EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
DR RAJAI AL-JEHANI	**v**	**(1) THE ROYAL FREE LONDON NHS FOUNDATION TRUST** **(2) UNIVERSITY COLLEGE LONDON**

Heard at: London Central (by video)

On: 6 – 16 June 2022
14, 15 July 2022 (in Chambers)

Before: Employment Judge P Klimov
Tribunal Member R Baber
Tribunal Member S Campbell

Representation:

For the Claimant: Mr R Quickfall (of Counsel)

For 1st Respondent: Ms M Murphy (of Counsel)
For 2nd Respondent: Ms L Harris (of Counsel)

RESERVED JUDGMENT

1. The Claimant's complaint that the First Respondent has subjected her to a detriment contrary to section 47B Employment Rights Act 1996 ("**ERA**") by causing or allowing the Claimant's honorary appointment to lapse on 30 April 2018 and/or failing to take steps to renew the same thereafter is dismissed upon withdrawal.

2. The Claimant's complaint that the Second Respondent has subjected her to a detriment contrary to section 47B ERA by causing or allowing the Claimant's

honorary contract to lapse on 30 April 2018 and/or failing to take steps to renew the same thereafter is dismissed upon withdrawal.

3. The Claimant's complaint that the Second Respondent has subjected her to a detriment contrary to section 47B ERA and contrary to section 27 Equality Act 2010 ("**EqA**") by on or around 19 March 2018, Professor Pinzani removing the Claimant from her office and telling Ms Chalmers she was "*out of control, out of line and all over the place*" is dismissed upon withdrawal.

4. The Tribunal does not have jurisdiction to consider the Claimant's complaints against the Second Respondents. All the Claimant's complaints against the Second Respondents are dismissed for lack of jurisdiction.

5. The Tribunal does not have jurisdiction to hear the Claimant's complaint against the First Respondent with respect to detriment 12.8 – "*Failing to deal with the Claimant's complaints dated 22 November 2018 (and subsequent series of complaints detailed in the ET1 which as a whole formed the whistleblowing complaints referred by the First respondent to the Second Respondent for investigation), 23 August 2018, 26 July 2019, 7 August 2019, 29 October 2019 properly or at all"*. The complaint is dismissed for lack of jurisdiction.

6. The Claimant's complaint of detriment on the ground that she has made a protected disclosure under section 47B ERA succeeds in respect of the allegations:

    6.1 - 12.3 In July 2019, resuming the paused redundancy consultation,
    6.2 - 12.4 On 22 August 2019, Ms Sen informing the Claimant that it would be better for her wellbeing if she left ILDH,
    6.3 - 12.6 Until 10 December 2019, leading the Claimant to believe that the Second Respondent's whistleblowing investigation was ongoing when in fact the screening panel had reported in November 2018,
    6.4 - 12.7 Failing to inform the Claimant of the outcome of the Second Respondent's screening panel until 10 December 2019,
    6.5 - *12.9 Failing to deal with the Claimant's grievance dated 5 February 2020, properly or at all*, and
    6.6 - *12.12 On 25 September 2020, dismissing the Claimant's appeal*.

7 The Claimant was unfairly dismissed by the First Respondent (s.103A ERA).

8 The Claimant's all other complaints against the First Respondent fail and are dismissed.

9 The First Respondent must pay to the Claimant compensation for unfair dismissal and for detriments caused in contravention to s.47B to be determined at a remedy hearing, if not agreed by the parties.

REASONS

Background, preliminary issues and evidence

1. By a claim form dated 17 December 2020, the Claimant brought complaints of "whistleblowing" detriments (section 47B ERA), sex and race direct discrimination, harassment on the grounds of sex and race, victimisation, automatic (s.103A ERA) and "ordinary" unfair dismissal against the First Respondent ("**the Trust**") and the Second Respondent ("**UCL**").

2. The Claimant's complaints against both Respondents are extensive and span a significant period of time going back to 2017. The Respondents deny all the claims and aver that most of the complaints are out of time and the Tribunal does not have jurisdiction to consider them. UCL also contends that the Claimant does not have legal standing to bring her claims against UCL by virtue of her employment status at UCL.

3. There was an agreed list of issues (see Appendix 1 below) and a table of the alleged protected disclosures. There were 112 alleged protected disclosures and 12 alleged detriments by the Trust and 15 by UCL. The Claimant largely relied on the same detriments as "less favourable" treatments, "unwanted conduct" and "detriments" for the purposes of her direct discrimination, harassment and victimisation claims.

4. Mr Quickfall appeared for the Claimant, Ms Murphy for the Trust and Ms Harris for UCL. The Tribunal is grateful to all Counsel for their submissions and assistance to the Tribunal.

5. There was an agreed bundle of 1924 pages, plus Appendices to the protected disclosure table of 965 pages. In the course of the hearing, the Claimant submitted further documents (emails dated 8 May 2018, 10 May 2019 and 26 June 2019 and documents related to Ms Chalmer's return to UCL). These were accepted in evidence. References in this judgment to (p.xxx) are to the corresponding pages in the hearing bundle. The Trust and UCL prepared an opening skeleton. There were casts list and chronology. These were initially agreed by the Trust and UCL with the Claimant then providing her edits. For ease of reference, the cast list is reproduced in Appendix 3.

6. The Tribunal heard sworn evidence from the Claimant, Ms L Gutcher, Mr J Mansfield, Ms N Ware, Ms S Sutopa, Mr J Matthews, Mr M Lowdell and Mrs P Rubin for the Trust, Mr M Pinzani, Ms K Rombout and Mr N McGhee for UCL. All witnesses were cross-examined. Following Mr Matthews evidence, Ms Murphy applied to recall Ms Sutopa to give further evidence in relation to the matters arising from Mr Matthew's evidence. The Claimant opposed the application. The Tribunal refused the application for the reasons given to the parties orally.

7. Following the discussion with the parties at the start of the hearing, the Claimant has reduced her list of the alleged protected disclosures to 29 disclosures. The Claimant also confirmed that she wished to withdraw her detriments 12.2 against the Trust and 14.3 and 14.4 (both as complaints under s.47B ERA and s.27 EqA) against UCL. These complaints have been dismissed upon withdrawal.

8. However, detriment 14.4 remained as an allegation of sex discrimination and harassment as set out at paragraphs 19 to 28 of the agreed List of Issues. The Claimant also confirmed that her complaint under detriments 12.8 and 14.8 (the correct date in the first line should read 22 November 2017) was limited the alleged failings by the respondents in investigating her HR and Financial misconduct complaints, but not the main Research Misconduct Investigation, considered by the UCL's Screening Panel. Finally, the Claimant confirmed that the reference in detriment 14.8 to "grievance dated 5 February 2020/15 April 2020" was the same detriment as claimed under paragraph 14.10. The updated list of the alleged protected disclosures and detriments is reproduced at Appendix 2 to this judgment.

9. The final submissions, heard on the last day of the hearing, took the whole day, which left no time for the Tribunal's deliberations, which were then conducted in Chambers on 14 and 15 July 2022. The Tribunal came to the judgment unanimously.

10. The day after the end of the hearing, Mr Quickfall applied to make further submissions on the issues of the Claimant's status, "just and equitable" extensions and paragraphs 14.14 and 14.15 of Appendix A of UCL's closing submissions. The application was refused for the reason provided in the Tribunal's reply.

Findings of Fact

Claimant's role

11. The Claimant is a Biomedical Scientist. On 14 January 2008, she commenced employment as a band 6 Clinical Scientist with the Trust, based in the UCL's Centre for Hepatology, later renamed to Institute for Liver and Digestive Health ("**ILDH**"). On the same date she was granted an honorary appointment with UCL as an Honorary Senior Research Associate. The appointment was granted until 13 January 2013.

12. The Claimant worked exclusively at ILDH and had minimal interaction with the Trust. Initially she worked under the supervision of Professor Hodgson, who was replaced by Professor Pinzani ("**MP**") in 2012. Both were employees of UCL.

13. The Claimant's honorary appointment with UCL lapsed in January 2013, but the Claimant continued to work at ILDH, as before. In May 2014 the Claimant was told that due to the expiry of her honorary appointment her membership account at the UCL library would be terminated. The Claimant requested MP to renew her honorary appointment, to which MP agreed. The appointment was renewed for a further period of 5 years, until 30 April 2018.

14. At ILDH the Claimant worked on a research project into liver hepatocellular cancer ("**the HCC project**"), for which she received a charity grant of £30,000. The project was suggested to the Claimant by MP, who was also named in the charity grant application as the person, who will provide "*long-term support with regard to securing funding, collection of biological samples, etc"* The HCC project was approved in September 2019.

15. For the Claimant to conduct her research on the HCC project she required liver tissue samples (both cancerous and healthy). Initially it was anticipated that the Claimant would need around 70 liver tissue samples for the project.

Difficulties with accessing tissue samples

16. On 22 January 2015, the Claimant received a first portion of liver tissue samples from the Tissue Access for Patient Benefit Biobank ("**TAPb**"), which was set up at UCL by Prof Brian Davidson ("**BD**") and Prof Barry Fuller ("**BF**") in or around 2012, with the remit to support research projects, including at ILDH. TAPb was managed by Dr Amir Gander ("**AG**").

17. From September 2016 the Claimant tried several times to obtain tissue samples from TAPb, but received only a limited number of samples, which she considered insufficient for her research. The Claimant raised the issue with MP at her appraisal meeting in October 2016. She also spoke with and wrote to AG several times. In July 2017 she wrote to BF complaining about the difficulties she had with accessing tissue samples and seeking his help. In October 2017, she sought help from BD. Some tissues were provided to the Claimant, but not in sufficient numbers for her research. The Claimant tried and managed to obtain some tissue samples from other biobanks outside UCL.

18. The Claimant considered that her access to tissue samples at TAPb was deliberately obstructed because samples were being used for the purposes of commercial research undertaken by MP and Dr Giuseppe Mazza ("**GM**"), a PhD student working under MP, for the benefit of a commercial venture set up by GM ("**Engitix**"), in which MP, AG, BF, BD and other members of ILDH had a commercial interest.

2017

Review of Trust's roles at ILDH

19. In March 2017, Elliot Westhoff ("**EF**") and Douglas Thornburn ("**DT**"), Clinical Director for Hepatology and Liver Transplant, commenced a review of the roles of various employees, who were employed by the Trust but worked at ILDH. On 22 March 2017, the Trust informed MP that six roles occupied by the Trust's employees at ILDH, including the Claimant's, were at risk of redundancy. However, at that time the Trust did not anticipate that those employees would be made redundant. DT wrote in his email to MP of 22 March 2017: "*If we decide any position is surplus it is unlikely anyone would be made redundant as the persons would likely be picked up in other similarly banded positions within the organisation but it would just not be within the liver directorate*".

20. In June 2017, EF produced a draft consultation document, which identified 3 roles, including the Claimant's, as the roles that the Trust would no longer be funding. Unless an alternative source of funding could be found the roles would be "*disestablished*" (i.e. eliminated), and support would be provided to the employees in those roles "*with the search for redeployment into suitable alternative employment*". The document proposed to launch the consultation process on 26 June 2017 with the new structure taking effect on 7 August 2017. The consultation process was,

however, paused by the Trust pending legal advice requested by the Trust's executives and was not picked up until September 2017.

21. In September 2017, Lee Gutcher ("**LG**") replaced EF as the Trust's Operations Manager of the Liver Services Directorate. As part of the handover LG was briefed on the Trust's Financial Improvement Programme ("**the FIP**"), the aim of which was to identify year on year savings due to significant budgetary constraints on the Trust. One element of the FIP was a review of individuals who were employed by the Trust but were working for UCL with a view to potentially "disestablishing" those roles, as the Trust could no longer afford to pay for the roles, which did not relate to the work of patient experience, safety or clinical outcomes.

22. On 15 September 2017, LG asked the Trust's HR Department whether he could launch the consultation process, but as the redundancy figures had not been confirmed the process remained on hold. On 14 November 2017, LG received redundancy costs figures for the Claimant.

Claimant makes initial complaints

23. On 22 November 2017, the Claimant wrote to her union representative, Ivor Dore, complaining about her difficulties with accessing tissue samples, various other practices at UCL and how she was being treated at ILDH by MP, GM, AG and other colleagues. Ivor Dore passed the Claimant's complaint to Jim Mansfield ("**JM**"), a union representative and Speaking-up Guardian, who on 4 December 2017 registered it under the Trust's Speaking Up Policy and Procedure.

24. The Claimant's complaint contained, *inter alia*, allegations that: (i) tissues samples at TAPb were being used by those who controlled access to it for commercial profit in preference to scientific non-for-profit research, (ii) there was a conflict of interest because AG needed to raise at least £8,000 a month from tissue samples in TAPb to keep his job, (iii) to obtain patients' consent to donate liver organs GM impersonated a medical doctor, (iv) AG attempted to get non-English speaking patients to sign consent forms in English, and (v) donors when signing the consent form did not know that their organs would be used for commercial profit and not for medical research.

2018

25. On 19 January 2018, Natalie Ware ("**NW**"), Head of Workforce for the Trust's Hospital Business Unit, and JM met the Claimant to discuss her complaints. NW and JM asked the Claimant to gather further information on the matters she complained about.

26. On 12 February 2018, the Claimant sent NW and JM an email with further details of her complaints. In that email she made further allegations that GM was intending to set up a myofibroblast biobank, and that GM had told a potential investor that he could provide human tissue - extracellular matrix ("**ECM**") - to make bionics and liver cubes, thus "commercialising" human tissue via Engitix. The Claimant also alleged that at one of his lectures MP displayed a slide showing examples of organs which had been successfully regenerated including a human trachea, which the Claimant said was a false and "shocking" thing to say.

27. On 12 March 2018, the Claimant sent an email to NW and JM providing further details of her concerns about practices at ILDH, including that GM was keeping patients' sensitive personal details in a folder on a shelf in a shared office in breach of data protection laws and regulations.

28. On 19 March 2018, MP emailed the Claimant advising her of a change in the office occupancy arrangements and telling the Claimant that she would be relocated to a new office.

29. In or around March 2018, having discussed the Claimant's "Speaking Up" complaints with JM, NW decided to pause the start of the Claimant's redundancy consultation process. The Claimant was unaware that her role was at risk of redundancy.

30. On 13 April 2018, the Claimant sent to NM and JM 328 pages of documentation in support of her complaints and allegations. Many of the documents were confidential documents related to GM, MP and Engitix, which the Claimant had photographed without their permission. In that pack of documents, the Claimant included her narrative, in which she repeated allegations of "commercialisation" of human tissue, conflict of interest, breaches of data protection rules and regulations, and misleading claims by MP about regeneration of human trachea. She also made allegations related to TAPb submitting incorrect data on its funding application form, misleading statements on the Engitix website, and complained of "racism" and "sexism" at ILDH.

Further complaints and investigation into Claimant's complaints

31. On 30 April 2018, NW met with David Grantham, Chief People Officer and Executive Lead for Speaking Up, and Dr Chris Streather, Medical Director for the Trust, to discuss the process of handling the Claimant's complaints. Initially it was planned to have a joint investigation by the Trust and UCL. However, following discussion between Dr Streather and his counterpart at UCL, it was decided that UCL would do the investigation and produce the terms of reference, as all the complaints were related to UCL staff and practices at ILDH, and the Trust would not be involved in investigating the complaints.

32. UCL decided that the Claimant's allegations would be split into three "streams" and each would be investigated separately: (1) allegations related to research practices ("**Research Misconduct Allegations**"), (2) allegations related to financial misconduct ("**Finance Allegations**"), and (3) allegations of marginalisation, bullying and HR malpractice ("**HR Allegations**").

33. Professor Mark Emberton, Professor of Interventional Oncology and Dean of the Faculty of Medical Sciences at UCL, was appointed to lead the investigation. It was agreed that UCL would keep the Trust updated and would send a copy of the outcome report to the Trust, when it was ready.

34. On 8 May 2018, the Claimant sent further information to NW and JM in support of her allegations of "commercialisation" of human tissue by Engitix.

35. On 22 May 2018, the Claimant sent further information to NW and JM, again raising the issues of GM keeping confidential patients' data in the shared office and also

making new allegations of inappropriate use of charity funds by a company called 3P, whose shareholders included GM and MP.

36. On 24 May 2018, NW confirmed to the Claimant that UCL would lead the investigation into the concerns she had raised. The Claimant said that she wished to remain anonymous but was willing to be interviewed.

37. On 25 May 2018, Professor Emberton emailed NW to confirm the processes were underway.

38. On 29 May 2018, NW emailed a redacted version of the Claimant's complaints and supporting documents to Professor Emberton (blanking out the Claimant's name). NW said that Claimant wished to remain anonymous. Professor Emberton appointed Professor Robert Kleta ("**RK**"), Medical Director, UCL, to act as a complainant on the Claimant's behalf. Professor Emberton was the line manager of RK.

39. On 31 May 2018, the Claimant emailed NW and JM further allegations concerning "commercialisation" of human tissue and conflict of interest. She also alleged that UCL students on research projects under MP's and GM's supervision were being unwittingly used to work for the benefit of Engitix. NW passed those documents to UCL.

40. In June 2018, Wendy Appleby was appointed to lead the investigation as the designated 'Named Person' under UCL's Procedure for investigating and resolving allegations of misconduct in academic research. She was assisted by Nick McGhee ("**NMcG**"). They conducted an initial assessment, which involved them speaking with the five individuals named in the Research Misconduct Allegations: namely Amir Gander, Guiseppe Mazza, Massimo Pinzani, Brian Davidson and Barry Fuller ("**the Five Named Individuals**").

41. On 27 June 2018, in his written response to the allegations, MP stated that the person making the accusations was easily identifiable, as there were only three NHS staff members at ILDH.

42. On 21 August 2018, the Claimant had an appraisal meeting with MP, which the Claimant had requested. It was necessary for her to obtain authorisation and funding to attend a scientific conference. Without telling the Claimant, MP invited LG to attend the meeting, because MP, on advice from his personal lawyer, decided that in light of the Claimant's allegations against him, it would be best if there was a witness during the meeting. The Claimant asked LG to leave the meeting, which he did.

43. On 23 August 2018, the Claimant emailed NW and JM making further complaints, including about the appraisal meeting on 21 August 2018.

44. On 24 August 2018, the Claimant emailed LG apologising for not inviting him to stay and suggesting a separate meeting to tell LG about her work, to which LG agreed.

45. On 13 September 2018, NW, JM and Claimant had a meeting, at which it was agreed that the Claimant would meet with RK. The Claimant was also offered a referral to Occupational Health, which she declined.

46. On 18 September 2018, RK told NW that the identity of the Claimant was apparent to the Five Named Individuals and raised concerns that some of the documentation provided by the Claimant included photographs of private documents held in GM's office, which the Claimant had accessed without permission. RK told NW that it would not help the situation if "counter-claims" were to be raised against the Claimant and therefore he had spoken to the individuals concerned and informed them that these allegations would not be taken forward.

The Claimant's September 2018 appraisal

47. On 21 September 2018, the Claimant emailed her appraisal forms to MP for him to review and provide a manager's assessment.

48. On 25 September 2018, MP emailed LG in relation to the Claimant's appraisal form, stating that he could only express an opinion on the scientific progress of the project on which the Claimant was working, but could not give an evaluation on the value of her work for the Trust or provide a score. LG agreed with that approach, and on 5 October 2019, MP emailed to LG his feedback (NW's witness statement para 31).

49. On 12 October 2018, the Claimant met with RK, NW and JM. At the meeting RK asked the Claimant what outcome she was seeking. The Claimant said that she wanted the bad behaviour to stop so that she could get on with her job and that she wanted to have better access to liver tissue samples. RK reassured the Claimant that her concerns were being treated seriously.

50. In October 2018, NW asked LG to become the Claimant's line manager on a temporary basis, to which he agreed.

51. On 29 October 2018, LG emailed the Claimant confirming the arrangement relating to her appraisal and alternative temporary work location and that on a temporary basis he would be her management point of contact for support and guidance. That was followed by a meeting, at which LG and the Claimant had a discussion concerning the Claimant's appraisal and MP's feedback, which the Claimant perceived as negative. LG updated the appraisal form and sent it to the Claimant for her comments. The Claimant's appraisal form was finalised in January 2019.

Outcome of investigation

52. On 12 November 2018, UCL's Screening Panel met to consider the Research Conduct Allegations. The panel concluded that "*there was no prima facie evidence of misconduct in research sufficient to justify a Formal Investigation. In the view of the Screening Panel, the allegations were mistaken*".

53. On 27 November 2018, the Screening Panel report was finalised and circulated to the Five Named Individuals and RK as a complainant on behalf of the Claimant. RK sent a copy of the report to NW. He told NW not to share it with the Claimant. NW withheld the report from the Claimant and did not tell the Claimant that the investigation had been concluded.

54. On 17 December 2018, the Claimant had a meeting with NW and JM. They did not tell the Claimant that the investigation had been concluded or what the outcome was. The Claimant remained unaware of that until her redundancy consultation meeting on 10 December 2019. On balance, the Tribunal prefers the Claimant's evidence on this issue because it is supported by documentary evidence (see pp.1204, 1222 and 1225), which shows that as late as August 2019 the Claimant was operating under a misapprehension that the investigation into her complaints was still ongoing. It is also consistent with NW's admission that she withheld the outcome report from the Claimant because RK had told her not to share it with the Claimant. It is striking that neither NW (being an HR professional) nor JM (being Speaking-up Guardian) took any notes at the various meetings they had with the Claimant, or made any file notes following the meetings, or sent any follow-up emails to the Claimant recording what had been discussed at the meetings.

55. The respondents did not call RK to give evidence to the Tribunal to explain the reasons he told NW not to share the outcome of the investigation with the Claimant. Based on that and the evidence in front of us, the Tribunal draws an inference that RK wished the Claimant to remain unaware of the outcome of the investigation for as long as possible, so that steps could be taken to have the Claimant relocated away from ILDH (see p. 1878) without the Claimant first attempting to appeal the outcome of the investigation or otherwise escalating the matter, or making further complaints against UCL staff. This was discussed and agreed with the Trust (see pp.1877, 1878).

2019

56. On 25 February 2019, Matthew Swales, who was appointed to investigate the Finance Allegations, confirmed in an email to NMcG that '*no action ha[d] been taken by finance*' into the Finance Allegations.

57. On 7 May 2019, the Claimant met with NW and JM. They did not tell the Claimant of the outcome of UCL's investigation into the Finance Allegations. For the reasons set out in paragraphs 54- 55 above the Tribunal prefers the Claimant evidence on that point.

58. On 6 June 2019, Audrey Parr, who was appointed to investigate the HR Allegations, confirmed in an email to NMcG that '*there [was] not sufficient information or evidence on which to progress any formal investigation*' into the HR Allegations.

59. On 24 June 2019, the Claimant met with NW and JM. They did not tell the Claimant of the outcome of UCL's investigation into the HR Allegations. For the reasons set out in paragraphs 54- 55 above the Tribunal prefers the Claimant's evidence on that point.

60. On 4 July 2019, NW and JM met with RK. The Claimant was not at that meeting. At the meeting RK told NW and JM that the matter was closed and informed NW and JM that the Claimant's request to have better access to liver tissue would not be possible to satisfy.

Walid Al-Akkad incident

61. On 23 July 2019, there was an incident between the Claimant and Walid Al-Akkad ("**WA**"), a PhD student at UCL. WA and the Claimant had a disagreement over the Claimant pointing out to another student (Stephano) that he should not be cleaning lab equipment, which had been in contact with biological material, outside the biological service room. The discussion became heated, and voices were raised. It was overhead by Krista Rombouts, who was in a nearby room with the door open.

62. On the same day WA emailed MP and Korsa Khan, Director and Operations Manager of the ILDH at UCL, describing the incident and telling them that the Claimant had said that she would be filing an official bullying complaint against WA. WA stated that the Claimant's allegations were false and he would be taking steps to protect his name.

63. On 26 July 2019, the Claimant sent a complaint about the incident to NW, accusing WA of bullying. She described WA's manner of talking to her as "*very misogynist*" and said that she felt that WA had tried to put her in her place as a woman. The Claimant also said that from what WA said to her during the incident she had concluded that he knew of her complaints against MP, GM and others at UCL, and that meant that her anonymity had been breached. On the same day, the Claimant went on a sick leave.

64. On 2 August 2019, the Claimant spoke with Sharon Alexander, HR Business Partner at UCL, about her complaint against WA. She repeated her complaint that WA exhibited misogynistic behaviour towards her. They discussed options regarding the handling of the Claimant's complaint. Sharon Alexander suggested that the Claimant discuss the matter with WA directly or have such a discussion facilitated by the Head of the Department (MP), options which the Claimant declined.

65. On 5 August 2019, Sharon Alexander wrote to the Claimant stating that because the Claimant was "an honorary worker" and her complaint related to a student it could not be dealt with under UCL's HR grievance procedure. However, she said, the complaint would be dealt with under the Student Disciplinary Procedure and NMcG would be able to investigate it further, to which the Claimant agreed. Sharon Alexander forwarded the Claimant's complaint to NMcG.

66. On 9 August 2019, the Claimant sent an updated report of the WA incident to NMcG. As part of his investigation, NMcG met with the Claimant, WA, Kirsta Rombouts and Ms Khan (who did not witness the incident but knew the feedback protocol which the Claimant had to follow with the student).

67. On 14 August 2019, the Claimant was signed off sick.

68. On 27 September 2019, NMcG concluded his investigation and prepared a report into the incident. NMcG did not find any evidence of misogynistic behaviour by WA. He also did not find that WA had talked to the Claimant in such a way because she was a woman. He found that the reason WA initiated discussion with the Claimant was because the Claimant's approach towards the student (Stephano), was "*arguably unsuitable*". NMcG sent his report to the Claimant.

Re-start of redundancy consultation

69. In or around mid-2019, NW told Sutopa Sen ("**SS**"), Lead HR Business Partner for the Transplantation and Specialist Services at the Trust, that the UCL investigation had been completed and the paused redundancy process could be re-launched. SS conveyed that message to LG. LG met with DT and Korsa Khan. It was confirmed at that meeting that the Claimant's post would no longer be funded by the Trust. It was also established that UCL would not agree to fund the post and would not have the Claimant transferred to UCL under TUPE. At the same time, it was decided that one of the three roles originally included for disestablishment, which was occupied by Ms Patricia Blake, were to be kept. DT justified that by suggesting that that role was included in MP's employment package.

70. On 24 July 2019, DT wrote to MP and RK as follows:

"Hi Robert& Massimo, I'm away at present. I spoke with our ops manager mon evening before I left. Because we had started looking at termination of her role (and one other RFH funded post in ILDH- Sheri-Ann) before she put in her initial complaint we are at liberty to progress the case for redundancy or relocation. (Indeed all her actions have likely been prompted by her recognising her position was at risk.....). The case is in hand and will be submitted for approval shortly (I understand this or next week). Given the problems created it is highly likely/certain it will be approved and the issues will cease. I'm sorry that in the meantime she remains a thorn in the side but I believe this is best just tolerated in the knowledge she will be gone soon. I'll check in with Lee re anticipated time scales."

71. RK replied a few hours later stating: "*What had been discussed was an urgent relocation within the Trust*".

72. DT then forwarded his reply to NW asking: "*Is she to be relocated or are we following the process I outline below?*", to which NW replied: "*We are following the process you have set out in your email. Robert is keen that the individual is redeployed out of the department asap as he is concerned about counter claims being raised. Sutopa [SS] is linking up with Lee [LG] on the consultation – anything you can do to push this along would be much appreciated*".

73. An hour later SS replied to NW and DT stating that the consultation document was being finalised and the proposal was to launch the process on 1 August – if possible.

74. On 22 August 2019, SS told the Claimant about the impending launch of the redundancy consultation process. She also told the Claimant that it would be better for the Claimant's wellbeing if the Claimant left ILDH. SS in her witness statement says that it was "*usual wellbeing advice*" because the Claimant said that she was not happy in her current role. NW in her witness statement (at paragraph 13) also states that the attempts to move the Claimant away from ILDH were driven by the Trust's concerns for her wellbeing.

75. The Tribunal rejects that. We find as a fact that the reason NW wanted to move the Claimant away from ILDH was because that was what RK and DT wanted her to do as soon as possible. RK wanted to do that because he was concerned about a possible fall out ("*counter claims*") arising from the Claimant's complaints and accusations. NW's evidence to the Tribunal was that the phrase in her email to DT

of 27 July 2019 (to which SS was copied): "*anything you can do to push this along would be much appreciated"* was directed to SS.

76. We also reject SS's evidence (in cross-examination) that she did not scroll to the end of the email chain at pp 1877-1879. We find that assertion not credible. SS replied to NW's email explaining the state of the redundancy process related to the Claimant. NW's email to DT says: "*We are following the process you have set out in your email*". How would SS know what "process" NW was referring to if she had not read DT's email, which started the chain?

Meeting with Professor Lowdell

77. SS arranged for the Claimant to meet Professor Mark Lowdell ("**ML**") to discuss the possibility of the Claimant transferring to work for him. ML ran the two remaining small research labs at the Trust. All other research labs had been transferred out to external organisations. In the process of arranging the meeting, SS mentioned to ML that the Claimant was having "hard times" in her current role.

78. We find as a fact that SS did not tell ML that the Claimant had raised "whistleblowing" complaints. We accept SS and ML's evidence on that. ML was clear in his evidence on that issue. He also said that before meeting the Claimant he did not know MP and never collaborated with MP or Engitix. The fact that ML was, unbeknownst to him, named in Engitix marketing materials as a collaborator is wholly insufficient to go behind his clear and credible evidence to the Tribunal. We also accept MP's evidence that he did not know that the Claimant was going to meet ML and did not speak with ML before that meeting.

79. The meeting was arranged for 27 August 2019, but the Claimant did not come to the meeting. The Claimant's evidence was that she did not know where the meeting was going to take place. We find that it is more likely that the Claimant was simply not very keen on meeting ML because of her state of mind at that time.

80. The meeting was re-arranged for 10 September 2019. The Claimant arrived late for the meeting. ML enquired about the Claimant's skillset and why she was looking to relocate from her current role. The Claimant said that she had filed complaints against her colleagues of a very serious nature. That was the first time ML heard about the Claimant's complaints. The Tribunal accepts his evidence on that. ML explained to the Claimant that he had no confirmed budget for a role, but was considering making an application, so one might become available in the future.

81. Following the meeting ML, informed SS that the Claimant did not have the relevant skillset for a possible role in his team, and in any event there was no budget for a role at that time and ML was only considering making an application for funding in the future.

Formal redundancy consultations

82. On 4 October 2019, the Claimant and another person in-scope for redundancy (Sherri-Ann Chalmers) were sent an email inviting them to a formal redundancy

consultation meeting on 24 October 2019. However, because to Sherri-Ann Chalmers was on annual leave the meeting was postponed.

83. On 10 October 2019, the Claimant emailed Paul Dilworth, Royal Free Site Sub Dean UCL Medical School, telling him that it was highly likely that she would no longer be working at the Trust and UCL and therefore would not be able to teach a course to students.

84. On 28 October 2019, the Claimant attended occupational health concerning stress at work. On 28 October 2019, she was signed off sick with work related stress for two weeks.

85. On 14 November 2019, LG wrote to the Claimant confirming the launch of the formal consultation process, enclosing the consultation document, and stating that the process would last 30 days, closing on 13 December 2019.

86. On 10 December 2019, the Claimant had her first redundancy consultation meeting attended by the Claimant, JM, acting as the Claimant's union representative, SS and LG. At that meeting the Claimant was informed for the first time of the outcome of UCL's investigation into her complaints. However, she was still not given the Screening Panel report. It was subsequently emailed to her by JM on 24 January 2020.

87. The consultation process ran for 30 days and finished with the determination that the Claimant's role would be disestablished. There were no further meetings with the Claimant during the 30-days' consultation.

88. LG and SS planned to meet the Claimant on 29 January 2020 and then on 6 February 2020 to give her a formal notice of redundancy dismissal. However, the meeting was postponed because on 10 January 2020 the Claimant went off sick. The Claimant never physically returned to ILDH, first due to her illness (signed off until 10 March 2020) and then because of the pandemic.

Claimant's grievance

89. On 5 February 2020, the Claimant's lawyers submitted a lengthy grievance (35 pages and 305 paragraphs) on her behalf. In the grievance document, the Claimant recounted the difficulties she encountered with accessing liver tissue sample at ILDH, repeated her allegations of "commercialisation" of human tissue, conflict of interest and corrupt practices at TAPb, GM falsely holding himself out as a medical doctor, MP making misleading claims regarding tissue regeneration, and WA misogynistic behaviour toward her. She also made new allegations of cover up by UCL regarding the way her original complaints had been dealt with and of harassment related to sex and race by MP and GM going back to 2013.

90. The grievance was sent to the Trust's CEO, Ms Kate Slemeck, and LG by separate cover email. In the cover email to Ms Slemeck, the Claimant's lawyer urged her to intervene and fully investigate the matter before sanctioning the Claimant's redundancy, which they described as "unlawful". The email stated:

> "*At present, the allegations of harassment and discrimination, as well as whistle-blowing detriment, have been ignored by your HR team which instead is said to be working hand in glove with UCL to victimise and harass our client by removing her from her employment through an obviously sham redundancy process.*"

91. In the cover email to LG, the lawyers said that they expected the Trust's CEO to put the redundancy process (which they described as "*sham and unlawful*") on hold, pending the outcome of the grievance and urged LG to consider whether he should withdraw from the process, given the allegations made and the information disclosed within the grievance.

92. Ms Slemeck emailed LG on the same day, telling him not to respond and that she would take it up with the employee relations and HR. After some further consultations between the employee relations and HR team, Mr Joe Matthews("**JMths**"), Senior Employee Relations Advisor at the Trust, was appointed to investigate the grievance.

93. Ragini Patel, the Trust's Deputy Director of People, expressed concerns related to JMths' experience to deal with a grievance of that complexity. Giovanna Leeks, the Head of Employee Relations, assured Ms Patel that JMths would be supported by her and her deputy and that if the matter became too complex someone else would be appointed to lead. She also wrote that in her view "*the majority of it [was] not valid as a grievance anyway"* (see p.1333).

94. NW in her evidence told the Tribunal that she was not aware of the Claimant's grievance. We reject that. We find it very surprising that NW said that, given the contemporaneous documentary evidence in the bundle (see pp. 1331, 1332, 1349 – 1352) showing that NW was fully aware and directly involved in the discussions on how to deal with the Claimant's grievance.

95. With some delay, and after the Claimant chasing the Trust on 25 March 2020 for an update on her grievance, the Trust agreed with UCL that the Claimant's grievance would be referred to UCL to look into, as it was largely related to her work for UCL and UCL employees. It was also agreed that the Claimant's redundancy process would be put on hold for 3 months in light of the pandemic, pursuant to the directions issued by the Trust's executives in relation to all pending redundancies.

96. On 15 April 2020, JMths had a telephone meeting with the Claimant to confirm that her grievance would be passed to UCL "to review and take forward", and that UCL would come back and confirm timescales of when the outcome could be expected. He also wrote that in the meantime, the Claimant's "redundancy case" would be put on hold for 3 months due to the pandemic, while the Trust would continue to look for suitable alternative employment. On that basis, JMths proposed that the Claimant's grievance "*be placed on hold*" until the Trust received a response from UCL. The Claimant was content with that arrangement.

97. On 16 April 2020, the Claimant's grievance was referred to UCL's Employee Relations Team to deal with.

98. On 17-23 April 2020, there was an email exchange between SS and Joanna Ryan, UCL's Employee Relations Manager, who was appointed by UCL to look into the Claimant's grievance, concerning the Claimant's grievance. Ms Ryan asked SS whether the outcome of UCL's investigations into the Claimant's earlier complaints had been passed on to the Claimant at the time. SS said that it was, which was untrue. SS went on to explain that the Trust followed up its Speaking-up process and within that process it was normal to give the complainant copies of the responses. SS wrote:

> "*To clarify, the aim of 'speaking up' is to be open and transparent in terms of staff raising issues, mainly because they are raising the issues because they have not been able to raise them through normal channels, or their complaint has been ignored or they have no faith in those channels investigating their issue in a proper way. Therefore, we would avoid just giving a complainant a simple answer such as 'nothing untoward was found, we are closing the case' which would not instil anyone with confidence in the independence of the 'speaking up' process*."

and that

> "….*it was only fair for the complainant to have copies of the investigations so they could be assured a full and thorough investigation had been carried out*". (p. 1369)

99. Ms Ryan replied as follows: "*Thank you. I just wanted to ensure that if any response, if I say that the outcomes of that process were communicated at the time, that that is accurate*", to which SS replied: "*Yes Joanna, that's fine*".

100. It appears that either SS did not know that on instructions from RK NW deliberately withheld the Screening Panel report and the outcomes of the HR Allegations and the Finance Allegations or was not telling the truth.

101. On 8 June 2020, UCL responded to the Claimant's grievance. UCL took the position that because the Claimant was not an employee or a contractor of UCL and her honorary appointment had lapsed in 2018, UCL's policies and procedures did not apply to the Claimant and her letter was not considered as a grievance. UCL's response read:

> "*Firstly, there is the matter of how UCL has considered your complaint. Your complaint states the following, on page 2, point 11:*
>
> *"I believe that I am the employee of the NHS and a contract worker vis a vis UCL. UCL controlled the work that I did and where and when I did it."*
>
> *A review of UCL records confirms that you have no contract of employment with the university, either a permanent member of staff or as a contractor. You previously had a relationship with UCL on an honorary basis, but that lapsed in 2018 and was not renewed. We do not accept your view that you are a contractor with UCL, but rather that you are an employee of the NHS.*
> *As we do not consider that you are an employee of the university, our policies*

and procedures would not apply to you. Therefore, we have not considered your letter as a grievance."

102. In so far as her grievance related to the Claimant's impending redundancy, UCL said that was a matter for the Trust:

"*There were a number of elements of your complaint which related to actions taken by your employer, which have not been considered by UCL as part of this complaint. This include any redundancy process initiated by your employer and the decisions made as a part of this. These are actions taken by the NHS, and UCL is not involved in these processes*".

103. With respect to the repeated Research Misconduct, HR and Finance Allegations, UCL said that these had been already dealt with and not upheld:

"*The panel found that the allegations were not upheld. A review was also conducted by HR and Finance. I have checked with HR within the NHS, and understand that these outcomes were forwarded to you. I can also see that your latest complaint makes reference to the outcomes from UCL at the time, and so I am clear that you have received the outcome.*

As the issues you have raised were previously investigated, and an outcome provided to you, UCL will not be taking any further action in respect of your complaint."

104. There was a general denial of any allegations of discrimination, harassment, victimisation and whistleblowing detriment. The letter concluded by stating that "*there [was] no right of appeal attached in respect of this letter"*.

105. The Claimant's grievance, which JMths placed on hold, was not resumed. JMths in his evidence could not explain why. He said he could not recall because he had too many grievances to deal with but maintained that everything was done in a correct manner, which is very surprising.

106. We find JMths' evidence highly unsatisfactory. Given the haste with which the Trust then issued the Claimant a formal notice terminating her employment (see paragraph 107 below) despite promising the Claimant that her redundancy case would be put on hold for 3 months, we infer that the reason JMths did not resume the Claimant's grievance was because the Trust wanted to push ahead with the Claimant's redundancy dismissal, and any on-going grievance investigation would have interfered with that plan.

Claimant's dismissal and appeal

107. On 12 June 2020, there was a formal redundancy consultation meeting, attended by LG, SS and the Claimant. The Claimant was notified of the decision to terminate her employment on the grounds of redundancy with 12 weeks' notice, with last working day being 4 September 2020. The letter said that the Claimant did not need to serve her notice period.

108. Rather surprisingly, the letter said that although the Claimant was not entitled to 12 weeks' notice, "*taking into account all factors, we have agreed to serve the full 12 weeks' notice"*. SS in her witness statement says that: "*The Claimant was given an extended notice period of 12 weeks although she was only entitled to 8 weeks and her last day of employment was 4 September 2020*".

109. That "generosity" was also used by SS to justify the sudden resumption of the Claimant's redundancy process despite the fact that the mandated 3 months' hold on redundancies still had at least one more month to run.

110. It seems SS thought that the Claimant was entitled to 8 weeks' notice by reference to item 18 in the Claimant's Statement of Main Terms and Conditions of Employment (p. 221). However, the Claimant's start date was 12 January 2008 and by 4 September 2020 she would have had 12 years of continuous services, and therefore under s.86 of the Employment Rights Act 1996 would have been entitled to a minimum statutory notice of 12 weeks.

111. On 26 June 2020, the Claimant appealed her dismissal. In support of her appeal the Claimant submitted a document of 12 pages and 127 paragraphs detailing her grounds of appeal. In that document she explained the history of her raising her original complaints, UCL's investigation into her complaints, which she said was biased and subject to unreasonable delay. She claimed that the Screening Panel decision was a sham. She alleged that the Trust failed to protect her as a whistleblower, that UCL and the Trust worked together to make her redundant in retaliation, that redundancy was a sham, and its outcome was predetermined. She made allegations that the Trust's attempts to find her alternative employment were not genuine, and that Professor Lowdell was prejudiced towards her. She also repeated allegations of racism and sexism within the Trust and UCL.

112. The appeal was heard on 10 September 2020 by an appeal panel, comprising Rachel Anticoni, Director of Operations, Patricia Rubin, Divisional Director of Operations and David Bray, Head of Workforce. The Claimant attended with JM as her union representative. LG attended to present the management response to the appeal. LG was supported by SS.

113. On 25 September 2020, the appeal panel wrote to the Claimant dismissing her appeal. The panel found that there was a genuine redundancy situation and the Claimant's selection for redundancy was not related to her raising speaking-up concerns, and that a full consultation process took place. The panel acknowledged that the Claimant felt dissatisfied with the outcome of the investigation into her complaints, but the Trust was not in a position to investigate them itself and therefore not in a position to comment on the investigation or the outcome. It noted that the Claimant did not appeal the speaking-up/grievance outcome. With regard to the hostile working environment, the panel said that it was "*very saddened and disappointed to hear about [the Claimant's] experience and impact [it] had on [the Claimant's] health and wellbeing*". Nonetheless, the panel found that appropriate supportive actions had been taken by LG being allocated as the Claimant's line manager and by LG offering the Claimant to work in a different area, though it accepted the Claimant's rationale for not being able to move to a non-lab workplace
.

114. The panel partially upheld the Claimant's complaint of unclear management arrangements between UCL and Trust in the period between Professor Hodgson's departure and LG becoming the Claimant's line manager.

115. The letter concluded by saying: "*On the matters related to your speaking up concerns, your treatment as outlined in your grievance, the panel is confident that UCL have fulfilled its legal obligations to ensure speaking up concerns and grievances are appropriately investigated in accordance with their own regulatory requirements and internal procedures*".

116. I asked Ms Rubin what gave the panel that confidence. She was not able to provide any satisfactory answer. She was also not able to explain on what basis the panel "noted" that the Claimant did not appeal the speaking up/grievance outcome, when the former was kept secret from her for over a year and UCL's grievance letter said that she had no right of appeal. It is even more surprising considering Ms Rubin's admission in cross-examination that the panel did not look into the Claimant's grievance.

117. The Claimant commenced ACAS early conciliation on 16 November 2020, obtained the EC certificate on 1 December 2020 and issued these proceedings on 17 December 2020.

Time limit Issues 1.1 – 2.3

The Law

Time limit – "whistleblowing" detriment claims

118. A claim for detriment under section 47B of the ERA 1996 must be presented "(a) *before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure to act is part of a series of similar acts or failures, the last of them, or (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months* " (section 48(3), ERA).

119. Section 48(4), ERA sates:

"(a) where an act extends over a period, the "date of the act" means the last day of that period, and
(b) a deliberate failure to act shall be treated as done when it was decided on; and, in the absence of evidence establishing the contrary, an employer [, a temporary work agency or a hirer] shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done".

120. In **Flynn v Warrior Square Recoveries Ltd** 2014 EWCA Civ 68, CA, the Court of Appeal stressed the need for tribunals to identify with precision the act or deliberate failure to act that is alleged to have caused detriment when considering whether an act/omission extended over a period of time for the purposes of S.48(4)(a). It is a mistake in law to focus on the detriment and whether the detriment continued.

121. In **Royal Mail Group Ltd v Jhuti** EAT 0020/16, the EAT held that it was irrelevant for the purposes of extending time under S.48(3)(a) that the out-of-time proven acts may have had continuing consequences in terms of the detriment experienced by the Claimant. S.48(3)(a) was concerned with when the act or failure to act occurs, not with when the consequence of that act or failure to act is felt or suffered.

122. The concept of "*a series of similar acts*" for the purpose of S.48(3)(a) is distinct from that of an act extending over a period of time in the context of S.48(4)(a). In **Arthur v London Eastern Railway Ltd (t/a One Stansted Express)** 2007 ICR 193, CA, the Court of Appeal held that S.48(3)(a) could cover a situation where the complainant alleges a number of acts of detriment by different people where, on the facts, there is a connection between the acts or failures to act in that they form part of a 'series' and are 'similar' to one another. At paragraph 31 of the judgment LJ Mummery said (**emphasis added**):

"*31. The provision can therefore cover a case where, as here, the complainant alleges a number of acts of detriment, some inside the 3 month period and some outside it. The acts occurring in the 3 month period may not be isolated one-off acts, but connected to earlier acts or failures outside the period. It may not be possible to characterise it as a case of an act extending over a period within section 48(4) by reference, for example, to a connecting rule, practice, scheme or policy but there may be some link between them which makes it just and reasonable for them to be treated as in time and for the complainant to be able to rely on them. Section 48(3) is designed to cover such a case.* ***There must be some relevant connection between the acts in the 3 month period and those outside it. The necessary connections were correctly identified by HHJ Reid as (a) being part of a "series" and (b) being acts which are "similar" to one another***."

123. At [45], LJ Lloyd stated that in deciding this question "*it must be sensible to consider the evidence as to each act relied on before deciding (a) whether they are part of a series at all and (b) whether they are sufficiently linked factually to be "similar" acts*".

124. In order to form part of a continuing act for the purposes of both the whistleblowing and victimisation claims, the acts relied upon must be unlawful (see **Oxfordshire County Council v Meade** UKEAT/0410/14).

Reasonably practicable extension

125. The following key principles can be derived from the authorities:

a. S.111(2)(b) ERA [and other corresponding provisions in ERA such as s.48(3)] should be given a '*liberal construction in favour of the employee*' — **Dedman v British Building and Engineering Appliances Ltd** 1974 ICR 53, CA.

b. what is reasonably practicable is a question of fact and thus a matter for the tribunal to decide. LJ Shaw said in **Wall's Meat Co Ltd v Khan** 1979 ICR 52, CA: "*The test is empirical and involves no legal concept. Practical common sense is the keynote….*".

c. the onus of proving that presentation in time was not reasonably practicable rests on the Claimant. "*That imposes a duty upon him to show precisely why it was that he did not present his complaint*" — **Porter v Bandridge Ltd** 1978 ICR 943, CA.

d. Even if a Claimant satisfies a tribunal that presentation in time was not reasonably practicable, that does not automatically decide the issue in his or her favour. The tribunal must then go on to decide whether the claim was presented "*within such further period as the tribunal considers reasonable*".

Meaning of 'reasonably practicable'

126. Lady Smith in **Asda Stores Ltd v Kauser** EAT 0165/07 explained it in the following words: "*the relevant test is not simply a matter of looking at what was possible but to ask whether, on the facts of the case as found, it was reasonable to expect that which was possible to have been done*".

127. In **Wall's Meat Co Ltd v Khan** Brandon LJ explained it in the following terms: "… *The performance of an act, in this case the presentation of a complaint, is not reasonably practicable if there is some impediment which reasonably prevents, or interferes with, or inhibits, such performance. The impediment may be physical … or the impediment may be mental, namely, the state of mind of the complainant oof ignorance of, or mistaken belief with regard to, essential matters. Such states of mind can, however, only be regarded as impediments making it not reasonably practicable to present a complaint within the period of three months, if the ignorance on the one hand, or the mistaken belief on the other, is itself reasonable. Either state of mind will, further, not be reasonable if it arises from the fault of the complainant in not making such enquiries as he should reasonably in all the circumstances have made, or from the fault of his solicitors or other professional advisers in not giving him such information as they should reasonably in all the circumstances have given him*." (Pages 60F-61A)

128. The focus is accordingly on the Claimant's state of mind viewed objectively.

Time limit – Discrimination claims

129. Discrimination claims must also be presented not 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*" (section 123(1) of the EqA 2010).

130. Section 123(2) EqA provides that:

"*For the purposes of this section –*

(a)conduct extending over a period is to be treated as done at the end of the period; (b)failure to do something is to be treated as occurring when the person in question decided upon it."

131. In the absence of evidence to the contrary, a person is taken to decide on failure to do something either when the person does an act inconsistent with deciding to do something or, if they do no inconsistent act, on the expiry of the period in which they might reasonably have been expected to do it (S.123(4) EqA).

132. In **Barclays Bank plc v Kapur and ors** 1991 ICR 208, HL, their Lordships drew a distinction between a continuing act and an act that has continuing consequences. They held that where an employer operates a discriminatory regime, rule, practice or principle, then such a practice will amount to an act extending over a period. Where, however, there is no such regime, rule, practice or principle in operation, an act that affects an employee will not be treated as continuing, even though that act has ramifications which extend over a period of time.

133. In **McKinney v Newham London Borough Council** 2015 ICR 495, EAT, HHJ Peter Clark at [15(1)] said: "*There is no material difference between the detrimental treatment provisions under the Employment Rights Act and the Equality Act so far as limitation is concerned*".

Just and equitable extension

134. In **Robertson v Bexley Community Centre t/a Leisure Link** 2003 IRLR 434, CA, the Court of Appeal held that when employment tribunals consider exercising the discretion under S.123(1)(b) EqA,: '*there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule*.' The onus is therefore on the Claimant to convince the tribunal that it is just and equitable to extend the time limit. However, this does not mean that exceptional circumstances are required before the time limit can be extended on just and equitable grounds. The law simply requires that an extension of time should be just and equitable — **Pathan v South London Islamic Centre** EAT 0312/13.

135. The relevant principles and authorities were summarised in **Thompson v Ark Schools** [2019] I.C.R. 292, EAT, at [13] to [21], and in particular:

a. Time limits are exercised strictly;
b. The onus is on the Claimant to persuade the tribunal to extend time;
c. The decision to extend time is case- and fact-sensitive;
d. The tribunal's discretion is wide;
e. Prejudice to the respondent is always relevant;
f. The factors under s33(3) Limitation Act 1980 (such as the length of and reasons for the delay and the extent to which the Claimant acted promptly once he realised he may have a claim) may be helpful but are not a straitjacket for the tribunal.

Submissions on Time Limit issues

136. First, we shall deal with the issues 1 and 2 on the Agreed List of Issues, as our answers to those will define the scope of our jurisdiction to consider the Claimant's claim on the merits.

137. It was common ground that the alleged treatments occurring on before 2 September 2020 were out of time, unless that was "*an act/conduct extending over a period of time*" beyond 2 September 2020 or "*part of a series of similar acts or failures"* with other acts or failures in the series occurring after 2 September 2020.

138. It was not clear why 2 September 2020 was accepted by the parties as such a "cut-off date". Initially, the Trust contended that the "cut-off" date should be 3 September 2020. However, the parties later agreed that nothing turns on the matter as there were no material events occurring in that period of time to make any difference to the outcome on the time issue..

139. On the Tribunal's calculation, the "cut-off" date must be 17 August 2020. The Claimant started her ACAS early conciliation process on 16 November 2020 in relation to both Respondents, which under s.207 ERA and 140B EqA "stopped the clock" of the 3 months limitation period, which then re-started on 1 December 2020 (when she received the EC certificate) with added period, thus giving the Claimant until 1 January 2021 to present ET1. ET1 was presented on 17 December 2020.

140. However, nothing turns on that, as there were no alleged acts or failures to act between 17 August and 2 or 3 September 2020, which would have made any difference to our conclusions.

An act extending over a period of time or part of a series of similar acts or failures

141. It was common ground that the issue of whether the claims were presented in time must be analysed on the same basis for whistleblowing detriment and discrimination/victimisation claims. Therefore, if a particular detriment is found to be out of time, it will be out of time as a whistleblowing detriment and as a discriminatory treatment/victimisation detriment. Of course, the Tribunal will then have to apply different tests in deciding whether to extend time (reasonably practicable vs. just and equitable). Therefore, although in arguments references were made to s.48 ERA, the arguments equally apply by reference to s.123 EqA.

Claimant's arguments

142. Mr Quickfall for the Claimant argued that all the detriments on the list of issues were linked together either as an act extending over a period of time or as a series of similar acts or failures. In essence, his argument is that there was an ongoing and coordinated effort between the Trust and UCL to marginalise the Claimant, remove her from ILDH and eventually get rid of her because she was a "thorn in the side". In uncovering the uncomfortable truth about unlawful practices at ILDH she had become a "whistleblowing pariah", and no one was going to help her to keep her job or deal with her legitimate complaints in a proper way. That situation began when the Trust and UCL breached the Claimant's confidentiality by not taking

the necessary steps to protect her anonymity as a complainant under the Trust's Speaking Up process and continued until her dismissal (and UCL terminating her worker's contract on the same date), and the Trust turning down her appeal on 25 September 2020. Various events that occurred in that period of time were all linked by common themes, in essence, by causation. In other words, the various individuals at UCL and the Trust acted and failed to act in the manner complained of by Claimant for the same underlying reason. That reason, Mr Quickfall argued, was the Claimant's blowing the whistle.

The Trust's arguments

143. It was accepted by the Trust that the dismissal and detriment 12.10.1 (the alleged failure to search for and offer the Claimant suitable alternative employment and/or instruct R2 to do the same, properly or at all) were in time. All others were out of time and detriments 12.11 (dismissal) and 12.12 (dismissing the Claimant's appeal) were intrinsic to the dismissal (brought under s.103A ERA, and alternatively under s.98 ERA), and were not capable in law of being pursued as s.47B detriment allegations against the Trust.

144. In particular, Ms Murphy pointed out that on the Claimant's case she had learned of the outcome of the investigation by UCL into her Speaking-up complaints on 10 December 2019, and therefore detriment 12.8 (failing to deal with the Claimant's complaints dated 22 November 2017, etc.) was *prima facie* out of time.

145. With respect to detriment 12.9 (failing to deal with the Claimant's grievance dated 5 February 2020, properly or at all), Ms Murphy argued that the grievance had been put on hold and the Claimant had received UCL's response on 8 June 2020. Therefore, to the extent there was a deliberate failure to act (by the Trust not resuming the grievance process after 8 June 2020) the time should start running from that date, because it should be taken as the date when "*a deliberate failure to act shall be treated when it was decided upon"* (s.48(4)(b) ERA). Alternatively, if it were to be considered as an act extending over a period of time, the date of the act would be the last day of that period, which again would be 8 June 2020. On either analysis the Claimant's claim in respect of that detriment was out of time.

146. With respect to detriment 12.10.2 (failing to search for external alternative sources of funding for the Claimant's role), Ms Murphy argued that it was *prima facie* out of time as any alleged failure to search for external funding for the Claimant's role must have occurred by the time the Claimant was served with notice of redundancy on 12 June 2020 during which the formal re-deployment period occurred.

147. She submitted that even if detriments 12.10.1 (or 12.10.2) were made out, the earlier alleged detriments are not similar acts and that was fatal to the Claimant's attempt to bring earlier alleged detriments within s.48(3) ERA, because the Tribunal must examine the acts or failures to act to see if these are sufficiently similar, to form part of a series of acts or failures and not the Respondent's motivation behind them. And none of those, when properly considered, could be said to be "similar" to the alleged detriments 12.10.1 and 12.10.2.

UCL arguments

148. Ms Harris for UCL argued that all allegations were out of time and the alleged detriments 14.13, 14.14 and 14.15 were not continuing acts or part of a series of similar acts or failures to bring those within s.48(3) ERA.

149. Ms Harris submitted that because UCL was not the Claimant's employer and did not dismiss her, the effective date of termination the Claimant's employment with the Trust was irrelevant. The Claimant's honorary appointment with UCL lapsed on 30 April 2018 (and the Claimant knew that), and therefore all her claims were considerably out of time. Further, in January 2020 the Claimant complained about her honorary appointment not being renewed. That was also part of the Claimant's case in front of this Tribunal until the first day of the hearing, when she withdrew the alleged detriments 12.2 and 14.3 on the List of Issues.

150. In any event, Ms Harris argued, it was put beyond doubt by the letter of 8 June 2020, in which UCL said that whilst the Claimant "*previously had a relationship with UCL on an honorary basis…that lapsed in 2018 and was not renewed*", and there were no act or failure to act by UCL on 4 September 2020, which could possibly be said to give rise to a detriment, let alone an actionable detriment on the ground that the Claimant had made a protected disclosure.

151. With respect to the alleged detriments against MP lasting until September 2020 (detriments 14.11, 14.12 and 14.13), Ms Harris submitted, that MP stopped being the Claimant's line manager in October 2018 and, save for one occasion in 2019, had no interactions with the Claimant after that time. The Claimant never physically returned to ILDH after 10 January 2020 and accepted in cross-examination that she had no contact at all with MP in 2020. All other alleged detriments occurred in 2018 and 2019 and therefore were significantly out of time.

Tribunal analysis and conclusions

Claims against UCL

152. Dealing first with the Claimant's complaints against UCL, we find that all of the Claimant's complaints are out of time. We find that the last act or failure to act was on 8 June 2020, when UCL communicated to the Claimant the outcome of their investigation into her grievance.

153. Read as a whole, the letter makes it clear that UCL did not regard the Claimant as an employee or a contractor, nor as having any kind of association with UCL after the expiry of her honorary appointment on 30 April 2018. Therefore, even were there an on-going relationship of some kind (whether as a "limb b" worker under s.230(3), a worker under s.43K ERA, a worker under s.83(2)(a) EqA or a contract worker under s.41 EqA) between the Claimant and UCL after the expiry of her honorary appointment, the letter of 8 June 2020 brought that to an end.

154. Although the letter does not specifically state that UCL terminates any such possible relationship with the Claimant, when read against the relevant background and applying the usual rules of construction, we find that it makes it plain that UCL did not consider itself as having any association with the Claimant, and for that reason UCL decided not to deal with the Claimant's grievance.

155. The parties' conduct before and after that date was consistent with that position. The Claimant stopped having any interaction with MP sometime in 2019. She did not return to ILDH after January 2020 (we accept that was partly due to the pandemic), she informed UCL in October 2019 that she would not be able to teach a course in 2020. Although she continued to work on her research paper, she did not seek to have access to ILDH or tissue samples. The only example the Claimant was able to provide in support of her contention that she continued to work for UCL was the fact that she had given a personal reference to an ex-student, but that cannot be sensibly said to be the Claimant's work for UCL. She did not seek permission from MP or anyone else to give the reference.

156. The Claimant's case (until she changed it on day one of the hearing) was that by allowing her honorary appointment to lapse on 30 April 2018 and by failing to take steps to renew it, UCL has subjected her to a detriment. It is clearly inconsistent for the Claimant then to argue that despite that, she continued to work for UCL up until 4 September 2020 and that is when UCL has terminated her honorary appointment.

157. We accept that after the lapse of the Claimant's honorary appointment on 30 April 2018 her association with UCL continued and she continued to be viewed by UCL as having such honorary appointment (see, for example, Sharron Alexander's email of 5 August 2019 at p.1208, in which she describes the Claimant as "*an honorary worker*"). Nevertheless, by letter of 8 June 2020 UCL made it clear that it was no longer treating the Claimant as being an "honorary worker" or having any other association with UCL. UCL did not terminate the Claimant's honorary appointment on 4 September 2020. UCL did not do anything after the letter of 8 June 2020, which can be sensibly described as an act of any kind.

158. The Claimant's attempt to bring the earlier acts and failures in time by constructing detriments as "*on unknown date(s) up to 4 September 2020*" or "*until 4 September 2020*", MP refusing to support the Claimant, and MP and GM ignoring the Claimant, marginalising her with ILDH and obstructing access to sample; or as "*on 21 June 2018 and further unknown dates*" UCL failing to search for and offer suitable alternative employment and declining to fund, is artificial and does not stand up to the scrutiny when considered against the facts.

159. As accepted by the Claimant in cross-examination, she ceased to have any dealings with MP and GM some time in 2019 and was not physically present at ILDH from January 2020. She made no request for support to MP or a request to access samples in 2020. The last complaint related to her work at ILDH was the WA incident on 23 July 2019.

160. In any event, those detriments can only be described as "failure to act" and therefore the time limit on them started to run when UCL, MP and GM decided not to act, which would have been in 2018 – 2019.

161. UCL, not being the Claimant's employer, was under no obligation to search and offer the Claimant an alternative role. It was also under no obligation to fund the Claimant's role. Therefore, it cannot be sensibly regarded as a detriment. However, even if we are wrong on that, the Claimant still has the same difficulty in bringing

those alleged detriments within s.48(3), as it was the alleged failures, and the time limit started to run from "*the unknown date*", which cannot be later than 8 June 2020, when UCL did "*an act inconsistent with doing the failed act*" – i.e. sending the letter stating that they do not regard the Claimant as their employee or contractor or as having any association with UCL after 30 April 2018. The Claimant cannot get around that by turning it into a detriment of UCL, see detriment 14.15 - "*From 8 June 2020 to 25 September 2020, misrepresenting that [her] active association with UCL has lapsed on 30 April 2018*."

162. In short, we find that all Claimant's complaints against UCL have, to borrow the term used by Mr Quickfall in his closing submissions, "crystallised" on or before 8 June 2020 and therefore should have been brought within the three months plus ACAS EC extension period starting on that date. There were not. For these reasons, we find that all of the Claimant's complaints against UCL are out of time.

Was it reasonably practicable for Claimant to bring claims against UCL in time?

163. Mr Quickfall argued that it was sensible for the Claimant to wait until all her potential claims had crystallised before presenting a claim, rather than issuing claims on a piece-meal basis, particularly when the clamant was advised to delay the complaints against her redundancy until she had received notice of termination. Further, he submitted, that given that the Claimant treated the redundancy appeal as covering everything which had gone before, it was sensible for the Claimant to await the outcome of the redundancy appeal before presenting her claim.

164. Finally, Mr Quickfall argued that the Claimant was seeking to exhaust the internal routes of complaint through the grievance and dismissal appeal procedures before resorting to "a potentially career-ending ET1".

165. None of that, however, explains why it was not reasonable to except the Claimant to present her claims earlier, in particular against UCL. UCL was not involved in the Claimant's redundancy appeal. It made its position clear on the Claimant's grievance on 8 June 2020. The relevant test is not whether or not it was "sensible to wait" but whether it was not reasonably practicable for the Claimant to present the claim within the primary limitation period.

166. The Claimant in her evidence said that she knew "*from day one*" that she could bring a tribunal claim and in fact considered doing so on several occasions before her dismissal. She consciously decided against that. She had access to union advice from 2017 and had a lawyer acting for her from February 2020. On 29 October 2019 she wrote to the Trust that she "*was considering going to the Employment Tribunal for discrimination and victimisation for whistleblowing".* On 25 March 2020, when chasing her grievance, the Claimant emailed the Trust stating: "*I am about to issue ET claims for (inter alia) discrimination against the employer, principal and named individuals later this week*".

167. In her first witness statement, prepared for the preliminary hearing on 10 and 11 February 2022, the Claimant said that she was under considerable stress and had to take sick leave between January and March 2020 and the period after was a worrying time because of the pandemic and the country going into the first lockdown.

She also said that her mother's health began to deteriorate making her more dependent on the Claimant, and the Claimant decided to focus on her mental and physical health and looking after her mother, while pursuing her appeal against dismissal. She said that she had limited amount of mental strength to deal with issues in her life and chose to prioritise those rather than making long-term decisions, such as bringing employment tribunal proceedings.

168. We do not accept that the Claimant's mental state was such that it was not reasonably practicable for her to bring the claims earlier. Firstly, she did not mention that in her oral evidence at the hearing. Her explanation was that it was a career-ending decisions and a big step to take. She was clearly contemplating taking that step, rather than "taking a break from thinking about or dealing with any work related problems" (as she claimed in her first witness statement). The Claimant provided no evidence to support her claim that it was not reasonably practicable for her to present the claim earlier because of her or her mother's health issues.

169. The Claimant was represented by a lawyer and with their help submitted a detailed grievance and appeal letters and was fully engaged in pursuing her appeal. It is clear from the contemporaneous documents (see her email of 25 March 2020 – p.1350) that she was ready to issue the claim.

170. For these reasons, we find that it was reasonably practicable for the Claimant to bring her whistleblowing detriment claims against UCL in time. She has failed to do so, and therefore the Tribunal does not have jurisdiction to consider them.

Is it just and equitable to extend time under s. 123(1)(b)?

171. Mr Quickfall argued that the Claimant had "*good reasons for waiting until all her claims had crystalised*" and because her claims are linked to the redundancy dismissal it would be artificial and unjust to refuse to consider out-of-time claims for time-limit reasons alone.

172. He also made a somewhat unconventional argument that if the time were to be extended on a just and equitable basis, "*it would be unjust to refuse to consider the same detriments for PID purposes*", because "*[t]here is no prejudice to R as the same facts are being considered through a different legal lens, whereas C would be significantly prejudiced if time was not extended*".

173. Dealing with the last point first, we find the argument misconceived. It seems to be an attempt to get the Claimant's out of time whistleblowing claims through the backdoor of "just and equitable" jurisdiction. It would be an error of law for the Tribunal to ignore the relevant jurisdiction limitation (i.e. reasonable practicable test) just because the same facts are pleaded in supported of both whistleblowing and discrimination claims.

174. We have already dealt with the "sensible to wait" point and for the same reasons we reject it. All Claimant's claims against UCL have "crystalised" on 8 June 2020, at the latest.

175. As Ms Harris pointed out in her closing submissions, it is for the Claimant to show why it would be just and equitable to extend time and provide relevant evidence and she has failed to do so. We agree. For the reasons stated above we find that the Claimant's arguments as to why she could not issue her claims earlier are unpersuasive and she has failed to discharge the burden.

176. For the sake of completeness, we went on to consider the relative prejudice to the Claimant and UCL. We find that it lies in favour of UCL. The Claimant's discrimination claims are of a historic nature. Many of the allegations make little sense (e.g. detriments 14.1, 14.7 – 14.12, 14.14 and 14.15 were pleaded as acts of sex or race direct discrimination or harassment). The fact that the allegations were defended on the merits at the hearing by UCL is not sufficient to find that there would be no prejudice to UCL by the Tribunal extending time. If that were correct, then the time limit on virtually all out-of-time discrimination claims would have to be extended on a just and equitable basis, as in the most cases this issue is left to be decided at a final hearing.

177. In short, we find that it will not be just and equitable to extend time. It follows, that the tribunal does not have jurisdiction to hear any of the Claimant's complaints against UCL and they stand to be dismissed for lack of jurisdiction.

178. Given our decision on the time limit issue, there is no need to consider Issue 2 – the Claimant's employment status at UCL.

Claims against Trust

179. We will now turn to the Claimant's claims against the Trust. Although most of what we found on the time issue in relation to the Claimant's claims against UCL equally applies to her claims against the Trust, there is an important distinction.

180. Unlike in the case of the complaints against UCL, the Claimant's complaints against the Trust in relation to her redundancy have a strong connection with her eventual dismissal and dismissal of her appeal.

181. We find that detriments 12.1, 12.3, 12.4, 12.5, 12.6, 12.7, 12.9, 12.10.1, 12.10.2 are all acts that form part of a series of similar acts and failures leading up to the Claimant's dismissal. In essence, these were all different stages of and events within the Claimant's redundancy process that the Trust resumed in July 2019. They are all linked together by the redundancy process that underpinned them. The Trust re-started the redundancy process, and as part of it the Trust, wishing to address RK's concerns about "counter-claims", sought to move the Claimant away from ILDH, organised a meeting with ML for that purpose, kept the Claimant in the dark about the outcome of UCL investigation into her complaints, and did not "un-hold" the Claimant's grievance of 5 February 2020.

182. We also find that detriment 12.10.2 was in time. While we accept Ms Murphy argument that the alleged failure must have occurred by the time the Claimant was served with notice of redundancy on 12th June 2020 during which the formal re-deployment period occurred, nevertheless that failure is clearly linked to the Claimant's eventual dismissal in the same way as the alleged failure to search for

suitable alternative employment (detriment 12.10.1), which Ms Murphy accepted was in time.

183. Ms Murphy submits that "*part of a series of similar acts or failures*" in section 48(3) ERA is similar to the wording in s.23 ERA (which deals with presentation of claims for unlawful deduction from wages) and therefore on the authority of **Bear Scotland v Fulton** [2015] ICR 221 a gap of three months breaks any such series. Ms Murphy argued that because there was more than a three months' gap between the alleged detriment 12.9 and 12.10, that broke the series, resulting in all the alleged detriments occurring before the alleged detriment 12.10 falling out of time.

184. We reject that. Firstly, there is no authority of which the Tribunal is aware (and Ms Murphy did not refer us to any such authority) to suggest that **Bear Scotland** applies to other types of claims beyond s.23 ERA. Secondly, there is nothing in the relevant case law (see **Arthur** at paragraph 122 above) which suggests that a three-month gap breaks a series. While the Court of Appeal said that "*There must be some relevant connection between the acts in the 3 month period and those outside it"* it did not go on to suggest that the mere passage of time (be it three months or any other period) will automatically break the series. Of course, the larger the gap the more tenuous the connection might become, but that remains a matter for fact findings, rather than time computation. Finally, in light of a "strong preliminary view" by the Court of Appeal in the recent judgment in **Smith v. Pimlico Plumbers Ltd** [2022] EWCA Civ 70 that **Bear Scotland** was wrongly decided, we find that it would be inopportune and wrong for this Tribunal to develop the law by expanding the rule in **Bear Scotland** to s.48(3) ERA, as advocated by Ms Murphy.

185. However, we find that the alleged detriment 12.8 is not part of a series of acts and failures that can properly be linked with the Claimant's redundancy. It relates to a different matter, namely the Claimant's original complaints, which went to be investigated by UCL. The Claimant's complaints caused the Trust to suspend the Claimant's redundancy process, rather than to continue with it.

186. The Claimant was told of the outcome of the investigation on 10 December 2019 and received a copy of the Screening Panel report on 24 January 2020. There were no further acts by the Trust in relation to the investigation that could be said to be "similar acts" in "a series", or an "act/conduct extending over a period" beyond that date.

187. Analysing the alleged detriment as a "deliberate failure to act" (under 48(4)(b) ERA) or as a "failure to do something" (under s.123(3)(b) EqA) gives the same result. By telling the Claimant of the outcome of the UCL investigation as concluding the matter, the Trust did an act inconsistent with dealing with the Claimant's complaints, and therefore under s.48(4)(b) ERA and s.123(4)(a) EqA that date should be taken as the date when the failure to do something (deal with the Claimant's complaints) has occurred. Therefore, we find that the time limit in relation to that detriment started to run from 24 January 2020.

188. The Claimant's complaint in relation to this detriment is significantly out of time. For the reasons already stated above (see paragraphs 165 - 177 above) we

find that it was reasonably practicable for the Claimant to present her complaint in relation to detriment 12.8 in time, and that it will not be just and equitable to extend the time limit.

189. It follows, that the Tribunal does have jurisdiction to consider the Claimant's "whistleblowing" detriments and victimisation complaints against the Trust with respect of the alleged detriments 12.1, 12.3 – 12.7 and 12.9 – 12.12, but not the alleged detriment 12.10.

190. We shall now consider whether the alleged protected disclosures are protected disclosures within the meaning of s.43A before moving on to deal with the alleged detriments and dismissal.

Alleged Protected Disclosures – Issues 3.1 – 11.3

The Law

191. Section 43A of the ERA states,

"In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H."

192. Section 43B of the ERA states,

(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

…

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

193. In **Blackbay Ventures Ltd v Gahir** [2014] ICR 747, EAT**,** HHJ Serota QC at [98] gave employment tribunals the following guidance:

"98. It may be helpful if we suggest the approach that should be taken by employment tribunals considering claims by employees for victimisation for having made protected disclosures.

1. Each disclosure should be identified by reference to date and content.

2. The alleged failure or likely failure to comply with a legal obligation, or matter giving rise to the health and safety of an individual having been or likely to be

endangered or as the case may be should be identified.

3. The basis on which the disclosure is said to be protected and qualifying should be addressed.

4. Each failure or likely failure should be separately identified.

5. *Save in obvious cases, if a breach of a legal obligation is asserted, the source of the obligation should be identified and capable of verification by reference for example to statute or regulation. It is not sufficient as here for the employment tribunal to simply lump together a number of complaints, some of which may be culpable, but others of which may simply have been references to a check list of legal requirements or do not amount to disclosure of information tending to show breaches of legal obligations. Unless the employment tribunal undertakes this exercise it is impossible to know which failures or likely failures were regarded as culpable and which attracted the act or omission said to be the detriment suffered. If the tribunal adopts a rolled up approach it may not be possible to identify the date when the act or deliberate failure to act occurred as logically that date could not be earlier than the latest of act or deliberate failure to act relied on and it will not be possible for the appeal tribunal to understand whether, how or why the detriment suffered was as a result of any particular disclosure; it is of course proper for an employment tribunal to have regard to the cumulative effect of a number of complaints providing always they have been identified as protected disclosures.*

6. The tribunal should then determine whether or not the Claimant had the reasonable belief referred to in section 43B(1) and … whether it was made in the public interest.

7. Where it is alleged that the Claimant has suffered a detriment short of dismissal it is necessary to identify the detriment in question and where relevant the date of the act or deliberate failure to act relied on by the Claimant. This is particularly important in the case of deliberate failures to act because unless the date of a deliberate failure to act can be ascertained by direct evidence the failure of the respondent to act is deemed to take place when the period expired within which he might reasonably have been expected to do the failed act."

194. In **Williams v Brown** UKEAT/0044/19/OO, EAT**,** HHJ Auerbach in the Employment Appeal Tribunal explained at [9] that,

"9. It is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held."

Was there a "disclosure of information"?

195. In **Kilraine v London Borough of Wandsworth** [2018] IRLR 846, CA**,** the Court of Appeal held at [31]

31 On the other hand, although sometimes a statement which can be characterised as an allegation will also constitute "information" and amount to a qualifying disclosure within section 43B(1), not every statement involving an allegation will do so. Whether a particular allegation amounts to a qualifying disclosure under section 43B(1) will depend on whether it falls within the language used in that provision.

196. Also in **Kilraine,** the Court of Appeal held at [35]-[36] (***emphasis added***),

*"35 The question in each case in relation to section 43B(1) (as it stood prior to amendment in 2013) is whether a particular statement or disclosure is a "disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the [matters set out in paragraphs (a) to (f)]". Grammatically, the word "information" has to be read with the qualifying phrase, "which tends to show [etc]" (as, for example, in the present case, information which tends to show "that a person has failed or is likely to fail to comply with any legal obligation to which he is subject"). **In order for a statement or disclosure to be a qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1)**. The statements in the solicitors' letter in the Cavendish Munro case did not meet that standard.*

*36 Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a tribunal in the light of all the facts of the case. It is a question which is likely to be closely aligned with the other requirement set out in section 43B(1), namely that the worker making the disclosure should have the reasonable belief that the information he discloses does tend to show one of the listed matters. **As explained by Underhill LJ in Chesterton Global Ltd v Nurmohamed [2018] ICR 731, para 8, this has both a subjective and an objective element. If the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief**."*

Reasonable belief that the information tended to show one of the listed matters

197. In **Chesterton Global Ltd v Nurmohamed [2017] IRLR 837,** the Court of Appeal held at [8],

"The definition has both a subjective and an objective element: see in particular paras 81—82 of the judgment of Wall LJ. The subjective element is that the worker must believe that the information disclosed tends to show one of the six matters listed in subsection (1). The objective element is that that belief must be reasonable."

198. In **Simpson v Cantor Fitzgerald Europe** [2020] ICR 236, EAT**,** Choudhury J in the Employment Appeal Tribunal said at [69],

"The Tribunal is thus bound to consider the content of the disclosure to see if it meets the threshold level of sufficiency in terms of factual content and specificity before it could conclude that the belief was a reasonable one. That is another way of stating that the belief must be based on reasonable grounds. As already stated above, it is not enough merely for the employee to rely upon an assertion of his subjective belief that the information tends to show a breach."

Tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation

199. In **Fincham v HM Prison Service** UKEAT/0991/01**,** the Employment Appeal Tribunal said at [33],

"there must in our view be some disclosure which actually identifies, albeit not in strict legal language, the breach of legal obligation on which the employers(sic) is relying."

200. In **Eiger Securities LLP v Korshunova** 2017 ICR 561, EAT, Slade J in the Employment Appeal Tribunal held at [46]**,**

"The identification of the obligation does not have to be detailed or precise but it must be more than a belief that certain actions are wrong. Actions may be considered wrong because they are immoral, undesirable or in breach of guidance without being in breach of a legal obligation."

201. In **Twist DX Ltd v Armes** UKEAT/0030/20, the Employment Appeal Tribunal said at [87], [91], and [103] (***emphasis added***),

"87. This is not to say that the questions whether the worker mentions, for example, criminality or illegality or health and safety in their disclosure, or whether it is obvious that they had these matters in mind, are irrelevant. What they said, and whether the matter is obvious, are relevant evidential considerations in deciding what they believed and the reasonableness of what they believed, rather than these questions presenting an additional legal hurdle, as Mr Nicholls effectively contends. If the nature of the worker's concern is stated - if they say that they consider that the reported information shows criminality or breach of legal obligation or a threat to health and safety - it will be harder to dispute that they held this belief and that the professed belief that the disclosure tended to show the specified matter was reasonable. The point is the same if what the worker thinks is obvious from what they say in the alleged disclosure. Conversely, if the link to the subject matters of any of section 43B(1)(a)-(f) is not stated or referred to, and is not obvious, an ET may see this as evidence pointing to the conclusion that the worker did not hold the beliefs which they claim, or that the information is not specific enough to be capable of qualifying. ***But what cannot be said is that unless it is stated that the information tends to show one or more of the specified matters, or it is obvious that the concern falls within section 43B(1)(a)-(f), the information is incapable of satisfying the requirements of that section because it cannot reasonably be thought by the worker that it tends to show any of the specified matters****. In my view, with respect to Mr Nicholls, this is*

flawed reasoning." […]

"91. So the EAT appears to have considered that the ET had not erred in looking at each complaint individually and was entitled to come to the decision which it had reached on the evidence. In this context, I do not read paragraph 33 of the judgment in Fincham as establishing a generally applicable rule. The ET had not decided the case on the basis that there was such a rule and it is not clear that it had been argued that there was. The EAT did not identify any such rule in the language of the statutory provisions and what the EAT said had a, with respect, vague quality which would be inconsistent with the identification of a rule. In my view the EAT was merely identifying a missing evidential feature which was particularly significant in a case where the alleged qualifying disclosures were essentially grumbles about colleagues. In the absence of any reference to the mutual trust and confidence term, the ET was entitled to find, in effect, that the Claimant did not reasonably believe that her grumbles tended to show breaches of legal obligation." […]

"103. In summary, then, none of the cases relied on by Mr Nicholls in relation to this issue involved the EAT overruling an ET which had found that there was a qualifying disclosure despite a failure by the worker to identify in the disclosure the fact that they had an actual or potential breach of legal obligation in mind, still less despite a failure to spell out the legal obligations in question. Evans, in the EAT, shows an ET decision being upheld despite a failure by the worker to do so, and the other decisions are all ones in which the EAT upheld the ET's finding of fact that the disclosure in question did not satisfy section 43B(1) and then made observations about why such finding was open to the ET on the evidence. ***The cases also show a range of formulations of when there need be no express reference to legal obligation – where it is obvious, common sense or sufficiently clear – but this tends to undermine the proposition that there is any rule other than that the worker's beliefs as to what the information tends to show must be reasonable.****"*

Multiple communications

202. In **Norbrook Laboratories (GB) Ltd v Shaw** [2014] ICR 540, EAT, the Employment Appeal Tribunal said at [22]:

"… an earlier communication can be read together with a later one as "embedded in it", rendering the later communication a protected disclosure, even if taken on their own they would not fall within section 43B(1)(d). … Accordingly, two communications can, taken together, amount to a protected disclosure. Whether they do is a question of fact."

203. In **Simpson v Cantor Fitzgerald** [2021] IRLR 238, the Court of Appeal said at [31]-[32],

"31 The question of whether or not two or more communications considered together amount to a protected disclosure is a question of fact: see Norbrook Laboratories (GB) Ltd v Shaw [2014] ICR 540, para 22. In the present case, the tribunal found that none of the 37 separate alleged disclosures identified amounted to a protected disclosure. The question is whether the tribunal erred in failing to consider whether some or all of them taken together might have done so.

32 In some cases, it will be obvious that aggregation is appropriate. That may be the case where, for example, just two communications are relied upon, the second of which refers back to (or "embeds" within it) the earlier one containing information within the meaning of section 43B of the 1996 Act. That was the situation faced by the tribunal in the Norbrook case, and the appeal tribunal found that the employment tribunal had not erred in taking the communications together. In the present case, however, the situation is far more complex in that the Claimant was seeking to rely upon a large number of communications - the tribunal identified 37 separate alleged communications - said to give rise to three or four separate disclosures. In those circumstances, in the absence of clarity from the Claimant, it would not necessarily be obvious to the tribunal which particular communications should be grouped together for the purposes of supporting one or more of the four alleged disclosures."

Reasonable belief that the disclosure was in the public interest

204. In **Chesterton Global Ltd v Nurmohamed** [2017] IRLR 837, the Court of Appeal provided guidance on the public interest test at [27]-[31] (***emphasis added***),

"27 First, and at the risk of stating the obvious, the words added by the 2013 Act fit into the structure of section 43B as expounded in Babula's case [2007] ICR 1026 (see para 8 above). ***The tribunal thus has to ask (a) whether the worker believed, at the time that he was making it, that the disclosure was in the public interest and (b) whether, if so, that belief was reasonable****.*

28 Second, and hardly moving much further from the obvious, element (b) in that exercise requires the tribunal to recognise, as in the case of any other reasonableness review, that there may be more than one reasonable view as to whether a particular disclosure was in the public interest; and that is perhaps particularly so given that that question is of its nature so broad-textured. The parties in their oral submissions referred both to the "range of reasonable responses" approach applied in considering whether a dismissal is unfair under Part X of the 1996 Act and to the "Wednesbury approach" (Associated Provincial Picture Houses Ltd v Wednesbury Corpn [1948] 1 KB 223) employed in (some) public law cases. Of course we are in essentially the same territory, but I do not believe that resort to tests formulated in different contexts is helpful. ***All that matters is that the tribunal should be careful not to substitute its own view of whether the disclosure was in the public interest for that of the worker. That does not mean that it is illegitimate for the tribunal to form its own view on that question, as part of its thinking - that is indeed often difficult to avoid - but only that that view is not as such determinative****.*

29 ***Third, the necessary belief is simply that the disclosure is in the public interest. The particular reasons why the worker believes that to be so are not of the essence. That means that a disclosure does not cease to qualify simply because the worker seeks, as not uncommonly happens, to justify it after the event by reference to specific matters which the tribunal finds were not in his***

head at the time he made it. ***Of course, if he cannot give credible reasons for why he thought at the time that the disclosure was in the public interest, that may cast doubt on whether he really thought so at all; but the significance is evidential not substantive. Likewise, in principle a tribunal might find that the particular reasons why the worker believed the disclosure to be in the public interest did not reasonably justify his belief, but nevertheless find it to have been reasonable for different reasons which he had not articulated to himself at the time: all that matters is that his (subjective) belief was (objectively) reasonable***.

30 Fourth, while the worker must have a genuine (and reasonable) belief that the disclosure is in the public interest, that does not have to be his or her predominant motive in making it: otherwise, as pointed out at para 17 above, the new sections 49(6A) and 103(6A) would have no role. ***I am inclined to think that the belief does not in fact have to form any part of the worker's motivation - the phrase "in the belief" is not the same as "motivated by the belief"; but it is hard to see that the point will arise in practice, since where a worker believes that a disclosure is in the public interest it would be odd if that did not form at least some part of their motivation in making it***.

31 Finally by way of preliminary, although this appeal gives rise to a particular question which I address below, ***I do not think there is much value in trying to provide any general gloss on the phrase "in the public interest". Parliament has chosen not to define it, and the intention must have been to leave it to employment tribunals to apply it as a matter of educated impression.*** *Although Mr Reade in his skeleton argument referred to authority on the Reynolds defence (Reynolds v Times Newspapers Ltd [2001] 2 AC 127) in defamation and to the Charity Commission's guidance on the meaning of the term "public benefits" in the Charities Act 2011, the contexts there are completely different. The relevant context here is the legislative history explained at paras 10—13 above. That clearly establishes that the essential distinction is between disclosures which serve the private or personal interest of the worker making the disclosure and those that serve a wider interest. This seems to have been essentially the approach taken by the tribunal at para 147 of its reasons."*

Submissions and Analysis

205. The Claimant relies on 29 protected disclosures (see Appendix 2). The Trust's position is that although at the time when the disclosures were made it treated them as if they were protected disclosures under s.43A ERA, in accordance with the Trust's Speaking-up policy, it makes no admission in that regard in these proceedings. The Trust submits that because the alleged protected disclosures were about practices at UCL, the Trust cannot comment on whether those communications amounted to qualified disclosures.

206. It is unhelpful that the Trust chose to adopt and maintain that position even after the evidence were heard. There is no good reason why the Trust needs to know the ins and outs of UCL's practices to form a view as to whether what the

Claimant was saying in those communications amounts to protected disclosures. As the case law referenced above makes it clear the test is whether the Claimant reasonably believed that the information tended to show one of the matters in s.43B(1)(a), (b) or (f) and that the Claimant reasonably believed that the disclosure was in the public interest. Therefore, the assessment is of the communication itself and not the subject matter of the communication, such as UCL practices.

207. The Claimant's original lists of disclosures (pp.176 – 215) put all her disclosures into 6 separate groups: Group 1 – Research Misconduct and commercialisation of human tissue, Group 2 – Fraud, Group 3 – Data, Group 4 – Cover up, Group 5 – Treatment of the Claimant after blowing the whistle, and Group 6 – Discrimination. That list contained 112 separate disclosures, which the Claimant subsequently reduced to 29. We shall now proceed to analyse each of them in turn. We adopt the reference used by the parties in the original table, i.e. "PID" as referring to a particular piece of communication. For the sake of brevity, we refer to matters specified in s.43B(1)(a) as "a criminal offence", in s.43B(1)(b) as "a failure to comply with a legal obligation" and in s.43B(1)(f) as "concealment".

PID 1

208. The Claimant claims that in her email to Ivor Dore of 22 November 2017 that she disclosed information that she reasonably believed tended to show that human tissue samples were being used for commercial profit in preference to not-for-profit cancer research and that was contrary to s. 8 of Human Tissue Act 2004 ("**the HTA**"), which prohibits using and storing donated materials for a purpose which is not a qualified purpose.

209. She relies on various passages in her email in which she complains that her access to liver sample in the TAPb was being obstructed whereas GM and Prof Rombouts were able to obtain hundreds of whole livers from the TAPb, which then were being used for commercial purposes via Engitix.

210. The Trust does not accept that it was a protected disclosure. It states that the nature of the letter was the Claimant asking various questions (e.g. is it ethical?) rather than disclosing information alleging potential breach of the HTA. It also argues that it was the Claimant's way of getting access to tissue samples, as the Claimant accepted in cross-examination.

211. We find that, read as a whole, the email does disclose information, as it contains sufficient factual information. The fact that the Claimant then poses various questions regarding the ethics and legality of the practices she complains about does not mean that the factual content of the email is not sufficient. It clearly identifies the facts, which the Claimant claims show inappropriate and potentially illegal behaviour.

212. We are also satisfied that the Claimant had a reasonable belief that the information she was disclosing tended to show a criminal offence, namely the use of human tissue contrary to the HTA and that she reasonably believed the disclosure was in the public interest. In concluding her email, she wrote: "*I believe that it is in*

the interest of the NHS and the general public that the issues I have raised above are addressed immediately by the NHS or other appropriate body".

213. Therefore, we find that PID 1 was a protected disclosure under s.43A ERA.

PID 7

214. The Claimant claims that in the same email she made another protected disclosure concerning a conflict of interest. She wrote that AG who managed TAPb told her that he needed to raise £8,000 a month to keep his job, which drove him to give samples to private companies for commercial projects and not for scientific non-for-profit research purposes, which TAPb was meant to support. The Claimant claims that the information tended to show a failure to comply with a legal obligation under GMC Guidance "Good Medical Practice".

215. The Trust says GMC Guidance does not contain legal obligations and therefore the communication about AG's conflict of interest was not sufficient to amount to a protected disclosure. The Tribunal was not referred to the GMC Guidance during the hearing. It was not in the hearing bundle. If it is mere guidance or best practice and that was known to the Claimant, it would be insufficient for Claimant to hold a reasonable belief that the information disclosed tended to show a failure to comply with a legal obligation (see **Eiger Securities LLP v Korshunova)**.

216. It is for the Claimant to show that her communication amounted to a protected disclosure, including by adducing evidence that in her reasonable belief the information tended to show that there was failure to comply with a legal obligation. We find that she has failed to do so in relation to "conflict of interest" disclosure, and therefore PID 7 was not a protected disclosure.

PID 25

217. In the same email of 22 November 2017, the Claimant alleged that GM, who was a PhD student, had told her that he had used the title "Doctor" before completing his doctorate, for the purposes of obtaining patients' consent for organ donation. She claimed that that amounted to impersonating a medical doctor, which is an offence under s.49 the Medical Act 1983 ("**the MA**") and also fraud by false representation under s2 of the Fraud Act 2006 ("**the FA**").

218. The Trust does not accept that the allegation amounts to fraud. It also argues that a potential professional misconduct is not sufficient to make it a protected disclosure.

219. We are satisfied that it was a protected disclosure. The Claimant set out factual information about what GM had told her. She wrote that what GM was doing in her view was deceptive, and the patients' consent obtained in that way would be invalid. We find that the Claimant reasonably believed that the information tended to show that GM was deceiving patients by misrepresenting his title and position, and that was illegal. Whether or not that amounts to fraud by false representation under the FA as a matter of law is not determinative.

220. We also find that the Claimant reasonably believed that GM was breaching the legal prohibition on research scientists approaching patients for consent to donate organs for research.

221. We find that the Claimant held a reasonable belief that the disclosure was in the public interest. She wrote: "*I believe that it is in the interest of the NHS and the general public that the issues I have raised above are addressed immediately by the NHS or other appropriate body*". Therefore, we find that PID 25 was a protected disclosure.

PID 29

222. Still in the same email of 22 November 2017 the Claimant stated that AG had tried to get non-English speaking patients to sign donor's consent form in English and had asked the Claimant to translate it orally to the patients, which the Claimant had declined to do.

223. She claims that the information tended to show a criminal offence by reference to various sections in the HTA, and also a failure to comply with a legal obligation, namely various provisions in the Human Tissue Authority Code of Conduct E – Research (pp 217 – 218 of Appendices to PD table) – ("**Code of Conduct E**").

224. The Trust does not admit that it amounted to a protected disclosure but does not make any further submissions.

225. We find that it was a protected disclosure. The relevant passage in the email contains sufficient factual information - GM approaching non-English speaking patients to sign consent forms in English and asking the Claimant to translate for him. The Claimant goes on to say that she told AG that to obtain a valid consent the form would need to be translated into Arabic, which AG said it was too complicated. However, the Claimant claims that subsequent to that conversation AG was caught approaching non-English speaking patients in the private wing of the hospital for consent. Therefore, we find that the Claimant reasonably believed that the information she was disclosing tended to show that AG was committing a criminal offence by attempting to obtain patients' consent in contravention of the HTA. We also find that she reasonably believed the disclosure was in the public interest. Therefore, PID 29 was a protected disclosure.

226. As the Claimant provided no evidence as to the legal status of the Human Tissue Authority Code of Conduct E – Research, we are unable to conclude that she reasonably believed that the information tended to show a failure to comply with a legal obligation.

PID 33

227. Although listed under 22 November 2017, it appears the Claimant relies on her email of 13 April 2018 and the attachments, in which she alleged that MP and GM had obtained ethical approval to use tissue from TAPb for domestic research

only, however in their funding application they wrongly asserted that the approval covered commercial use, including abroad through Engitix.

228. She claims that information tended to show a criminal offence under the HTA, and also under s.2 of the FA, and that there was a failure to comply with a legal obligation under various paragraphs of the Code of Conduct E.

229. The Trust does not admit that the disclosure amounted to a protected disclosure and points out that if the alleged breach is of the Code of Conduct, that is insufficient.

230. We find that the communication was a protected disclosure. The Claimant includes the original application for human tissue by GM and MP for the organ regeneration project and the ethics approval letter and provides details, which she says, show that the ethics approval covered only domestic use, whereas the funding application represented that the ethics approval covered a wider use and that was a false representation contrary to the HTA. We also find that the Claimant reasonably believed that the disclosure was in the public interest. Therefore, PID 33 was a protected disclosure.

PID 49

231. The Claimant relies on her email of 12 February 2018 to JM in which she states that she overheard a telephone conversation in which GM said to the person at the other end of the line (who the Claimant thought was a potential investor into Engitix) that he (GM) was able to source human tissue and that he had a team who were proficient in decellularizing all human tissue. GM also told the "investor" about his plants to travel to Japan and the USA to meet with other investors, and of GM's plans to set up a human myofibroblast (a type of human cell) biobank.

232. The Claimant says that this communication contained information that tended to show "commercialisation of human tissue" which she says is a criminal offence under the HTA and also a failure to comply with a legal obligation under the Code of Conduct E.

233. The Trust does not admit that the email amounts to a protected disclosure and states that the nature of the content of the communication is the Claimant asking questions and it did not tend to show a criminal offence or a failure to comply with a legal obligation.

234. We find that it was a protected disclosure, when read in the context of the Claimant's earlier 22 November disclosure. Essentially, the Claimant provides further information in support of her PID 1, which she reasonably believed tended to show that human tissue samples were being used for commercial purposes in breach of the HTA. We also find that she reasonably believed that the disclosure was in the public interest. Therefore, we find PID 49 was a protected disclosure.

PID 64

235. In the same email of 12 February 2018, the Claimant wrote about a lecture by MP to a large audience at ILDH, during which he had put a slide showing examples of organs which had been successfully regenerated, including human trachea. The Claimant wrote that it was false and insulting to all in the audience for MP to make such a claim, especially in light of "*the huge scandal surrounding the artificial trachea and the tragic outcomes of the pseudoscience surrounding it*". In cross-examination the Claimant explained that she was referring to an affair involving another professor who had attempted to regenerate human trachea using plastic moulds and to grow human trachea using stem cells to be used as transplants. She claimed that the experiment had resulted in deaths of 10 patients and UCL had to set up a special enquiry into the affair.

236. The Claimant claims that the disclosure tended to show that a criminal offence of fraud by false representation under s. 2 FA has been committed and a failure to comply with a legal obligation under the GMC Guidance.

237. The Trust does not admit that it was a protected disclosure because the paragraph in the email the Claimant relies upon is "too vague/speculative".

238. On balance, we find that it was not a protected disclosure. Although the Claimant disclosed factual information about the claim made by MP at the lecture, we find that the Claimant could not have reasonably believed that the disclosed information tended to show that MP was committing a criminal fraud. She wrote that the claim was insulting to the audience and could bring the whole UCL into disrepute, especially considering the past scandal, and that a major scandal was "brewing".

239. However, the Claimant does not claim that the information tended to show that MP was regenerating human trachea and then transplanting it to patients, thus putting their life at risk, but that his claim that human trachea <u>was successfully regenerated</u> is not only false, but also amounts to criminal fraud, which requires a dishonest making of a false representation with intent to make gain or cause loss to another or expose another to a risk of loss.

240. While the Claimant might well have reasonably believed that the claim was false, based on the content of her email and the evidence she gave in cross-examination, we do not find that she reasonably believed that in making that claim MP had intent to "defraud" anyone at the audience, i.e. to obtain a gain at their expense, or to cause them a loss, or to put them at a risk of loss.

241. With respect to a failure to comply with a legal obligation under the GMC Guidance, for the same reasons as given in relation to PID 7, we find that the Claimant has failed to discharge the burden to show that she had a reasonable belief that there was a failure to comply with a legal obligation. Therefore, we find that PID 64 was not a protected disclosure.

<u>PID 75</u>

242. The Claimant relies on her email to JM of 12 March 2018 in which she reported a serious breach of data protection. She wrote that she had discovered that

GM had a folder labelled "human liver" which contained highly sensitive information related to NHS patients from whom human liver samples had been obtained and kept in TAPb and that folder was kept on a shelf in a shared office which many UCL staff and students had access to.

243. The Claimant claims that she reasonably believed the information tended to show that a criminal office had been committed under s.170 of the Data Protection Act 2018 ("**the DPA**") (unlawful obtaining of personal data without consent) and a failure to comply with legal obligations under the DPA, the General Data Regulations 2016, Code of Conduct E and UCL-RFH BERC Guidelines.

244. The Trust does not admit that it was a protected disclosure but makes no further submissions.

245. We find that it was a protected disclosure. The email contained detailed factual information, the Claimant reported it as a serious data protection breach. We find that she reasonably believed that the information tended to show a failure to comply with a legal obligation under the data protection legislation and possibly a criminal offence. Given the likely number of patients (the data went back to 2014) whose highly sensitive personal data the Claimant thought was at risk, we find that she reasonably believed the disclosure was in the public interest. Therefore, we find PID 75 was a protected disclosure.

PID 18

246. The Claimant relies on a passage in her email of 13 April 2018 to JM and NW in which she wrote: "*Prof Massimo Malago and Mr Giuseppe Kito Fusai are surgeons who operate on NHS patients and provide livers to TAPb and Engitix. They have shares in the Engitix*".

247. She claims that this was a disclosure of information, which she reasonably believed tended to show conflict of interest and therefore a failure to comply with a legal obligation. She relies on the CGM Guidance as the source of the alleged legal obligations.

248. We reject that for the same reasons as PID 7. Therefore, we find that PID 18 was not a protected disclosure.

PID 39

249. This essentially repeats PID 33 and for the same reasons we find that it was a protected disclosure.

PID 43

250. This PID is "an extension" to PID 75. It is in the same email. It discloses the same facts as PID 75 but makes further allegations about GM misusing patients' personal data. For the same reasons as apply to PID 75, we find that it was a protected disclosure.

PID 46

251. The Claimant relies on Section III of the attachment to her 13 April 2018 email to JM and NW, which she claims contained information that the biobank application submitted GM and MP incorrectly stated that organs would be obtained from the Royal Free Hospital only. She claims that she reasonably believed the information tended to show that a criminal fraud was being committed and a failure to comply with a legal obligation under the GMC Guidance.

252. We do not accept that the Claimant had a reasonable belief that the information tended to show that GM and MP were committing a criminal offence of fraud by false representation or failing to disclose information in contravention of s.2 or s.3 of the FA. Although she does say that organs came from other hospitals, there is nothing in that email which could be reasonably said to show that the Claimant believed that by stating that organs would be sourced from the Royal Free Hospital, GM and PM were committing a criminal offence by deliberately and dishonestly making a false representation with intent to make a gain or cause loss to another, or by dishonestly not disclosing information which they were under a legal duty to disclose with the same intent.

253. For the same reason as apply to PID 7, we find that the Claimant has failed to show that she reasonably believed that the information tended to show that there was a failure to comply with a legal obligation by reference to GMC Guidance. Therefore, we find that PID 46 was not a protected disclosure.

PID 65

254. Although it is contained in a different communication (email of 13 April 2018) and in addition to the lecture by MP, also refers to the funding application, in essence it is the same as PID 64 and for the same reasons we reject that it was a protected disclosure.

PID 68

255. This, again, contained further information (now by reference to information on the Engitix website) about regeneration of human trachea. The Claimant relies on the same grounds as for PID 64 and PID 65, and for the same reasons we reject that that communication was a protected disclosure.

PID 76

256. This is a repeat of PID 46, and we reject it for the same reasons.

PID 96

257. The Claimant relies on the wording in her email of 13 April 2018 to the effect that all staff employed by Engitix are Italian and their jobs have never been advertised and that they speak to each other and with MP in Italian, which the Claimant does not understand. She writes that there is "*a huge divide*" between the Italian speaking Engitix group and non-Italian speaking ILDH staff. She claims it is information, which she reasonably believed tended to show racism and breach of the Equality Act 2010. The Trust states that it is not information tending to show a breach of a legal obligation.

258. The Claimant does not allege in that email that she or other non-Italian speakers at ILDH were being discriminated against or harassed. Although she writes about "a huge divide" between Italian speakers and non-Italian speakers at ILDH and that the Italians were being given jobs at Engitix without the jobs being advertised, and also taking into account the title of "Racism" she puts on that paragraph, the content of the paragraph is insufficient for us to come to the conclusion that the Claimant had a reasonable belief that the information she was providing tended to show a failure of a legal obligation under the Equality Act. The Claimant did not provide any further evidence to sustain the argument why she reasonably believed the information tended to show that. Therefore, we find that at the time of disclosing that information she did not hold such a belief.

259. We also find that the Claimant did not hold a reasonable belief that the disclosure was in the public interest. She essentially complains about her personal experience. Although she refers to other non-Italian speakers at ILDH, given that there were about 10 staff at ILDH, many of whom were Italian speakers, we find that the affected group was too small to give the Claimant proper grounds to hold a reasonable belief that the disclosed information was in the public interest. Therefore, we find that PID 96 was not a protected disclosure.

PID 100

260. The Claimant relies on the wording in her email of 13 April 2018 in which she complains that she was asked to move the office and that MP told Ms Chalmers (the lab manager) to give the Claimant the key to her new office adding that the Claimant "*was out of control, out of line and all over the place*". The Claimant claims that this disclosure showed sexism in ILDH and contained information which she reasonably believed tended to show a failure to comply with a legal obligation, namely direct discrimination and harassment contrary to the Equality Act.

261. We reject that. The words "out of control, out of line and all over the place" are gender-neutral and there is nothing else in that email which could reasonably be said to be disclosing any information tending to show a breach of the Equality Act. Therefore, we find that the Claimant did not have a reasonable belief that the information disclosed tended to show a failure to comply with a legal obligation. We also find that the Claimant did not hold a reasonable belief that the information was in the public interest, because the alleged mistreatment (asking to move office and the "out of control…" words) involved only the Claimant and no one else.

262. For the sake of completeness, we find on balance, that MP did not say those words. He was cross-examined on that issue. He denied saying that. We find no reason not to accept his evidence. The Claimant's evidence is hearsay, and she was not able to present any other evidence, which will make the Tribunal to prefer her version of the events.

PIDs 36, 40 and 50

263. The Claimant relies on her email of 8 May 2018 to JM and NW in which she repeats her complaint that Engitix using human tissue for commercial purposes. She

relies on the same wording in her email as information showing that no proper consent had been obtained from donors (PID 36), that no ethical approval had been obtained for commercial use (PID 40), and that human tissue samples were being used by Engitix for commercial purposes (PID 50). She claims that she reasonably believed that the information tended to show a criminal offence under the HTA and the FA and a failure to comply with a legal obligation under the Code of Conduct E. and UCL-RH BERC Guidelines.

264. However, the wording relied upon does not say anything about any kind of failure to comply with a legal obligation. It simply says that in its application form GM is named as Engitix's investor and CEO, that Engitix commercial objective related to decellularized human extra-cellular matrix scaffolds, that GM ticked the box that Engitix was a for-profit organization, that Engitix purchased human organs for its commercial activities, and that the age of donors was specified as 1 to 100 years old. The Claimant says in that email that she could not imagine that parents would consent to their child's organs being used for commercial purposes or that any next-of-kin would do that either. However, there is simply nothing in that email that could be said to be disclosing information of any failure to comply with any kind of legal obligation, let alone a criminal offence. Therefore, we find that the Claimant did not have a reasonable belief that the information in that email tended to show a criminal offence or a failure to comply with a legal obligation. Therefore, we find that PIDs 36, 40 and 50 are not protected disclosures.

PID 69

265. The Claimant relies on her email of 8 May 2018 to JM and NW, to which she attached a document entitled "Regenerative therapies at UCL & NHS" - a brochure produced by UCL and NHS partner trusts. She drew their attention to the following text in the brochure: "*Professor Massimo Pinzani and team from the Division of Medicine have pioneered the development of tissue-engineered liver, and other tissue engineered products in development at UCL include diaphragm, lung, liver, pancreas, small intestine, stomach, bladder, musculoskeletal and craniofacial tissue*". She wrote that the statement was "extremely misleading", as there had been no such work achieved and no such organs had been engineered in any way. She also wrote that it did not make sense to try to regenerate all of those organs all at once, and that she did not believe that GM "*and co*." had any intention of trying to regenerate any human organs and that she had not seen any evidence of that.

266. The Claimant claims that this communication was a protected disclosure because she reasonably believed it tended to show that an offence of fraud by misrepresentation was being committed and also a failure to comply with a legal obligation under the GMC Guidance.

267. For the same reasons as explained in relation to PIDs 64 we reject that. There is even less information in that communication from which it can be found that the Claimant reasonably believed that a criminal offence was being committed. She disagrees with the statement in the brochure and makes her observations on the state of scientific advancements in that area, and also states her belief that "GM and co." were not actually trying to regenerate human organs. This is miles away from being capable of being information tending to show any criminal activity and therefore

we find that the Claimant could not have reasonably believed it did. With respect to a failure to comply with a legal obligation under the GMC Guidance, it is rejected for the same reasons as PID 7.

PID 72

268. The Claimant relies on her email to JM and NM of 22 May 2018, in which she wrote about a company, 3P, which she claimed had been set up by GM, MP and other investors. She wrote that the company was commercialising the nanotechnology developed by one its founders and that it had obtained £200,000 from an Italian charity set up by GM. She wrote that the source of the funding needed to be thoroughly investigated.

269. The Claimant says that this communication was a protected disclosure because she reasonably believed it tended to show that charitable funds might have been obtained under false or fraudulent premise and therefore a fraud by misrepresentation had been committed.

270. The Trust contests that and states that GM was UCL's employee and 3P is a third-party company, external to the Trust and UCL. This, however, is irrelevant for the purposes of assessing whether the communication was a protected disclosure.

271. We find that it was not. Although the Claimant wrote that the source of funding needed to be investigated, there is nothing in that email that could indicate that the Claimant held a reasonable belief that the funds had been obtained by fraud. She simply states that while before she was told by Dr Ndieyirah that the money would come from the charity, later he told her that the money would come from an investor in Italy, a company called BIOVIIIX, which was a shareholder in 3P. Taking it at its highest, the Claimant simply states that the source of the funds was unclear to her. This, however, falls far short of any suggestion that the funds had been obtained in a fraudulent way.

272. Therefore, we find that the Claimant did not have a reasonable belief that a criminal offence had been, was being or was likely to be committed.

PID 3

273. The Claimant relies on her email of 31 May 2018 to JM and NW, in which she wrote about a talk given at the Research and Development Open Day at the Royal Free Hospital. At that talk, AG and Dr Emma Lawrence, Engagement Director at UCL, talked about problems researchers face in accessing human tissue samples and how TAPb was facilitating access to samples. The Claimant asked a question about what percentage of donated organs were ended up being used by NHS. Dr Lawrence said that she did not have such information. The Claimant then asked whether they had information on recovery costs for procuring tissue samples. The answer was no. The Claimant then explained the difficulties she had with accessing sample at TAPb, and AG said that it was not the right forum to discuss these issues.

274. The Claimant claims that this email contained information, which in her reasonable belief tended to show that a criminal offence of using/storing donated materials for a non-qualified purpose, namely commercial profit contrary to s.8 HTA.

275. The Trust does not admit that being a protected disclosure and states that at best the communication was raising ethical questions.

276. The factual information disclosed by the Claimant is about her interactions with AG and Dr Lawrence at the open day event. All it says is that Dr Lawrence did not have statistical information on where donated organs end up and on recovery costs for obtaining organs, and AG did not wish to discuss the Claimant's difficulties in accessing tissue samples in front of the audience. She then writes that she is "*disgusted with the way TAPB are trying to dupe the public into thinking they are doing highly moral work when in reality they have been facilitating access of human tissue by rogue companies such as Engitix (and God knows who else) whose only interest is to make hefty profits from commercializing the sale and use of human body parts*".

277. This communication by itself would not be sufficient to find that it was a protected disclosure because the information there is insufficient to conclude that in the Claimant's reasonable belief a criminal offence has been, is being or is likely to be committed. However, when read in conjunction with the Claimant's earlier disclosures, in particular PIDs 1, 33, 39 and 49, it discloses further information tending to show the same alleged offence - i.e. the use of human tissues for non-qualified purposes of commercial use, as opposed to non-for-profit research. Therefore, we find that it was a protected disclosure.

PID 11

278. The Claimant relies on the same email of 31 May 2018, in which she also wrote that it was "cringeworthy" that Prof Fuller, who was one of the founders of TAPb, was a shareholder of Engitix. She said that he was featured in a video shown to the audience at the event, which was designed to encourage organ donation.

279. The Claimant claims that in her reasonable belief the information tended to show that there was a conflict of interest and therefore a failure to comply with a legal obligation under GMC Guidance.

280. For the reasons explained in relation PID 7, we reject that. The Claimant has failed to adduce evidence as to the legal status of the GMC Guidance and therefore we find it was not a protected disclosure.

PID 59

281. The Claimant relies on the same email of 31 May 2018, in which she also wrote about her encounter with a PhD student, who she suspected was unwittingly exploited by GM and MP for the benefit of Engitix and was not properly supervised. She wrote that she believed that the students were not being given correct guidance and training on ethical use of human tissue, HTA regulations, data protection and other governance and therefore "*many of these regulations are being violated*".

282. She claims that in her reasonable belief the information tended to show criminal offences under the HTA and the FA, and a failure to comply with a legal obligation under Code of Conduct – E, the DPA and GDPR.

283. We find it was a protected disclosure. It contains factual information about the Claimant's conversation with the student from which she discovered that the student was working on a project for Engitix. She makes assertions that the work was not properly supervised, and applicable regulations violated. Although those assertions are not supported by concrete evidence in that email, when read together with her earlier disclosures, in particular 1, 33, 39, 43, 49 and 75, we find that the Claimant did believe that the information provided tended to show likely violations of the relevant laws and regulations and in the circumstances that belief was reasonable. We also find that she reasonably believed that the information disclosed was the public interest. Therefore, it was a protected disclosure.

PID 26/27, PID 66/67, PIDs 70/71

284. The Claimant relies on her 5 February 2020 grievance (which was shared with UCL on 15 April 2020 – hence two separate PIDs for the same disclosure), in which she again recounted the entire story and repeated her complaints and allegations. Essentially, PID 26/27 repeats PID 25, PID 66/67 repeats PID 64, and PID 70/71 repeats PID 69.

285. PID 70/71 contain some further information - the Claimant claims that she was told by Ms Morrone, who had worked with MP in Italy, that the Italians in ILDH were "*by far the most corrupt bunch she had ever come across*" and that she did not believe that Engitix has successfully decellularized that human liver and that was a false marketing premise on which Engitix was built.

286. For the same reasons as apply to PID 25, we find that PID 26/27 was a protected disclosure, but that PID 66/67 was not a not a protected disclosure. We find that PID 70/71 was not a protected disclosure for the same reasons as apply to PID 69. The additional information concerning the Claimant's conversation with Ms Morrone is insufficient to change our conclusion.

PID 81/82

287. The Claimant relies on paragraphs 282-305 in her 5 February 2020 grievance in which she complains that her complaints were not properly investigated, and the Screening Panel decision was a sham. The Claimant explained that she disagreed with the Panel's conclusions because these were based on untrue submissions by the Individual Respondents, and because her complaints had been rejected without any proper investigation. She also complained that the Trust had failed to inform her of the outcome of the investigation despite knowing it from late 2018 or early 2019. She said it was a cover up.

288. The Claimant claims that these paragraphs in her grievance contained information, which in her reasonable belief tended to should concealment of criminal offences and failures to comply with legal obligations contained in her earlier disclosures.

289. The Trust does not admit it was a protected disclosure because it says it was "not disclosure of information tending to show…"

290. We find that it was a protected disclosure. The Claimant gives detailed factual information about what happened with her complaints and why she believes these have not been properly dealt with. She explains why she disagrees with the Screening Panel conclusions and why such conclusions could not have been reasonably made on the evidence presented if a due investigation process had been followed. She says that she believes it was a cover up. Her complaints that had been passed to the Screening Panel, as we found, contained protected disclosures falling within s.43B(1)(a) and (b). Therefore, we find that the Claimant did disclose information, which she believed tended to show that the matters she had complained about in protected disclosures had been deliberately concealed. In the circumstances we find that her belief was reasonable and that she reasonably believed that the disclosure of that information was in the public interest. Therefore, we find that PID81/82 was a protected disclosure.

Overall conclusion on PIDs

291. We therefore find that the Claimant has made protected disclosures on 22 November 2017 (PIDs 1, 25 and 29), on 12 February 2018 (PID 49), on 12 March 2018 (PID 75), on 13 April 2018 (PIDs 33, 39 and 43), on 31 May 2018 (PIDs 3 and 59) and on 5 February 2020 (PIDs 26/27 and 81/82).

292. There is no dispute that all relevant PIDs were made to the Trust, the Claimant's employer, and therefore the requirement of s.43C(1)(a) was met (Issue 11).

Detriment and Causation – Issues 12 and 13

293. We shall now move on to deal with the alleged detriments and causation issues.

294. As the Tribunal does not have jurisdiction to consider the Claimant's claims against UCL, we cannot consider issues 14 and 15.

The Law

295. Section 47B of the ERA states,

"*(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.*

(1A) A worker ("W") has the right not to be subjected to any detriment by any act, or

any deliberate failure to act, done—
(a) by another worker of W's employer in the course of that other worker's employment, or
(b) by an agent of W's employer with the employer's authority, on the ground that W has made a protected disclosure.

(1B) Where a worker is subjected to detriment by anything done as mentioned in subsection (1A), that thing is treated as also done by the worker's employer.

(1C) For the purposes of subsection (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.

….]

Meaning of "detriment"

296. In **Jesudason v Alder Hay Children's NHS Foundation Trust** [2020] EWCA Civ 73 the Court of Appeal said at [27]-[28] (***emphasis added***):

"*27 In order to bring a claim under s 47B, the worker must have suffered a detriment. It is now well established that the concept of detriment is very broad and must be judged from the view point of the worker.* ***There is a detriment if a reasonable employee might consider the relevant treatment to constitute a detriment. The concept is well established in discrimination law and it has the same meaning in whistle-blowing cases****. In Derbyshire v St Helens MBC [2007] UKHL 16, [2007] ICR 841, [2007] IRLR 540, paras [67]-[68], Lord Neuberger described the position thus:*

> *'[67] … In that connection, Brightman LJ said in Ministry of Defence v Jeremiah [1980] ICR 13 at 31A that "a detriment exists if a reasonable worker would or might take the view that the [treatment] was in all the circumstances to his detriment".*
>
> *[68] That observation was cited with apparent approval by Lord Hoffmann in Khan [2001] ICR 1065, para 53. More recently it has been cited with approved in your Lordships' House in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337.* ***At para 35, my noble and learned friend, Lord Hope of Craighead, after referring to the observation and describing the test as being one of "materiality", also said that an "unjustified sense of grievance cannot amount to 'detriment'".*** *In the same case, at para 105, Lord Scott of Foscote, after quoting Brightman LJ's observation, added: "If the victim's opinion that the treatment was to his or her detriment is a reasonable one to hold, that ought, in my opinion, to suffice".'*

28 ***Some workers may not consider that particular treatment amounts to a detriment; they may be unconcerned about it and not consider themselves to be prejudiced or disadvantaged in any way. But if a reasonable worker might do so, and the Claimant genuinely does so, that is enough to amount to a detriment. The test is not, therefore, wholly subjective****."*

Causation: meaning of "on the ground that"

297. In **Fecitt and ors v NHS Manchester (Public Concern at Work intervening)** 2012 ICR 372, CA, Elias J said at [45],

"45 In my judgment, the better view is that section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower."

298. In **Panayiotou v Chief Constable of Hampshire Police** [2014] IRLR 500 the Employment Appeal Tribunal said at [49], [52], and [54] (***emphasis added***),

"49 There is, in principle, a distinction between the disclosure of information and the manner or way in which the information is disclosed. An example would be the disclosing of information by using racist or otherwise abusive language. Depending on the circumstances, it may be permissible to distinguish between the disclosure of the information and the manner or way in which it was disclosed. An employer may be able to say that the fact that the employee disclosed particular information played no part in a decision to subject the employee to the detriment but the offensive or abusive way in which the employee conveyed the information was considered to be unacceptable. ***Similarly, it is also possible, depending on the circumstances for a distinction to be drawn between the disclosure of the information and the steps taken by the employee in relation to the information disclosed****."* […]

"52 Those authorities demonstrate that, ***in certain circumstances, it will be permissible to separate out factors or consequences following from the making of a protected disclosure from the making of the protected disclosure itself****. The employment tribunal will, however, need to ensure that the factors relied upon are genuinely separable from the fact of making the protected disclosure and are in fact the reasons why the employer acted as it did." […]*

"54 The Employment Appeal Tribunal in Woodhouse suggested that, in such cases, it would only be exceptionally that the detriment or dismissal would not be found to be done by reason of the protected act. In my judgment, there is no additional requirement that the case be exceptional. ***In the context of protected disclosures, the question is whether the factors relied upon by the employer can properly be treated as separable from the making of protected disclosures and if so, whether those factors were, in fact, the reasons why the employer acted as he did. In considering that question a tribunal will bear in mind the importance of ensuring that the factors relied upon are genuinely separable*** *and the observations in paragraph 22 of the decision in Martin v Devonshires Solicitors [2011] ICR 352 that:*

> *'Of course such a line of argument is capable of abuse. Employees who bring complaints often do in ways that are, viewed objectively, unreasonable. It would certainly be contrary to the policy of the anti-victimisation provisions if employers were able to take steps against employees simply because in making a complaint they had, say, used intemperate language or made inaccurate statements. An employer who purposes to object to "ordinary" unreasonable behaviour as that kind*

should be treated as objecting to the complaint itself, and we would expect tribunals to be slow to recognise a distinction between the complaint and the way it is made save in clear cases. But the fact that the distinction may be illegitimately made in some cases does not mean that it is wrong in principle.'"

299. In the context of whistle-blowing detriment claims, in **Malik v Cenkos Securities Plc** UKEAT/0100/17/RN, EAT, the Employment Appeal Tribunal held at [87], [89], and [93] (***emphasis added***)

*"87. **It can be seen therefore that it is considered quite unjust for the decision-maker to be liable in circumstances where he personally was innocent of any discriminatory motivation. That is why the composite approach to liability, whereby the motivation of another is brought together with the act of the decision-maker, was considered by the Court of Appeal to be unacceptable in principle**. **Instead, where a Claimant seeks to rely upon the motivation of a person other than the decision-maker, the Claimant must rely on the "separate acts" approach, which involves treating the actions of the person motivated by a prohibited characteristic as a separate act of discrimination**."*

*89 [..] Under section 47B, another worker can be liable for subjecting a Claimant to a detriment on the ground that the Claimant has made a protected disclosure. By virtue of section 47B(1B) the acts of that worker are treated as also done by the employer, irrespective of whether it was done with the employer's knowledge or approval. However, the employer can rely upon the reasonable steps defence to avoid liability. It was the fact that the decision-maker could be personally liable (as well as the employer being vicariously so) that led to the Court of Appeal in CLFIS concluding that it would be unjust to attribute the discriminatory motivation of another to that decision-maker. **I agree with Mr Forshaw that the similar scheme of vicarious liability under section 47B means that a similar approach should be taken in cases of detriment on the grounds of protected disclosure; that is to say the knowledge and motivation of another should not be attributed to the innocent decision-maker**."*
[..]

"93. The case of Royal Mail Group v Jhuti does not assist the Claimant for the simple reason that that was a dismissal case and not one relying upon detriment. One can attribute the motivation of someone other than the dismissing officer to the employer in a dismissal case in some circumstances. That is because the liability for the dismissal lies only with the employer, and the injustice which concerned the Court of Appeal in CLFIS does not arise."

Burden of Proof

300. S48(2) ERA sates: *"it is for the employer to show the ground on which any act, or deliberate failure to act, was done."*

301. In **Serco Ltd v Dahou** [2017] IRLR 81 (a trade union detriment case) the Court of Appeal held at [40],

"40 As regards dismissal cases, this court has held (Kuzel, paragraph 59) that an employer's failure to show what the reason for the dismissal was does not entail the conclusion that the reason was as asserted by the employee. As a proposition of logic, this applies no less to detriment cases."

302. In **International Petroleum Limited v Osipov** UKEAT/0058/17, EAT, Simler J in the Employment Appeal Tribunal held at [84] and [115],

"*84. Under s.48(2) ERA 1996 where a claim under s.47B is made, "it is for the employer to show the ground on which the act or deliberate failure to act was done". In the absence of a satisfactory explanation from the employer which discharges that burden, tribunals may, but are not required to, draw an adverse inference: see by analogy Kuzel v. Roche Products Ltd [2008] IRLR 530 at paragraph 59 dealing with a claim under s.103A ERA 1996 relating to dismissal for making a protected disclosure."*

"115. Mr Forshaw submits and I agree that the proper approach to inference drawing and the burden of proof in a s.47B ERA 1996 case can be summarised as follows:

(a) the burden of proof lies on a Claimant to show that a ground or reason (that is more than trivial) for detrimental treatment to which he or she is subjected is a protected disclosure he or she made.
(b) By virtue of s.48(2) ERA 1996, the employer (or other respondent) must be prepared to show why the detrimental treatment was done. If they do not do so inferences may be drawn against them: see London Borough of Harrow v. Knight at paragraph 20.
(c) However, as with inferences drawn in any discrimination case, inferences drawn by tribunals in protected disclosure cases must be justified by the facts as found."

Submissions and Analysis

303. Given our findings of fact (see paragraph 78) that ML did not know that the Claimant was the complainant in the whistleblowing investigation, the complaint of the alleged detriment 12.1 - *On an unknown date prior to the 4 October 2019, breaching the Claimant's confidentiality by revealing her to be the complainant in the whistleblowing investigation to Prof Mark Lowdell, which the Claimant alleges was reported to the Claimant by Ms Sutopa Sen on 4 October 2019* - fails on the facts.

304. For the same reasons the complaint of the alleged detriment 12.5 - "*On 10 September 2019, Prof Lowdell rejecting the Claimant for the position he had available*" – fails. ML could not have rejected the Claimant on the ground that she had made a protected disclosure because he did not know she had made any protected disclosures. We also accept ML's evidence that he did not have an available position for the Claimant at the time, and that the reason he told SS that Claimant was not suitable for a possible position he might have in the future was solely based on his assessment of the Claimant's skills.

305. On the first day of the hearing the Claimant withdrew her complaint of the alleged detriment 12.2 - *Causing or allowing the Claimant's honorary appointment to lapse on 30 April 2018 and/or failing to take steps to renew the same thereafter*. Therefore, it is dismissed upon withdrawal.

306. As it is decided by the Tribunal (see paragraphs 183- 189) that the complaint for the alleged detriment 12.8 - *Failing to deal with the Claimant's complaints dated 22 November 2018 (and subsequent series of complaints detailed in the ET1 which as a whole formed the whistleblowing complaints referred by the First respondent to the Second Respondent for investigation), 23 August 2018, 26 July 2019, 7 August 2019, 29 October 2019 properly or at all.-* is out of time and the Tribunal does not have jurisdiction to consider it, it cannot be considered on the merits.

307. With the exception of the alleged detriments 12.11 and 12.12, the Trust did not argue that any of the alleged detriments were not detriments within the meaning of s47B ERA. For the sake of completeness, we record our findings that, with exception to the alleged detriment 12.11, they are detriments within the meaning of s47B ERA. We will deal with the alleged detriment 12.12 separately.

Alleged detriment 12.3 - In July 2019, resuming the paused redundancy consultation.

308. Mr Quickfall was very brief in his closing submissions on this point. He stated that the "*consultation resumed to solve the problem of [the Claimant] as a [whistleblower] within [UCL]*".

309. Mr Murphy submitted that there is no evidence that it was resumed on the ground that the Claimant had made the alleged protected disclosures. There is no complaint about the redundancy process being put on hold in March 2018. That was done on account of the Claimant's wellbeing whilst the Speaking-up process was ongoing. She also points out that Patricia Blake (another of the Trust's employees at ILDH) was in the pool until 17 July 2019.

310. Based on our findings of fact (see paragraphs 69-76) we find that the Claimant's protected disclosures were the main factor in the Trust's decision to resume the redundancy process. The email from DT speaks volumes. The Trust decided not to call DT to give evidence to the Tribunal. NW confirmed in her evidence that DT was still an employee of the Trust. Therefore, the Tribunal draws an inference that DT's evidence to the Tribunal would have been unhelpful to the Trust's case, and DT would not have been able to give an alternative reasonable explanation to the apparent meaning of his email. On a fair reading, DT states that the problem of the Claimant being "*a thorn in the side*" will be solved through redundancy. The redundancy case will almost certainly be approved (given the problems the Claimant had created), and it is just a matter of time to let the process run its course while tolerating the Claimant "*in the knowledge she will be gone soon*".

311. Further, LG in his evidence said that the decision to resume the process was taken by "the triumvirate" consisting of DT, the matron[1] and him, and that he relied on DT in DT's capacity as the "clinical lead". LG was an operations lead and had limited insight into what the Claimant did and the value of her work for the Trust. He was made her line manager on a temporary basis in October 2018 to "relieve" the tense situation that had developed with MP's learning that the Claimant had made complaints about him. At the time, LG had no knowledge of the Claimant's role. He admits that he could not score her performance. LG had just one meeting with the Claimant on 29 October 2018 and after that he had "*limited contact with the Claimant and she did not come to me with any specific queries, issues or complaints*" (LG's witness statement para 22).

312. Looking at the subsequent steps in the process: - SS telling the Claimant that it would be better for her wellbeing to leave ILDH, failure to deal with the Claimant's February 2020 grievance, and the haste with which the Claimant was eventually dismissed after UCL had sent its letter of 10 June 2020 (and that is despite the 3 months hold on redundancies), we are drawn to the conclusion that the real reason why the Trust had decided to resume the process was to eventually get rid of the Claimant because she had made herself a *persona non-grata* at ILDH and created unwelcome problems for UCL and the Trust by blowing the whistle on what the Claimant considered to be illegal practices at ILDH.

313. The contemporary documentary evidence (see pp 1877-1879) clearly shows that RK (who was also not called as a witness, despite him playing a key role in the investigation of the Claimant's complaints) was very keen to see the Claimant leave ILDH as soon as possible. DT was not only in agreement with that, but, as early as 24 July 2019, outlining the process which would inevitably lead to the Claimant's dismissal.

314. That is in contrast with the position before the Claimant made her protected disclosures, when DT wrote to MP that it was unlikely that anyone (and that included the Claimant) would be made redundant (see pp 310-311).

315. The fact that Patricia Blake was first included in the pool, but then removed by DT under the pretext that she was included in MP's employment package, with rather dubious evidence in support of that (see pp 1776 and 238), gives us further grounds to infer that the main purpose of the resumed redundancy exercise was to remove the Claimant's role from ILDH as soon as possible, rather than to achieve financial savings.

316. While Ms Chalmers was made redundant in April 2020 as part of the same redundancy exercise, she re-joined ILDH a year later, when UCL was able to secure alternative funding for her role.

317. Furthermore, the fact that the Claimant was kept in the dark about the outcome of UCL's investigations into her complaints, and that was on specific instructions of RK (who was meant to be acting as a complainant on behalf of the

[1] Although the matron was mentioned by LG as a person involved in the process, there was no evidence, whether oral or documentary, as to who that person was and their role in the process. The Trust did not argue that the matron played any significant role in the redundancy process or in the decisions taken.

Claimant, and therefore in her interests), is another important piece in the jigsaw. The picture that emerges shows that the Claimant's protected disclosures ruffled a few important feathers at UCL, nobody at UCL wanted to deal with the Claimant and wanted her out of sight as soon as possible. RK told NW and JM at a meeting on 4 July 2019 that the Claimant's request to have better access to liver tissue would not be possible to satisfy (see NW WS at para 37).

318. Maintaining a good relationship with UCL was important for the Trust. The Tribunal heard evidence that RK and DT worked closely together. SS gave evidence that RK was DT's opposite number at UCL, but in a "*slightly senior*" position. LG admitted that there was some arrangement between UCL and the Trust on regarding the exchange of honorary appointments, though he did not have the details.

319. The Trust was not going to stick up for the Claimant. Instead, it wanted to solve the problem by finding a way of getting the Claimant out of ILHD as soon as possible. The paused redundancy process was the most convenient vehicle to achieve that.

320. For these reasons, we find that the Claimant's protected disclosures had material influence on the Trust's decision to resume the redundancy consultation.

321. It follows that we find that the Trust subjected the Claimant to a detriment by resuming the redundancy consultation on the ground that the Claimant had made the protected disclosures, contrary to s.47B ERA.

Alleged detriment 12.4 - On 22 August 2019, Ms Sen informing the Claimant that it would be better for her wellbeing if she left ILDH.

322. Given our findings of fact at paragraphs 75 and 76, we find that SS telling the Claimant that it would be better for her wellbeing if she left ILDH was materially influenced by NW's instructions NW to "*push this [removal of the Claimant from ILDH] along*" (p.1877).

323. As we have found that the desire to remove the Claimant from ILDH was on the ground that the Claimant had made protected disclosures, it follows that SS' attempts to persuade the Claimant to leave were equally "tainted by" the underlying prescribed reason. By that stage, SS was aware of the Claimant's protected disclosures and RK, DT and NW's desire to see the Claimant from ILDH.

324. We reject the Trust's submission that because SS had arranged a meeting with ML for the Claimant it would be inconsistent to find that when SS told the Claimant that it would be better for her wellbeing if she left ILDH she motivated by the Claimant's protected disclosures. On the contrary, if ML had a role to offer to the Claimant that would have achieved the desired result – the Claimant leaving ILDH - and it was that result which SS was asked to "push along".

325. We accept, however, that in saying that SS was also expressing her concern for the Claimant's wellbeing, having seen her in a distressed state. We also accept that SS genuinely thought that because of the way the Claimant felt about her colleagues in ILDH it would be very difficult for her to continue to work in the

department. This, however, does not mean that the Claimant's protected disclosures, which materially influenced the decision to find a way to remove the Claimant from ILDH (of which SS was aware, having read the email chain on pp.1877-1879), ceased to be "the ground" for the treatment in question.

326. This situation is distinguishable from the so-called "composite approach" in **Malik** (see paragraph 299 above) because we find that SS was not totally "innocent" of the prescribed motivation, having acquired the knowledge of the reason why RK, DT and NW wanted to have the Claimant removed from ILDH. She knew what motivated the request to move the Claimant away from ILDH and went along with that.

327. Therefore, we find that the Trust subjected the Claimant to a detriment by SS informing the Claimant that it would be better for her wellbeing if she left ILDH on the ground that the Claimant had made the protected disclosures, contrary to s.47B ERA.

Alleged detriments 12.6 and 12.7 –

- *Until 10 December 2019, leading the Claimant to believe that the Second Respondent's whistleblowing investigation was ongoing when in fact the screening panel had reported in November 2018, and*
- *Failing to inform the Claimant of the outcome of the Second Respondent's screening panel until 10 December 2019*

328. We find that these are essentially the same alleged detriment expressed in two different ways. The Claimant complains that she was led to believe that the investigation was still ongoing because she was not told otherwise, when the Trust knew it had finished in November 2018.

329. Giving our findings of fact (see paragraphs 52- 55) we conclude that the Trust did subject the Claimant to those detriments on the ground that she had made the protected disclosures, contrary to s.47B ERA.

Alleged detriment 12.9 - Failing to deal with the Claimant's grievance dated 5 February 2020, properly or at all

330. Giving our findings of fact (see paragraph 106) we conclude that the Trust did subject the Claimant to that detriment on the ground that she had made the protected disclosures, contrary to s.47B ERA.

331. We reject Ms Murphy's submission in rebuttal of any adverse inference. The fact that JMths was a neutral person does not answer his unexplained and inexplicable failure to deal with the Claimant's grievance. The fact that the Trust paused the redundancy process in March 2018 is irrelevant. At that time the "stir" the Claimant's protected disclosures would cause at UCL were not known to the Trust. Equally, SS' efforts to find the Claimant an alternative role do not explain why the Claimant's grievance was left unaddressed by the Trust in wanton disregard of its own Grievance Policy and Procedure (pp1651-1669). Finally, contrary to Ms

Murphy's submission the Claimant did chase the status of her grievance on 25 March 2020.

Alleged detriments 12.10.1 and 12.10.2

12.10 On unknown date(s) up to September 2020:

12.10.1 Until 4 September 2020, failing to search for and offer the Claimant suitable alternative employment and/or instruct the Second Respondent to do the same, properly or at all.

12.10.2 Failing to search for external alternative sources of funding for the Claimant's role.

332. In his closing submissions Mr Quickfall accepted that, given the Claimant's role, it was unlikely that there would be any suitable vacancies at the Trust for her. His criticism is that the Trust only searched for suitable vacancies within the Trust, but not outside, and in particular that the Trust did not instruct UCL to look for vacancies for the Claimant within UCL.

333. Ms Murphy submits that the Claimant's role was fairly unique within the Trust. Almost all research laboratories had been TUPE'd out of the Trust over the preceding years, leaving only two small laboratories. These were run by ML, with whom and Claimant met, and had no immediate vacancies. In any event, the Claimant did not have the required skillset for ML's projects. The Claimant was offered non-scientific research roles, which she did not find suitable. She was offered shadowing, which she declined.

334. We find that the Trust did not fail to search and offer suitable alternative employment to the Claimant. We accept SS' evidence on the efforts she put in to try and find an alternative role for the Claimant. In particular, we accept that she tried to work with the Claimant to identify potential roles that the Claimant might be interested in outside the Trust and asked the Claimant to tell her if she saw any such roles and promised to try to get the Claimant a "priority interview". SS also tried to explore non-lab roles with the Claimant and suggested shadowing as a way of exploring such roles, to see if they can be used as "a bridge" while continuing to search for something more suitable. SS arranged a meeting with ML to explore the only possible opportunity for a research scientist role within the Trust. SS had multiple meetings with the Claimant to discuss available options. She asked the Claimant for an updated CV, which she then sent to RK and David Grantham, Chief People Officer for the Trust, in order that he could identify suitable laboratory-based vacancies in other North and Central London NHS Trusts and Health Service Laboratories. Unfortunately, there were none available at the time.

335. SS in her witness statement criticised the Claimant for her failure to engage in the process. We find that the Claimant did take reasonable steps, albeit largely acting on her own and not via SS, in looking for possible alternative roles.

336. The Trust was not in a position to "instruct" UCL to search for alternative roles for the Claimant. However, SS did meet RK on 15 November 2019 to discuss the possibility of the Claimant's redeployment within UCL and gave him the Claimant's CV.

337. Therefore, we find that the Claimant was not subjected to the alleged detriment 12.10.1, and that complaint fails on the facts.

338. With respect to the alleged failure to search for alternative funding for the Claimant's role, Mr Quickfall submitted that "*no sources of funding were considered by LG and SS*". That is not correct. We accept LG's evidence that the possibility of alternative funding was discussed with UCL and found not to be viable. This is also supported by the contemporaneous documentary evidence (see p.1263). Further, we accept MP's evidence that, given the state of the Claimant's research, it would have been very difficult to find external funding due to a very competitive field for scientific grants.

339. Therefore, we find that the Trust did consider the possibility of UCL funding the Claimant's role and discussed that option with UCL. It was under no obligation to search for "external" funding in a broader sense. Accordingly, we find that it did not subject the Claimant to the alleged detriment 12.10.2, and that complaint fails on the facts.

Alleged detriments 12.11 - On 4 September 2020, dismissing the Claimant.

340. Section 47B(2) states that section 47B(1) "*does not apply where—*
(a) the worker is an employee, and
(b) the detriment in question amounts to dismissal (within the meaning of [Part X])"

341. Therefore, "detriment" 12.11 cannot be claimed as a section 47B(1) detriment in addition to the Claimant's claim for automatically unfair dismissal under s.103A ERA.

Alleged detriment 12.12 - On 25 September 2020, dismissing the Claimant's appeal.

342. The first question we need to answer is whether this alleged detriment can be properly considered as a stand-alone detriment under s.47B or, because it is "intrinsic" to the dismissal, it can only be considered as part of the complaint for unfair dismissal under s.103A or 98 ERA, and not under s.47B ERA.

343. Neither party was able to refer the Tribunal to a clear authority on that issue. Ms Murphy said that in a different case, in which she appeared before the EAT and argued the point that it could be considered as a stand-alone detriment, the EAT found against her. However, she was not at liberty to provide further details. While somewhat surprising, as generally the EAT decisions are a matter of public record, the Tribunal respected Ms Murphy's position and did not press the issue further. That meant that the Tribunal needed to form a view on the question without being assisted by any higher authority.

344. It is correct that the law of unfair dismissal treats appeal against dismissal as part of assessing the overall fairness of the process (see **Mirab v Mentor Graphics (UK) Ltd** EAT 0172/17 at [54]), and the case law (see **Salmon v Castlebeck Care**

(Teesdale) Ltd (in administration) and anor 2015 ICR 735, EAT, approved by the Court of Appeal in **Patel v Folkestone Nursing Home Ltd** 2019 ICR 273, CA. P) states that if appeal is successful there is no dismissal in law.

345. However, such a "vanishing dismissal" does not, in our view, mean that the appeal process is immune from a separate challenge and must be regarded as part and parcel of the antecedent dismissal. The Court of Appeal in the **Patel** at [48] recognised that "*a serious breach of contract by an employer in its handling of a contractual appeal may justify the employee in treating himself as having been constructively dismissed*".

346. It is not impossible to imagine a scenario where an employee is dismissed for a potentially fair reason, which reason is totally unconnected to their protected disclosure made some months or possibly years earlier, but the employer fails to follow a fair process. The employee appeals, and the appeal comes before a manager who harbours a grudge against the employee because of that historic protected disclosure. Although the manager finds that a proper process was not followed and the dismissal could not stand, he still dismisses the appeal, with the employee's earlier protected disclosure having material influence on the manager's decision. In this scenario, if it is found or accepted by the employee that the reason for the dismissal was a potentially fair reason and not related to his historic protected disclosure, it is hard to see why with such finding or admission the employee should lose their right to complain that they were subjected to a whistleblowing detriment by the appeal manager dismissing their appeal. That would leave the employee with no redress for the manager's wrongdoing.

347. Therefore, we consider that dismissing an employee's appeal against dismissal is capable of being "a detriment" within the meaning of s.47B ERA.

348. Moving to the substance of the allegation, we find that the Trust has failed to discharge the burden of proof under s.48(2). Ms Rubin's evidence was highly unsatisfactory. While she maintained that the Claimant's whistleblowing had nothing to do with the panel's decision to refuse the Claimant's appeal, she could not properly explain on what basis the panel made its decision (see the Tribunal's findings of fact at paragraphs 113-116 above).

349. Furthermore, Ms Rubin accepted in her evidence that the panel did not consider any alternatives to the dismissal. She was not even certain whether the appeal had the power to reinstate the Claimant. She could not say what the Claimant could have said or done at the appeal meeting to avoid the dismissal. She later said that the Claimant could have presented new evidence.

350. However, the Claimant did present evidence (not least by telling the panel why she considered her complaints had not been properly dealt with), but the panel chose not to investigate them and instead roundly dismissed them on the basis of the panel being *"confident that UCL have fulfilled its legal obligations to ensure speaking up concerns and grievances are appropriately investigated in accordance with their own regulatory requirements and internal procedures".* Ms Rubin was unable to explain on what basis the panel came to that decision.

351. The appeal panel clearly knew that the Claimant had made protected disclosures, as this issue was at the core of her appeal. They also knew that the main ground of the Claimant's appeal was that she had been dismissed in retaliation for blowing the whistle.

352. We find that the Trust has failed to provide cogent and satisfactory evidence as to why the Claimant's appeal was dismissed. We accept that just because the Trust has failed to adduce satisfactory evidence to explain the ground for dismissing the appeal, it does not automatically follow that we must find that the Claimant's appeal was dismissed on the ground advanced by the Claimant – (see **Secro** and **Osipov** at paragraphs 301- 302 above). However, in light of our findings that the resumption of the redundancy process and the failure to deal with the Claimant's grievance were acts and omissions of the Trust on the ground of the Claimant's protected disclosure, we make an inference that the decision to dismiss the Claimant's appeal was also materially influenced by the Claimant making protected disclosures.

353. It was a further and final step in the process of getting rid of the Claimant, a process "tainted" by the prescribed ground, namely the Claimant's blowing the whistle on various practices at ILDH.

354. Therefore, we find that the Trust subjected the Claimant to a detriment by dismissing her appeal on the ground that the Claimant had made the protected disclosures, contrary to s.47B ERA.

Automatic Unfair Dismissal – Issue 29

355. We shall now deal with the question: "*Was the First Respondent's reason or principal reason for dismissing the Claimant that she made the alleged protected disclosures?*"

The Law

356. Section 103A ERA states: "*An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure*".

357. It is for the employer to show the reason (or if more than one, the principal reason) for the dismissal (see section 98(1) ERA). For a dismissal to be automatically unfair under section 103A, the protected disclosure must be the reason or, if more than one, the principal reason for the dismissal.

358. A reason for dismissal is "*is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee*." (**Abernethy v Mott, Hay & Anderson** [1974] ICR 323).

359. This requires the tribunal to consider the mental process of the person, who made the decision to dismiss and to identify the relevant decision maker was. The

tribunal must consider "*only the mental processes of the person or persons who was or were authorised to, and did, take the decision to dismiss*" (**Orr v Milton Keynes Council 2011 ICR 704**, CA).

360. However, in **Royal Mail Group Ltd v Jhuti** [2019] UKSC 55 the Supreme Court held at [60] and [62] that,
"*60 […] If a person in the hierarchy of responsibility above the employee (here Mr Widmer as Ms Jhuti's line manager) determines that, for reason A (here the making of protected disclosures), the employee should be dismissed but that reason A should be hidden behind an invented reason B which the decision-maker adopts (here inadequate performance), it is the court's duty to penetrate through the invention rather than to allow it also to infect its own determination. If limited to a person placed by the employer in the hierarchy of responsibility above the employee, there is no conceptual difficulty about attributing to the employer that person's state of mind rather than that of the deceived decision-maker." […]*

"62 […] if a person in the hierarchy of responsibility above the employee determines that she (or he) should be dismissed for a reason but hides it behind an invented reason which the decision-maker adopts, the reason for the dismissal is the hidden reason rather than the invented reason."

361. If the decision is made for more than one reason the tribunal must identify the principal reason "*As it is a matter of fact, the identification of the reason or principal reason turns on direct evidence and permissible inferences from it*" (**Kuzel v Roche Products Ltd 2008** ICR 799, CA).

Submissions and Analysis

362. Mr Quickfall submits that the real reason for the Claimant's dismissal was because she had made protected disclosures. Once it became known to her colleagues, she was treated as "*a pariah*", her role at ILDH became untenable and the redundancy "*was probable and principally because [the Claimant] was a [whistleblower]"*. He urged the Tribunal to "*blow away the smoke to get to the truth*" because a respondent's witnesses rarely admit to unlawful behaviour and claimants rarely have direct evidence. He relies heavily on DT's email (pp 1877-1878). He also criticises the appeal process, the Trust's failure to deal with the Claimant's grievance, and the Trust's failure to secure funding for the Claimant's role.

363. With respect, none of this tells the Tribunal on what basis it ought to find that the dismissing officer's (LG) reason for dismissing the Claimant was her protected disclosure.

364. Ms Murphy submits that the Tribunal "*has to constrain its analysis to considering the motivation of the dismissing officer in assessing the reason for dismissal*", that is of LG, who was not a party to the email from DT and denied having any such conversations (about the Claimant being "*a thorn in the side*") with DT. She argues that there was a genuine redundancy situation, which commenced in mid-2017, and the Claimant was dismissed for that reason.

Whose reason?

365. The first question we need to deal with is: *Who decided to dismiss the Claimant?* On the face of it, it was LG. He was the one who notified the Claimant at the meeting on 12 June 2020 of the Trust's decision to terminate her employment on the ground of redundancy and confirmed that in a letter on the same day. LG was also the person who held the individual consultation meeting with the Claimant on 10 December 2019, at which he told the Claimant of the decision to disestablish her role unless alternative funding or other alternatives could be found during the 30-days' consultation period.

366. In answering my question: "*Whose decision it was to dismiss the Claimant?*", LG explained that he was not operating "*in a silo*", and the decision to launch the redundancy process was taken jointly by him, DT and the Matron. In answering, my follow-up question: "*But was the decision to dismiss the Claimant taken by you?*", LG said: "yes".

367. Therefore, at first sight it appears that the Tribunal does not need to enquire any further and should only consider what operated on the LG's mind when he decided to dismiss the Claimant. LG's evidence was that: "*[f]rom [his] point of view, the decision to progress with the consultation was made for purely financial reasons, as the Trust, my division and my directorate were over budget and cost saving initiatives were strongly encouraged to be progressed to save money for the Trust*".

368. In cross-examination, LG denied that the redundancy outcome was pre-judged because the Claimant was "*a thorn in the side*". He said that it was not the case "*from [his] perspective*", and that he did not recall DT referring to the Claimant or anyone else as "*a thorn in the side*". We accept that from LG's point of view the process was driven by the need to make costs savings in accordance with the targets set out in the Trust's Financial Improvement Programme.

369. Therefore, when he was taking the decision together with DT that the Claimant's role needed to be disestablished, and the Claimant dismissed unless an alternative source of funding could be found, or if the Claimant could be TUPE'd across to UCL, what operated on his mind was the need to achieve the costs savings targets in the Trust's FIP, and not the fact that the Claimant had made the protected disclosures, of which LG knew very little.

370. However, LG admitted in cross-examination that he "*relied on [DT] in [DT's] capacity as the medical lead*". It is obvious why. LG is an operations manager. It is not his role to tell the Trust what kind of scientists and medical staff it needs to keep and who they could let go.

371. Furthermore, the Claimant's situation was unique, in the sense that although she was employed by the Trust, to all intents and purposes she worked for UCL at ILDH. LG was her manager only nominally and had no day-to-day interactions with the Claimant and very limited (if any) knowledge of what the Claimant did.

372. Therefore, we find that it would be artificial to consider that LG took a decision by himself to dismiss the Claimant as a separate and distinct decision to the

decision to disestablish the Claimant's role, which was taken by LG "*in partnership with DT*" (LG's witness statement at paragraph 26).

When was the decision to dismiss taken?

373. The reality of the situation is that the decision to dismiss the Claimant was not taken on 12 June 2020 by LG. It was taken much earlier, in or around June – July 2019, after all three streams of UCL's investigation into the Claimant's complaints (Research Misconduct, HR and Finance Allegations) had been closed off. That was when RK told NW not to share the outcome of the investigations with the Claimant to avoid any further escalations, while steps were being taken to remove the Claimant from ILDH.

374. From DT's email of 24 July 2019 (pp 1878 -1879) and his conspicuous absence as a witness for the Trust, we have drawn the inference that it was decided by him that the way to remove the Claimant from ILHD was to dismiss her and the paused redundancy process was the perfect vehicle to achieve that (see paragraphs 310-321 above).

375. DT writes in that email: "*Because we had started looking at termination of her role (and one other RFH funded post in ILDH- Sheri-Ann) before she put in her initial complaint we are at liberty to progress the case for redundancy or relocation. [..] The case is in hand and will be submitted for approval shortly (I understand this or next week). Given the problems created it is highly likely/certain it will be approved and the issues will cease. I'm sorry that in the meantime she remains a thorn in the side but I believe this is best just tolerated in the knowledge she will be gone soon. I'll check in with Lee re anticipated time scales."* DT could not be any clearer. He wants the Claimant out and because there is that paused redundancy process, which had started before the claimant blew the whistle, the matter can be progressed and the rest will be mere formality.

376. In our judgment, that was effectively the decision to dismiss the Claimant. It was taken by DT. The principal reason for which he took that decision was "*the problems created*" by the Claimant by making the protected disclosures. The rest was just a matter of executing on the decision. The HR Department was on board with the decision (NW writes in her reply – "*We are following the process you have set out in your email*." – p.1877). LG, with assistance from SS, sets the wheels in motion.

377. Finally, although DT says in his email "*we are at liberty to progress the case for redundancy* ***or relocation****" (****emphasis added****),* read in the context of the entire email chain on p1877-1879 we find that DT's decision was to terminate the claimant's employment and not merely to progress the case which might result in termination or relocation. The case that was progressed was for redundancy. In the circumstances, relocation within UCL or back to the Trust was not a viable option. DT was not at the hearing to give evidence to rebut the inference we have drawn.

378. For these reasons, we find that the decision to dismiss the Claimant was taken by DT in or around June – July 2019 and the principal reason for that decision was that the Claimant had made the protected disclosures.

379. If that analysis is wrong as a matter of law, and LG's decision to dismiss the Claimant on 12 June 2020 must instead be treated as a separate decision, distinct from the decision in June-July 2019 to disestablish the Claimant's role, we find that DT, in his role as the clinical lead upon whose judgment LG's relied, manipulated LG into believing that the Claimant should be dismissed for the principal reason of redundancy.

380. LG was not privy to DT's email of 24 July 2019. We accept LG's evidence that he did not know DT's view that the Claimant was "*a thorn in the side*" and should be "*gone soon*". DT hid from LG the real reason why he wanted the Claimant dismissed. By withholding from LG his view that the Claimant should be gone and the real reason for that in the knowledge that LG was looking to resume the redundancy process to meet financial savings targets in the FIP, DT effectively manipulated LG into believing that redundancy/achieving financial savings was the reason for dismissing the Claimant. We make this finding based on the documentary evidence, principally DT's email of 24 July 2019, LG's evidence to the Tribunal and by drawing an adverse inference from the fact that DT was not called by the Trust to give evidence (see paragraph 310 above).

381. Therefore, on the principle in **Royal Mail Group Ltd v Jhuti** (see paragraph 360 above), we "penetrate through the invention" and conclude that the principal reason for the Claimant's dismissal was the Claimant's protected disclosure.

382. While we accept (and that is on either analysis – decision to dismiss taken in June/July 2019 or LG's decision on 12 July 2020 being manipulated by DT) that the redundancy or some other substantial reason, namely the Trust needing to achieving costs savings targets pursuant to the Trust's FIP, was a reason for the Claimant's dismissal, it was not the principal reason for her dismissal. We have not heard the parties' arguments on *Polkey* and other remedy issues and therefore we make no further findings or conclusions on those issues.

383. It follows that the Claimant's dismissal was unfair under s.103A ERA and the Trust must pay to the Claimant compensation for unfair dismissal.

Direct Discrimination (Sex or Race) and Harassment – Issues 19 -28

384. As it is our conclusion that the Tribunal does not have jurisdiction to consider any of the Claimant's complaints against UCL, it follows that the Tribunal cannot consider the Claimant's complaints against the Trust on the basis that the Trust is vicariously liable for the alleged direct discriminatory treatment and harassment by UCL and its employees and agents. Therefore, the Claimant's complaints against the Trust for direct sex and race discrimination and harassment are dismissed for lack of jurisdiction.

Victimisation – Issues 16 - 17

385. Finally, we will deal with the Claimant's complaints of victimisation against the Trust.

The Law

386. Section 27 EqA states:

> *(1) A person (A) victimises another person (B) if A subjects BSto a detriment because—*
> *(a) B does a protected act, or*
> *(b) A believes that B has done, or may do, a protected act.*
>
> *(2) Each of the following is a protected act—*
> *(a) bringing proceedings under this Act;*
> *(b) giving evidence or information in connection with proceedings under this Act;*
> *(c) doing any other thing for the purposes of or in connection with this Act;*
> *(d) making an allegation (whether or not express) that A or another person has contravened this Act.*
>
> *(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.*

387. The relevant legal principles can be summarised as follows:

388. The Claimant is protected when he or she complains about discrimination even if he or she is wrong and there has been no discrimination, unless the complaint was made in bad faith, e.g. a false allegation without the employee believing he/she or someone else was discriminated against.

389. However, if the employer could not be held liable for the alleged discriminatory conduct (e.g. because it was not committed "in the course of employment"), the employee cannot rely on the allegation of such conduct as a protected act (see **Waters v Commissioner of Police of the Metropolis** 1997 ICR 1073, CA).

390. The protection is against victimisation for raising a complaint of discrimination. The Claimant is not protected against victimisation for simply complaining about unfairness. It is important to identify precisely what the Claimant said which amounts to a "protected act" (see **Beneviste v Kingston University** EAT 0393/05). The protected act must have taken place before the detrimental treatment which is complained of.

391. The meaning of a "detriment" for the purposes of s.27 EqA is broadly the same as the meaning of a "detriment" for the purposes of s.47B ERA. It involves examining the situation from the Claimant's point of view and also considering whether a reasonable worker would or might take the view that the treatment in question was in all the circumstances to his or her disadvantage (subjective/objective test) – (see **Warburton v Chief Constable of Northamptonshire Police** 2022 EAT 42), An unjustified sense of grievance could not amount to a detriment. However, whether or

not the Claimant has been disadvantaged is to be viewed subjectively (see **Shamoon v Chief Constable of the Royal Ulster Constabulary** 2003 ICR 337, HL).

392. Detriment cannot be because of a protected act in circumstances where the person who allegedly inflicted the detriment did not know about the protected act (see **Scott v London Borough of Hillingdon** 2001 EWCA Civ 2005, CA).

393. Unlike in cases of dismissal (see **Jhuti** above), if the person who subjects the Claimant to the detriment does not do so because of the protected act (and may not even know of the protected act) but has been influenced or manipulated to carry out the detriment by a different person who is aware of it, the detrimental treatment is the manipulation or tainted information (see **CLFIS (UK) Ltd v Reynolds** [2015] EWCA Civ 439; [2015] IRLR 562, CA.)

394. An employer's failure to investigate a complaint of discrimination or harassment will not constitute victimisation unless there is a link between the fact of the employee making the complaint and the failure to investigate it (see **A v Chief Constable of West Midlands Police** EAT 0313/14).

395. Decisions are frequently reached for more than one reason. Provided the protected act, had a significant influence on the outcome, discrimination is made out. (**Nagarajan v London Regional Transport** [1999] IRLR 572, HL, applied in the context of a victimisation claim in **Villalba v Merrill Lynch and Co Inc and ors** 2007 ICR 469, EAT). As with direct discrimination, the discriminator may have been unconsciously motivated by the protected act (**Nagarajan v London Regional Transport** 1999 ICR 877, HL).

EqA Burden of Proof

396. **Section 136 EqA states:**

(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.

397. The guidance set out in ***Igen v Wong*** *[2005] ICR 9311* (approved by the Supreme Court in ***Hewage v Grampian Health Board*** *[2012] ICR 1054*) sets out the correct approach to interpreting the burden of proof provisions. In particular:

a. it is for the Claimant to prove on the balance of probabilities facts from which the tribunal could conclude that the employer has committed an act of **d**iscrimination, in the absence of an adequate explanation (para 79(1), see also ***Ayodele v Citylink Ltd and anor*** *[2018] ICR 748* at paras 87 - 106);

b. it is unusual to find direct evidence of discrimination and *'[i]n some cases the discrimination will not be an intention but merely based on the assumption that "he or she would not have fitted in*"' (para 79(3));

c. therefore, the outcome of stage 1 of the burden of proof exercise will usually depend on '*what inferences it is proper to draw from the primary facts found by the tribunal*' (para 79(4));

d. '*in considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts'* (para 79(6));

e. where the Claimant has satisfied stage 1 it is for the employer to then prove that the treatment was "in no sense whatsoever" on the grounds of the protected characteristic and for the Tribunal to '*assess not merely whether the employer has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that [the protected characteristic] was not a ground for the treatment in question*' (para 79(11)-(12));

f. *'[s]ince the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof*' (para 79(13)).

398. In ***Igen v Wong***, the Court of Appeal cautioned tribunals '*against too readily inferring unlawful discrimination on a prohibited ground merely from unreasonable conduct where there is no evidence of other discriminatory behaviour on such ground*' (para 51).

399. In ***Madarassy v Nomura International*** *PLC [2007] ICR 867* Mummery LJ stated that: '*The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination*' (para 58).

Submissions and Analysis

400. The Claimant relies on the following as protected acts ("**PA**"):

a. PID 96

b. PID 100

c. Verbal complaint to Sharon Alexander (UCL HR) on 1/8/19 that Walid Al-Akkad exhibited misogynistic behaviour towards her on 23/7/19 (§3, email 5/8/19, p. 1208)

d. The following paragraphs in her 5 February 2020 grievance:

i. §82, 1305 – sexism - Prof Pinzani and Dr Mazza run an Old Boy's Club – female scientists are considered less capable than male scientists.

ii. §§87-88, 1306 – Prof Pinzani is anti-Muslim

iii. §95, 1307; §203, 1320; §209, 1321 – Prof Pinzani marginalised and ignored the Claimant (because he was racist and sexist)

iv. §208, 1320 – Walid Al-Akkad is a misogynist

401. The Trust states that none of those were protected acts because the alleged conduct in law could not be a breach of the Equality Act 2010 by the Trust, as the allegations are against UCL's staff. In relation to the alleged PAs 2 and 4(iii) the Trust also contends that the content is not sufficient to amount to a PA. The Trust does not admit the content of the conversation with Ms Alexander (PA 3).

402. With respect to the first point raised by the Trust in reliance on **Waters** (see paragraph 388 above), we find that this authority does not apply on the present facts. Unlike in the **Waters** case, the alleged discriminatory conduct was in the course of the Claimant's employment.

403. Further, the Court of Appeal in **Waters** confirmed [at 1097 D] that "*All that is required is that the allegation relied on should have asserted facts capable of amounting in law to an act of discrimination by an employer within the terms of section 6(2) (b)*." (now - EqA). On the present facts, the Claimant's allegations are capable of amounting in law to an act of discrimination by the Trust within the terms of the EqA by virtue of section 109 of the Act.

404. The Claimant's discrimination/harassment complaints against UCL are time-barred, and therefore the Tribunal does not need to examine the issue of the Trust's liability for the conduct of UCL and its employees and agents (see paragraph 384 above). However, this does not mean that the Claimant's allegations of discriminatory conduct by UCL staff are not capable in law of amounting to an act of discrimination or harassment for which the Trust could be liable.

405. If we are wrong on that, and the Claimant's complaints against UCL employees and agents are not capable in law of amounting to discriminatory acts/omissions for which the Trust could be held liable under the EqA, in our view the Claimant's making of such complaints will still fall within the ambit of section 27(2)(c) EqA – "*doing any other thing for the purposes of or in connection with this Act*".

406. We will now turn to the individual alleged PAs. The Claimant relies on s.27(2)(c) and 27(2)(d) in relation to each of the alleged PAs.

PID 96

407. We find that PID 96 was a protected act. Given our findings in relation to this PID (see paragraphs 257- 258 above) we find that it was not an allegation that the Trust or another person has contravened the EqA and therefore does not come within s.27(2)(d).

408. However, we find that it was "*the Claimant's doing any other thing …. in connection with the Act*" (s.27(2)(d)). The Claimant raises the issue of non-Italian speaking staff at ILDH being "marginalized" and of all the staff employed by Engitix being Italians. She labels her complaint "Racism". It is a strong word, and the narrative that follows clearly does not support that label. Nevertheless, what the Claimant raises is an issue of exclusion and divide in the department based on the ability to understand and speak Italian, which in our judgment, does make it "*doing*

any other thing …. in connection with the Act", which not only prohibits discrimination on the prescribed grounds, but also imposes the duty on NHS Trusts (and other public sector authorities) to "*foster good relations between persons who share a relevant protected characteristic and persons who do not share it*" (s.149(1)(c)). Therefore, we find that PID 96 was a PA within the meaning of s.27(2)(c).

409. This might appear at odds with the Tribunal's conclusion at paragraph 258 that the Claimant did not have a reasonable belief that the information disclosed tended to show a failure of a legal obligation under the EqA, which would include a failure to "*foster good relations between persons who share a relevant protected characteristic and persons who do not share it*" under s.149(1)(c) EqA.

410. However, there is a difference, and in our view an important difference, between the test of "*information, which in the reasonable belief … tends to show*" and "*doing any other thing …. in connection with Act*", which does not require the employee to hold a reasonable belief that the information tends to show, or indeed to disclose any information.

PID 100

411. On the first day of the hearing, the Claimant withdrew this underlying allegation as a detriment against UCL (alleged detriment 14.3) both under s.47B(1) ERA and s.27(1) EqA, and only maintained it as an allegation of direct discrimination and harassment (issues 19 – 28). However, she continues to rely on her complaint about the alleged words used by MP as a protected act.

412. We reject that it was a PA for the same reasons as stated above in relation to this PID (see paragraphs 260- 262). Nothing in that the alleged phrase (which we found had not been spoken by MP) could reasonably be said to amount to a contravention of the Act. Therefore, the Claimant complaining about that cannot be sensibly considered as her complaining about MP contravening the EqA. We also do not find that it could be considered as "*doing any other thing for the purposes of or in connection with [the EqA]*". The Claimant did not provide any satisfactory evidence to support that contention.

Verbal complaint to Sharron Alexander on 1 August 2019

413. While the Trust and UCL do not admit the content of the conversation, there is no dispute that the conversation did take place. UCL also accepts that it was understood that the Claimant was alleging that WA had exhibited misogynistic behaviour towards her. On 5 August 2019, Ms Alexander acknowledged the Claimant's complaint and said it would be reviewed in line with the Student Disciplinary Procedure.

414. An allegation of "misogynistic behaviour" is an allegation of sex discrimination or harassment, and therefore clearly falls within the ambit of s. 27(2)(d) EqA. Accordingly, we find that it was a PA.

Paragraph 82 of 5/02/20 Grievance

415. The paragraph reads: "*82. Dr Mazza views female staff as less being inherently less capable as scientists and believes that they should defer to the male*

scientists in the department. The Mazza/Pinzani team is an old boy's club with the exception of Prof Rombouts who defers to Dr Mazza (and did so even when he was a student)".

416. It is an allegation of sex discrimination and/or harassment and therefore falls within s.27(2)(d) EqA and accordingly a PA.

Paragraphs 87-88 of 5/02/20 Grievance

417. The paragraphs read:

"*87. On another occasion, Prof Pinzani mocked a Saudi Arabian female patient by laughing at how fat and stupid she was. As a woman, she was ridiculed for being overweight and as a Saudi Arabian she and myself were being ridiculed because of our race*

88. Masimo Pinzani is also anti-Muslim, and favours Italians. He also had a rant on another occasion about Muslim extremists (as if I was somehow connected to them) and about him being treated negatively in Saudi Arabia. He found it unacceptable not to be looked up to by Muslims and Arabs."

418. These are allegations of sex and race discrimination and harassment and therefore they fall within s. 27(2)(d) EqA. Accordingly, these are PAs.

Paragraphs 95, 203 and 209 of 5/02/20 Grievance

419. The paragraphs read:

"95. *Prof Pinzani had no interest in my career development and did not support me at all over the relevant period. In addition to not helping me to access tissue Prof Pinzani never gave me any students to supervise, never helped me with getting any kind funding for my research or ever gave me anything to do that would further my career in any way. In the meantime PhD students would be given students to supervise. Essentially I was left to carve out my own career without any kind of assistance from my line manager.*

203. I remained marginalised from the department, obstructed in my access to necessary tissue and I continued to have to work in a hostile working environment.

209. By mid-2019, Prof Pinzani had become more obviously cold toward me. He would pointedly ignore me in front of other staff. He did so in front of Lynn Knight, his PA, who noticed I was being ignored."

420. We find that the content of these paragraphs is not sufficient to amount to an allegation of a contravention of the EqA, nor can they reasonably be read as "*doing any other thing for the purpose of or in connection with [the EqA]*". It is a personal complaint by the Claimant about MP's lack of support and "cold" attitude towards her, but it does not contain any suggestions that those alleged acts/omissions were in contravention of the EqA or otherwise disclose any connection with the EqA. Therefore, we find that these paragraphs were not PAs.

Paragraph 208 of 5/02/20 Grievance

421. The paragraph reads:
"208. I do not believe that he would have shouted at a male senior scientist in that manner. He is a misogynist. I also believe a significant influence on his aggressive behaviour towards me was caused by my whistle-blowing. His reference to my "poking my nose" into other people's business and unnecessary mocking references to ethical approval and permission strongly suggest he was aware of my protected disclosures."

422. This is an allegation of sex discrimination/harassment and therefore a protected act under s.27(2)(d)

Detriment and Causation

423. The Claimant alleges the same detriments as the detriments in her "whistleblowing" complaint.

424. We found the alleged detriments 12.1, 12.5, 12.10.1 and 12.10.2 not to be detriments on the facts, and therefore these cannot be detriments under s.27(1) EqA either.

425. We found that the detriment 12.8 was out of time and it was not just and equitable to extend time to bring it in time. Therefore, the complaint for this detriment fails for lack of jurisdiction.

Detriment 12.3 - In July 2019, resuming the paused redundancy consultation.

426. The only PA that predates this detriment is PID 96. Although we found that this detriment was on the ground that the Claimant had made the protected disclosures, we are not satisfied that it was because of the Claimant's PID 96 as a PA.

427. Firstly, we found that PID 96 was not a protected act. Secondly, the complaint is relatively insignificant in the scheme of things, and we find that by itself it was not something that would have caused the Trust to resume the paused redundancy process. The Claimant has failed to adduce satisfactory evidence to show the connection between this particular PA and the resumption of the redundancy process, and therefore, we find that she has failed to discharge the initial burden of proof under s.136(2) EqA. For these reasons this complaint fails.

Detriment 12.4 - On 22 August 2019, Ms Sen informing the Claimant that it would be better for her wellbeing if she left ILDH.

428. The only two PAs predating this detriment are PID 96 and the conversation with Sharron Alexander.

429. While we found that SS knew that the Claimant had made "whistleblowing" complaints, the Claimant did not provide any evidence that SS was aware of the content of her allegations, and in particular of the content of PID 96. Neither did she adduce any evidence that SS was aware of the content of her conversation with Ms Alexander. SS' evidence, which we accept, is that she was not involved in a

detailed way with the Claimant's "whistleblowing" complaints as it was NW who was leading on that, and that she would not get involved without being asked.

430. We find that SS had no knowledge of the content of PID 96 and the content of Claimant's conversation with Sharron Alexander and therefore under the principle in **Scott** (see paragraph 392 above) could not have subjected the Claimant to a detriment because of that protected act, of which she had no knowledge of. Accordingly, this complaint fails too.

Detriments 12.6 and 12.7 –

- *Until 10 December 2019, leading the Claimant to believe that the Second Respondent's whistleblowing investigation was ongoing when in fact the screening panel had reported in November 2018, and*
- *Failing to inform the Claimant of the outcome of the Second Respondent's screening panel until 10 December 2019*

431. As with detriment 12.4, the only two predating PAs are PID 96 and possibly the conversion with Sharron Alexander.

432. We found that the reason the Claimant was kept in the dark by the Trust was because RK had asked NW not to share the outcome of the investigation with the Claimant to avoid any possible escalation while steps were being taken to remove the Claimant from ILDH. That was done in November 2018, and therefore predates the conversation with Ms Alexander. It was not argued by the Claimant that the conversation with Ms Alexander somehow made the Trust withhold that information longer, which otherwise they would have given to the Claimant in August 2019.

433. Further, the Claimant did not adduce any evidence from which the Tribunal could conclude that it was the content of her PID 96 and/or the content of her conversation with Ms Alexander, which made the Trust act in that manner, rather than the other and much more serious allegations she had made in her complaints. This was not put to any of the Trust's witness in cross-examination. Therefore, we find that the Claimant has failed to discharge the initial burden of proof under s.136(2) EqA and this complaint must fail.

Detriment 12.9 - Failing to deal with the Claimant's grievance dated 5 February 2020, properly or at all

434. On the authority of **A v Chief Constable of West Midlands Police** (see paragraph 394 above) the Trust's failure to deal with the Claimant's grievance cannot be because of the protected acts contained within the grievance unless there is a link between the fact of the Claimant's making the relevant complaints and the failure to investigate them.

435. In his written closing submissions Mr Quickfall argues the point of causation as follows:

"R1 is liable for failing to deal itself with the grievance. R1 is also vicariously liable for the failure of it's agent (R2) to deal with the grievance as R1 outsourced the investigation to R2. This failure was ongoing as C by R1 as C did not receive an outcome to her grievance because she was a WB. It was easier to ignore C's concerns that to investigate them and risk finding something which might make it more difficult to justify C's dismissal.

R1 is vicariously liable as R2 was R1's agent in relation to the investigation. This is PID- related because R2 did not want to risk identifying any uncomfortable truths."

436. It appears that he accepts that the failure by the Trust to deal with the Claimant's grievance was not because of the protected acts contained within the grievance, but because UCL did not want to discover "*any uncomfortable truths*", related to the Claimant's PIDs, and the Trust did not want to find something which might make it more difficult to justify the Claimant's dismissal.

437. Essentially, the argument on causation is that neither UCL nor the Trust wanted to deal with it. However, Mr Quickfall does not take it further to suggest that the reason they did not want to deal with it was because of the PAs in the grievance (or those made earlier) or because UCL and/or Trust believing that the grievance may contain PAs.

438. Further, the Trust's liability as an agent of UCL (and we make no findings on that) only "bites" if it is found that UCL was liable for the alleged victimisation. As we found that the claims against UCL are time-barred, the Trust cannot be liable for the alleged act of victimisation either.

439. In any event, there is nothing that was adduced in evidence by the Claimant that links the fact of the Claimant's raising her grievances recorded in paragraphs 82, 87, 88 and 208 and the Trust's failure to investigate her grievance properly.

440. There was also no evidence adduced to show that the Trust's failure to deal with the grievance was because of the Claimant's earlier PAs (PID 96 and the Sharron Alexander conversation). It was not put to JMths that he was aware of those PAs or that he failed to act on the Claimant's grievance because of those PAs or because of the fact that the Claimant was making the three further PAs in her grievance.

441. Therefore, we find that the Claimant has failed to discharge her initial burden of proof under s.136(2) EqA. Therefore, her complaint for this detriment fails.

Detriment 12.11 - On 4 September 2020, dismissing the Claimant

442. We found that the principal reason for the Claimant's dismissal was that she had made the protected disclosures. None of the valid PAs were either alleged to be PIDs or found to be valid PIDs. Therefore, the PAs could not have been the principal reason for the Claimant's dismissal. We also find that they did not have significant (in the sense of more than trivial or minor) influence on the Trust's decision to dismiss the Claimant. They were relatively minor allegations in the

context of the overall scope of the Claimant's complaints, the principal and most serious of which related to the alleged Research Misconduct.

443. The Claimant has failed to adduce evidence to show that the decision to dismiss her could be because of the PAs. These matters were not put to the Trust's witnesses. Therefore, we find that she has failed to discharge the initial burden of proof under s.136(2) EqA, and this complaint must fail.

Detriment 12.12 - On 25 September 2020, dismissing the Claimant's appeal.

444. While we found that the Trust has failed to discharge the burden of proof under s.48(2) ERA, it does not follow that the dismissal of the Claimant's appeal was because of her making PAs. As with dismissal and other alleged detriments, the Claimant has failed to adduce any satisfactory evidence, from which the Tribunal could conclude that the Claimant's PAs had significant influence (in the sense more than trivial or minor) on the panel's decision to dismiss her appeal. It was not put to Ms Rubin when she was cross-examined.

445. The thrust of the Claimant's claim is very much about PIDs and detriment/dismissal caused by the PIDs. Her victimisation complaint had been run by her legal team more as a "sweep-up". The only point that Mr Quickfall has made in support of this complaint is that "*R1 did not consider any alternatives to dismissing C's appeal. Nothing C could have said or done would have avoided the dismissal of her appeal (per PR)".* This, however, does not explain on what basis the Tribunal could find that the panel's decision to dismiss the Claimant's appeal was because of her PAs. Accordingly, this complaint fails too.

Overall conclusion on Victimisation complaint

446. It follows that the Claimant's complaint of victimisation against the Trust fails and is dismissed.

447. This deals with all liability issues. In conclusion we wish to make it clear that we make no findings as to the substance of the Claimant's underlying complaints of research misconduct, fraud, conflict of interest, breaches of data protection, allegations of sex or race discrimination or harassment, financial irregularities or cover up. We also make no findings as to whether the Claimant was "obstructed" from accessing liver tissue samples. These are not the matters this Tribunal need determine to deal with the Claimant's claim.

448. Finally, our conclusions as to the principal reason for the Claimant's dismissal and on the "whistleblowing" detriments must not be read as the Tribunal's finding that the redundancy was a sham or not a reason (albeit not the principal reason) for the Claimant's dismissal.

Remedy

449. All remedy issues (if not agreed) will be determined at a remedy hearing to be listed by the Tribunal.

450. The parties must write to the Tribunal within 14 days of the date this Judgment is sent to them giving their dates to avoid from October 2022 to April 2023.

451. The parties must discuss and send to the Tribunal their joint proposed directions for the remedy hearing.

452. The parties are encouraged to attempt to settle the remaining issues by negotiations.

Employment Judge Klimov

15 August 2022

Sent to the parties on:

.16/08/2022

For the Tribunals Office

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Appendix 1

Agreed List of Issues

Preliminary matters

Time limits and Scope of the Equality Act / Employment Rights Act

1 Does the Tribunal have jurisdiction to hear the Claimant's claims related to any alleged treatment which took place prior to 2 September 2020?

1.1 For the EqA claims:

1.1.1 Do any of the Claimant's claims amount to acts extending over a period for the purposes s123(3) EqA, and if so, which?

1.1.2 Are there any just or equitable reasons for the Tribunal to extend time under s123(1)(b) EqA?

1.2 For the ERA claims:

1.2.1 Was it reasonably practicable for the claims to be presented in time?

1.2.2 If not, were the claims presented within such further period the Tribunal considers reasonable?

2 Does the Tribunal have jurisdiction to hear the Claimant's claims against the Second Respondent?

2.1 When did the Claimant's honorary contract with the Second Respondent come to an end? The Second Respondent says the honorary contract came to an end on 30 April 2018 as that is the termination date expressed in the contract. The Claimant says that in reality, the honorary contract continued to be performed beyond this date, ran parallel to her employment contract with the First Respondent, and so came to an end on the same date, 4 September 2020.

2.2 For the EqA claims:

2.2.1 At the time the alleged treatment occurred, was the Claimant an employee of the Second Respondent within the meaning of s83(2) EqA or in the alternative a contract worker within the meaning of s41 EqA?

2.3 For the ERA claims:

2.3.1 At the time the alleged treatment occurred, was the Claimant a worker within the meaning of s230(3)(b), s43K(1)(a) or s43k(1)(b)?

Alleged protected disclosures

The full particulars of the disclosures relied on by the Claimant are set out in the attached table.

Did the Claimant make each or any of the alleged qualifying disclosures set out on the attached table numbered 1 to 112?

Disclosure of information

3 Do each (or any) of the alleged qualifying disclosures set out in the attached table constitute a "*disclosure of information*" within the meaning of section 43B ERA?

Reasonable belief of wrongdoing

Research misconduct

4 Do the alleged qualifying disclosures numbered 1 to 64 in the attached table "*tend to show*" in the reasonable belief of the Claimant (as fully set out in the table):

4.1 pursuant to section 43B(1)(a) ERA, that a criminal offence has been committed, is being committed or is likely to be committed by either or both of the First or Second Respondent and/or

4.2 pursuant to section 43B(1)(b) ERA, that either or both of the First or Second Respondent has failed, is failing or is likely to fail to comply with any legal obligation to which it was subject, the Human Tissue Act 2004 and/or the HTAuth Consultation Codes and/or the Medical Act 1983

Fraud

5 Do the above alleged qualifying disclosures numbered 65 to 75 in the attached table "*tend to show*" in the reasonable belief of the Claimant (as fully set out in the Claimant's Further Particulars dated 14 October 2021):

5.1 pursuant to section 43B(1)(a) ERA, that a criminal offence has been committed, is being committed or is likely to be committed by either or both of the First or Second Respondent, namely fraud ; and/or

5.2 pursuant to section 43B(1)(b) ERA, that either or both of the First or Second Respondent has failed, is failing or is likely to fail to comply with any legal obligation to which it was subject, namely fraud

Data

6 Do the alleged qualifying disclosures numbered 76 to 81 in the attached table "*tend to show*" in the reasonable belief of the Claimant (as fully set out in the Claimant's Further Particulars dated 14 October 2021):

6.1 pursuant to section 43B(1)(a) ERA, that a criminal offence has been committed, is being committed or is likely to be committed by either or both of the First or Second Respondent in the reasonable belief of the Claimant; and/or

6.2 pursuant to section 43B(1)(b) ERA, that either or both of the First or Second Respondent has failed, is failing or is likely to fail to comply with any legal obligation to which it was subject, namely the Data Protection Act 1998 and/or 2018 and/or GDPR (as set out in the Claimant's Further Particulars dated 14 October 2021;

Cover up

7 Do the alleged qualifying disclosures numbered 82 to 84 in the attached table "*tend to show*" in the reasonable belief of the Claimant (as fully set out in the Claimant's Further Particulars dated 14 October 2021):

7.1 pursuant to section 43B(1)(a) ERA, that a criminal offence has been committed, is being committed or is likely to be committed by either or both of the First or Second Respondent (as set out in the Claimant's Further Particulars dated 14 October 2021;; and/or

7.2 pursuant to section 43B(1)(f) ERA, that information tending to show any matter falling within 43b(1)(b) is being or is likely to be deliberately concealed by the First or Second Respondent, namely "*the obligation to properly investigate allegations of the nature made by the Claimant and/or the Public Sector Equality Duty*" (as set out in the Claimant's Further Particulars dated 14 October 2021;

Whistleblowing

8 Do the alleged qualifying disclosures numbered 85 to 96 in the attached table "*tend to show*" in the reasonable belief of the Claimant (as fully set out in the Claimant's Further Particulars dated 14 October 2021):

8.1 pursuant to section 43B(1)(b) ERA, that either or both of the First or Second Respondent has failed, is failing or is likely to fail to comply with any legal obligation to which it was subject, namely s103A and/or s105(6A) ERA and/or s47B ERA and/or s27 EqA ?

Discrimination

9 Do the alleged qualifying disclosures numbered 97 to 112 in the attached table "*tend to show*" in the reasonable belief of the Claimant (as fully set out in the Claimant's Further Particulars dated 14 October 2021):

9.1 pursuant to section 43B(1)(b) ERA, that either or both of the First or Second Respondent has failed, is failing or is likely to fail to comply with any legal obligation to which it was subject, namely s13 and/or s26 EqA?

<u>Public interest</u>

10 Did the Claimant have a "reasonable belief" that the alleged qualifying disclosures were made in the public interest?

<u>To whom the disclosure was made – protected disclosure</u>

11 Are the alleged disclosures "*protected disclosures*" within the meaning of sections 43A and 43C ERA 1996, and:

11.1 Were each (or any) of the alleged disclosures made to the First Respondent and when were they made?

11.2 Were each (or any) of the alleged disclosures made to the Second Respondent and when were they made?

11.3 At the time the disclosures were made, did the Second Respondent fulfil the definition of the Claimant's employer within the meaning of section 43C(1)(a) ERA or a "Responsible Person" within the meaning of section 43C(1)(b) ERA?

Detriments by the First Respondent and causation

12 Was the Claimant subjected by the First Respondent (pursuant to section 47B(1) ERA) to the following treatment?

12.1 On an unknown date prior to the 4 October 2019, breaching the Claimant's confidentiality by revealing her to be the complainant in the whistleblowing investigation to Prof Mark Lowdell, which the Claimant alleges was reported to the Claimant by Ms Sutopa Sen on 4 October 2019.

12.2 Causing or allowing the Claimant's honorary appointment to lapse on 30 April 2018 and/or failing to take steps to renew the same thereafter.

12.3 In July 2019, resuming the paused redundancy consultation.

12.4 On 22 August 2019, Ms Sen informing the Claimant that it would be better for her wellbeing if she left ILDH.

12.5 On 10 September 2019, Prof Lowdell rejecting the Claimant for the position he had available.

12.6 Until 10 December 2019, leading the Claimant to believe that the Second Respondent's whistleblowing investigation was ongoing when in fact the screening panel had reported in November 2018.

12.7 Failing to inform the Claimant of the outcome of the Second Respondent's screening panel until 10 December 2019.

12.8 Failing to deal with the Claimant's complaints dated 22 November 2018 (and subsequent series of complaints detailed in the ET1 which as a whole formed the whistleblowing complaints referred by the First respondent to the Second Respondent for investigation), 23 August 2018, 26 July 2019, 7 August 2019, 29 October 2019 properly or at all.

12.9 Failing to deal with the Claimant's grievance dated 5 February 2020, properly or at all.

12.10 On unknown date(s) up to September 2020:

12.10.1 Until 4 September 2020, failing to search for and offer the Claimant suitable alternative employment and/or instruct the Second Respondent to do the same, properly or at all.

12.10.2 Failing to search for external alternative sources of funding for the Claimant's role.

12.11 On 4 September 2020, dismissing the Claimant.

12.12 On 25 September 2020, dismissing the Claimant's appeal.

13 Were the alleged detriments done on the ground that the Claimant made a protected disclosure?

Detriments by the Second Respondent and causation

14 Was the Claimant subjected by the Second Respondent (pursuant to section 47B(1) ERA) to the following treatment?

14.1 *On an unknown date, breaching the Claimant's confidentiality by revealing her to be the complainant in the whistleblowing investigation*";

14.2 *In 2019, Dr Gander describing the Claimant as a "mad woman'"*" as verbally reported to the Claimant by Dr Mark;

14.3 "*Causing or allowing the Claimant's honorary contract to lapse on 30 April 2018 and/or failing to take steps to renew the same thereafter*";

14.4 "*On or around 19 March 2018, Prof Pinzani removing the Claimant from her office and telling Ms Chalmers she was "out of control, out of line and all over the place*"";

14.5 "*Between June and October 2018, Prof Pinzani's treatment of the Claimant in relation to her appraisal*";

14.6 "*On 23 July 2019, Mr Al-Akkad's treatment of the Claimant*";

14.7 "*On 10 September 2019, Prof Lowdell rejecting the Claimant for the position he had available*";

14.8 Failing to deal with the Claimant's complaints dated 22 November 2018 (and subsequent series of complaints detailed in the ET1 which as a whole formed the whistleblowing complaints referred by the First respondent to the Second Respondent for investigation), 23 August 2018, 26 July 2019, 7 August 2019 and 29 October 2019. and grievance dated 5 February 2020/15 April 2020, properly or at all;

14.9 *Failing to inform the Claimant of the outcome of the Screening Panel between November 2018 and 10 December 2019, with the* written outcome only being provided on 24 January 2020;

14.10 "*On 8 June 2020, refusing to deal with the Claimant's grievance*";

14.11 "*On 21 June 2018 and further unknown date(s)(as Prof Pinzani's support for the Claimant's role thereafter reduced or stopped), Prof Pinzani's refusal to support the continuation of the Claimant's work and role*" ;

14.12 "*On unknown date(s) up to 4 September 2020: i. Failing to search for and offer the Claimant suitable vacancies within UCL (the Claimant understands her CV was provided to Prof Kleta). ii. Declining to fund the Claimant's role internally, or search for external alternative sources of funding for the Claimant's role*" The second respondent says that the second respondent was not under any obligation to do any of these things and that therefore this allegation should not be used to determine that there was a continuing act up to 4 September 2020:

14.13 "*Until 4 September 2020: i. Prof Pinzani and Dr Mazza ignoring the Claimant and marginalising her within ILDH. ii. Obstructing the Claimant's access to samples*" The second respondent says that the Claimant was either working from home or absent form work on sick leave from January 2020 and so this allegation should not be used to determine that there was a continuing act up to 4 September 2020;

14.14 "*On 4 September 2020, terminating the Claimant's honorary appointment, which ran in parallel with her contract of employment with the Trust*". The

second respondent says that the contract lapsed on 30 April 2018 (see 26.14); and

14.15 "*From 8 June 2020 to 25 September 2020, misrepresenting that the Claimant's active association with UCL had lapsed on 30 April 2018*".

15 Were the alleged detriments done on the ground that the Claimant made a protected disclosure?

Victimisation

16 Did the alleged acts set out in Group 6 (from 96 to 112 in the attached table) constitute a protected act pursuant to s. 27(2) EqA in that it is an example of the Claimant either:

16.1 doing any other thing for the purposes of or in connection with the EqA;

16.2 making an allegation (whether or not express) that A or another person has contravened the EqA?

17 Did the First Respondent subject the Claimant to the detriments set out at paragraph 12 above because the Claimant did or may do the alleged protected acts?

18 Did the Second Respondent subject the Claimant to the detriments set out at paragraph 14 because the Claimant did or may do the alleged protected acts?

Direct Discrimination (Sex or Race)

19 The Claimant relies upon the following alleged conduct:

19.1 In respect of sex, the detriments at paragraph 14.1 – 14.15 above.

19.2 In respect of race, the detriments at paragraphs 14.1 – 14.15, with the exception of 14.2 and 14.6.

20 If such conduct is established, did the Second Respondent or its employee, servant or agent for whom it is vicariously liable subject the Claimant to a "detriment" within the meaning of section 39(2)(d) EqA?

21 If so, by reason of above matters, was the Claimant thereby treated "less favourably" than the Second Respondent treats (or would treat) a hypothetical female and/or non-Italian comparator?

22 If so, contrary to section 13(1) EqA, did the Second Respondent subject to the Claimant to such less favourable treatment because of her sex or race, and/or because of information tainted by sex or race discrimination?

23 If so, is the First Respondent vicariously liable for such conduct.

Harassment

24 The Claimant relies upon the alleged conduct set out at paragraph 19 above. If established, does the above conduct constitute 'harassment' pursuant to section 26 and 40 Equality Act 2010? In particular:

25 Did the conduct in question have the purpose or effect of:

25.1 Violating the Claimant's dignity; or alternatively;

25.2 Creating for the Claimant an intimidating, hostile, degrading, humiliating or offensive environment?

26 If so, was the conduct in question unwanted conduct related to the Claimant's sex and/or race?

27 In determining whether the conduct alleged had the effect set out at paragraph 25, the following must be taken into account:

27.1 The Claimant's perception;

27.2 The other circumstances of the case; and

27.3 Whether it is reasonable for the conduct to have that effect.

28 If the Claimant was subject to harassment pursuant to section 26 and 40 Equality Act 2010, is the First and/or Second Respondent vicariously liable for such conduct?

Automatic unfair dismissal

29 Was the First Respondent's reason or principal reason for dismissing the Claimant that she made the alleged protected disclosures?

Ordinary unfair dismissal

30 Did the First Respondent have a fair reason to dismiss the Claimant? The First Respondent asserts that it was a reason related to redundancy, which is a potentially fair reason for dismissal under s. 98 (2) of the Employment Rights Act 1996.

31 If the Claimant was not dismissed by reason of redundancy, the First Respondent asserts that it dismissed the Claimant for some other substantial reason of a kind such as to justify the dismissal of the Claimant under section 98 of the Employment Rights Act 1996, namely a reorganisation carried out in the interests of economy and efficiency.

32 Did the First Respondent follow a fair procedure in dismissing the Claimant? In particular:

32.1 Was the decision to disestablish the Claimant's role predetermined and made without meaningful consultation?

32.2 Was it fair to exclude Ms Blake's role from the pool?

32.3 Did the First Respondent fail to comply with its duty to search for and offer suitable alternative employment?

33 Was dismissal within the reasonable band of responses available to the First Respondent and was the dismissal fair in all the circumstances?

34 If it did not use a fair procedure, would the Claimant have been fairly dismissed in any event and/or to what extent and when?

35 If the dismissal was unfair, did the Claimant contribute to the dismissal by failing to engage with attempts to identify alternative employment?

Remedy

36 If the Claimant is successful in any of her claims, what remedy is appropriate?

37 Should any compensation awarded to the Claimant be:

37.1 adjusted because of the First or Second Respondent's alleged unreasonable failure to comply with the Acas Code of Practice on Disciplinary and Grievance Procedures on the basis that, according to the Claimant, the grievances were not fully investigated that they were not dealt with promptly and the outcome was unreasonably delayed

37.2 reduced because of a failure by the Claimant to mitigate her losses?

Appendix 2

ALLEGED PROTECTED DISCLOSURES

	A	B	C	D	E	F	G	H

#	Disclosure	Grounds of Complaint reference	Format of disclosure (email / verbal)	To whom the disclosure was made	Date	Exact words used in this disclosure *Where documentary evidence has been provided to support a disclosure (e.g. a biobank application), it forms part of that disclosure. That evidence will be referred to at trial, but has not been quoted or highlighted in this document.*	Criminal offence alleged to have been committed (s 43B(1)(a) ERA 1996)	Legal obligations relied upon (s 43B(1)(b) ERA 1996)
Group 1 – Research Misconduct and commercialisation of human tissue								
1.	Provision of samples for commercial profit in preference to for not-for-profit cancer research	21 a. i. – Prof Davidson and Dr Gander at TAPb — which had a remit to supply ILDH — and Prof Pinzani had obstructed the Claimant's access to samples, whereas Dr Mazza had been able to obtain hundreds of whole livers via Dr Gander, which were kept in a -80C freezer on the Hospital site. Prof Rombouts had also been able to access samples from Dr Gander. 21 a. ii. – Prof Pinzani, Dr Mazza and Prof Rombouts were all involved in the for-profit private company Engitix Ltd and Dr Gander is	Email	First Respondent - UNISON representative Ivor Dore (Pharmacy Procurement Office Manager for the First Respondent)	22 November 2017	See highlighted sections in relevant appendix.	**Provision of samples for commercial profit in preference to for not-for-profit cancer research (all)** Using/storing donated material for a purpose which is not a qualified purpose, namely commercial profit (s8 Human	
			Email	First Respondent - Jim Mansfield and	31 May 2018	**"**First of all today, Thu 31st May, was Research & Development open day at the Royal Free Hospital. Dr Amir Gander (TAPB Director) and Dr Emma Lawrence (engagement Director) gave brief talks on the subject of "research using human tissue samples changing patient		

		supplying samples selectively to them. 28. f. ii. Repeated Provision of samples for commercial profit in preference to for not-for-profit cancer research. 37 b. in the context of a presentation that day at the Hospital's Research and Development day by Dr Gander designed to encourage the public to donate tissue for research.		Natalie Ware		care". They described the problems faced by researchers in accessing tissue samples for research and how TAPB is facilitating access for researchers at every level from ethics to procurement. The talk was obviously designed to encourage the public to donate tissue for "research". At the question and answer session at the end of their talks I asked whether they kept a record of where the patient samples ended up and whether they could give me any idea of what percentage of human samples were actually used by NHS researchers or funneled into industry. Emma Lawrence said they didn't have that information. I also asked whether they had specific recovery costs for procuring tissue samples as the prices seem to vary from one biobank to another. The answer was again no. I then mentioned that I had tried to access tissue from TAPB but was told I couldn't afford it though I was never quoted a price for cost recovery. At this point Amir said this was probably not the right forum for discussion and that perhaps I should talk to him after the session. The truth is I've been trying to obtain tissue from Amir for over 5 years and there has never been a good time to discuss it so I doubt if there ever will be. I am actually disgusted with the way TAPB are trying to dupe the public into thinking they are doing highly moral work when in reality they have been facilitating access of human tissue by rogue companies such as Engitix (and God knows who else) whose only interest is to make hefty profits from commercializing the sale and use of human body parts."	Tissue Act 2004). N.B. by contrast, research is a qualified purpose	

7.	Conflict of interest	*Dr Gander at TAPb conflict* 21 b. – Dr Gander needs to raise £8000 per month to keep his job and which drives him to provide samples to those who are willing to pay more, such as for-profit private companies	Email	First Respondent - Ivor Dore	22 November 2017	**"**I have an email from Amir Gander informing me that he is expected to raise £8000 for TAPB per month or his job would be on the line and for this reason he needs to chase high end projects. Does this mean he is only interested in providing tissue to commercial companies as they are able to pay much more money than a humble NHS researcher like myself? In fact, I have an email in which Amir states my offer of £1000 upfront would only be "in kind". I have managed to acquire around 20 liver tissue samples from another UK biobank for around £1000 so why are the cost recovery rates for TAPB much greater than other UK biobanks. Also bear in mind that Amir has never quoted a price for cost recovery. He just tells me that I could never afford it. I believe there is a serious conflict of interest in the way TAPB is run. Amir is obviously driven to meet the financial targets he has been set in order to keep his job and this drives him to provide tissue to those who are willing to pay large sums of money and these are often commercial companies whose sole raison d'etre is company profits." "I believe that it is in the interest of the NHS and the general public that the issues I have raised above are addressed immediately by the NHS or other appropriate body."	**<u>Conflict of interest (all)</u>** N/A	**<u>Conflict of interest (all)</u>** GMC Guidance 'Good Medical Practice'

11.			Email	First Respondent - Jim Mansfield and Natalie Ware	31 May 2018	"The fact that Professor Barry Fuller, who is one of the founders of TAPB, has shares in Engitix is also cringeworthy. In fact Barry Fuller was featured in a video entitled "patient" experience of transplant via acrobatics" shown by Jessica Simms at the RFH research open day. Again this was a designed to encourage organ donation by the public."		
18.		*NHS surgeons conflict* 28 b. iii. – Prof Massimo Malago and Mr Giuseppe Kito Fusai are surgeons who operate on NHS patients and provide livers to TAPb and Engitix. They have shares in the Engitix.	Email and attachments	First Respondent - Jim Mansfield and Natalie Ware	13 April 2018	See highlighted pink section in relevant appendix. N.B. bright yellow highlighting was done by the Claimant on the original document. When pink highlighting has been placed on top of the Claimant's yellow it appears orange.		
25.	Ethics approval and consent	*Dr Mazza impersonated a medical doctor*	Email	First Respondent - Ivor Dore	22 November 2017	"However, around the end of October 2017, Giuseppe Mazza, with whom I actually share an office,	*Dr Mazza impersonated a medical doctor*	*Dr Mazza impersonated a medical doctor*

		21 c. i. – Whilst Dr Mazza was a PhD student, he used the title Dr before completing his doctorate. He also collaborated with surgeons to obtain consent from patients by holding himself out as a medical doctor.				told me that Prof Pinzani had forwarded my emails to him. Giuseppe Mazza then proceeded to tell me how he had arranged for his liver organs to be accessed through Amir in TAPB and that Giuseppe had collaborated with a couple of surgeons in order to facilitate this. Giuseppe then told me that he had obtained consent from patients on the wards by himself. He described how he would put on a white coat with a badge displaying his name prefixed with the title of Dr whilst he was still a PhD student and he would approach patients as if he were a doctor. I told Giuseppe that as far as I am aware any scientist carrying out research is not supposed to have access to patients and that all patients must remain anonymous to the researcher carrying out the research. Giuseppe was very surprised by this and told me that he didn't think what I was saying was true. I added that I would have consented patients for my own research project if it was permissible to do so." "if NHS patients were made to sign consent forms by a student who didn't even have the right to approach patients in an NHS hospital is that consent even valid?" "I believe that it is in the interest of the NHS and the general public that the issues I have raised above are addressed immediately by the NHS or other appropriate body"	S49 Medical Act 1983 Fraud by false representation(S2 Fraud Act)	N/A
26.			Written Grievance	First Respondent	5 February 2020	See highlighted sections in relevant appendix.		

27.			Written Grievance	Second Respondent	15 April 2020	See highlighted sections in relevant appendix.		
29.		*Dr Gander tried to consent non-English speakers* 21 c. ii. – Dr Gander has attempted to get non-English speaking patients to sign consent forms in English and asked C to translate orally	Email	First Respondent - Ivor Dore	22 November 2017	**“**Amir Gander has personally approached patients in the private wing of the Royal Free Hospital without permission and has tried to get patients who may not even speak English to sign consent forms. He was caught in the one of the private patients' room by a senior staff member and told to leave. Before I knew about this incident Amir Gander had asked me if I would be willing to translate and get consent from private patients who are mostly Arabic speaking patients from the Middle East. I explained that this would not be a good idea as most of these patients were in the UK because of very serious illness and most would already be very anxious because of their illness as well as the fact that they are very far from home and loved ones. I also explained that many would not be familiar with the idea of consenting to give their tissue for research and may feel frightened if they were asked. I also explained that the consent forms would need to be translated into Arabic in order for the consent to be valid. Amir said he hadn't thought about translating the consent forms and decided it was too complicated to bother with pursuing.” “I believe that it is in the interest of the NHS and the general public that the issues I have raised above are addressed immediately by the NHS or other appropriate body”	*Dr Gander tried to consent non-English speakers* Falsely representing that there is appropriate consent to do an activity or that s1 does not apply (s5 Human Tissue Act 2004). Using/storing donated material for a purpose which is not a qualified purpose, namely commercial profit (s8 Human Tissue Act 2004).	*Dr Gander tried to consent non-English speakers* Human Tissue Authority Code of Conduct E – Research §16, §48, §60, §89, §111, §113, §49 UCL-RH BERC Guidelines

							Non-consensual analysis of DNA (s45 Human Tissue Act 2004).	
33.		*No donor consent for commercial use of tissue* 21 c. iii. – She did not believe that the donors were told that their tissue would be used for commercial profit, as opposed to for research purposes for the First Respondent or Second Respondent 32. b. repeated No donor consent for commercial use of tissue	Email	First Respondent - Ivor Dore	22 November 2017	See highlighted sections in relevant appendix.	*No donor consent for commercial use of tissue* Falsely representing that there is appropriate consent to do an activity or that s1 does not apply (s5 Human Tissue Act 2004). Using/storing donated material for a purpose which is not a qualified purpose, namely commercial	*No donor consent for commercial use of tissue* Human Tissue Authority Code of Conduct E – Research §16, §48, §60, §89, §111, §113, §49 UCL-RH BERC Guidelines
34.								
36.			Email	First Respondent - Jim Mansfield and Natalie Ware	8 May 2018	**"**Please find attached a copy of an application for human organs made to Promethera by Guiseppe Mazza. On page 1 of you will notice Dr Guiseppe Mazza is named as the investigator and CEO of Engitix. On the first page the last line of the Research Project Information reads: Engitix commercial objectives, related to Engitix decellularized human extra-cellular matrix scaffolds are to provide in-house research services and/ or to commercialize/ licence ECM bioinks/ hydrogels to third parties (only for commercial research and not for therapeutic use). On Page 2 you will see Guiseppe has ticked the box which asks "are you a For Profit Organization?" You will also see on page 2 that the primary source of funding for Engitix will come from "service contracts" ie the profits mad by Engitix will be used to purchase the tissue on a regular basis and the procured tissue will then be used to provide more service contracts or sold as bioinks etc. and the		

						company will thus grow through the commercialization of the human organs. Below is a list of the whole organs that Guiseppe has applied to purchase on a monthly basis: Heart liver kidney lung intestine Pancreas The age range of the donor is specified as 1 year to 100 years old. I can't imagine any parent would ever consent for their child's organs to be used by any organization to make a profit from nor can I imagine any next of agreeing to their loved ones organs to be used for personal profit either." "However there is plenty of evidence to show that the founders of Engitix are making huge profits from the decellularized human tissue without having obtained proper informed consent from the donors or their next of kin to do this."	profit (s8 Human Tissue Act 2004). Non-consensual analysis of DNA (s45 Human Tissue Act 2004).	
39.		*No ethics approval for commercial use* 28 a. i. – Prof Pinzani and Dr Mazza have obtained ethical approval to use tissue obtained from TAPb	Email and attachments	First Respondent - Jim Mansfield and Natalie Ware	13 April 2018	See highlighted pink section in relevant appendix. N.B. bright yellow highlighting was done by the Claimant on the original document. When pink highlighting has been placed on top of the Claimant's yellow it appears orange.	*No ethics approval for commercial use* Falsely representing	*No ethics approval for commercial use* Human Tissue

40.		for domestic research only, not (as they wrongly assert in a funding application) commercially including abroad through Engitix. 32. b. repeated No ethics approval for commercial use	Email	First Respondent - Jim Mansfield and Natalie Ware	8 May 2018	**"**Please find attached a copy of an application for human organs made to Promethera by Guiseppe Mazza. On page 1 of you will notice Dr Guiseppe Mazza is named as the investigator and CEO of Engitix. On the first page the last line of the Research Project Information reads: Engitix commercial objectives, related to Engitix decellularized human extra-cellular matrix scaffolds are to provide in-house research services and/ or to commercialize/ licence ECM bioinks/ hydrogels to third parties (only for commercial research and not for therapeutic use). On Page 2 you will see Guiseppe has ticked the box which asks "are you a For Profit Organization?" You will also see on page 2 that the primary source of funding for Engitix will come from "service contracts" ie the profits mad by Engitix will be used to purchase the tissue on a regular basis and the procured tissue will then be used to provide more service contracts or sold as bioinks etc. and the company will thus grow through the commercialization of the human organs. Below is a list of the whole organs that Guiseppe has applied to purchase on a monthly basis: Heart liver kidney lung intestine Pancreas The age range of the donor is specified as 1 year to 100 years old. I can't imagine any parent would ever consent for their child's organs to be used by any organization to make a profit from nor can I imagine any next of agreeing to their loved ones organs to be used for personal profit either."	that there is appropriate consent to do an activity or that s1 does not apply (s5 Human Tissue Act 2004). Using/storing donated material for a purpose which is not a qualified purpose, namely commercial profit (s8 Human Tissue Act 2004). Non-consensual analysis of DNA (s45 Human Tissue Act 2004). Fraud by false representati	Authority Code of Conduct E – Research §16, §48, §60, §89, §111, §113, §49 UCL-RH BERC Guidelines

						"However there is plenty of evidence to show that the founders of Engitix are making huge profits from the decellularized human tissue without having obtained proper informed consent from the donors or their next of kin to do this."	on (s2 Fraud Act 2006).	
43.		*Knowledge of donor identity* 28 a. ii. – Dr Mazza has in his possession personal data from each patient samples were taken from.	Email and attachments	First Respondent - Jim Mansfield and Natalie Ware	13 April 2018	**Breach of ethics and HTA regulations** "The form also states: Applicants wishing to use existing samples within the biobank for new research projects are required to show that they comply with the HTA governance standards by working to standard operating procedures and have quality systems in place. The use of human tissue to set up a personal business (Engitix) and the fact that the personal data for each patient from which the tissue came from is in the possession of Guiseppe Mazza clearly does not comply with HTA governance standards. A picture of this folder containing these NHS donor patient details is shown in the file in the miscellaneous folder called NHSBT liver patient folder." "Record keeping should be done in a manner ensuring complete confidentiality of patients' personal details. The fact that Guiseppe Mazzza has a folder in his possession containing very personal details of NHS patient	*Knowledge of donor identity* Unlawful obtaining of personal data without consent (s170 Data Protection Act)	*Knowledge of donor identity* Data Protection Act 1998 / 2018 General Data Protection Regulation 2016 / 679 Code E §32, §60 UCL-RFH BERC Guidelines

						liver donors is clearly in breach of patient confidentiality. How and why did Guiseppe Mazza get hold of this information? The principle investigator on the application is prof Massimo Pinzani and he is the individual named on the tissue application form as “resposnsible for overseeing material storage and data protection.” “It is important for those involved in research to be aware that in addition to the consent provisions of the HT Act they will need to adhere to other legal requirements such as the Data Protection Act 1998 and the common law duty of confidentiality.” **Biobank application** “Record keeping should be done in a manner ensuring complete confidentiality of patients’ personal details.”		
46.		*Source of tissue* 28 a. iv. – The biobank application incorrectly states that organs will be obtained from the Hospital only	Email and attachments	First Respondent - Jim Mansfield and Natalie Ware	13 April 2018	**Breach of ethics and HTA regulations** “SECTION III: PROPOSED RESEARCH STUDY DETAILS under SAMPLE SELECTION it states: “-Patients will be identified by TAPb using the Royal Free hospital patient booking system. “ It’s clear that not all donor organs used for this project came from the RFH. Organs have been received from hospitals other than RFH as evidenced by the NHS patient donor details given in the NHSBT livers folder. Many of these patients had their life support switched off after they were certified brain dead so presumably their next of kin had consented the deceased organs be used for transplant or research”	*Source of tissue* Fraud by failing to disclose information or false representation (s3/2 Fraud Act 2006	*Source of tissue* GMC Guidance ‘Good Medical Practice’

49.	Commercialisation of human tissue	24 a. – Dr Mazza intended to set up a human myofibroblast biobank and informed a likely potential investor that he could provide human tissue, namely extracellular matrix ("ECM") to make bioinks and liver cubes. 32. a. Further detail provided 42 - in her appraisal Prof Pinzani was enquiring about new sources for human tissue samples, she now realised for Engitix.	Email	First Respondent - Jim Mansfield	12 February 2018	**"**As I previously mentioned I share an office with Dr Guiseppe Mazza and last Friday (9th Feb) evening around 6pm Guiseppe made a phone call whilst he was in my office which lasted about half an hour and which I found to be very disturbing. I don't know who was on the other end of the line but it sounded like a potential investor and basically Guiseppe Mazza was informing the individual he was talking to about the human products that he is able to provide. Guiseppe boasted he has a "team" who are proficient in decellularizing all human tissue. He claimed to be decellularizing human liver, pancreas, lung, kidney, as well as intestine and then creating solutions containing the extracellular matrix (ECM) which is left over from the decellularization process. The ECM containing solutions are then provided by Engitix to other companies which make bioinks (a bioink is basically an artificial matrix which is used to grow cells). The idea is to mix the ECM solution with the bioink which is then sold commercially. He mentioned Cellink as a partner company. He also mentioned he was travelling to Osaka/ Japan this week in order to meet with investors and is also planning on travelling to Boston at the end of March. He also talked about the fact he supplies liver cubes and also plans to set up a human myofibroblast (type of human cell) biobank." "I imagine there is a major scandal brewing here and the longer the problem is left unchecked the worse it is going to be for	**Commercialisation of human tissue (all)** Falsely representing that there is appropriate consent to do an activity or that s1 does not apply (s5 Human Tissue Act 2004). Using/storing donated material for a purpose which is not a qualified purpose, namely commercial profit (s8 Human Tissue Act 2004). Non-consensual	**Commercialisation of human tissue (all)** Human Tissue Authority Code of Conduct E – Research §16, §48, §60, §89, §111, §113, §49 UCL-RH BERC Guidelines

						everyone concerned."	analysis of DNA (s45 Human Tissue Act 2004).	
50.			Email	First Respondent - Jim Mansfield and Natalie Ware	8 May 2018	**"**Please find attached a copy of an application for human organs made to Promethera by Guiseppe Mazza. On page 1 of you will notice Dr Guiseppe Mazza is named as the investigator and CEO of Engitix. On the first page the last line of the Research Project Information reads: Engitix commercial objectives, related to Engitix decellularized human extra-cellular matrix scaffolds are to provide in-house research services and/ or to commercialize/ licence ECM bioinks/ hydrogels to third parties (only for commercial research and not for therapeutic use). On Page 2 you will see Guiseppe has ticked the box which asks "are you a For Profit Organization?" You will also see on page 2 that the primary source of funding for Engitix will come from "service contracts" ie the profits mad by Engitix will be used to purchase the tissue on a regular basis and the procured tissue will then be used to provide more service contracts or sold as bioinks etc. and the company will thus grow through the commercialization of the human organs. Below is a list of the whole organs that Guiseppe has applied to purchase on a monthly basis: Heart liver kidney lung intestine Pancreas The age range of the donor is specified as 1 year to 100 years old. I can't imagine any parent would ever consent for their child's organs to be used by any organization to make a profit from nor can I		

						imagine any next of agreeing to their loved ones organs to be used for personal profit either."		
59.	Involvement of innocent individuals	37. a. i. Second Respondent students were using Engitix human tissue products in their projects which breached ethics rules and benefitted Engitix.	Email	First Respondent - Jim Mansfield and Natalie Ware	31 May 2018	"Another difficult position I found myself in recently involved a student researcher who I was chatting to when we were briefly interrupted by a PhD student who was clearly supervising her in some way. He briefly described an experiment they were going to do which to me was clearly wrong. When he left I began to describe how the experiment should be conducted. I told her I could provide her with protocols and supervise the experiment if she wished and she was very happy with the idea. However, I quickly realized that her project involved growing human cells on hydrogels that had been mixed with powdered human liver extracellular matrix which Dr Guiseppe Mazza is commercializing in collaboration with the company called Cellink. I obviously don't want to get involved with any work that is remotely connected with Engitix but I find myself in the the very uncomfortable position of having to look on in silence whilst UCL students are being unwittingly used to further the advancement of a rogue company which deals in human body parts. The students are not being given the correct supervision and guidance that one would expect from a top British university nor are they being trained in proper ethics regarding the handling and use of human tissue	*Students* Falsely representing that there is appropriate consent to do an activity or that s1 does not apply (s5 Human Tissue Act 2004). Using/storing donated material for a purpose which is not a qualified purpose, namely commercial profit (s8 Human	*Students* Human Tissue Authority Code of Conduct E – Research §16, §48, §60, §89, §111, §113, §49 UCL-RH BERC Guidelines Data Protection Act 1998 / 2018 General Data Protection Regulation 2016 / 679

						for research. It is really ironic that despite all the ethics, HTA regulations, data protection act, MAST and other governance we have in place that UCL students are being put on research projects whereby many of these regulations are being clearly violated. What kind of example are we setting these future doctors and scientists? I am also very concerned for the future of some UCL students such as Walid Al-Akkad who has been given shares in Engitix but clearly has no idea that the company is running an illegal operation. Also, Dr Joseph Ndieyirah (who is a very accomplished academic) has been given the opportunity to commercialize his nanotechnology invention but has no idea where the funding for 3P Sense is really coming from. What will happen to these individuals in future if a major scandal is not averted?"	Tissue Act 2004). Non-consensual analysis of DNA (s45 Human Tissue Act 2004). Unlawful obtaining of personal data without consent (s170 Data Protection Act) Fraud by failing to disclose information or false representation (s3/2 Fraud Act 2006	Code E §32, §60
Group 2 – Fraud								
64.	Misinformation	*Human trachea*	Email	First Respond	12 Febru	**"**In addition to this, our head of department Prof Massimo Pinzani recently gave a lecture to a packed audience in	*Human trachea*	*Human trachea*

		24 c. – Prof Pinzani displayed a slide showing a successfully regenerated human trachea, about which there had been a scandal. 28. c. ii. This disclosure was repeated and the Claimant explained that no one has been able to successfully regenerate a human trachea.		ent - Jim Mansfield	ary 2018	our department (Institute for Liver & Digestive Health) in which he outlined his vision for ILDH over the next 5 years. He mainly outlined how he would like to grow his businesses and make them independent of UCL. The majority his talk was irrelevant to the vast majority of academics in the audience, as was pointed out by one of the senior scientists. However, the most shocking part of his talk was the fact that he put up a slide showing examples of organs which had been successfully regenerated including a human trachea. These examples were supposed to provide support for the work that his company Engitix is doing on liver regeneration. There can be few people in the audience who are unaware of the huge scandal surrounding the artificial trachea and the tragic outcomes of the pseudoscience surrounding it. It is insulting to all of us who were in the audience that he could even think of using the trachea as an example of a successfully regenerated organ after all the scandal surrounding it. It also brings the whole of UCL into disrepute especially considering the fact that UCL set up a special enquiry into the scandal." "I imagine there is a major scandal brewing here and the longer the problem is left unchecked the worse it is going to be for everyone concerned."	Fraud by false representation (s2 Fraud Act 2006) ***"could amount to fraud"***	GMC Guidance 'Good Medical Practice'
65.			Email and	First Respondent - Jim	13 April 2018	**Description of each file content** "Liver tissue patches MRC application		

			attachments	Mansfield and Natalie Ware		This application to the MRC to develop the use of powdered human ECM tissue mixed with hydrogels that can be used as a medium for growing cells and create "engineered liver tissue patches" that can then be implanted clinically thus delivering functional liver tissue as an alternative to liver transplant. - On Page 3 reference is made to the previous creation of an engineered trachea (p3) as support for the application despite the fact that an engineered human trachea has never been developed." "Martin Birchill is one of the reviewers for the application. He was previously investigated for his association with Paolo Machiarini and the scandal surrounding the engineered human trachea." **Engitix** "One of the more ambitious claims of Engitix is to create new organs by repopulating the human scaffolds with healthy cells so as to provide new organs for patients needing transplants. The idea that Engittix can even begin to do this is extremely far-fetched as the liver is a very complex organ and regeneration of much simpler organs such as the trachea have not been achieved either in animals or humans." **Serious concerns regarding Engitix and TAPb** "Despite the fact that no one has been able to successfully regenerate a human trachea (upper airway) reference to this continues to be made by Prof.		

						Massimo Pinzani and Dr Guiseppe Mazza in support of their organ regeneration work eg page 3 of the funding application to the MRC for the liver patches project makes reference to how tissue engineering has enabled the creation of constructs of the upper airways- see below and file named liver tissue patches MRC application: In addition Prof Pinzani also made reference to a regenerated trachea in the departmental seminar he gave earlier this year outlining his vision for ILDH over the next 5 years. the file named Pinzanis 5 year vision shows Prof. Pinzani standing in front of an image of a trachea."		
66.			Written Grievance	First Respondent	5 February 2020	**"**151. On 12 March 2018, I also reported to the union/HR that Prof Pinzani had given a lecture to ILDH in which he claimed his aim over the next 5 years was to grow his businesses and make them independent of the UCL. To that end, he posted a slide which showed examples of human organs which had already been successfully regenerated including a human trachea. He knew that to be untrue (he also knew of the scandal surrounding the alleged artificial trachea which the UCL was investigating). He used that untruth to seek to justify and exaggerate the work that was being done by Engitix on liver regeneration."		
67.			Written Grievance	Second Respondent	15 April 2020	See disclosure 66 above.		

68.		*Bioartificial Liver ("BAL")* 28 c. i. this was presented as if it is already being used on patients but it is still in the research phase.	Email and attachments	First Respondent - Jim Mansfield and Natalie Ware	13 April 2018	**Serious concerns regarding Engitix and TAPb** "Prof. Clare Selden's research is mainly focussed on trying to develop an bioartificial liver (BAL) devise that may one day be able to provide temporary support for liver function in patients with liver failure. This project is currently still very much in the research phase yet her work is seriously misrepresented on the Engitix website and is presented as if the BAL is already being used on patients: "The BAL was developed from know-how, research and expertise accrued over more than 13 years. It addresses unmet need for treatment of liver failure, providing bedside support whilst the liver regenerates so that people may return to a normal quality of life, or whilst a donor organ is identified. The device provides temporary replacement of liver function and, therefore, reduces the need for transplant organs." http://www.engitix.com/science_.html"	*BAL* Fraud by false representation (s2 Fraud Act 2006) ***"could amount to fraud"***	*BAL* GMC Guidance 'Good Medical Practice'
69.		*Pioneering organ regeneration* 32 c. – A Second Respondent and First Respondent brochure, contained misleading claims that: Prof Pinzani and his team were engineering tissue (regenerating organs); and that the technique (decellularization) was pioneering. She also provided evidence in support.	Email	First Respondent - Jim Mansfield and Natalie Ware	8 May 2018	**"**The attached PDF file named Regenerative therapies at UCL & NHS is a brochure produced by UCL and NHS partner trusts. Page 19 of the brochure reads: "Professor Massimo Pinzani and team from the Division of Medicine have pioneered the development of tissue-engineered liver, and other tissue engineered products in development at UCL include diaphragm, lung, liver, pancreas, small intestine, stomach, bladder, musculoskeletal and craniofacial tissue." The above statement is extremely misleading. There has been no pioneering work achieved and none of the organs mentioned above have been engineered in any way. All that has been done with these organs and tissues is that they have had their cells removed by decellularization. The process of decellularization is neither new nor pioneering. It has been around for many years and can in no	*Pioneering organ regeneration* Fraud by false representation (s2 Fraud Act 2006) ***"could amount to fraud"***	*Pioneering organ regeneration* GMC Guidance 'Good Medical Practice'

						way be described as organ regeneration or tissue engineering yet these descriptions have been used over and over again in order mislead the rest of us as to the real purposes behind Engitix. To date no human organ has been successfully regenerated in humans (nor animals as far as I am aware). For example Dr Birchill has been trying to regenerate a human trachea for many years and to this date he has not yet been successful. The organs listed above are far more complex than the trachea. Trying to regenerate any one of these organs would be challenging enough and would take a lifetime to achieve if at all. It therefore does not make sense to be trying to regenerate all of these organs all at once. Guiseppe and Massimo already have a freezer full to the brim with hundreds of human livers obtained from NHS patients via TAPB so one has to ask why these are not being used for human liver regeneration and why are a variety of additional human organs being collected by Engitix on a regular basis? I do not believe Guiseppe and co. have any intention of trying to regenerate any human organ and neither have I, nor anyone else in our department, seen any evidence of this either."		
70.			Written Grievance	First Respondent	5 February 2020	"63. Ms Morrone informed me she had worked in many places in Italy but that the Italians in our department (specifically those involved with Engitix) were "by far the most corrupt" bunch that she had ever come across. She also told me she didn't believe Engitix had successfully decellularized the human livers, which is the (false) marketing premise on which the company Engitix is		

						built."		
71.			Written Grievance	Second Respondent	15 April 2020	See disclosure 70 above.		
72.	3P sense funding	34 b. – Expressed concerns about the legitimacy of the funding source for the company, set up by Dr Mazza	Email	First Respondent - Jim Mansfield and Natalie Ware	22 May 2018	**"**I also forgot to mention in my previous emails anything about the company called 3P Sense : https://beta.companieshouse.gov.uk/company/10062547 This company was set up by Dr Guiseppe Mazza (founder of Engitix) Prof Massimo Pinzani (Head of ILDH), Dr Jospeh Ndieyirah (honorary UCL staff member), Dr Samadhan Patil (research associate in Glasgow University who previously worked with Joseph Ndieyira) and a company called BIOVIIIX SRL (based in Italy) - all with equal shares. The company is commercializing the nanotechnology developed by Dr Joseph Ndieyirah which is designed to detect biological molecules. I was initially told by Joseph Ndieyirah that Dr Guiseppe Mazza was investing £200,000 in 3P Sense and that this money would come from the charity called Associazione Icore ONLUS which Dr Guiseppe Mazza had set up in Italy in 2011 just prior to starting his PhD at UCL. Unfortunately I have never been able to find any information about the charity online and the weblink that is given on Guiseppe Mazzas linkedin page has never worked www.icoreonlus.it. In a more recent conversation Dr Joseph Ndieyirah mentioned the funding provided by 3P sense is actually coming from an investor in Italy. I reminded Joseph Ndieyirah that he had previously told me the money was coming from the charity set up by Dr Mazza in Italy. Joseph ignored my comment - he neither denied nor admitted he had told me this and merely reiterated the money was being	3P sense funding *"might be fraudulent"* *"the charitable funds might have been obtained under a false or fraudulent premise"* *"could amount to an offence under the Fraud Act'*	3P sense funding N/A

						provided by an investor in Italy from a company called BIOVIIIX. Unfortunatley I cannot find any information about this company either and the website given for the company http://www.bioviiix.com/ merely states it is under construction. In addition Dr Joseph Ndieyira also told me that 3P sense was being shut down and that the company was going to be restarted under a different name in order to remove Dr Samadhan Patil as a shareholder. In light of the above, it is my belief that the source of funds for 3P Sense need to be thoroughly investigated along with all the other concerns that I had previously raised."		
Group 3 – Data								
75.	Data breach	25 a. – Dr Mazza had a folder on a shelf in a shared office containing patient identifier information for the livers in the freezer which can be paired with those livers and a similar folder for TAPb blood samples, as well as a folder containing patient consent forms 28. f. repeated data breach 34. a. Repeated data breach disclosure in light of the recently	Email	First Respondent - Jim Mansfield	12 March 2018	See highlighted sections in relevant appendix.	**Data (all)** Unlawful obtaining of personal data without consent (s170 Data Protection Act)	**Data (all)** Data Protection Act 1998 / 2018 General Data Protection Regulation 2016 / 679 Code E §32, §60 UCL-RFH BERC Guidelines
76.			Email and attachments	First Respondent - Jim Mansfield and Natalie Ware	13 April 2018	See disclosure 46 above.		

		implemented General Data Protection Regulation ("GDPR"), and highlighted that since she vacated the office lots of unfamiliar individuals are coming into contact with the folder.						
Group 4 – Cover up								
81.	Cover up	63 h. – the First Respondent and Second Respondent failed to properly investigate the Claimant's complaints properly, Prof Kleta is Prof Pinzani's line manager and not independent and the outcome of Second Respondent's screening panel was not relayed to the Claimant.	Written Grievance	First Respondent	5 February 2020	See highlighted sections in relevant appendix.	**Cover up (all)** Concealment of the criminal offences referred to in the other disclosures.	**Cover up (all)** The obligation to properly investigate allegations of the nature made by the Claimant and/or The Public Sector Equality Duty" Concealment of breach of the legal obligations referred to in the other disclosures.
82.			Written Grievance	Second Respondent	15 April 2020	See highlighted sections in relevant appendix.		
Group 5 – Treatment of the Claimant after blowing the whistle								

Group 6 – Discrimination								
96.	Racism	28 d. i. – All staff employed by Engitix are Italian and their jobs have never been advertised. 28 d. ii. – There is a divide between the Italian and non-Italian speakers in ILDH and the latter have become marginalised since Prof Pinzani joined	Email and attachments	First Respondent - Jim Mansfield and Natalie Ware	13 April 2018	**Serious concerns regarding Engitix and TAPb** "All staff employed by Engitix are Italian and their jobs have never been advertised. They always communicate with each other and with Prof Pinzani in Italian so the rest of us in ILDH have no idea what they are talking about or what they are doing professionally or otherwise. Although they share the same lab and office space as other ILDH staff there is in effect a huge divide between the Italian speaking Engitix group and the non-Italian speaking ILDH staff members who have become increasingly marginalized since Prof. Pinzani took up his post as Head of ILDH."	**Racism/sexism (all)** N/A	**Racism/sexism (all)** Direct Discrimination under section 13 Equality Act 2010 Harassment under section 26 Equality Act 2010
100.	Sexism	28 e. – the Claimant disclosed that she had been removed from her office and described by Prof Pinzani as "out of control...".	Email and attachments	First Respondent - Jim Mansfield and Natalie Ware	13 April 2018	See disclosure 84 above.		

		50 – Mr Al-Akkad's behaviour was misogynistic 63 b. – Further to her disclosure regarding Mr Al-Akkad, the Claimant disclosed that Prof Pinzani and Dr Mazza ran an old boys' club and saw female scientists of less value and lower status due to their gender. This was reflected in Prof Pinzani being tactile without consent, mocking a female Saudi Arabian patient because of her weight, the Christmas party incident, Dr Mazza winking at female staff, Dr Mazza removing the Claimant from his acknowledgements list, the "le Rajai" comment and the Claimant's removal from her office.						

Appendix 3

AGREED CAST LIST

Name	**Role**
Walid **Al-Akkad**	PhD Student – R2; supervised by Dr Guiseppe Mazza. Shareholder in Engitix
Dr Rajai **Al-Jehani**	Claimant Biomedical Scientist – First Respondent (**R1**) Honorary – Second Respondent (**R2**)
Sharon **Alexander**	HR Business Partner for R1
Rachel **Anticoni**	Director of Operations – R1
Wendy **Appleby**	Registrar and Head of Student & Registry Services – R2
Patricia **Blake**	Band 2 Laboratory Assistant – at IDLH; Employed by R1 to work for MP at R2 as part of MP's recruitment package
David **Bray**	Head of Workforce – R1
Sherri-Ann **Chalmers**	Band 5 Medical Technical Officer employed by R1 to work for R2 at UCL's ILDH
Professor Brain **Davidson [BD]**	Professor – R2; Founder of TAPb; respondent in the PID investigation
Ivor **Dore**	Pharmacy Procurement Office Manager for R1 and C's UNISON Representative. Initial PID recipient
Prof. Mark **Emberton**	Led investigation, R2
Beth **Foley**	Divisional Director of the Liver Service – R1
Professor Barry **Fuller [BF]**	Professor – R2; Founder of TAPb; Respondent in the PID investigation
Dr Amir **Gander [AG]**	Tissue Access for Patient Benefit ("**TAPb**") Manager – R2; Respondent in the PID investigation

Stefano **Granieri**	Visiting Student – R2
David **Grantham**	Chief People Officer – R1
Lee **Gutcher [LG]**	Band 8B Operations Manager of the Liver Service – R1. C's line manager from Oct 18.
Korsa **Khan**	Operations Manager – R2
Professor Robert **Kleta [RK]**	Former Director of Division of Medicine – R2. Line Manager of MP. Complainant in the PID investigation
Professor Mark **Lowdell [ML]**	Director of the Centre for Cell, Gene & Tissue Therapeutics and Director of the RFH/UCL BioBank – R1
Adrian **Machinn**	Divisional HR Officer – R2
Jim **Mansfield [JM]**	UNISON Staff Side Chair and Freedom to Speak Up Guardian for the Trust – R1
Joe **Matthews**	Senior Employee Relations Advisor – R1
Dr Giuseppe **Mazza [GM]**	PhD Student / employee of R2 as Doctoral Scientist; CEO of Engitix; Largest shareholder in Engitix; Respondent in the PID investigation
Nick **McGhee [NM]**	Former Deputy Director (Casework and Governance) – R2; Investigator of the Research Misconduct PIDs
Farhan **Naim**	Director, Research and Development – R1
Dr Joseph **Ndieyira**	Lecturer – R2
Audrey **Parr**	Interim Head of HR – R2; Investigator of the HR PIDs
Professor Massimo **Pinzani [MP]**	Director of Institute for Liver and Digestive Health (ILDH) – R2; C's line manager from 2012 until Oct 18; Chairman of Engitix; 2nd largest shareholder of Engitix; Respondent in the PID investigation
Dr Krista **Rombouts**	Professorial Research Associate – R2; Engitix shareholder
Pat **Rubin**	Divisional Director of Operations, Medicine & Urgent Care – R1
Joanna **Ryan**	Senior Employee Relations Manager – R2; Grievance investigator

Sutopa **Sen [SS]**	Lead HR Business Partner for the Transplantation and Specialist Services – R1; Supported LG with redundancy consultation process
Kate **Slemeck**	Chief Executive – R1
Dr Chris **Streather**	Medical Director – R1
Matthew **Swales**	Director of Finance, Services and Reporting – R2; Investigated the Finance PIDs
Douglas **Thorburn [DT]**	Clinical Director for Hepatology and Liver Transplant – R1;
Natalie **Ware [NW]**	Head of Workforce for the Royal Free Hospital Business Unit – R1
Elliot **Westhoff [EW]**	Previous Operations Manager of the Liver Service - R1