



## EMPLOYMENT TRIBUNALS

**Claimant:** Mr S Lannin

**Respondent:** Solent University

**Heard at:** Bristol

**On:** 25-28 October 2021

**Before:** Employment Judge Matthews

**Members:** Mrs S Collins  
Mr D Stewart

**Representation:**

**Claimant:** In Person

**Respondent:** Mr R Chaudhry – Solicitor Advocate

### Corrected **UNANIMOUS RESERVED** **JUDGMENT**

(Note: Paragraphs 154 and 156 of this Judgment have been corrected pursuant to rule 69 of the Employment Tribunals Rules of Procedure 2013 on the joint application of the parties. This Judgment replaces that sent to the parties on 2 December 2021)

1. Mr Lannin's claim of unfair dismissal by reference to section 94 of the Employment Rights Act 1996 is dismissed.
2. Mr Lannin's claims that he was discriminated against on dates before 1 September 2018 because of the protected characteristic of his sexual orientation by reference to sections 13 (direct discrimination) and 26 (harassment) of the Equality Act 2010, were not presented to an employment tribunal before the end of the period specified in section 123 of the Equality Act 2010. The employment tribunals have no jurisdiction to hear those claims.
3. Accordingly Mr Lannin's claims of discrimination (as referred to in paragraph 2 above) are dismissed.

4. Mr Lannin's claim that his dismissal was because of the protected characteristic of his sexual orientation and discriminatory by reference to section 13 (direct discrimination) of the Equality Act 2010 is dismissed.

5. Mr Lannin's claim that he was discriminated against on 17 September 2019 because of the protected characteristic of his sexual orientation by reference to sections 13 (direct discrimination) and 26 (harassment) of the Equality Act 2010 is dismissed.

6. Mr Lannin's claim that he was victimised because of doing a protected act on 17 September 2019 by reference to section 27 of the Equality Act 2010 is dismissed.

## **REASONS**

### **INTRODUCTION**

1. Mr Stephen Lannin's claims and the issues involved were discussed at a preliminary hearing before Employment Judge Fowell on 15 April 2020. At the hearing before us, it was agreed that they were as set out in paragraphs 3-8 of the Case Management Summary (the "CMS") sent to the parties on 16 April 2020, following that preliminary hearing.
2. Mr Lannin claims that he was unfairly dismissed. The University says that the dismissal was fair and either by reason of redundancy or for some other substantial reason being a re-organisation.
3. Mr Lannin also claims that he was discriminated against because of the protected characteristic of his sexual orientation by reference to sections 13 (direct discrimination) and 26 (harassment) of the Equality Act 2010 (the "EA"). These claims include that the dismissal was discriminatory. In addition, Mr Lannin claims that he was victimised because he did a protected act by reference to section 27 of the EA. To the extent that any such claims are out of time, Mr Lannin applies for time to be extended.
4. The University denies any discrimination. The University says that the complaints about alleged acts of discrimination before 1 September 2018 are out of time. Further, the University says there was no conduct extending over a period falling within section 123(3)(a) of the EA.
5. As far as the issues are concerned, we will use the CMS as a reference point. To save repeating the issues in this Judgment we have used them as headings in our conclusions.

6. Mr Lannin gave evidence supported by a written statement. Mr Lannin called Dr Tom Slevin (former Course Leader for BA Photography at the University), Dr Mark Farwell (UCU representative), Mr Philip Long (former tutor on the BA Graphic Design Course at the University), Ms Sarah Dryden (formerly a Senior Lecturer at the University) and Mr Nick Coveney as supporting witnesses. All gave evidence by reference to written statements, save Ms Dryden. Ms Dryden was not called as her statement was not contested by the University. On the University's side we heard from Mr Brent Meheux (Head of Visual Communication, Fashion and Applied Arts at the University), Professor Peter Lloyd (Dean of the Faculty of Creative Industries, Architecture and Engineering at the University), Professor Graham Baldwin (formerly Vice-Chancellor of the University), Mr Nigel Duncan (a member of the University's Board of Governors) and Ms Gemma Baker (Head of People and Development, Schools and Strategy at the University). Each produced a written statement, save for Ms Baker who was called at the Tribunal's request to give oral evidence on one specific point.
7. There was a 517 page bundle of documentation. References in this Judgment to page numbers are to the pages in the bundle unless otherwise specified. We watched the YouTube clips listed at page 488 in the bundle.
8. There was an index for the bundle and Mr Chaudhry produced written argument.
9. The Hearing was listed for five days, but, with the co-operation of the parties, it was completed in four days. It was confined to liability only, as indicated at the preliminary hearing. The Tribunal reserved judgment to consider better, in particular, the evidence.
10. The hearing was a remote hearing using the CVP platform consented to by the parties. The Tribunal is satisfied that, in this case, the overriding objective of dealing with cases fairly and justly could be met in this way.
11. In deciding this case it is not necessary for the Tribunal to make findings in relation to every disputed fact. Where it is necessary, the Tribunal's findings are on the balance of probability taking account of the evidence as a whole. Where appropriate the provisions of section 136 EA (Burden of Proof) have been taken into account as is explained below.

## **FACTS**

12. The University is based at East Park Terrace in Southampton. It has a workforce of 1,300-1,500 (Baldwin WS 4). Staff costs make up 50%-55% of budget (Baldwin WS 6). The faculty with which we are principally concerned is that of Creative Industries, Architecture and Engineering, of which Professor Lloyd became the Dean in 2018. Professor Baldwin was the Vice-Chancellor at all material times.
13. Mr Lannin started work for the University on 2 September 2002 as a Senior Lecturer in Graphic Design. Mr Lannin was dismissed with effect from 8 August 2019, just short of 17 years' service. At the time of his dismissal, Mr Lannin was a Grade 8 Senior Lecturer in Graphic Design in the School of Art Design and Fashion with particular responsibility for Year 2 (Level 5) students on the BA Graphic Design course.
14. Mr Lannin describes himself as a gay man.
15. Professor Lloyd's evidence is that the faculty has a number of openly gay staff members (WS 33). Mr Meheux commented that Mr Lannin was openly gay and the faculty was a liberal environment with a diverse workforce (WS 31).
16. There appear to have been no issues with Mr Lannin's performance of his job, as such. To the contrary, Mr Meheux says that Mr Lannin "*performed his role well*" and "*did a good job*" and Mr Meheux "*respected his professional ability*" (WS 6). However, there were difficulties with colleagues and managers, some of which we will come to.
17. Mr Lannin says, in 2014/2015, he was overlooked for the position of Level 6 Tutor and the post was given, instead, to Mr Chris Venables. At the time Mr Meheux had just been appointed Course Leader for the BA Graphic Media and Design Course and we assume Mr Lannin's complaint is about Mr Meheux. Mr Meheux explains that there was no appointment as such (WS 35.3). What happened was that, on assuming his new role, Mr Meheux had asked all those in his team to remain in their posts for a year. Everyone agreed at a team meeting (including Mr Lannin) and Mr Venables continued as Level 6 Tutor, as before.
18. Mr Lannin says that, sometime in 2014/2015, Mr Meheux made the comment "that is so gay" in his presence. Mr Nick Long (Head of Subject and Course Leader, line managing Mr Lannin and Mr Meheux at the time), also present, said nothing. Mr Meheux denies making the comment.

19. We know that something happened around this time. There is an e-mail exchange at 92-96 on the subject, which can be referred to for its full content. This was obviously in the context of more general comments Mr Lannin had made about bias by Mr Long and the behaviour of "Paul". On 5 February 2015 Mr Lannin met Professor Lloyd and sent him an e-mail after the meeting (96). It included:

*"Also there has been a rise in "casual homophobic remarks" in the office – none of these were designed to cause offence but have raised alarm bells in my head."*

20. Professor Lloyd's reply included (95):

*"I am alarmed to hear that you have encountered homophobic remarks in the office. This is an extremely serious issue, can you please provide me information regarding what was said. When and by whom please. This kind of behaviour is completely unacceptable."*

21. Mr Lannin declined to provide details and commented (95):

*"While I obviously can't dictate the course of action to be taken by either the University or HR in any circumstance, my suggestion as a gay individual, would be for a general reminder to all staff about the effect of such "casual" remarks on the young people we are privileged to teach."*

22. Professor Lloyd pressed for detail on 6 February and Mr Lannin's reply included this (93):

*"I am going to with-hold the names because I'm still not certain about the consequences of this statement – but in the light of recent events I will clarify that neither individual currently holds a full-time position at the University:*

*Incident one*

*3/2/15 Tuesday morning –*

*The person concerned used the phrase "that's so gay" about something they'd seen on their computer.*

*I challenged this remark – the person concerned then stated "Oh I didn't mean it like that" – I replied that I hoped they never use the phrase around students.*

*Incident two [a different person]*

*3/2/15 Tuesday late afternoon –*

*The person concerned, in the context of a joke, used the word “Puffy” to describe how a person [not a gay individual] may be perceived for not drinking enough alcohol. I regret not challenging this person on the remark.*

*Please appreciate my position in wishing to reduce these incidents without wishing to cause substantial damage to careers of my colleagues.”*

23. Professor Lloyd closed the conversation in an e-mail on 10 February 2015 (92):

*“I am sure you can appreciate that investigating anonymous allegations of any kind is difficult and leaves me in a position where I cannot substantiate claims.*

*If you feel that you would rather not supply me with the names can I strongly urge you to discuss the matter with the individuals involved, particularly the perpetrator of incident 2. This needn’t be a confrontational and should simply involve making the individuals aware of the fact that you felt their use of language was inappropriate and it had made you feel uncomfortable.*

*Irrespective of intent there is no room for such language in the School of Art & Design.”*

24. The question for us is, was the comment “that’s so gay” made and, if so, was it by Mr Meheux? We have no reason to find that Mr Lannin simply made up the comment. On the evidence, however, we do not find that it was Mr Meheux who made it. First, Mr Meheux denies it and was not named at the time. Second, the contextual complaints seem to have been about Mr Long and “Paul”. Third, Mr Lannin confirms that the comment was not made by an individual holding a full-time position. Whilst Mr Lannin maintains that he did not think that Mr Meheux held a full-time position at that point, that does not ring true in context.

25. Mr Lannin criticises Professor Lloyd’s response to these incidents. In particular, Mr Lannin says that Professor Lloyd should have sent out a message to the subject group condemning the behaviour and that Professor Lloyd does not appear to have met Mr Long to remonstrate with him for not taking action on 3 February 2015. Mr Lannin characterises Professor Lloyd’s failure to send out a generic statement to the subject group as a “refusal” to act (WS 15.2). It was no such thing. Mr Lannin made a suggestion about what Professor

Lloyd might do and Professor Lloyd judged it inappropriate to send out a generic warning about unattributed allegations. That was a reasonable course of action.

26. On 12 August 2015 Professor Lloyd appointed Mr Meheux as Course Leader for the MA Visual Communication course (109). Prior to the appointment, Mr Meheux had had discussions with Professor Lloyd and Mr Long. As a result, Mr Meheux was given permission to write a new course, which he did whilst studying for an MA in Graphic Design at the London College of Communication. Having written the course, Mr Meheux recruited students for it. The course proved successful and a full-time staff member was needed for it. The post was advertised on the University portal. Ms Baker sent an e-mail on the subject on 15 July 2015 (384-385). Mr Lannin and Mr Meheux both applied. Mr Meheux was appointed following interview by Professor Lloyd, someone from People and Development (we think Ms Baker) and another academic. The paperwork is at 97-108.
27. There are a number of examples in the bundle of Mr Lannin being taken to task for inappropriate communication with his colleagues and/or managers. No doubt this pattern of behaviour did not endear him to them. One, dated 24 September 2015, is at 110 in the bundle. Professor Lloyd sent Mr Lannin an e-mail which included:
- “The language and tone of your emails have become patronising and antagonistic. Surely a simple conversation with colleagues would be more productive? Can I ask you to cease this discussion before it escalates any further.”*
28. On 31 October 2016 Mr Long had a Performance and Development Review (“PDR”) meeting with Mr Lannin (125-130). There was a further such meeting on 23 October 2017 (138-143). Mr Lannin was graded as exceeding expectation on both occasions. However, as Mr Lannin points out, the sections for training and development were left blank (WS16.5). Whether or not this was a common practice we do not know. Mr Lannin seems to have taken no exception to it at the time.
29. In the Autumn of 2017 Mr Lannin jointly curated an LGBTQ+ design exhibition entitled “Making Out 67-17”. On 8 September 2017 Mr Lannin sent an e-mail to Professor Baldwin’s Executive Officer, Ms Agnieszka Larus-Hartley, inviting Professor Baldwin to say a few words at the preview on 2 November 2017 (135-137). Ms Larus-Hartley replied the same day, seemingly without consulting Professor Baldwin, to say that Professor Baldwin was on leave that week (134-135). Mr Lannin expressed his disappointment (134).

30. In paragraph 11.7 of his witness statement Mr Lannin acknowledges that Professor Lloyd attended and spoke at “Making Out 67-17” at Mr Lannin’s invitation. Further, Mr Lannin says that Professor Lloyd expressed a positive view of the exhibition. Mr Lannin then criticises Professor Lloyd for not sharing that positive view across the school, unlike the warm tribute Professor Lloyd later paid to Mr Long on his retirement. In our view, this is an example of a characteristic displayed by Mr Lannin on occasions. Mr Lannin makes connections between events and reads meaning into an act or omission to act when there is plainly a more obvious and straightforward explanation. On this occasion it is very doubtful that Professor Lloyd had it, consciously or unconsciously, in mind that he should not pay tribute across the school to Mr Long on his retirement in 2018 (see 156-157) because he had omitted to send a positive note around the school about an exhibition in 2017. The two are unconnected.
31. On 23 November 2017 Professor Lloyd gave an Inaugural Lecture lasting around an hour and a half. Mr Lannin was present and says that the lecture included a homophobic joke. This is the subject of the YouTube clips the Tribunal viewed (see 488). What happened is this. To illustrate a point Professor Lloyd used four people as props. They came down the lecture theatre stairs. Two were dressed as mushrooms and two as ladybirds. One of the ladybirds appears to have been female and the other male. As they reached the bottom of the steps Professor Lloyd said “*Well this is the ladybird,*” [turning to the male] “*that would make you a ladyboy, is that right? Okay, that doesn’t sound right, they are ladybirds.*” The word “ladyboy” has a number of different meanings in colloquial use but is commonly understood to mean a trans woman or an effeminate gay man.
32. Watching the clip, the Tribunal’s view is that Professor Lloyd did not make the association before he made the remark. In other words, when he made the initial comment, he was simply thinking that one of the ladybirds was male and he was making a play on the word “ladybird”. Having done so, Professor Lloyd immediately realised what he had said and backtracked. To the audience, however, it would have come across as a joke on the subject of “ladyboy” in the sense of a trans woman or an effeminate gay man. In an earlier draft statement, Professor Lloyd denied making the remark but, having seen the YouTube clip, accepted that he had done so. No doubt it is a source of embarrassment to him.
33. Mr Lannin says he “*felt disgusted that the Director of the School of Art, Design and Fashion would make such an offensive, demeaning joke towards a student, at a public gathering.*” (WS 12.5) This, however, is in stark contrast to Mr Lannin’s claim form in which he



refers to the remark by Professor Lloyd as “a mildly homophobic joke, that leaves me feeling uncomfortable.” (16).

34. Around January 2018 (see Lannin WS 17.6) Mr Brian Reed was appointed Course Leader for Illustration. Mr Lannin was not offered the position or informed that it was available. Professor Lloyd was a member of the panel of three which appointed Mr Reed. Professor Lloyd’s notes of the interview are at 152-153. The position was advertised in the usual way. Mr Lannin did not apply for the role.
35. Around May 2018 Mr Long retired. Professor Lloyd’s evidence on this subject goes back to events two years previously. A joint role had been created when Mr Paul Shakespeare left as Course Leader in 2016 and that job was combined with Mr Long’s existing role of Head of Subject (Lloyd WS 10.1). On Mr Long’s retirement the combined post was advertised (156-159). There were at least two applicants (Dr Slevin and Mr Meheux). The interviews were conducted by Professor Lloyd, Ms Baker and a Ms Sara Briscoe. Mr Meheux was appointed and his existing position of Senior Lecturer Grade 8, Course Leader of Visual Communication MA was not backfilled. Mr Lannin puts this differently. Mr Lannin says that Mr Meheux’s existing post was combined with that of Mr Long and that this amounted to designing a post which was only suitable for Mr Meheux and not for Mr Lannin. Mr Lannin’s complaint about the job advertised is set out in an e-mail to Dr Farwell on 18 May 2018 (156). Mr Lannin felt unable to apply for the post because he had not been offered any course leader experience by the University. Mr Lannin now says this was all by design to exclude him from the post because of his sexual orientation. If so, that would mean that the combination of the posts in 2016 had been engineered by someone (presumably Professor Lloyd) with a view to excluding Mr Lannin from applying on the retirement of Mr Long two years later. It would also involve deliberately excluding Mr Lannin from course leader experience. Although not impossible, that seems to us to be far-fetched.
36. Mr Meheux comments in his witness statement that after he took on these combined roles his relationship with Mr Lannin began to deteriorate (WS 34). Mr Meheux’s oral evidence was that, from this point on, Mr Lannin “disengaged” from him. There is abundant evidence in the bundle to suggest this was the case (see 253-256 and 269-271 for examples).
37. Around August 2018 Mr Venables was appointed to lead the Final Major Project (“FMP”) in Level 6. The position was not offered to Mr Lannin. Mr Meheux explains that this was a natural consequence of Mr Venables being the Level 6 Tutor (WS 35.4). The Level 6 Tutor

always got this role, it was standard practice and Mr Lannin raised no issue at the time.

38. On 5 October 2018 Professor Lloyd sent Mr Lannin an e-mail on the subject of Mr Lannin's PDR (228-229). Professor Lloyd urged Mr Lannin to use the University's formal procedures to resolve historic issues that Mr Lannin had raised in the PDR about (we think) Mr Long. As far as we know Mr Lannin did not do so.
39. Around the Autumn of 2018, Mr Meheux led a team to undertake a curriculum review. This continued until at least April 2019. The team was, in effect, the Graphic Design team including Mr Lannin, Mr Venables and Ms Susie Smith (Grade 8 Lecturer in the faculty). They held weekly meetings to review course modules. It seems that proposals were adopted by majority consent. In essence this was an exercise in analysing the market for the courses offered by the faculty in the area of Visual Communications and Applied Arts and shaping those courses to address that market in terms of both content and resource. There is evidence of this in the bundle (see 184-221 for example). Mr Lannin presumably had some understanding of what this might mean for him. In an e-mail to Mr Meheux on 29 October 2018 Mr Lannin commented "*who knows which years or units I will be teaching going forward.*" (234). In any event, Mr Lannin was fully engaged in the process and designed many course modules that remain well regarded and in use (Meheux WS 13 and 14).
40. Around November 2018 Mr Meheux was approached by Professor Lloyd to discuss cost savings in the BA Graphic Design course of which Mr Meheux was now the Course Leader and Head of Subject. In early February 2019, Mr Meheux met Ms Baker to present various options for making savings in staff costs.
41. At the start of the 2018/2019 academic year the lecturers in the Graphic Design team consisted of the two Grade 8 Senior Lecturers (Mr Lannin and Ms Smith), one Grade 7 Lecturer (Mr Venables) and Mr Meheux as Head of Subject with Course Leader responsibility. This team was supported by associate lecturers on zero hours contracts called on as needed. Typically, associate lecturers had other full-time jobs.
42. The University's case is that there was a need to make cost reductions driven by a predicted decline in student numbers (Lloyd WS 5). This may have been so across the faculty or across several faculties looked at as a whole. [This particular round of redundancies resulted in around 35 proposed redundancies (Baldwin WS7).] The reality, however, as Mr Lannin points out, is that it was easy to make a case that the numbers at Level 5 taught by him were going to

increase, at least in the short term. The real objective the University was pursuing, at least as far as it affected Mr Lannin, was that all Grade 8 senior lecturing posts were being taken out of the structure except where they included either a course leader role or other equivalent responsibilities. The teaching resource so removed was to be replaced by lecturers at lower grades, in particular Grade 6. One of the factors making this possible was the curriculum review. This had included sharing teaching across the areas of Graphic Design, Illustration, Body Art and Visual Communication. This resulted in a reduction in the number of teaching hours required and a commensurate reduction in teaching posts.

43. Mr Meheux's options for making cost savings were fed back to Professor Lloyd. Looking across the faculty as a whole Professor Lloyd then settled the proposals for achieving the required cost savings and sent them back to his heads of subject, including Mr Meheux.
44. In the case of Mr Meheux's subject area, the proposals included the removal of the two Grade 8 Senior Lecturers' posts on the Graphic Design courses, then held by Mr Lannin and Ms Smith. Ms Smith later accepted the standard enhanced voluntary terms offered by the University. As noted above, the changes brought about by the curriculum review included a reduction in the teaching hours needed so the proposal was to replace the two Grade 8 posts with two 0.5 Grade 6 posts.
45. In essence, there was no "selection pool" because both the Grade 8 posts were to go. Mr Venables, at Grade 7, was not included in the pool. This was justified by the University on the basis that a Grade 7 post was paid significantly less (around £6,000 less) and that Mr Venables was the only member of the teaching team who had sufficient industry experience to teach Year 3 (Level 6) industry based modules.
46. It fell to Mr Meheux, with support from Ms Helen Stride of People and Development to break the news to those affected.
47. On 29 April 2019 Mr Meheux sent Mr Lannin an e-mail (331). It was short and to the point:

*"You may be aware that the University continues to undergo a period of change which will have implications for a number of staff. In view of this, I would like to meet with you on Tuesday 30 April, 4:00pm, HC033A to discuss how this will affect you."*

*You may bring along a trade union representative or workplace colleague and Helen Stride, Business Partner from People and Development will also be present.*

*At the meeting, I will provide you with further information, answer any initial questions that you may have and outline timescales and next steps.”*

48. After nearly 17 years' service and with the high regard Mr Lannin obviously enjoyed in the teaching side of his job, this no doubt came as a bitter blow to him.
49. It seems that the meeting duly took place on 30 April 2019. An unusual feature of this case is the lack of a note of this and other important meetings. In any event, the substance was caught in a letter from Mr Meheux to Mr Lannin on 1 May 2019 (332-333). This appears to have been delivered as an attachment to an e-mail from Mr Meheux to Mr Lannin on 3 May (335). Mr Lannin was informed that his post was at risk of redundancy. Mr Lannin would be notified of all vacancies across the University and the two new Grade 6 posts in Visual Communications were to be ring fenced. Mr Meheux's e-mail gave details of those posts. A consultation period had commenced until 3 June 2019. Any redundancy would take effect on 31 July 2019. The reasons behind this were put in this way:

*“The redundancy position has arisen due to changing operational needs and circumstances within the Visual Communication and Applied Art subject group. Curriculum review has created shared units across courses within the groups at level 4, level 5 and level 6 for the following courses:*

*BA (Hons) Graphic Design*

*BA (Hons) Visual Communication (Accelerated degree) – new*

*BA (Hons) Body Art – new*

*BA (Hons) Illustration*

*The efficiencies produced by sharing units creates a situation where residual teaching can be covered by two, 0.5 fractional Grade 6 Lecturer, in Visual Communication. This change will provide flexibility required for teaching across the provision.*

*In addition to the creation of shared units, there has been a reduction in student recruitment for BA (Hons) Graphic Design (58% down in firm applications) for 2019/20.*"

50. Apparently, Mr Meheux was in tears for at least part of the meeting. Mr Lannin's evidence is that Mr Meheux either pretended to cry or cried (WS 8.8). In either event, Mr Lannin was not impressed.
51. On 3 May 2019 Mr Lannin sent an e-mail to Ms Stride asking that Dr Farwell be copied in on all future correspondence (334). On 5 May 2019 Mr Lannin sent an e-mail to Ms Stride, copied to Dr Farwell (334). It included:

*"I would prefer any future discussions/meetings to be with another senior member of staff, not Peter Lloyd or Brent Meheux, nor any other member of the staff that work/share office space directly with either.*

*I have no intention of entering the HC" [Herbert Collins] "building again, I found the last meeting extremely distressing and Brent's behaviour to be unacceptable. This is not the first time Brent has behaved inappropriately."*

52. Ms Stride replied on 7 May to say that she was sorry if Mr Lannin had found the meeting distressing and suggesting they meet either when Dr Farwell was back in the office or beforehand if Mr Lannin wished (337).
53. In an e-mail on 13 May, Ms Stride again suggested a meeting, this time in an e-mail to Dr Farwell copied to Mr Lannin (342). Mr Lannin replied the same day to confirm he would attend a meeting, although timing was an issue (342). The e-mail included this:

*"With regards to the 0.5 posts at Grade 6, proposed by Brent Meheux, I felt that the offer appeared deliberately insulting. There are many ways to humiliate a member of staff, but this offer seemed unnecessarily cruel, in the circumstances."*

54. The three met on 16 May 2019 and Ms Stride sent an e-mail confirming the outcome to Mr Lannin later that day (347). Dr Farwell and Mr Lannin had raised questions about the rationale behind Mr Lannin's job being put "at risk". Ms Stride explained that these could be discussed at the consultation meeting. That meeting needed to be with Mr Meheux or Professor Lloyd if it was to include the discussion on the "at risk" decision. The only other alternative would be for consultation through correspondence, although Ms Stride did not recommend it.

55. On 21 May 2019 Ms Stride set out the questions (that Mr Lannin and Dr Farwell appear to have asked at the meeting on 16 May) and the University's answers in an e-mail to Mr Lannin, copied to Dr Farwell (349-350). This should be referred to for its full content. Ms Stride offered another meeting. There were several responses to questions on why Grade 8 posts were "at risk".
56. Having had no response to the offer of a meeting, Ms Stride sent an e-mail to Mr Lannin, copied to Dr Farwell, on 12 June 2019 (354). Ms Stride summarised the position and, in the circumstances, extended the consultation period to 21 June 2019. A further meeting was offered or further consultation by correspondence.
57. At this point there appear to have been some discussions between the parties about "*voluntary severance and allegations of discrimination*" (see 375). There are some specifics about these in the bundle (see 378, for example). Whatever the detail was, the University's proposal for voluntary severance was rejected (as, in effect, its proposal for voluntary redundancy on standard enhanced terms had been rejected). The matter was to proceed to a "Vice Chancellor Representations Meeting" on 8 August 2019. This meeting was to consider a report prepared by Mr Meheux dated 26 July 2019 (373-379). This made the case for making Mr Lannin's post and Mr Lannin redundant. It can be referred to for its full content. Amongst other things, it confirmed consultation with "*the Union*" (the UCU – University and College Union).
58. On 31 July 2019 Professor Baldwin wrote to Mr Lannin requiring him to attend the meeting on 8 August 2019 (380). Professor Baldwin enclosed a copy of Mr Meheux's report. The purpose of the meeting was to consider the recommendation that Mr Lannin be dismissed on the ground of redundancy. Professor Baldwin's evidence is that, prior to this meeting, he did not, as far as he is aware, know Mr Lannin.
59. The meeting duly took place. Present were Mr Lannin accompanied by Dr Farwell, Professor Baldwin, Mr Meheux, Ms Baker and Ms Stride. We have seen no note of the meeting but we do have some evidence on a few specific points.
60. Dr Farwell handed over the document we see at 401. It is clear that this was Dr Farwell's document because, in his evidence to us, Mr Lannin said as much and was not able to explain its content. The document demonstrates that, on certain assumptions, Mr Lannin's job could be retained with a net financial surplus. This document took on particular significance when Dr Farwell's asserted, in oral evidence, that the University had agreed with the UCU that it would always use this methodology when contemplating redundancies but had not done

so in Mr Lannin's case. This amounted to an allegation that the University had not used an agreed procedure. The document at 401 lends some weight to the allegation. It mentions a 2003 agreement between the Unions and the University. As Dr Farwell had made no such specific allegation in his written statement, the Tribunal invited Mr Chaudhry to call Ms Baker on the subject to try to get to the bottom of the point. Dr Farwell questioned Ms Baker on Mr Lannin's behalf. Ms Baker recognised the document at 401 as having been produced at the meeting on 8 August 2019. Ms Baker did not agree that it represented an agreed methodology for use whenever a redundancy was being considered. Ms Baker said this had not been raised by the Unions during the consultation Ms Baker had with them in respect of this round of redundancies. We accept Ms Baker's evidence on this.

61. As far as the substance of Dr Farwell's document is concerned, Professor Baldwin comments that the figures were in isolation and took no account of the global financial challenge the University faced or the new resourcing requirement following the curriculum review (WS 16).
62. Mr Meheux confirms that Mr Lannin raised the issue that Mr Lannin considered that he had been held back from promotion historically because of his sexual orientation (WS 25). As an example, Mr Lannin cited Mr Meheux's appointment as Course Leader for MA Visual Communication in 2015. Professor Baldwin believes this was raised (WS 17). The Professor comments, however, that no supporting evidence was produced.
63. On 9 August 2019 Professor Baldwin wrote to Mr Lannin to confirm that Mr Lannin was dismissed by reason of redundancy with immediate effect, notice pay being paid in lieu (386-387). It appears that this had been communicated verbally at the meeting on 8 August as the parties agree that was the date of dismissal. The redundancy payment calculations were enclosed. The letter included:

*“- The reason for redundancy was identified due to the following:*

- The introduction of shared units following curriculum review*
- Changes to the way that teaching is delivered, which include increased use of technical support and the removal of team teaching*
- A reduction in student numbers*

*The above created a requirement to reduce the number of Senior Lecturers in Graphic Design by two.”....*

*“- Dr Farwell presented a detailed financial analysis of the graphic design course, however the issues are wider than individual courses.”....*

*“- I was not able to find any evidence that you have been unfairly treated. The Equality Impact Assessment was carried out and consulted with the unions. I cannot find any evidence to support your claims relating to staff behaviour.”*

64. As he had been invited to do, Mr Lannin appealed to the University's Board of Governors against the decision to make him redundant. This was done in a written note to Ms Andrea Thompson (Chief People Officer) dated 21 August 2019 (389-390). It should be referred to for its full content. From the oral evidence given to us, we know that sections 1.0 and 2.0 were written by Mr Lannin and section 3.0 by Dr Farwell. Sections 1.0 and 2.0 are a summary of Mr Lannin's career achievements. At the end, under the heading “*Aggravating Circumstances*”, Mr Lannin's turns to the discrimination he felt he had been subjected to because of his sexual orientation. In section 3 Dr Farwell re-directs the appeal to include the common grounds of appeal against redundancy, albeit with scattered references to discrimination. There was considerable generalisation but specifics included:

- Professor Lloyd and Mr Meheux had abused process, and were predisposed to and had colluded in Mr Lannin's dismissal (2.)
- The inadequacy of the selection pool (3.)
- Failure to consult with the UCU over the selection criteria (4.)
- The University reneged on the agreement between itself and the unions regarding financial viability (7.) [We think this is a reference to Dr Farwell's paper at 401.]

65. The appeal hearing took place on 17 September 2019. The appeal panel consisted of Mr Duncan and another of the University's Governors, Mr Philip Wake. We note that Mr Duncan refers to a panel of three (WS 5). This does not seem to be a requirement of the Severance Policy and it appears the panel consisted of two people. Mr Lannin has taken no point on this. Also present at the meeting were Mr Lannin accompanied by Dr Farwell, Ms Thompson, Professor Baldwin and Ms Baker.



66. Of the people at the hearing, we heard from Mr Duncan, Professor Baldwin, Mr Lannin and Dr Farwell on the subject. (We heard from Ms Baker, but not on this subject.) They gave differing accounts on some aspects. Again, the absence of a note does not help us in our task of understanding what happened. The meeting lasted around an hour and a half to two hours (Duncan WS 7), so it must have been reasonably wide ranging.
67. One contemporaneous document we do have is a note Mr Lannin took into the meeting as a prompt (492). It includes a list of questions Mr Lannin wanted to put to Professor Baldwin. The first was *“When did you come out to your parents as being heterosexual?”* The second was *“As a teacher/lecturer, when did you have conversations with your students about your sexuality? Was it ever an issue?”* There were other questions that, in the event, were not put. What seems to have happened is this. At some point Mr Lannin put his first question to Professor Baldwin. Professor Baldwin regarded the question as personal and could not see the relevance of the question to the appeal, so he refused to answer it. Mr Lannin started to put the second question, at which point Professor Baldwin asked him to stop. Mr Lannin persisted, Mr Duncan intervened and voices were raised on both sides. Mr Duncan’s evidence is that Mr Lannin had *“become acrimonious towards”* Professor Baldwin (WS10). Mr Lannin says he was shouted at. Dr Farwell does not go that far, mentioning raised voices. Professor Baldwin and Mr Duncan do not accept that either shouted. Our finding is that, when Mr Lannin persisted with his questions, voices were raised, probably on both sides.
68. In the Further Particulars of Claim provided by Mr Lannin’s advisers in these proceedings Mr Lannin’s purpose in asking these questions is explained (56-57, paragraphs 3. and 4.). This includes:

*“Specifically, the Claimant asked the Vice Chancellor, Graham Baldwin, questions concerning sexuality through the Chair of the Meeting, Nigel Duncan. The Claimant explained that, as far as he (the Claimant) was concerned, his sexuality was relevant to his redundancy because as a gay man his experience of teaching was very different than that of heterosexual male staff and he had suffered a level of prejudice in his 30-year teaching career that Mr Baldwin (and the Board) needed to comprehend (or words to that effect). The Claimant also recalls making a point about unconscious bias that he felt he had been subjected to as a gay man.”...*

Referring to the questions – *“The Claimant’s aim was to impress upon the Vice Chancellor and the Chair that he had suffered discriminatory treatment and bias as a young man*

*and this had continued in his teaching career, including at Solent University.”*

69. The pleadings clarify what might have been behind Mr Lannin’s questions. Mr Duncan certainly seems to have understood the gist of it. Mr Duncan comments (WS 9) *“He did make reference to unconscious homophobic discrimination but was unable to evidence anything which showed this to be the case”*. However, Mr Lannin did not put the allegation that he now makes in these proceedings, that Professor Lloyd and Mr Meheux discriminated against him because of his sexual orientation. This is surprising as it had been hinted at in the grounds of appeal (2. – see paragraph 64 above). We asked Mr Lannin about this. Mr Lannin’s response was to the effect that, as a lecturer in his subject, he approached things by way of illustration rather than directly. That may be the case but we think there is a simpler explanation. Mr Lannin wanted to make a general, rather than a specific point. He chose to do this by putting personal questions that an objective observer would see as intended to be provocative. Mr Duncan’s evidence goes a little further. Mr Duncan says (WS 12) *“There was an inference that Mr Baldwin did not like him because he was a homosexual”*. Professor Baldwin’s reaction was, objectively viewed, unsurprising and reasonable.

70. The appeal panel unanimously agreed to dismiss the appeal. This was communicated to Mr Lannin at the end of the appeal hearing and confirmed in a letter from Mr Duncan on 20 September 2019 (399-400). The letter, which should be referred to for its full content, did not refer to the grounds of appeal one by one. It included:

*“I reminded all parties that the appeal hearing was not a re-run of the disciplinary”* [Mr Duncan explains that he meant “redundancy”] *“meeting. I confirmed that the panel would be focusing on any procedural or administrative issues and any new evidence that was material to your appeal.”....*

Referring to the more general issues *“Anecdotal evidence and opinions were expressed by yourself and Dr Farwell about the business case and other matters raised in the appeal letter dated 21 August 2019 but were not substantiated with any evidence.”....*

*“This decision has been taken because I was not able to identify any procedural or administrative issues, or any new evidence that was material to your appeal.”*

71. Mr Lannin applied for Early Conciliation on 20 September 2019. ACAS issued an Early Conciliation Certificate on 5 October 2019 (1).

Mr Lannin's claims were presented to the Bristol office of the employment tribunals on 4 November 2019 (2).

72. The University has a "Redeployment Policy and Procedure (446-450) and a Severance Policy (438-445). Generally, these contain all the good practice provisions that would be expected in a public sector organisation like the University. These include measures to avoid compulsory redundancy including ring fencing, redeployment and salary protection, enhanced voluntary redundancy provision, equality impact assessment, consultation with trade unions and individuals, selection pools and the detailed procedural arrangements for redundancy when necessary.

### **APPLICABLE LAW**

73. Section 94 of the Employment Rights Act 1996 (the "ERA") provides an employee with a right not to be unfairly dismissed by his or her employer.

74. Section 98 of the ERA, so far as it is relevant, provides:

#### ***"98 General***

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

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

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

*(2) A reason falls within this subsection if it-" ....*

*"(c) is that the employee was redundant,"*

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

*(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably*

*in treating it as a sufficient reason for dismissing the employee, and*

*(b) shall be determined in accordance with equity and the substantial merits of the case.”*

75. The meaning of redundancy is set out in section 139 of the ERA. So far as it is relevant, that section provides:

***“139 Redundancy***

*(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to-” ....*

*(b) the fact that the requirements of that business-*

*(i) for employees to carry out work of a particular kind,” ....*

*“have ceased or diminished or are expected to cease or diminish.”*

76. In applying the provisions of section 98(4) of the ERA to a dismissal by reason of redundancy, it has long been established that the following are expected:

- As much warning as possible
- Consultation on the method for achieving any necessary redundancies including the selection criteria
- The use of objective selection criteria
- The fair application of the selection criteria
- Consideration of alternatives.

77. Section 4 of the EA, so far as it is relevant, provides:

***“4 The protected characteristics***

*The following characteristics are protected characteristics-”  
....*

*“sexual orientation.”*

78. Section 12 of the EA, so far as it is relevant, provides:

**“12 Sexual Orientation**

(1) *Sexual orientation means a person’s sexual orientation towards-*

(a) *persons of the same sex;” ....*

“(2) *In relation to the protected characteristic of sexual orientation-*

(a) *a reference to a person who has a particular protected characteristic is a reference to a person who is of a particular sexual orientation;”*

79. Section 13 of the EA, so far as it is relevant, provides:

**“13 Direct discrimination**

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

80. Section 26 of the EA, so far as it is relevant, provides:

**“26 Harassment**

(1) *A person (A) harasses another (B) if-*

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

(b) *the conduct has the purpose or effect of-*

(i) *violating B’s dignity; or*

(ii) *creating an intimidating, hostile, degrading, humiliating or offensive environment for B.” ....*

“(4) *In deciding whether conduct has the effect referred to in section (1)(b), each of the following must be taken into account-*

(a) *the perception of B;*

(b) *the other circumstances of the case;*

(c) *whether it is reasonable for the conduct to have that effect.”*

The relevant protected characteristics include sexual orientation (section 26(5) EA).

81. Section 27 of the EA, so far as it is relevant, provides as follows:

***“27 Victimisation***

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

*(a) B does a protected act, or*

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

*(2) Each of the following is a protected act-”....*

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

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

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

82. Section 39(4) of the EA, so far as it is relevant, provides as follows:

*“(4) An employer (A) must not victimise an employee of A’s (B)-”....*

*“(c) by dismissing B;*

*(d) by subjecting B to any other detriment.”*

83. Section 123 of the EA, so far as it is relevant, provides:

***“123 Time limits***

*(1) Subject to section 140B, proceedings on a complaint within section 120 may not be brought after the end of-*

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

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

*“(3) For the purposes of this section-*

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

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

84. Section 140B of the EA is the provision that extends time limits to facilitate conciliation through ACAS. The scheme of it is twofold. First, the period of conciliation is discounted when calculating time limits. Second, if a time limit would have expired in a period of conciliation, the time limit is extended for a month beyond the end of conciliation.

85. A recent Court of Appeal decision (*Adedeji v University Hospital Birmingham NHS Trust* [2021] EWCA Civ 23) cautions against using the traditional approach of going through the factors in section 33 of the Limitation Act 1980 when applying the “just and equitable” test. In his leading Judgment, Lord Justice Underhill made it clear that the focus in applying the test, should be on the factors behind the delay. Further, Lord Justice Underhill pointed out that the employment tribunals have a wide discretion in this area.

86. There is no presumption that a tribunal should exercise its discretion to extend time. Time limits are exercised strictly in employment cases and the onus is on the claimant to justify the claimant’s failure.

87. Section 136 of the EA, so far as it is relevant, provides:

**“136 Burden of proof**

*(1) This section applies to any proceedings relating to a contravention of this Act.*

*(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*

*(3) But subsection (2) does not apply if A shows that A did not contravene the provision.”*

88. The Tribunal was referred to *Modern Injection Moulds v Price* [1976] IRLR 172, *Williams v Compair Maxam* UKEAT/372/81, *Polkey v A E Dayton Services Ltd* [1987] IRLR 503, *Taymech Ltd v Ryan* UKEAT/663/94, *R v British Coal Corporation and Secretary of State for Trade and Industry, ex parte Price* [1994] IRLR 72, *Hendrick v Metropolitan Police Commr* [2003] IRLR 96, *Bexley Community Centre (t/a Leisure Link) v Robertson* [2003] EWCA Civ 576, *Alvis Vickers Ltd v Lloyd* EAT/0785/04, *Amnesty International v Ahmed*

[2009] IRLR 884 and *Gardner v Chief Constable of West Yorkshire Police and another* ET/1807082/13.

## **CONCLUSIONS**

89. Mr Lannin's theme is that his experience as a gay man lecturing in further education was different from that he would have had if he had been a heterosexual man. It would not surprise the Tribunal if that was the case. However, the Tribunal's task is not to enquire into that general proposition but to examine the evidence in relation to the specific allegations and determine whether or not all or any of Mr Lannin's claims are well founded.

### **90. Time points**

91. The employment relationship ended on 8 August 2019. Conciliation started on 20 September 2019 and the Early Conciliation Certificate was issued on 5 October 2019. Mr Lannin's claims were lodged on 4 November 2019.

92. Mr Lannin's claims that he was unfairly dismissed, that his dismissal was discriminatory and that he was harassed and victimised during the appeal hearing on 17 September 2019 were made within the three month primary time limit.

93. The latest of Mr Lannin's remaining claims, of harassment and direct discrimination, pre-dates 1 September 2018. Most are considerably older. These claims were well outside the three month primary time limit. The primary three month time limit in respect of them expired before conciliation was entered into. Therefore, Mr Lannin does not benefit from any extension of time for the conciliation period.

94. There are two exceptions to the primary three month time limit (apart from the extension for conciliation, where appropriate). The first is the "conduct extending over a period" exception. The second is where an employment tribunal extends the time limit on the "just and equitable" ground.

95. We turn first to the "conduct extending over a period" exception. In short this means that time will be extended in respect of earlier otherwise out of time acts (including failures to act) if those acts are part of conduct extending over a period of time ending with an act or acts that are in time. It is, however, established that the in-time act or acts relied on must, itself or themselves, be a discriminatory act or acts. In this case, the in-time acts relied are the dismissal and events at the appeal hearing on 17 September 2019. As we explain below, neither was a discriminatory act. It follows, therefore that these claims



cannot save any other claim relating to an earlier act on the basis of “conduct extending over a period”.

96. Second, we turn to Mr Lannin’s application for an extension of time in respect of any out of time claims on the “just and equitable ground”. The issue is, did Mr Lannin bring his proceedings in respect of those alleged acts of discrimination after the end of such other period as the Tribunal thinks just and equitable? As an example of the extension of time sought, we take the alleged discriminatory act in August 2018, when Mr Lannin was not appointed to lead the FMP in Level 6. Assuming the alleged act of discrimination took place on 31 August 2018, any claim in relation to that would have had to be lodged on or before 30 November 2018. The claim was, therefore, over eleven months out of time (30 November 2018 – 4 November 2019).
97. Mr Lannin was clear why he did not, at the time, pursue the University’s internal grievance procedures, far less proceedings before the employment tribunals, in relation to the issues before 1 September 2018 that he now raises. The reason was that he judged that he would prejudice his relations with his managers and colleagues by doing so and, in turn, that would affect his career.
98. Mr Lannin may or may not have been right about that. What is clear is that Mr Lannin made an informed choice. Having done so, Mr Lannin cannot now revisit that choice and rely on it as a sustainable reason for an extension of time on the just and equitable ground in respect of allegations over eleven months old, in some cases, four or five years old. If the Tribunal exercised its discretion in that respect, it would clearly be prejudicial to the University. There are clear impacts on the evidence. For example, some of those involved long ago left the employment of the University.
99. The Tribunal’s conclusion is that all the claims in respect of acts before 1 September 2018 are out of time, it is not just and equitable to extend time and there is no conduct extending over a period within the meaning of section 123(3) of the EA. Those claims are, therefore dismissed.
100. Notwithstanding, if we were to be wrong about that, we have heard the evidence and it is proportionate to consider whether or not the out of time claims of discrimination would have succeeded if they had not been out of time. It is also the case that an out of time act of discrimination may have a bearing on the in-time discrimination claims in terms of context. Our conclusions on all the discrimination claims set out below (save for the claims in relation to the dismissal and events on 17 September 2019) are to be read on the basis, first,

that they are context and, second, that this is the decision we would have made, had the claim been in time.

101. **The discrimination claims**

102. In addressing the discrimination claims we will follow the time line rather than the order in the CMS. We adopt the wording of the CMS for ease of reference.

103. Mr Lannin's protected characteristic is his sexual orientation. Mr Lannin offers a number of actual comparators for the purposes of the direct discrimination claims by reference to section 13 EA. We will also refer to a "hypothetical comparator", which will be a person in Mr Lannin's circumstances but without the protected characteristic of Mr Lannin's sexual orientation.

104. His line manager Nick Long, failing to provide or suggest promotion opportunities for Mr Lannin.

105. This is brought as a claim of direct discrimination. It is substantially out of time. Mr Venables and Mr Reed are offered as actual comparators.

106. Whilst there is evidence that Mr Long did not complete the training and development sections of Mr Lannin's PDRs (see paragraph 28 above), we have not been offered evidence on which we can make any meaningful findings of fact on these allegations. There is, therefore, nothing that can amount to direct discrimination.

107. In 2014/2015, overlooking him for the position of L6 Tutor, given to Chris Venables without offering the position to Mr Lannin or giving him the opportunity to apply for it.

108. This is brought as a claim of direct discrimination. It is substantially out of time. Mr Venables and Mr Reed are offered as actual comparators.

109. The Tribunal's findings of fact in relation to this allegation are set out in paragraph 16 above. We see no less favourable treatment on the facts. There was no selection exercise. Mr Venables carried on as he had before.

110. In an incident in 2014/2015, in the presence of Mr Lannin, when Brent Meheux made the comment "that is so gay" and Nick Long, Mr Lannin's line manager, said nothing.

111. This is brought as a claim of harassment, or, if it is not harassment, direct discrimination. It is substantially out of time.

112. The Tribunal's findings of fact in relation to this allegation are set out in paragraphs 18-25 above. The Tribunal finds that any such comment was not made by Mr Meheux. There is, therefore, nothing that can amount to the alleged harassment or direct discrimination.
113. In an incident in 2014/2015, in which Brent Meheux made comments that he "only liked certain types of gay", was "anti-PC" and "hated PC culture".
114. This is brought as a claim of harassment, or, if it is not harassment, direct discrimination. It is substantially out of time.
115. We have not been offered any evidence on which we can make any findings of fact on these allegations. There is, therefore, nothing that can amount to harassment or direct discrimination.
116. In 2014/2015, overlooking him for the position of Course Leader for the MA in Visual Communication, given instead to Brent Meheux.
117. This is brought as a claim of direct discrimination. It is substantially out of time. Mr Meheux is offered as an actual comparator.
118. The Tribunal's relevant findings of fact are at paragraph 26.
119. We can see that not securing the appointment may be considered as less favourable treatment. The test we must apply to this is, are there facts from which we could decide, in the absence of any other explanation, that the appointment of Mr Meheux in preference to Mr Lannin was less favourable treatment because of Mr Lannin's sexual orientation? There are none and Mr Lannin does not offer any, beyond the assertion that this was less favourable treatment because of his sexual orientation. Mr Lannin offers Mr Meheux as an actual comparator. We did not establish whether or not Mr Meheux is of a different sexual orientation to Mr Lannin but, for this purpose, will assume that to be the case. Notwithstanding, Mr Meheux is not a suitable comparator because, inevitably, his qualifications for the job were different from Mr Lannin's. The hypothetical comparator fits better. We conclude that person would have been treated in exactly the same way in the circumstances. We accept Professor Lloyd's evidence that Mr Meheux was unanimously selected as the better candidate by a three person selection panel. The selection was made objectively on merit rather than for any reason connected to Mr Lannin's sexual orientation.
120. In October 2017, the Vice-Chancellor Graham Baldwin failing to mention, offer support or visit the LGBTQ Design exhibition convened by Mr Lannin.

121. This is brought as a claim of harassment, or, if it is not harassment, direct discrimination. It is substantially out of time.
122. Our findings of fact in relation to this allegation are set out in paragraph 29 above. As far as harassment is concerned, we do not see any unwanted conduct by Professor Baldwin. It was Professor Baldwin's Executive Officer who declined the invitation, seemingly by reference to the Professor's diary and without his knowledge. If we assume he knew he had been invited, Professor Baldwin not accepting the invitation to attend the event might be unwanted conduct. However, there are no facts from which we could decide that, in the absence of any other explanation, that conduct related to Mr Lannin's sexual orientation. The fact is that the Professor was on holiday. Turning to the direct discrimination claim, there are no facts from which we could decide that, in the absence of any other explanation, Mr Lannin was treated less favourably than the hypothetical comparator would have been treated in this respect. Declining the invitation was not because of Mr Lannin's sexual orientation, it was because Professor Baldwin was on holiday.
123. In November 2017, Peter Lloyd made a homophobic joke in the presence of Mr Lannin in which he asked a male participating in one of his lectures whether he was "a Ladyboy".
124. This is brought as a claim of harassment, or, if it is not harassment, direct discrimination. It is substantially out of time.
125. The Tribunal's findings of fact in relation to this incident are at paragraphs 31-33 above.
126. As far as harassment is concerned, we can see that, even addressed to a large audience, a reference of this sort might amount to unwanted conduct by an individual member of that audience. It is commonly understood to relate to sexual orientation, a relevant protected characteristic. On the facts we do not find, however, that it had the purpose of violating Mr Lannin's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for Mr Lannin. It was not addressed to anyone in particular. We also do not find that it had that effect. Mr Lannin took no action at the time. In issuing these proceedings, Mr Lannin goes no further than describing it as "*a mildly homophobic joke*". At the time, we do not think it had the required effect for it to amount to harassment.
127. We do not think this claim works as a claim of direct discrimination. There is no evidence that Professor Lloyd set out to treat Mr Lannin less favourably than he would have treated the hypothetical comparator in this respect.

128. In February 2018, Nick Long shouted at Mr Lannin and called Mr Lannin by the name of his daughter Tilly.
129. This is brought as a claim of harassment, or, if it is not harassment, direct discrimination. It is substantially out of time.
130. We have not been offered any evidence on which we can make any findings of fact on this allegation. There is, therefore, nothing that can amount to harassment or direct discrimination.
131. In March 2018, the decision to award Course Leader for Illustration to Brian Reed and not to offer it to Mr Lannin or to inform Mr Lannin that the position was available.
132. This is brought as a claim of direct discrimination. It is substantially out of time. Mr Reed is offered as an actual comparator.
133. The Tribunal's relevant findings of fact are at paragraph 34.
134. The alleged less favourable treatment cannot be the decision to appoint Mr Reed because Mr Reed was appointed following due process, whereas Mr Lannin never applied for the post. The alleged less favourable treatment seems to have been the lack of positive action in drawing the availability of the post to Mr Lannin's attention. On the facts, this seems to be misconceived. The post was advertised in the usual way and Mr Lannin could have applied for it if he wished. The Tribunal cannot see less favourable treatment.
135. In May 2018, the decision on the retirement of Nick Long to combine his posts so as to design a new post which was only suitable for Brent Meheux and was not suitable for Mr Lannin.
136. This is brought as a claim of direct discrimination. It is substantially out of time. Mr Meheux is offered as an actual comparator.
137. The Tribunal's relevant findings of fact are at paragraph 35.
138. We can see that, if the post had been designed for Mr Meheux to exclude Mr Lannin, that would be less favourable treatment. On our findings of fact, this does not seem to have been the case and we can see no less favourable treatment.
139. In August 2018, the decision to appoint Chris Venables to lead the FMP in L6 and not to offer the position to Mr Lannin.
140. This is brought as a claim of direct discrimination. It is substantially out of time. Mr Venables is offered as an actual comparator.

141. The Tribunal's relevant findings of fact are at paragraph 37.
142. We can see that, if Mr Venables had been preferred over Mr Lannin in this instance, there would have been less favourable treatment. On the facts, however, Mr Venables' appointment appears to have been a consequence of his existing post. There is no less favourable treatment.
143. The decision to dismiss Mr Lannin
144. This is brought as a claim of direct discrimination. It is in time.
145. Mr Lannin offers a number of actual comparators. They are Mr Reed, Mr Venables, Dr Slevin, Ms Julie Beattie and Ms Nicola Chamberlain.
146. Mr Lannin says that the message he was trying to get across at the appeal hearing on 17 September 2019 was: "*as far as he*" .... "*was concerned, his sexuality was relevant to his redundancy because as a gay man his experience of teaching was very different than that of heterosexual male staff and he had suffered a level of prejudice in his 30-year teaching career that Mr Baldwin (and the Board) needed to comprehend.*" .... Mr Lannin recalled "*making a point about unconscious bias that he felt he had been subjected to as a gay man.*".... His "*aim was to impress upon the Vice Chancellor and the Chair that he had suffered discriminatory treatment and bias as a young man and this had continued in his teaching career, including at Solent University.*"
147. Whilst that does not amount to a specific allegation that the Tribunal can address, Mr Lannin does make two specific allegations in his statement. First, Mr Lannin says that there were other heterosexual male staff who could have been included in the selection pool (WS 18.3). Second, Mr Lannin says that Professor Lloyd, Mr Long and Mr Meheux "*created or allowed promotional opportunities for, or best suited to, anyone other than the Gay claimant. It only informed and directly contacted heterosexual members of staff about opportunities that may have been possible routes to promotion. It created a demotion that may have been suitable for the Gay claimant and a situation that enabled the claimant's redundancy.*" (WS 18.5).
148. We will deal first of all with the subject of other male staff who were heterosexual and could have been included in the selection pool. Turning it around, we think the allegation is that Professor Lloyd and Mr Meheux deliberately excluded male staff who were heterosexual from the pool. The test is, are there facts from which we could decide,

in the absence of any other explanation, that the exclusion of other male staff who were heterosexual from the pool was less favourable treatment of Mr Lannin because of Mr Lannin's sexual orientation? There are none and Mr Lannin does not offer any, beyond the assertion that this was less favourable treatment because of his sexual orientation. There are several difficulties with the actual comparators offered by Mr Lannin in this connection. Two are female. As far as the males are concerned, leaving aside the fact that we have no evidence as to their sexual orientation, so far as we are aware none of them were Grade 8 Senior Lecturers without other responsibilities. In our view the hypothetical comparator would have been treated in exactly the same way in the circumstances.

149. We now turn to the allegation that Professor Lloyd, Mr Long and Mr Meheux, in effect, engineered Mr Lannin's redundancy, presumably over a long period of time, by denying him promotional opportunities and thus leaving him vulnerable to his eventual selection for redundancy, because of his sexual orientation. We have looked at each of the individual allegations that Mr Lannin has made to paint that picture and can find nothing in them. The test is, are there facts from which we could decide, in the absence of any other explanation, that Mr Lannin was subjected to less favourable treatment because of his sexual orientation? There are none offered that we find substantiated. The actual comparators offered do not help Mr Lannin in this respect because we have looked at the individual allegations in which some of them are involved and cannot find facts to support Mr Lannin's claims. In our view the hypothetical comparator would have been treated in exactly the same way in the circumstances.

150. These claims are dismissed.

151. On 17 September 2019, the Respondent's Vice Chancellor and Chair shouted at and refused to answer questions asked by Mr Lannin regarding his concerns that he had faced detriments because of his sexual orientation.

152. This is brought as a claim of harassment, or, if it is not harassment, direct discrimination. It is also brought as a claim of victimisation. It is in time.

153. The Tribunal's findings of fact relating to the appeal hearing on 17 September 2019 are at paragraphs 65-69 above.

154. As far as the harassment claim is concerned, we can see that Professor Baldwin and Mr Duncan raising their voices might have been unwanted conduct as might Professor Baldwin's refusal to answer the questions. However, there are no facts from which we

could decide that, in the absence of any other explanation, that conduct related to Mr Lannin's sexual orientation. What it clearly related to was Mr Lannin asking a provocative question and attempting to put others, after he had been asked not to. If we were to be wrong about that and the unwanted conduct did relate to a relevant protected characteristic, we would not find that it had the purpose or effect of violating Mr Lannin's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for Mr Lannin. The purpose was to stop Mr Lannin asking questions that an objective observer would see as intended to provoke. Even if the raised voices and Professor Baldwin's refusal to answer the questions had the required effect on Mr Lannin, it would not have been reasonable for it to do so in the circumstances. In the circumstances of Mr Lannin trying to insist on putting the questions in point, it was reasonable for Professor Baldwin to refuse to answer them and for Professor Baldwin and Mr Duncan to raise their voices. Not only would it be reasonable for Mr Lannin to expect the reaction he got but it was probably also the reaction he intended to get.

155. We turn to the claim of direct discrimination. There are no facts from which we could decide that, in the absence of any other explanation, Mr Lannin was treated less favourably than the hypothetical comparator would have been treated in this respect.

156. As far as the claim of victimisation is concerned, the first step is to identify a protected act. The evidence is that Mr Lannin did raise an issue of unconscious homophobic discrimination. In doing so, Mr Lannin was doing something in connection with the EA and/or making an allegation that there had been a contravention of the EA. It was a protected act. However, Mr Lannin was not subjected to a detriment because of that protected act. Voices were raised and Professor Baldwin refused to answer the questions because Mr Lannin chose to pursue his allegation through provocative questioning, having been asked to stop. If Mr Lannin had chosen, for example, to make the direct allegation, that Professor Baldwin and Mr Meheux had dismissed him for discriminatory reasons, we anticipate that would have been met with a measured response.

157. These claims are dismissed.

158. **The unfair dismissal claim**

159. It is for the University to show a permissible reason for the dismissal and it puts forward redundancy or, in the alternative, some other substantial reason. The University says that its requirements for Grade 8 Senior Lecturers without other responsibilities had ceased or diminished. On the facts, that was the case.



160. We have rejected Mr Lannin's claim that his dismissal was discriminatory. The University has shown a permissible reason for the dismissal, being redundancy.
161. The enquiry now moves to the section 98(4) ERA tests.
162. Whilst Mr Lannin would, no doubt, have liked more notice of possible redundancy, he was given adequate notice.
163. There was consultation with the UCU on the method of achieving the redundancies as evidenced in Mr Meheux's report for the "Vice Chancellor Representations Meeting" (see paragraph 57 above). Individual consultation was offered to Mr Lannin, but he did not engage.
164. The method of selection and the application of the selection criteria was not really an issue as the requirement for Grade 8 Senior Lecturers without other responsibilities was going in its entirety.
165. Alternatives such as the University's vacancy list and the two 0.5 Grade 6 posts were offered but Mr Lannin, as he was entitled to do, did not consider any of them suitable.
166. In our view the University acted reasonably in the circumstances and the dismissal by reason of redundancy was fair. Accordingly, the claim of unfair dismissal is dismissed.

Employment Judge Matthews  
Date: 31 December 2021

Amended Judgment sent to parties: 14 January 2022

FOR THE TRIBUNAL OFFICE