128. He noted a written complaint to himself regarding Prof Oglethorpe relating to correspondence in May and November 2018 stating this was an historic complaint not suitable for the grievance procedure and where the member of staff concerned was no longer employed.

129. Finally, he referred to a fourth complaint dated 1 May 2020 to Prof Finn regarding Kirsty Newsome. This was about the email sent by her to the claimant in December 2019 suggesting that, given he was currently off work

due to sickness, the issue he raised was best picked up with Prof Finn on his return to work. He said that this matter was considered to be trivial and therefore not suitable for the grievance procedure.

130. He concluded that none of these four complaints would be considered further pursuant to the respondent's grievance procedure. He referred to the respondent reserving the right under the grievance procedure to dismiss complaints which are trivial, vexatious or without merit. The claimant maintained before the tribunal that he had not been spoken to about them and there had been no investigation. The claimant has complained of the respondent applying a policy of accusing him of being vexatious. In cross-examination he said that this letter was an example of that, but he could not point to any further such instances. The claimant said that he had been following the advice of new legal counsel who had told him that he needed to send in grievances to show to the respondent that he still existed. Prof Valentine emailed the claimant on 18 May saying that, as he was aware from correspondence with Prof Watkins, his communications should be addressed to Prof Finn and she considered that his complaint should be addressed at this level rather than escalated to her.

131. On 5 May Prof Finn attempted to arrange a meeting with the claimant on 7 May. The claimant responded that he was uncomfortable with Dr Merrywest. Prof Finn replied on 6 May reiterating her suggestion for a meeting. She also referred to the grievance about Kirsty Newsome which had been raised with her and suggested that they sought to seek to resolve this informally in the first instance.

132. No meeting took place on 7 May. The claimant emailed Prof Finn on 13 May referring inaccurately to having been given 15 minutes notice that she would like him to attend a meeting without accompaniment. He said that he had looked over the stress risk assessment "that you decided to conduct without me". He said that it was a step backwards as it overlooked the first issues he raised as concerns. He went on that there was clearly a failure to communicate.

133. Prof Finn next sought to arrange a meeting for 18 May. The claimant communicated on 15 May saying amongst other things that he was no longer in agreement with the recommended process for conducting a stress risk assessment together. The claimant's union representative wrote on 15 May making a suggestion to split the stress risk assessment into two meetings, the first one to agree on an action plan regarding the management of the claimant's grants and the second to cover all other issues. Dr Merrywest responded agreeing to that suggestion.

134. The claimant wrote to Prof Finn on 27 May saying that it had been suggested to him that she was inviting Dr Merrywest to meetings as she was aware that he would not attend such meetings. When put to the claimant that he well understood that a line manager needed HR support

given the complexity involved in the stress risk assessment process, the claimant said that that could be one of a substantial number of people pointing out that another HR manager, Ms Hall eventually stepped in. Again, it was put to the claimant that no reason was given as to why Dr Merrywest shouldn't be there. The claimant responded that he had not been asked.

135. Prof Finn sought to arrange a further meeting. The claimant said that medical advice was that he should not attend meetings he was uncomfortable with and that he had repeatedly expressed discomfort at meetings which involved Dr Merrywest. Prof Finn emailed the claimant on 2 June saying that Dr Merrywest was not now available for the meeting and therefore Nicky Hall from HR would attend. The claimant agreed to come to the meeting.

136. The meeting included a discussion regarding grant management, albeit the claimant's perspective was that this had not been completed and there was a need to exchange documentation thereafter.

137. The claimant alleges that Prof Finn set spurious performance targets. On 16 June she sent as promised information regarding the claimant's research including Academic Career Pathway guidance outlining the expectations of a band 2 professor, a list of current grants held with spend, start and expected end dates, the School's policy on workload allocations for funded grants effective from 2018 and a summary of the claimant's research related workload allocations since 2016.

138. The claimant agreed that he had requested this information, but said that she had missed out the amount of money expected to be generated by a Band 2 professor. When put to the claimant that Prof Finn had not set targets, he said that she would not say what the department's targets were. He maintained that this communication was spurious.

139. Prof Finn wrote to the claimant on 12 June summarising their meeting. The claimant responded that no further meeting was to be scheduled until they had clarified the research policy/process in his case. He requested further information.

140. The claimant emailed Prof Finn on 26 June with a doctor's note saying that he was not fit for work. He said he was still going through the documentation he had been provided with. Prof Finn replied on 1 July suggesting a meeting in mid-July in circumstances where the GP had advised that the claimant would not be fit to return for a further 2 months. The claimant expressed in cross-examination that he was no longer willing to meet and said that he was waiting for the production of information he needed. He disagreed that strenuous attempts had been made to conduct the stress risk assessment. When put to him that he never returned any comments on the draft stress risk assessment, he said that he didn't "on Dr Merrywest's document".

141. On 29 July Prof Finn wrote to the claimant inviting him to attend a capability hearing. This would be chaired by Prof Susan Fitzmaurice, Head of the Faculty of Arts and Humanities. She had had no previous dealings with the claimant. The purpose of the hearing was to consider the current absence, the claimant's state of health, fitness for work and the likelihood of him being able to render satisfactory attendance and performance in his role in the future. The meeting had been prompted by the fact that it had not been possible to put in place a return to work programme for him despite significant attempts to do so, it was said. There was currently no date or suggested date for him being well enough to return. The claimant was informed that the panel would consider options including whether it was appropriate to terminate his employment. The panel would have access to previous occupational health reports and GP sick notes. It was noted that further medical disclosure had been provided in separate legal proceedings (a report by a Dr Fieldman) and it was considered that this would be relevant material for the panel to see. The claimant's consent was sought to obtain this. The claimant was entitled to be accompanied at the hearing by a work colleague or trade union representative.

142. The claimant considered that there could be no dismissal within the respondent's procedures at a first hearing without a prior investigation or hearing from him. Medical advice, he considered, had not been followed.

143. The respondent's sickness management policy provided that the respondent could hold a preliminary case management meeting, but this was not a mandatory requirement. The procedure also said that where an employee submitted a grievance within another procedure during a sickness management process which was related to the case it might be appropriate to deal with the issues as part of or concurrently with the sickness management. Alternatively, the panel might deem it appropriate to temporarily suspend the sickness absence receiving pending the outcome of the other process. The claimant's view was that this meant that the respondent either had to deal with his grievances or suspend the sickness process. The respondent's options were not so limited.

144. On 11 September the claimant wrote to Mr Matthew Wood, HR Manager, advising that it had been determined by the Employment Tribunal on 4 September that the claimant was a disabled person by reason of his work related stress.

145. On 1 October Mr Wood refused a request of the claimant to be accompanied at the sickness management hearing arranged for 16 October by Prof Fradkin, on the basis that she was neither a work colleague nor a union representative. The claimant considered that this was an example of him not being treated with due care.

146. The claimant attended the meeting on 16 October unaccompanied. He said that he was attending "under protest", had been offered a postponement, but preferred to continue. Prof Finn read out the prepared management case. She outlined the support which she felt had been given to the claimant. She also described the stress risk assessment attempts which the claimant considered to be an inaccurate description. She commented on the impact the claimant's absence had on the School. The claimant considered his performance was being criticised by the reference to him not being a Professional Investigator in circumstances where it was not his role to be one. Prof Finn did refer to him not being a Professional Investigator of expected grants because his sickness. She did also refer to him having difficulties with team teaching. The claimant rejected the proposition that he had difficulties in engaging with others. The claimant was asked about his current state of health and said that he was in the process of obtaining a further psychiatric assessment. He described the risk assessment as an unhelpful distraction but that he would be willing to meet again on this provided Dr Merrywest was not involved. When discussing possible reasonable adjustments, he referred to there having been a breach of trust and confidence and he did not know how this could be restored.

147. Mr Wood wrote to the claimant on 3 November. The claimant and the management team, it was noted, had provided medical information which included extracts from the claimant of a report of a consultant psychiatrist, Dr Major. Mr Wood said that little weight could be attached to an incomplete report. At this point, the panel had determined that further medical information would be useful such that a decision was deferred pending further medical information. The panel proposed referring the claimant to occupational health to obtain the latest relevant medical position relating to his ongoing absence and prospects of a return to work. The claimant's agreement to such a referral was sought.

148. Prof Fitzmaurice told the tribunal that whilst the claimant said he was fit to return he was still under a sicknote and did not look fit enough to come back. Without the full medical information, it was difficult to make a determination and the December 2019 occupational health report was of limited use. The recent information provided by the claimant in the report of Dr Major was partial only. Judging by the claimant's demeanour, she did not believe him when he said he was fit and able to return. She considered that he kept harking back to the past, saying that if certain historical things were remedied he would be able to return. She described him as being fixated on the past and past grievances. The message she received from him was that unless things were sorted out to his satisfaction, particularly in relation to grants and funding, he wouldn't come back to work. She did not believe that the person she observed would be capable of performing as a senior professor. She and her colleagues on the appeal panel found it difficult to concentrate as the claimant "would go all over the place". In that context, it was felt that a further medical report would be useful and eminently reasonable given that the claimant's continued employment was at stake, the occupational health advice was a little stale and reliance could not be placed on the partial extracts of the report provided by the claimant.

149. In cross-examination, the claimant said it would have been reasonable to involve and follow occupational health advice at the beginning and that this proposal just prolonged the process. He needed closure.

150. On 4 November the claimant wrote to the respondent resigning with immediate effect. He said this was due to bullying and harassment in the workplace, allegations of poor performance, a failure to investigate grievances or complaints, disability discrimination, violation of the sickness absence management policy and disregard of medical advice as well as unjustified warnings in order to dishearten him and drive him out of his employment. He said that he believed the employment relationship had irrevocably broken down and he resigned as a result of the fundamental breach of the employment contract and, in particular, the duty of trust and confidence.

151. Prof Fitzmaurice said that she was aware that the claimant had a broad variety of claims against the respondent including that he was forced out of his employment. There was another way of looking at the situation for her. There did appear to have been a deterioration in relationships after discussions had been held with the claimant regarding his performance and expectations of him. The claimant had not fulfilled the conditions of his appointment in terms of bringing in significant amounts of research income and forming the types of strategic partnerships anticipated. His track record in terms of research was more that of a senior lecturer than a professor. She believed that he had not welcomed the scrutiny and had become withdrawn and frustrated as a reaction to the expectations which were spelt out to him. Whilst she said that this background was not directly relevant to the decision they were due to make as a panel about the claimant's continued employment, in the context of his long-term ill-health, she felt this was a contributing factor to the situation.

152. On 14 August 2020 the claimant had written to Prof Lambert raising a protected disclosure alleging financial impropriety. An investigation was undertaken which led to the production of a report dated 22 October. Prof Sue Hartley wrote to the claimant on 5 November to inform him that there was no case to answer and that the matter was now considered closed. The claimant told the tribunal that the respondent had no intention of investigating the matter because he had not been contacted in respect of his disclosure.

153. The claimant in these proceedings seeks to rely on a form of medical report produced by Dr Major. Questions had been asked of him without any input from the respondent. In an addendum to that report there was an answer to a question as to whether or not the claimant's depression made his manifestation of circumlocution worse. The response given was that the circumlocution to which Dr Major had referred was a tendency to not answer a question directly but rather to include numerous irrelevant points and details before finally answering. It was a disorder of thinking. Circumlocution

was not said to be a specific sign or symptom that occurs in depression, PTSD or personality disorder but rather should be viewed as a manifestation of poor mental functioning consequent on having a mental disorder. He said he would see his circumlocution as being a consequence of his mental disorders and the stress of the circumstances he found himself in. He could not say whether the claimant had raised incoherent grievances and complaints as was suggested in the question put to him. The tribunal draws from that comment that Dr Major had not seen them.

154. The question was asked as to whether a failure to investigate concerns and grievances would put at a group disadvantage people with work-related stress, depression and PTSD. Dr Major responded that he struggled to understand the question but opined that the vast majority of employees would find it difficult if their managers ignored and failed to address issues. This was particularly true for patients with mental health issues and particularly for those with depression. Patients who are depressive were said to have low self-worth and found it very difficult to be assertive.

155. In cross-examination the claimant's position was that his grievances had in fact been expressed very clearly, albeit he then immediately revisited his answer to say that a number of them had been expressed very clearly – there was one which had not been.

156. In the body of the report of Dr Major (which has been presented to the tribunal in a redacted form only) produced shortly following an appointment with the claimant on 23 September 2020, the claimant was described as not a "good historian". The claimant did not accept that this was a recognition that the claimant's own narrative given to Dr Major may not have been accurate. The claimant did, however, accept that there was no statement that his circumlocution was an aspect of work-related stress.

Applicable law

157. In order to bring a claim of unfair dismissal an employee must have been dismissed. In this regard the claimant relies on Section 95(1)(c) of the Employment Rights Act 1996 which provides that an employee is dismissed if he terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate without notice by reason of the employer's conduct. The burden is on the claimant to show that he was dismissed.

158. The classic test for such a constructive dismissal is that proposed in **Western Excavating (ECC) Ltd v Sharp 1978 IRLR 27CA** where it was stated:

"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment or which shows that the employer no

longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employer is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover he must make up his mind soon after the conduct of which he complains; or, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract".

159. Here the claimant asserts there to have been a breach of the implied duty of trust and confidence.

160. In terms of the duty of implied trust and confidence, the case of **Mahmud v Bank of Credit and Commerce International 1997 IRLR 462** provides guidance clarifying that there is imposed on an employer a duty that he *"will not without reasonable and proper cause conduct himself in a manner calculated [or] likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee*". The effect of the employer's conduct must be looked at objectively.

161. The Court of Appeal in the case of **London Borough of Waltham Forest v Omilaju 2004 EWCA Civ 1493** considered the situation where an employee resigns after a series of acts by his employer.

162. Essentially, it was held by the Court of Appeal that in an unfair constructive dismissal case, an employee is entitled to rely on a series of acts by the employer as evidence of a repudiatory breach of contract. For an employee to rely on a final act as repudiation of the contract by the employer, it should be an act in a series of acts whose cumulative effect is to amount to a breach of the implied term of trust and confidence. The last straw does not have to be of the same character as the earlier acts, but it has to be capable of contributing something to the series of earlier acts. There is, however, no requirement for the last straw to be unreasonable or blameworthy conduct of the employer, but it will be an unusual case where perfectly reasonable and justifiable conduct gives rise to a constructive dismissal. The claimant relies on the outcome of the sickness hearing and the proposal for a further OH referral to be the last straw in this case.

163. If it is shown that the employee resigned in response to a fundamental breach of contract in circumstances amounting to dismissal (and did not delay too long so as to be regarded as having affirmed the contract of employment), it is then for the employer to show that such dismissal was for a potentially fair reason. If it does so, then it is for the tribunal to be satisfied whether the dismissal for that reason was fair or unfair pursuant to Section 98(4) of the Employment Rights Act 1996.

164. Indirect discrimination, as defined in Section 19 of the Equality Act 2010, occurs where:

> *"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.*
>
> *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 applies, or would apply, it to persons with whom B does not share the characteristic,*
>
> *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,*
>
> *it puts, or would put, B at that disadvantage, and*
>
> *A cannot show it to be a proportionate means of achieving a legitimate aim."*

165. The relevant protected characteristics include disability and it has been found that the claimant was indeed a disabled person due to work related stress and anxiety from 26 September 2019.

166. A provision, criterion or practice ('PCP') will not be narrowly construed. However, according to the case of **Ishola v Transport for London [2020] ICR 1024 CA** the concept "*does not apply to every act of unfair treatment of a particular employee*". It must be "*capable of being applied to others*" and carries the connotation of a state of affairs, "*indicating how similar cases are generally treated or how a similar case would be treated if it occurred again*".

167. It must be established both that the PCP puts or would put the relevant group to a particular disadvantage, and that the claimant himself suffered that disadvantage. Statistical evidence, while helpful, is not necessary to establish group disadvantage – the claimant's own evidence might suffice - see **Games v University of Kent [2015] IRLR 202**. However, there must be some evidential basis to find or infer there is an actual or hypothetical group that would be disadvantaged by the application of the PCP which is "*intrinsically liable to disadvantage a group with [the claimant's] shared protected characteristic*" - see **Gray v Mulberry Co (Design) Ltd [2020] ICR 715**.

168. In the Equality Act 2010 discrimination arising from disability is defined in Section 15 which provides:-

"(1) A person (A) discriminates against a disabled person (B) if – A treats B unfavourably because of something arising in consequence of B's disability,and
A cannot show that treatment is a proportionate means of achieving a legitimate aim."

169. **Pnaiser v NHS England [2016] IRLR 170** summarised the approach to be followed as follows:

"(a) A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.

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

…

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

170. If the two-stage test is satisfied by the claimant, the burden moves to the respondent to show that the treatment is a proportionate means of achieving a legitimate aim. The same approach is taken as for indirect discrimination, outlined above.

171. Applying these legal principles to the facts as found, the tribunal reaches the conclusions set out below.

Conclusions

172. The tribunal deals firstly with the actions of the respondent which are said to have constituted a fundamental breach of contract.

173. Prof Oglethorpe issued a letter of advice and admonishment dated 23 May 2019 on an informal basis, but which was to lie on the claimant's personnel file. This was said not to be part of any formal process. It was

not a disciplinary warning. However, as a consequence it was issued without protective steps which might have been afforded to the claimant had he been taken through a formal disciplinary process.

174. Firstly, as regards the substance of the letter, the tribunal has rejected the suggestion that Prof Oglethorpe knew the claimant's wife was intended to undertake teaching. The tribunal finds that he believed that the request to hire an atypical worker was to assist with some grading. The relevant section of the staffing request form submitted does not refer to teaching and whilst detailing a number of areas of work, in fact, is tellingly against the claimant's position that a reference to course-related activities was to encompass teaching. This was not, as suggested by Prof Fradkin, a reference back to the claimant's wife's CV submitted sometime previously. The mention of teaching on the approval form was to past experience, not to the now proposed work. The claimant did not seek or receive approval from the Associate Dean of Learning and Teaching as was required under the respondent's policies. Prof Fradkin accepts he did not. The claimant cannot absolve himself from responsibility by saying that others should have picked the issue up. The claimant's wife then taught on a number of the claimant allocated teaching sessions. This resulted in genuine queries and concerns being raised. We claimant did not in response to such concerns, including the issuing of the 23 May 2019 letter, point out that he had obtained authorisation for the teaching work which the tribunal has found he would have done had he believed such authorisation to have been sought and given.

175. In such circumstances Prof Oglethorpe had reasonable and proper cause for sending the letter. He did so, it has to be said, without any form of investigation albeit were there was no formal procedure under which the letter was issued which required any form of investigation. The claimant ought reasonably to have had an opportunity nevertheless for providing an explanation prior to the letter being issued. On balance, he had such opportunity when told of Prof Oglethorpe's concerns on 9 May. The claimant did not respond and clearly had time to do so and would be expected to do so if the concerns were ill founded, crtainly, again, if Prof Oglethorpe had got things as wrong as the claimant now maintains.

176. Thereafter the claimant was told, in particular by Prof Watkins, that the letter would be removed if he could demonstrate compliance with due process. When the claimant did put forward his case at a meeting when he produced PowerPoint slides in September 2090, he did not provide the evidence of authorisation which Prof Watkins was reasonably seeking.

177. On balance, whilst out of any process and denying an explicit opportunity to present his side of the argument, the placing of this letter on the claimant's file did not in itself amount to a breach of trust and confidence. Objectively and on the facts as found, had a formal process been followed the claimant could justifiably have been given a formal disciplinary sanction, which would still have remained on file after the expiry of its 'live' period.

Even if the claimant's fault was one of mistake and neglect rather than any deliberate wrongdoing, the issuing of the letter, with no discernible consequences unless he subsequently did the same thing again, was a legitimate response.

178. The claimant relies on the respondent's alleged failure to investigate grievances and complaints raised by the claimant.

179. He says that from August 2018 there were several informal attempts by him to make a public interest disclosure. The claimant relies on emails between 8 August and 20 September 2018 in which he voiced concern about the WAF policy. His email of 14 September comes closest to a potential public interest disclosure, raising that doing something different could get the respondent into trouble at the time of accounting and audit and suggesting to Prof Genovese that he was being personally creative. The issue was raised, however, in a sarcastic email, where he had misunderstood Prof Genovese's role and the issue which he was raising. Prof Genovese was aware that the claimant already had his guaranteed 40% of research hours to draw on – the funders were not being short changed. WAF calculations have been criticised by the claimant, but there is no basis for the tribunal concluding that anything other than honest attempts were made at arriving at the appropriate figure. The claimant accepted that his emails of 9 August and 3 September did not raise any public interest concerns. The claimant was involved in a personal effort to ensure he had the correct WAF and where he might use research grants to buy out an element of teaching, so as to enhance the time he had dedicated to research. He was frustrating colleagues who had shown him the WAF a number of times (although the claimant did not accept what he had been told). Administration staff were finding it difficult to work with the claimant and his managers considered that he was trying to get out of teaching commitments. They viewed his correspondence in that context, but it cannot objectively be found that there was a failure to investigate anything.

180. The claimant relies on attempts between 28 March and 24 July 2019 to arrange a PhD studentship and him complaining that the respondent was failing to meet its legal obligations in this regard. He accepted that his email of 28 March 2019 was not a protected disclosure. He was seeking guidance. Emails of 10 May, 22 May and 5 June were ones seeking assistance from Deborah McClean, not raising complaints to be investigated. The claimant did not provide the tribunal with an explanation for his own inaction. The claimant said, on being asked about his email on 21 July, that it was too early to be investigating anything. When he emailed on 24 July his concern was to maintain the respondent's reputation with its partners. He told the tribunal that he didn't think that there had been a breach of an obligation and did not expect an investigation.

181. The claimant relies on a complaint initiated through the Dignity at Work procedure on 26 April 2019. This refers to a telephone call between the claimant and Dr Catherine Merrywest, during which the claimant raised concerns about Professor Oglethorpe. Dr Merrywest explained the claimant's options to him, which included his ability to raise a grievance. The claimant said that he was not looking to raise a grievance at that time. In fact, he said he wanted disciplinary proceedings taken against Prof Oglethorpe. Dr Merrywest explained that it was not for him to instigate disciplinary proceedings. The claimant was encouraged to seek to resolve matters informally, including by contacting Prof Watkins. Mediation was raised as a possibility but he said that he did not think it was helpful. The claimant was not discouraged or prevented from pursuing a complaint and indeed he took no decision at that meeting. She then followed up their conversation reiterating that he could request to meet with Prof Watkins. She noted that he did not wish to raise a grievance, but sent him a link to that procedure and the Dignity at Work Guidance which provided for the use of an informal process or the use of the respondent's grievance procedure. The claimant did indeed meet with Prof Watkins on 24 June where concerns were discussed, albeit briefly in the context of the meeting having been arranged by Prof Watkins for other purposes. Dr Merrywest did not conflate the issues to be discussed and there was indeed an overlap between performance and the claimant's concerns that he was being blocked in his research activities. Professor Oglethorpe left the respondent on 9 August – the claimant has not explained any further steps which could be taken relating to him, but has instead referred to legacy issues since his departure adversely affecting him.

182. The claimant relies on a complaint initiated through the Dignity at Work procedure by letter of 17 October 2019. In this letter, he asked for disciplinary investigations to be instigated against three members of staff, including Professor Oglethorpe, who had by then left the respondent. Dr Merrywest repeated in her response of 28 October 2019 that it was not open to him to invoke disciplinary proceedings against colleagues - this was not part of the Dignity at Work procedure. The claimant knew from their earlier conversation that he could submit a grievance which might lead to disciplinary proceedings depending on the findings. He was not making a mistake in his terminology, but, if he had been, how could Dr Merrywest be expected to know that he was. He was not at this point submitting such a grievance. He could have done so and was aware of that option from Dr Merrywest.

183. The claimant did submit a grievance against Professor Rachael Finn on 24 April 2020 alleging that she had refused to meet with him by herself. Professor Finn did, however, hold a meeting between just herself and the claimant on 28 April 2020. Dr Merrywest emailed the claimant on 30 April asking whether he wished to pursue a grievance or deemed the matter resolved given his discussion with Prof Finn. The claimant did not respond and Professor Watkins dismissed this complaint on 13 May referring to the history and the number of meetings Prof Finn had previously sought to

arrange with the claimant. In the circumstances his approach was not unreasonable. The tribunal has rejected the characterisation Prof Fradkin seeks to put forward of Prof Finn displaying deep ignorance of the claimant's mental health condition. She was trying to gain a better understanding of it.

184. The claimant submitted to Professor Valentine on 6 May a grievance that Professor Watkins had not dealt with his grievance against Professor Finn. This was inaccurate given that the claimant had not responded to Dr Merrywest to pursue his grievance against Professor Finn. Also, again, the claimant's request to speak to Professor Finn one to one had been satisfied. Professor Valentine responded on 18 May 2020 that she was not the correct person to submit a grievance to was not problematic in the context of the claimant's lack of response to Dr Merrywest. He had no legitimate reason for ignoring correspondence received from her – she had delegated authority to act in the matter as an HR Manager and her enquiry of him had not been inappropriate.

185. The claimant relies on a formal public interest disclosure on 20 August 2020 which can only refer in fact to refer to his letter of 14 August raising concerns about his WAF and attempts to recruit a PhD student. This was investigated in detail, as is clear from the report – the claimant might have expected that he would be spoken to and criticise the scope of people who were, but this was far from a cursory exercise judging by the report. However, the claimant did not know what steps the respondent had taken prior to his resignation and there was no delay of a character to indicate to him that the matter would not be looked at. He was informed that the investigation had concluded there was no case to answer on 5 November – the day after the claimant had communicated his resignation.

186. The claimant relies further on complaints referred to at paragraphs 13, 14, 16, 17, 18, 19, 20, 21, 23, 25, 26, 27, 28, 37, 38, 42, 48 of his amended grounds of complaint, said to have been dismissed by Prof Watkins (at paragraph 30) It is helpful to set out the paragraphs relied on.

Paragraph 13: "*The concerns have never been addressed by management; on 9 August 2018 D1* [Prof Oglethorpe] *advised a relevant colleague to ignore C on WAF issues, the third issue involving straightforward mistakes in allocation*."

187. Professor Oglethorpe's email to Emma Williamson on 9 August 2018 did advise her to ignore the claimant on certain issues but also stated that he and Professor Genovese would meet with the claimant. Ms Williamson

had commented that the claimant was difficult to work with because he would not give a straight answer to queries regarding his grants. The claimant's issues clearly needed to be dealt with at a higher level and in his line management chain. Professor Oglethorpe had reasonable and proper cause to relieve the staff member of responsibility for dealing with claimant's queries and seek to resolve them himself. The claimant was not aware of the email at the time it was sent. It was not calculated or, viewed objectively, likely to destroy or seriously damage trust and confidence. The claimant says that no meeting was arranged as Prof Oglethorpe suggested in the email, but there was further significant discussion with him on the issue of his grants. The tribunal has no evidential basis for concluding, as submitted on the claimant's behalf, that Prof Oglethorpe was creating an impossible working atmosphere for the claimant.

Paragraph 14: "*On 27 November 2018 D1 met with C. However, instead of addressing his concerns, D1 started the meeting by accusing C of having harassed multiple staff members. D1 claimed that this pattern of behaviour was well established and that it had to stop immediately. If not, formal action would be taken. This was the first time C was confronted with such allegations. He advised D1 that he was uncomfortable with continuing the meeting without proper accompaniment and left*."

188. The 27 November 2018 meeting was not arranged to deal with any complaints of the claimant – Prof Oglethorpe had advised him in advance that it would centre on the respondent's expectations of him. The claimant said that it had been his intention to bring up his complaints once they had gone through Prof Oglethorpe's agenda items. The meeting was adjourned for the claimant to obtain representation, and not because of any dismissal of any complaints on Professor Oglethorpe's part. The meeting ended early, before the claimant raised any complaints.

Paragraph 16: "*D1 and HR agreed to a four-way meeting with C and his TUR2 to discuss all concerns. The meeting took place on 10 January 2019, but no disciplinary hearing was initiated, and at least part of C's work assignment on WAF was agreed to have been inappropriate and removed. C's concerns regarding the new WAF policy on teaching buy-out were not addressed*."

189. The agenda for this meeting included the claimant's workload concerns. These were indeed discussed and addressed. The claimant was referred to explanatory documents about workload allocation. Prof Oglethorpe gave the claimant the opportunity to put into writing any issues he considered remained outstanding. Following this meeting the MGT 136 course the claimant had objected to teaching was removed from his allocation. There was no dismissal of his concerns.

Paragraph 17: "*On 26 March 2019 another meeting between D1 and C took place, but C's concerns were not addressed*."

190. This was a meeting between the claimant, Professor Oglethorpe and Dr Merrywest. Prof Oglethorpe tried to ascertain the claimant's complaints. Correspondence ensued between the claimant and Dr Merrywest from 5 April – she tried to gain an understanding of what his concerns were. There was no dismissal of any concern.

Paragraph 18: "*On 5 April 2019 C advised HR that he was ready to initiate the Dignity in Work procedure to deal with his complaints... On 26 April 2019 C had a long telephone conversation with HR, seeking ways to deal with his perceived mistreatment by the D1. He alleged that not only he himself felt bullied, he witnessed other employees with protected characteristics being discriminated against. Eventually it was decided that C would be in touch with VP [Prof Watkins]*."

191. See above - The claimant said that he was not looking to raise a grievance at that time. In fact, he said he wanted disciplinary proceedings taken against Prof Oglethorpe. Dr Merrywest explained that it was not for him to instigate disciplinary proceedings - the claimant was encouraged to seek to resolve matters informally including by contacting Prof Watkins. Mediation was raised as a possibility, but he said that he did not think it would be helpful. The claimant was not discouraged or prevented from pursuing a complaint and indeed he took no decision at that meeting. Dr Merrywest then followed up their conversation reiterating that he could request to meet with Prof Watkins. She noted that he did not wish to raise a grievance, but sent him a link to that procedure and the Dignity at Work Guidance which provided for the use of an informal process or the use of the respondent's grievance procedure.

Paragraph19: "*On 23 May 2019 D1 and HR [Dr Merrywest] arranged for a Signed Disciplinary Note to be put on claimant's file, accusing him of inappropriately hiring his wife as a substitute teacher. C's emails justifying his actions were ignored. All subsequent attempts by C to demonstrate that he followed the appropriate procedures were ignored, leading to great distress*."

192. The claimant asked on a number of occasions for the letter to be withdrawn. The respondent communicated that it would do so if the claimant could show that he had followed due process. The claimant did not produce anything which the respondent thought (reasonably) could explain his actions. The claimant had an opportunity to present his case to Prof Watkins, who reasonably concluded on 23 October 2019 that the letter should remain as issued.

Paragraph 20: "*Between 28 March 2019 and 24 July 2019 C attempted in vain to arrange a PhD studentship that the respondent undertook to support as an in-kind contribution to one of the externally funded research projects SUSTAIN. Again, all complaints that the respondent was failing in their legal obligations fell on deaf ears*."

193. The tribunal has already dealt with the allegation in respect of the claimant's attempts to arrange a PhD studentship above.

Paragraph 21: "*On 24 June 2019 C met with VP, who instead of addressing his concerns focused on whether C's performance warranted continuation of his market supplement. C was advised that his concerns would be addressed by the new line manager D2. He was told not to contact her though, but wait for her to contact him. Thus the Dignity at Work procedure was effectively dismissed*."

194. The meeting was convened for Professor Watkins to discuss the claimant's market supplement as well as to listen to his concerns. In his email of 5 July, he said that he would like to know more about why the claimant felt he had been blocked in some aspects of his role and would like to explore this further in a longer meeting in September. He had reviewed the 23 May letter and said he would remove it if the claimant could explain that he had followed due process. He did not dismiss any complaint of the claimant.

Paragraph 23: "*In a now disclosed email to a colleague, on 2 September 2019, D2 [Prof Finn] described C's WAF concerns as "still rumbling on"*."

195. The tribunal agrees with Ms Barrett that this is an accurate reflection of the long-running correspondence between the claimant and his colleagues regarding his workload allocation. It does not show Prof Finn dismissing the claimant's complaint.

Paragraph 25: "*On 18 September 2019 C met with VP again. Similarly to the June meeting, the focus of the meeting was not on claimants' grievances and complaints, but on the performance expectations*."

196. Prof Watkins listened to and discussed the claimant's concerns. He explained the respondent's expectations of him but showed a willingness to discuss further alternative ways of measuring his performance. In saying that issues of support would be dealt with at School level, he was not dismissing the claimant's complaints. That is where the ordinary day to day management of the claimant ought to have lain. He had given the claimant the opportunity to provide evidence that he had followed due process when

allocating his teaching to his wife – the claimant had not been able to do so. Prof Watkins had reasonable and proper cause for concluding that the letter of 23 May had been the correct way to address the issue of the claimant's wife's teaching.

Paragraph 26: "*On 19 September 2019 - in a now disclosed email – D2 provided VP with C's latest SRDS form. D2 mentioned that the form documented claimant's concerns over "a number of 'live' issues" and this was "wearing thin among a few" staff members. In this email she promised VP that she would invite C to come to her with perceived issues*."

197. This email was reflective of frustration felt (not without some genuine basis) with the claimant. However, Prof Finn did not suggest that the claimant's concerns would be dismissed, and the tribunal agrees that she did subsequently attempt to understand and address them, albeit that she believed that she ought to proceed with care so as not to exacerbate the claimant's ill health absence.

Paragraph 27: "*On 20 September 2019 - in a now disclosed email – VP advised D2 that she "should probably go ahead and meet" with C*."

198. There was no dismissal of any complaint by the claimant, but an expressed intention for the claimant's issues to be addressed by relevant people at appropriate levels. The claimant was absent on long-term sickness absence less than a week later.

Paragraph 28 : "*She did not and in frustration on 4 October 2019 C submitted his first ET1 – claiming victimisation*."

199. This is a reference to the claimant's tribunal claim for victimisation which was ultimately not pursued. The respondent defended the claim.

Paragraph 37: "*On 13 February 2020, having received a reply from the HR that his questioning of her behaviour was unclear and could be discussed at the next meeting, C despaired and asked her to recluse herself from further proceedings. He wished to continue conducting SRA with D2 – as prescribed by the Sickness Absence Management procedure, with the help of a mediator – as suggested in the OH report*."

200. The respondent did not accede to his request that Dr Merrywest recuse herself or be removed from involvement in his case. The claimant did not give any reason or explanation for his request, he met with her on 17 February 2020 and continued to correspond with her.

Paragraph 38: "*Despite this, on 17 February 2020 another four-way SRA meeting took place. Lack of compliance with the Sickness Absence Management procedure was not discussed*."

201. There was no reason to discuss a lack of compliance with the absence management policy. The meeting was focussed on the completion of a stress risk assessment, as recommended by OH, a step in compliance with the policy. Dr Merrywest then attempted to reflect their discussions in a risk assessment form for the claimant's consideration.

Paragraph 42: "*Throughout March and April C made many unsuccessful attempts to meet with VP or D2, without HR but hopefully with a mediator*."

202. There were many attempts by the respondent to hold a meeting with the claimant. The claimant's issue is that Prof Finn wanted Dr Merrywest to be present and did not understand why that might not be appropriate. The claimant asked for a meeting with Prof Watkins, who reasonably replied that he ought to follow the return to work process with Prof Finn, before meeting with Prof Watkins if there were unresolved issues on his return. None of this correspondence shows the respondent dismissing or failing to investigate any complaint.

Paragraph 48: "*In mid-July, in preparation for discussion of C's grant related concerns C and D2 exchanged some information and D2 promised to check hers and respond in a few days. However, on 29 July 2020 C was advised that the Sickness Absence Procedure had now entered the formal stage and there would be a hearing; with dismissal as one possible outcome*."

203. This allegation does not appear to encompass the dismissal of any complaint by the claimant. There is a sense that no information provided to the claimant was ever going to be enough for him. Contrary to submissions on behalf of the claimant, Prof Finn did not say that she was making an empty promise to keep the claimant quiet.

204. There are two further sub-allegations.

Firstly at Paragraph *3.2.2 b (i) of the claimant's further particulars: "On 19 September D2 promised VP to see C about his concerns (§ 26 POC), and yet, the same day she advised a redacted correspondent to redirect to her C's WAF concerns revealing that she would then redirect them to VP - after reading description of how, in a vain attempt to resolve WAF issues, C contacted one manager after another many times over (there are several emails confirming that often C did that on advice of the managers involved)".*

205. This has been dealt with already with reference to Paragraph 26 of the claimant's grounds of complaint. Prof Finn was setting out the chain of

management through which issues would be addressed rather than suggesting that she would simply ignore issues and pass them up the chain. The respondent was seeking to address matters, but without ever being able to satisfy the claimant, who was involving a range of people simultaneously in his issues. The respondent's exasperation was not without reasonable cause.

Secondly at Paragraph 3.2.2 b (ii) of the claimant's further particulars*: "When C attempted to initiate a grievance procedure against Craig Watkins, who did not want to consider a grievance against Rachael Finn, Gill Valentine, Provost and Deputy Vice-Chancellor, advised C that all complaints should be directed to Rachael Finn (§45 POC)."*

206. This is repetitious of the allegation already addressed above, where the claimant complained of grievances being dismissed.

207. The respondent is said to have introduced spurious performance targets. Prof Watkins in September 2019 set targets which cannot be said to be spurious in the context of the claimant's senior position and where, for instance, the grant income he had achieved in his first 3 years was not too far off the £100k per annum average set for the subsequent 5 years. It is understood in fact that the claimant's complaint is that in mid-July 2020 Prof Finn did not refer to quantitative targets. By email of 16 June 2020 Prof Finn provided requested guidance on research time and workload allocation. She did not herself set targets for the claimant and it is not understood on what basis the claimant maintains her communications to have been "spurious". On 23 July she referred the claimant to publicly available numeric expectations for grant capture.

208. The claimant next refers to the respondent making allegations of poor performance at the sickness management hearing on 16 October 2020. It is alleged that Prof Finn suggested that the claimant did not attract enough research income or publish enough quality papers and accused claimant of not being a good member of the teaching team. Prof Finn did refer in her written presentation of the management case and in her answers to panel questions to the gap left by the claimant's absence. She opined that a teaching only contract would not be an appropriate alternative for claimant *"given that Jonathan has had difficulties engaging with team teaching"*. She explained in evidence this referred to the earlier difficulties prior to her appointment that she was aware of (the tribunal can come to no conclusion on their accuracy) and her understanding that his focus was on research (which was accurate, albeit unlikely to be unusual in itself for someone at the claimant's level or necessarily a point of criticism). She said that he was not the Principal Investigator of grants of the size that would be expected at his level – the research collaborations and an impact of international standing had "not been taken forward". Whilst his difficulty in

doing so was then said to be related to his absence and an issue in terms of the respondent's needs, the impression was not given in a more general sense of an academic who was meeting the respondent's expectations. This was not relevant to a determination of capability due to illness. The view of the claimant not meeting expectations was, however, a view genuinely held (with an evidential basis) and which had been raised with the claimant already. The claimant can argue about exactly how his publication record should be evaluated, but in recent times certainly it wasn't great. In giving such background information, Prof Finn strayed a little from the purpose of the hearing, but she made the comments openly and, insofar as there were matters raised which could be seen as criticisms of performance, they were not, viewed objectively, likely to destroy or seriously damage trust and confidence.

209. The respondent is criticised for, in October 2019, asking Occupational Health when the claimant would return to work. The OH referral of 9 October ticked the standard box to ask about a likely date of return to work. That was hardly surprising in any OH referral and was in accordance with the respondent's sickness absence policy. There was no OH referral in November 2020 - the outcome of the sickness absence hearing was a proposal to seek up to date OH advice including regarding the claimant's prospects of a return to work. The respondent had reasonable and proper cause to ask this question given that the claimant was on long term sick leave. Its doing so could not amount to conduct likely to damage trust and confidence. OH's comments that workplace stressors needed to be addressed and that further intervention by them was unlikely to be helpful was a year previously and the respondent would surely have been criticised if it had not sought up to date advice which would include an assessment of the claimant's current state of health.

210. It is then alleged that the respondent failed to follow its sickness absence management procedure in a number of aspects Taking each particular allegation under this heading in turn the tribunal finds as follows.

211. It is said that the respondent did not follow the flowchart guidance: "What to do when a may be fit for work note is received". Although the claimant was provided with and submitted a "may be fit for work" note on 20 August 2019 while still working, he was then classified as "not fit for work" from the time he went off sick on 26 September until 9 January 2020. Therefore, this guidance was not strictly applicable during a key period of his criticisms. Nevertheless, the delegation of functions to Dr Merrywest was not of a repudiatory nature.

212. The claimant's GP's recommendations were considered, as were those from OH. Dr Merrywest and Prof Finn sought to meet with the claimant to discuss them as confirmed consistently in correspondence with him. The

draft stress risk assessment reflected the recommendations to address workload concerns, a phased return, time off for appointments, and regular meetings.

213. Prof Finn did not "avoid" direct communication with the claimant until December 2019. The claimant was in contact with Dr Merrywest and Professor Watkins from the time Professor Finn started in post in August 2019 and he was regularly communicated with regarding his sickness absence by them. In the early part of his sick leave, when Prof Finn was new in post, day-to-day communication with the claimant was conducted by the appropriate HR Manager, Dr Merrywest, who had in depth knowledge of his case. This was a sensible application of the policy. Whilst the policy did suggest the involvement of the manager as distinct from an HR Manager, the effective delegation of tasks to Dr Merrywest was not a breach of trust and confidence even if technically not expressly provided for in the flowchart. It was commonsense and pragmatic in the case of a manager at Prof Finn's level of seniority to allow routine contact to be maintained by someone in Dr Merrywest's position. It was unrealistic and over hierarchical to expect Prof Finn to micro-manage the absence of one of her reports. When the claimant expressed a desire to speak with Professor Finn on 4 November 2019, a telephone meeting was arranged. The claimant continued to email Dr Merrywest about his absence and health issues after this meeting.

214. It is not accepted that holding "sporadic" meetings on 6, 11 and 17 February, 28 April and 4 June 2020 amounted to a failure to follow the process. Meeting were anticipated by the policy and occurred. There were multiple attempts to arrange other meetings.

215. Prof Watkins explained to the claimant by email of 16 March 2020 that the claimant should complete the return-to-work process with Professor Finn, and they could meet on his return to work. This was not a breach of the process. The tribunal has not been referred to the requirement or right to meet with a more senior line manager. No breach of trust and confidence arises from Prof Watkins' understandable response, where otherwise there might have been a duplication of effort.

216. The claimant complains that his concerns were never fully addressed at a meeting on 28 April and a second stress risk assessment meeting did not take place. There was a video meeting between the claimant and Prof Finn on that date where she sought to reach a shared understanding as to what the return to work and stress risk assessment process entailed. No policy can require that an individual's concerns be "fully addressed" at any particular meeting. There was then a further meeting on 4 June 2020. The

Claimant thereafter sought various documents from Prof Finn. Some were provided, but not what the claimant felt that he needed.

217. The claimant was not expected to return to work before a risk assessment was completed. The claimant was not expected to return to work unless and until he was certified as fit to do so, which did not occur. The risk assessment was, however, rightly viewed as a tool which might aid the claimant's recovery and a return to work. Prof Finn and Dr Merrywest, made significant efforts to complete the stress risk assessment process with the claimant and to make the exercise easier for him.

218. The claimant alleges that risk assessment meetings were often confused with return to work meetings. There was no requirement in the flowchart or policy that these were to be held separately. Nor was there anything unreasonable in the respondent's approach. The purpose of the stress risk assessment was to inform the claimant's return to work.

219. The claimant complains that there was a suggestion of the termination of his employment even before the first formal sickness absence meeting. He was, however, appropriately told that termination was a possible outcome when the absence process was escalated to a formal sickness absence hearing – that was an option given to the respondent under the policy and it would have been unreasonable and in breach of policy not to advise the claimant of this possible outcome. Dismissal was a possible outcome even at a first hearing, in exceptional circumstances.

220. The claimant alleges that it was not taken into account that he was an accredited trade union representative. The Sickness Absence Management Procedure does not mandate different treatment for a trade union representative other than that it is provided that: "No formal action should be taken against accredited trade union representatives until there has been discussion with the appropriate official employed by the Trade Union". In any event, this did not apply to the claimant because he was not a union representative – he had simply undertaken the necessary union training.

221. The claimant finally relies on him having suffered unlawful discrimination as a breach of trust and confidence. The claimant's complaints are firstly of indirect disability discrimination.

222. Reliance is placed by the claimant on a number of alleged PCPs and these form the starting point of the tribunal's analysis.

"*Dismissing C's grievances and complaints without investigation*."

223. The respondent applied no such practice. His grievances and complaints were dealt with individually and investigated as required, as already referred to above.

"*Using meetings meant to deal with C's grievances and complaints to discuss his performance or return to work, namely using the meetings meant to deal with the work issues and thus stress risk assessment to discuss C's return to work instead (as confirmed by confusing the names of such meetings in many emails from R by C)*."

224. Again, there was no requirement for the stress risk assessment to have been conducted separately from return to work meetings. The purpose of the risk assessment was to inform the claimant's return to work. Therefore, there were no meetings "*meant to deal with*" issues and stress risk assessment but not a return to work. The tribunal's difficulty in understanding any practice as pleaded is rather illustrative of the claimant's situation being complex with issues of performance and the claimant's concerns being intertwined with his illness and the block ultimately on any return to work. Many meetings discussed such overlapping issues – not necessarily on a planned basis and at times arising out of the claimant's preferred approach rather than any plan adopted by the respondent.

"*Redirecting C's complaints from one manager to another*". It is alleged that when the claimant attempted to initiate a grievance procedure against Prof Watkins, because he did not want to consider a grievance against Prof Finn, Prof Valentine, advised the claimant that all complaints should be directed to Prof Finn.

225. This refers to Prof Valentine's email of 18 May 2020. As already referred to the context is that the claimant's original concern - his desire for a one to one meeting with Prof Finn - had already been addressed by them meeting on 28 April. The claimant then failed to respond to an email from Dr Merrywest asking if his grievance was still being pursued. Professor Watkins did consider and respond to claimant's complaint on 13 May. Professor Valentine's email was a one-off communication in a specific context and cannot amount to a PCP within the meaning explained in **Ishola**.

226. It is noted that an allegation concerning Prof Finn's email of 19 September 2019 has been removed by the claimant from the original list of issues as this pre-dated the claimant's status as a disabled person. In any event, her communication is not supportive of the PCP the claimant asserts.

She set out the appropriate line management escalation chain for the claimant's concerns. Again, the respondent can be seen throughout the history of the claimant's complaints as reacting to particular situations and in circumstances where the claimant was rarely accepting of the answer he received and sought to pursue his cause with someone else. Multiple people might be involved at any one time, not necessarily aware of what the claimant had already been told by someone else. This was a source of frustration for the respondent and also caused the claimant to believe that there was a practice of him being habitually ignored. Objectively that perception cannot be supported, but the claimant's own behaviour contributed to that feeling.

"*Accusing C of being vexatious when dismissing his grievances*".

227. This, the claimant clarified, refers to a single email of 13 May 2020 from Prof Watkins. His comment was that the claimant escalating his concern to Prof Valentine when fully aware that it was already being directly addressed "*could be seen as vexatious conduct*" and that the frequency and manner of the claimant's complaints led him to conclude they were vexatious. This does not suggest the respondent applying a PCP of accusing the clamant of being vexatious. If there was a complaint about this comment, it cannot sound as one of indirect discrimination. It has to be said that in context, there was justification for Prof Watkin's view. The claimant himself in evidence suggested that he had bombarded the respondent with grievances just to remind it that he was still around.

"*In October 2019, asking the Occupational Health advisor when C would return to work.*"

228. Ms Barrett accepts that the respondent applied a PCP of asking OH about the prospects of employees on long term sick returning to work. This step is contained in its sickness absence management policy and standard OH referral form.

"*Accusing C of failing to co-operate with the Occupational Health expert in a letter of 23.10.19 from Professor Watkins*."

229. The letter states: "*I note that you have declined an appointment with Occupational Health, which you previously agreed to, as you wished to discuss the referral in more detail*." This was intended to summarise the relevant OH report, which stated: "*Mr Linton did not wish to proceed with the assessment. He wishes to discuss the referral with you in more detail*." This was not an *"accusing C of failing to co-operate",* albeit the claimant genuinely took it that way. In any event, it was a one-off communication, not capable of amounting to a PCP.

"*Refusing to follow or discuss the Sickness Absence Management Procedure*."

230. The tribunal has not considered the claimant's suggestions of breaches of the procedure to be well founded or supported by the facts. No such PCP was applied.

"*Refusing to follow or discuss the Occupational Health report and GP recommendations",* which has the following sub-allegations in:
"Arranging no regular meetings with Rachael Finn or Craig Watkins."

231. Prof Finn and Dr Merrywest made repeated attempts to meet with the claimant to discuss his fitness and possible return to work, including the recommendations made by OH and his GP. There was no OH or GP recommendation for regular meetings with Prof Watkins.

"*Making only half-hearted attempts to conduct the stress risk assessment.*"

232. This is not a fair representation of what occurred. Again, repeated efforts were made to engage with the claimant to complete the stress risk assessment. The claimant would not engage with the process and Dr Merrywest's involvement in it did not justify such refusal.

"*Refusing to arrange mediation with Rachael Finn.*"

233. As explained in the tribunal's factual findings, there was no recommendation in the OH report or from the claimant's GP for mediation with Prof Finn. The tribunal's interpretation is that the OH report recommended mediation with the line manager with whom they understood the claimant had a problematic relationship, Professor Oglethorpe.

"*Refusing to arrange meetings with Rachael Finn sensitively without HR.*"

234. There was a recommendation by OH that the claimant be handled sensitively, but without specific guidelines. The respondent did not act insensitively in arranging meetings attended by a HR Manager and Dr Merrywest in particular.

"*Matthew Wood refusing to be sensitive to C's requests to be accompanied by his lay representative at the Sickness Absence Management Meeting*."

235. There was no recommendation by OH or from the claimant's GP that the claimant be accompanied by a lay representative rather than a union rep or colleague. Matthew Wood did not deal insensitively with the claimant's request. He offered to postpone the hearing until a union representative was available. It was, however, a practice of the respondent to allow accompaniment at such meetings by only a colleague or union representative.

236. In summary, none of the matters relied upon are capable of amounting to PCPs within the meaning described in **Ishola***,* save for asking OH when a person on long term sickness absence would return to work and limiting accompaniment at a sickness management meeting to a union representative or colleague. Those practices are indicative of how similar cases were or would be treated – how anyone indeed who did not share the claimant's disability would be treated. None of the others are and are more complaints of adverse treatment in the claimant's individual and unique circumstances. They are allegations of ill-treatment specifically targeted at him. There is no evidence or attempt to adduce evidence that the purported PCPs would have been applied to anyone other than him. They are misconceived as complaints of indirect discrimination.

237. The claimant has formulated then the particular disadvantage relied on as follows: "*Having their concerns ignored is particularly difficult for persons with mental health issues and in particular for those with depression. Persons who are depressed have low self worth and a poor opinion of themselves. Ignoring their concerns is the worst response the management can give, making them question their own sanity and reinforcing despair*". This only relates to one of the alleged PCP of "*Dismissing C's grievances and complaints without investigation*." This has not been found by the tribunal to be a practice applied by the respondent. Indeed, the tribunal's factual findings are not supportive of this being an accurate characterisation of how the claimant was individually treated.

238. Do or would those practices capable of amounting to PCPs then put persons with work-related stress and anxiety at a particular disadvantage in relation to a relevant matter when compared with persons who do not have work-related stress and anxiety? The claimant has provided no evidence that asking about a return to work date would put persons with work-related stress and anxiety at a particular disadvantage. It might be harder for an accurate answer to be given for employees suffering from those impairments than perhaps some physical illnesses, but asking the question does not involve a disadvantage. Its purpose is to seek to understand an

employee's condition, which may lead to consideration of support which could be provided. It is problematic in disability cases for claimants to show a group disadvantage when a type of disabling impairment may manifest itself in very different ways and degrees amongst people who share the same impairment – hence the greater effectiveness of the obligation to make reasonable adjustments which requires only an individual substantial disadvantage to be shown. This applies certainly to the right of accompaniment. On what basis can the tribunal conclude that those with stress and anxiety are disadvantaged by only being able to be represented by a colleague or union representative? The tribunal can envisage that some people with this type of impairment may prefer to be accompanied by a friend or relative, but it would be stretching the concept of judicial notice to find this wide group of persons is disadvantaged by this limitation. Indeed, there is no evidence that the claimant suffered any individual disadvantage – he ultimately represented himself at the hearing without him providing any evidence that he was unable to do so. There is evidence that the panel struggled to follow his arguments, but that would not have been remedied necessarily by any type of representative. The claimant had been represented by his union throughout his issues with the respondent and he has not suggested that this was ineffective or, if so, why. Reverting to the practice of asking about a return to work date, the claimant was not put to an individual disadvantage. As Ms Barrett submits, he simply took objection to an innocuous and obvious question. It was clearly proportionate and legitimate for the respondent to ask for OH advice on a return to work date.

239. The tribunal turns now to the complaints of discrimination arising from disability. Dealing firstly with the question of unfavourable treatment, the respondent did not dismiss the claimant's grievances and concerns without investigation. It did not fail to follow the OH's recommendations to address his work-related issues. Professor Finn and Dr Merrywest tried repeatedly to work with the claimant to address his concerns, including in the draft stress risk assessment document. The claimant relies on the respondent "*viewing*" him as "*refusing to co-operate*" There were, however, many instances where the claimant did not co-operate with the stress risk assessment and return-to-work process. Prof Watkins did not "*treat C's negative reaction to being asked by the Occupational Health advisor when he could return to work as a refusal to keep an appointment*." As referred to already, he sought to reflect the wording of the OH report. Prof Finn's management case presented at the sickness absence hearing accurately reflected the difficulties experienced in attempting to meet with the claimant.

240. Assuming, nevertheless, unfavourable treatment, the claimant relies on a number of things as arising from his disability of work-related stress and anxiety.

241. He alleges that because of his impaired ability to express himself clearly and succinctly in consequence of his disability he was unable to express his complaints and grievances in a clear, concise and assertive manner. Dr Major was asked to answer the question whether the claimant raising "*incoherent grievances and complaints*" arose from his disability. The Tribunal has noted that his report has not been tested in cross-

examination. Dr Major refers to depression, PTSD and personality disorder, none of which are the relevant disability in this claim and it appears that Dr Major was not provided with copies of the grievances and complaints which he was being asked to comment on.

242. The claimant alleges that because of his increased emotional vulnerability in consequence of his disability he was upset at the respondent asking OH in October 2019 when he would return to work. The tribunal has read the transcript of the meeting taken from the claimant's recording. The claimant clearly took umbrage at what he was being asked and was frustrated at the approach taken by OH. This was not the only form of potential advice and support he considered to be unhelpful. The tribunal has no basis for concluding that the claimant's reactions stemmed from his work related stress and anxiety. This could have been a manifestation of the claimant's personality unrelated to his mental health impairments. The tribunal cannot dismiss the claimant's case on the basis, put forward by Ms Barrett, that the claimant was unclear in self-expression at an earlier stage when not a disabled person, where clearly the claimant's mental health issues had a period of gestation. However, the claimant certainly has not proven a causal link on the balance of probabilities.

243. The claimant alleges that because of his increased emotional vulnerability in consequence of his disability he needed his trade union representative to be present at any meeting where Dr Merrywest, whom he viewed as hostile to him, was in attendance. Again, it is unclear why the claimant took such objection to Dr Merrywest, beyond his seeing her as subordinate to his line manager and having been involved in the problematic issues which arose for him with Prof Oglethorpe. Nor was his reaction to and willingness to engage with Dr Merrywest consistent. He had asked for union representation regardless of her presence at meetings. Again, the claimant has not proven a causal link on the balance of probabilities.

244. Was any unfavourable treatment done because of something arising from disability?

245. In relation to causation, the claimant says that the respondent dismissed his grievances without investigation and failed to address his work-related issues because of his impaired ability to express himself clearly and succinctly. This causal link cannot be established. The reason the respondent did not uphold his grievances was because they thought that they lacked merit, not because they lacked clarity. In terms of absence management, had he completed the stress risk assessment process it would have aided the respondent's handling of the situation.

246. He further contends that the respondent viewed him as refusing to cooperate in Prof Watkins' letter and Prof Finn's management case at the sickness hearing, because of the claimant's reaction to the first OH advisor and because he required accompaniment at meetings. Again, this causal

link is not established. No criticism was made of the claimant in relation to the first OH assessment, other than a factual recording of what happened. The respondent accommodated his union representative in terms of the convenience of the meetings and never criticised or objected to his presence at meetings.

247. Was the treatment a proportionate means of achieving a legitimate aim, namely to manage the respondent's operations efficiently and fairly and successfully manage sickness absence? This stage is not reached. There was no unfavourable treatment arising from disability. The claimant's complaints of disability discrimination fail and are dismissed. Fundamentally. The tribunal cannot conclude that the disability caused the "something arising" and that the something arising then caused any unfavourable treatment.

248. The tribunal reverts to the claimant's complaint of unfair dismissal which is dependent on him having been constructively dismissed. Was there then still a cumulative breach of contract such as to entitle the claimant to resign without notice? The tribunal has made factual findings and has come to conclusions in respect of the individual acts relied upon. Certainly, none of them individually surmount that hurdle. The tribunal recognises that, in common with some complaints of discrimination where there are multiple individual allegations of mistreatment, there is a danger in a case such as this for the tribunal to lose sight of the bigger picture. The tribunal therefore stands back and looks at the respondent's treatment of the claimant as a whole.

249. The claimant's difficulty is that the test is not based on his individual subjective perception of events. That perception is often not the same as the objective reality as found by the tribunal. There is in this case somewhat of a disconnect in the claimant, in his complaint of disability discrimination, asserting that certainly his own behaviour, his ability to express himself and at times his reaction to events was affected by mental health impairments, yet his claim of constructive dismissal is firmly based on those impaired reactions. The tribunal is clear that, taken cumulatively, his allegations do not add up to a breach of the implied term of trust and confidence. There is evidence of the claimant's managers and HR making significant attempts to understand his concerns and engage with him. This did lead to frustration, at times up to the point of exasperation, with the claimant. It would be repetitive to recount the history of the respondent's handling of the claimant's sickness absence and possible return to work. It is, however, characterised by the respondent making repeated efforts to engage with the claimant in circumstances where his reactions were often not objectively justified and where he erected his own barriers to progressing their dialogue. The claimant clearly had lost trust and confidence in the respondent, but that is not the test the tribunal must apply. There was no final straw and nothing to be revived by one in terms of a fundamental breach of contract. Choosing to resign after over 12 months' sickness absence, when instead of a dismissal, the employer wishes to obtain an up to date medical opinion will rarely be the most obvious moment to pick. It certainly wasn't on the facts the tribunal has found. The hurdle the claimant

must surmount is a high one – the test is not one of reasonableness. It may well be the case that an employer could have handled some situations better or more quickly. The claimant must show that, viewed objectively, the respondent's conduct evinced an intention to regard the contract of employment as at an end. The tribunal's findings do not come close to that. The claimant was not dismissed and therefore his complaint of unfair dismissal must fail.

Employment Judge Maidment
Date 27 August 2021

JUDGMENT SENT TO THE PARTIES ON
Date 1 September 2021