



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms J Griffiths-Baker

**Respondents:** (1) Cardiff Metropolitan University  
(2) Ms C Aitchison  
(3) Ms I Finlay  
(4) Ms C Fraser  
(5) Minerva (Shepherd Tucker) LLP  
(6) Mr B Tucker

**Heard:** by video **On:** 10 August 2022

**Before:** Employment Judge S Jenkins

## Representation

**Claimant:** Mr J Mitchell (Counsel)  
**Respondents:** (1 – 4) Mr S Keen (Counsel)  
(5 – 6) Mr C Ludlow (Counsel)

# JUDGMENT

1. The Claimant's applications to amend her claim are refused.
2. For the avoidance of doubt, the following sections in the List of Issues attached as an Appendix to this Judgment were included in the initial Claim Form and do therefore fall to be considered as specific claims at the final hearing:

2.4  
2.18  
2.30 – Limited to the letter of 9 February 2020.  
2.33 - 40  
2.44 – Excluding the reference to “personal data”.  
2.52  
10.3  
10.16  
10.34 – 38  
10.39 – Excluding the reference to “personal data”.  
10.44  
10.47  
13.26, 28, 30 & 31  
13.39

# REASONS

## Background

1. This case had been through several preliminary hearings prior to this one, most recently before Employment Judge Sharp on 29 April 2022.
2. The background circumstances to the claim were set out in paragraphs 7 to 12 of the Case Management Orders I issued following an earlier preliminary hearing before me on 4 and 5 February 2021. However, to provide some context to the application considered in this hearing, key dates were that the relationship between the Claimant and the First Respondent, which had been due to commence on 1 February 2020, was in fact brought to an end on 31 January 2020, the Claim Form was then issued on 29 April 2020, and Responses were submitted by the Respondents on 29 May 2020.
3. Judge Sharp's Case Management Orders, which dealt with a number of different matters, included a direction that the parties were to co-operate and agree a list of the issues to be determined at the final hearing. The first draft of that list was to be prepared by the Claimant, and was to be sent to the other parties to review by no later than 20 May 2022. The parties were then to work together to produce a list of issues to be used for further case management and for the final hearing.
4. Judge Sharp also listed that final hearing to take place over eleven days commencing on 9 December 2022.

## The application

5. The Claimant's representatives produced a draft List of Issues as required, but that led to a concern on the part of the Respondents that several matters set out in it had not been included in the Claimant's pleaded case, and should not therefore be included in the List of Issues. That led to the Claimant's representatives making an application, set out in an email of 4 July 2022, described as an "*Application to include additional instances of detriment, discrimination and harassment in the list of issues*".
6. Attached to the email was the List of Issues on which various sections had been highlighted. The email confirmed that different types of claim had been identified as follows:
  - (i) Those highlighted in **Blue** were new claims.
  - (ii) Those highlighted in **Green** were areas where there was a dispute as to whether they had been originally pleaded in the initial Claim Form or not.
  - (iii) Those highlighted in **Purple**, were ones which, whilst not in the initial Claim Form, were asserted by the Claimant as having been included in subsequently provided further and better particulars.
7. The List of Issues, attached to this Judgment as an Appendix for ease of reference, is split into 31 numbered sections, with several of them having sub-sections, notably section 2, which lists alleged whistleblowing

detriments, which has sub-sections running from 2.1 to 2.63; section 10, which lists alleged acts of less favourable treatment for the purposes of the direct discrimination claim, which has sub-sections running from 10.1 to 10.47; and section 13, which lists alleged acts of unwanted conduct for the purposes of the harassment claim, has sub-sections running from 13.1 to 13.46. The references to sections below are to sections within the List of Issues.

8. There were 22 blue sub-sections, 30 green sub-sections, and 2 purple sub-sections. However, there was some overlap as several matters were included as ones giving rise to claims for whistleblowing detriment, less favourable treatment for the purposes of the direct disability discrimination claim, and/or unwanted conduct for the purposes of the harassment claim.
9. The Claimant's application was to amend her claim to include those claims identified as being new instances of detriment, discrimination or harassment, i.e. those highlighted in blue. That was on the ground that they could not have been presented largely because they were unknown or had not occurred at the date the claim was issued. The Claimant's position was that the areas highlighted in green and purple had already been included in the pleaded claim and therefore no amendment was required in respect of them. The Respondents were of the view that all matters highlighted required an application to amend, to which they did not consent.

## **Law**

10. With regard to the applicable law, the test to be applied in relation to applications to amend involves the assessment of the balance of injustice and hardship of allowing or refusing the amendment. The Employment Appeal Tribunal ("EAT") in Selkent Bus Company Ltd v Moore [1996] ICR 836, reiterated that point, which had previously been made in Cocking v Sandhurst (Stationers) Limited [1974] ICR 650, and noted a non-exhaustive list of relevant circumstances which would need to be taken into account in the balancing exercise, namely; the nature of the amendment, the applicability of time limits, and the timing and manner of the application to amend. Those points have subsequently been encapsulated within the Employment Tribunals (England & Wales) Presidential Guidance on General Case Management (2018), Guidance Note 1.
11. The EAT, more recently, in Vaughan v Modality Partnership [2021] ICR 535, gave detailed guidance on applications to amend tribunal pleadings. That confirmed that the core test in considering applications to amend is the balance of injustice and hardship in allowing or refusing the application, but noted that the focus should be on the real practical consequences of allowing or refusing the amendment, considering whether the Claimant has a need for the amendment to be granted as opposed to a desire that it be granted.
12. With regard to claims arising after the submission of the initial claim form, the EAT, in Prakash v Wolverhampton City Council (UKEAT/0140/06), confirmed that there is no reason in principle why a cause of action that has accrued after the presentation of the original claim form should not be added by amendment if appropriate.

13. With regard to the timing and manner of the application to amend, the EAT, in Martin v Microgeneration Wealth Management Systems Ltd (UKEAT/05/006) noted that whilst late amendments can be permitted in appropriate cases, the later an application is made, the greater the risk of the balance of hardship being in favour of rejecting the amendment. Indeed, the overriding objective, which the Tribunal Rules require to be applied, involves dealing with cases expeditiously and in ways which save expense, and undue delay may be inconsistent with that.
14. However, the appellate courts have made clear that applications to amend can be made at any stage, with the key principle being the need for the applicant to show why the application to amend was not made earlier. The EAT, in Ladbroke Racing Ltd v Trainer (UKEATS/0067/06), noted that, in addition, the impact of delay on additional costs may be relevant, as may be circumstances where the delay has put the other party in a position where evidence relevant to the new issue is no longer available or is rendered of lesser quality than would have been the case.

### **The parties' positions**

#### The Claimant

15. The Claimant was of the opinion that the incidents highlighted in green and purple had already been included in the pleaded claim and therefore that no application to amend to include those claims was necessary.
16. With regard to the matters that the Claimant accepted did require amendment, Mr Mitchell, on her behalf, whilst accepting that there had been a delay in raising the matters now sought to be included by way of amendment, noted that the focus of the decision in Vaughan was on the need for the tribunal to have regard to the injustice caused to the party seeking to amend if the application was refused, and to balance that against the injustice caused to the party seeking to oppose the application, if granted.
17. He contended that the application should be viewed against the background of the Respondents seeking to delay the hearing of the case, having made various preliminary applications. He contended that a failure to allow the application would allow the Respondents to continue to treat the Claimant less favourably and/or to cause her detriment and/or to harass her, the contention appearing to be that the Respondents had continued to discriminate against, harass, and cause detriment to, the Claimant, after 31 January 2020, both in relation to an application the Claimant had made for the role she had been due to take up when subsequently re-advertised, and in relation to its conduct of the defence of these proceedings.
18. Mr Mitchell contended that the amendments would not have significant consequences for the Respondents, whether in terms of disclosure or additional witness evidence, and would not lengthen the hearing. He submitted that the Respondents had never provided a list of the witnesses they proposed to call at the final hearing, and therefore that any contentions they might advance about difficulties amendments might cause them in that

regard should be treated with caution.

19. With regard to the matters highlighted in green and purple, Mr Mitchell contended that where a previously asserted factual claim had not been asserted as a specific act of harassment or detriment or less favourable treatment there would be no prejudice to the Respondents in allowing the Claimant to relabel those pleaded matters to refer to the other claims.

### The Respondents

20. The Respondents' submissions were principally made by Mr Keen on behalf of the First to Fourth Respondents, which were endorsed and supplemented by submissions made by Mr Ludlow on behalf of the Fifth and Sixth Respondents.

21. They noted that the EAT, in Chandok v Tirkey (UKEAT/190/14), had observed as follows:

*“The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely upon their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a Respondent is required to respond.”*

22. They contended that the Claimant's application was the worst type of example of a Claimant treating their claim form as something which only “started the ball rolling”.

23. They noted that their Responses had been presented in May 2020, that further and better particulars of the Claims and Responses had been exchanged over the Summer of 2020, and that the parties had then given disclosure by list on 9 November 2020. They noted that the Claimant's proposed new allegations were therefore all based upon information that had been available to her for well over a year, and in some cases much longer, and that the time limits in respect of those claims would have expired long ago.

24. The Respondents noted that, despite that lengthy delay, the Claimant had made no attempt in her application to explain when the potential claims came to her attention, or why she had delayed in bringing them. Specifically, the Respondents noted that it appeared that some of the allegations were based upon minutes of an internal meeting, involving the individual Respondents, on 31 January 2020. Those minutes had been disclosed to the Claimant on 18 December 2020.

25. The Respondents noted that some of the allegations should have been apparent to the Claimant at the time she presented her Claim Form, as they appeared to relate to the First Respondent's announcements about the fact that the Claimant would not be taking up the proposed position. The Respondents also noted that other allegations appeared to relate to communications sent to the Claimant by the First Respondent's Board of Governors in response to a further application the Claimant made for the

role when re-advertised in February 2021. In the context of an application to amend in July 2022, the Respondents contended that the matters raised were all significantly out of time.

26. The Respondents contended that the allegations contained facts which were wholly unconnected with the Claimant's termination, and which were likely to concern a number of different witnesses, including members of the Board of Governors and other administrative officers.
27. In that regard, Mr Keen, on behalf of the First to Fourth Respondents, noted that they had made clear who was going to be called as witnesses at the final hearing in the preliminary hearing before Judge Sharp on 29 April 2022, namely the three named Respondents, an individual from the First Respondent's students' union, and an individual from the Claimant's previous employer.
28. The Respondents contended that further disclosure would also need to be considered, and that it was unlikely that additional work could be done before the commencement of the hearing due to start on 9 December 2022. The Respondents further contended that the if the amendments were granted the current 11-day listing would be likely to be inadequate.
29. The Respondents also contended that, in addition to the timing of the application being unreasonable, so was its manner, with the Claimant not producing an amended ET1 Claim Form, but attempting to introduce these additional allegations into the List of Issues without informing the Respondents that they were new.
30. The Respondents also contended that there was no reasonable basis for saying that any of the Respondents had continued to harass or mistreat the Claimant or that the Respondents had sought to delay the hearing of the case by making preliminary applications. The Respondents noted that any applications they had made had been successful, whereas those made by the Claimant had been very largely unsuccessful.

## **Conclusions**

### General

31. As I have noted, the approach, urged upon employment tribunals by the appellate courts when considering amendment applications, is to focus on the need to balance the injustice and hardship caused to a claimant by refusing the amendment and caused to a respondent by allowing it, with the Vaughan case, noting that the focus should be on the real practical consequences.
32. I also noted that the EAT in Vaughan confirmed that the examples outlined in Selkent as factors that may be relevant to the balancing exercise, which are also included in the Presidential Guidance as factors to be taken into account, whilst they should not be taken as a checklist to be ticked off to determine the application, are nevertheless factors which are to be taken into account in conducting the fundamental balancing exercise.

33. In terms of the real practical consequences of allowing or refusing the amendment, an overarching issue in this case is that the final hearing, which has already been given a lengthy listing due to the breadth of matters to be considered, is scheduled to take place less than four months after the preliminary hearing in relation to this application.
34. In relation to that final hearing, a case management timetable had been set out by Judge Sharp at the preliminary hearing in April, which had already been required to be adjusted at the end of this preliminary hearing to take into account the delay already caused to it by the Claimant's amendment application. Indeed, I committed, at the end of this preliminary hearing, to provide this Judgment as soon as I practicably could to avoid further impacts on the timetable, and I noted that the case management timetable could need to be revisited, depending on my decision on the amendment application.
35. In my view, the proximity of the final hearing, and the steps that the parties need to undertake to be ready for that hearing, means that prejudice is likely to arise, for both parties, and indeed potentially for other employment tribunal litigants, if the December hearing is jeopardised and has to be postponed.
36. I also noted that many of the issues under consideration for amendment would appear to add little to the Claimant's already pleaded case. The fundamentals of that are that the Claimant contends that the withdrawal of the role she was due to take up at the First Respondent involved retaliatory action as a result of protected disclosures she had made to her previous employer and/or involved acts of direct discrimination or harassment arising from a perception of her as disabled. The core of that is set out, often in granular, and it could be said excessive, detail, in the List of Issues regardless of this application to amend.
37. Several of the matters sought to be added to the claim, if they involve detriments at all would be very minor ones, and certainly ones which would pale into insignificance alongside the core detriment claim of the withdrawal of the job. An example of that is the amendment sought to be added at section 2.12 of the List of Issues, asserted to be a comment by the Second Respondent about the Claimant, in the course of an internal meeting on 31 January 2020, that "*there was a litigiousness*" about her. That could form part of the evidence in this case in relation to the Claimant's core claim, but it is difficult to see what the Claimant would materially gain from it being considered as an individual act of detriment, or, put another way for the purposes of this application, what hardship or prejudice the Claimant would suffer if not allowed to pursue the matter as an individual act of detriment.
38. Other matters sought to be added to the claim would similarly appear to add little to the Claimant's existing claims. Examples of these are section 2.13, where it is asserted that the Respondents' failure to believe that the Claimant could have disclosed her absence as part of her application process was to her detriment, and section 2.59, which asserts that the Respondents' continued failure to admit that the Claimant had made protected disclosures was a detriment. It is not clear how a failure to agree with the Claimant's perspective on matters could amount to a detriment.

39. Other matters appear to be misconceived, for example section 2.15, which states that a detriment arose from an unknown person informing any of the Respondents that "Her manager (one down from VC) had a "dossier" of her complaints." Paragraph 40 of the Claimant's Grounds of Complaint indicated that it was the Claimant herself who raised that point with the Second Respondent in her meeting with her. It is difficult to see how the actions of another person, particularly the Claimant herself, could be construed as a detriment caused by any of the Respondents.
40. I considered conversely that there would be further obligations placed on the Respondents if the amendments were allowed. They would be required to undertake further investigations, further disclosure exercises, and potentially call additional witnesses.
41. An example of that is the additions sought to be added at sections 2.56 – 2.62 which would involve assessing who, from the First Respondent's Board of Governors, was involved in the matters complained about, which would in turn be likely to lead to additional disclosure and potentially additional witness evidence. The same point can be made about the proposed addition at section 2.23, which would involve the Respondents investigating who was involved in the publication of the fact that the Claimant would not be joining the First Respondent, a further disclosure exercise, and, if someone other than the individual Respondents was involved, the calling of an additional witness.
42. In my view therefore, there was real prejudice to the Respondents, particularly the First to Fourth Respondents, if the amendments were granted, in return for limited material benefit to the Claimant if the amendments were granted.
43. I also noted that there had been considerable delay in the making of the amendment application. One of the matters raised, the handling of communications about the fact that the Claimant was not going to be joining the First Respondent, could have been raised in the initial claim form in April 2020. Other additions seemed to be derived from the Respondents' Responses which were submitted in May 2020. The most recent events sought to be added revolved around the re-advertisement of the Deputy Vice Chancellor role in February 2021. The matters sought to be added had therefore taken place a considerable time before the amendment application was made.
44. I also noted that, despite the fact that three previous preliminary hearings had taken place, in July 2020, February 2021 and April 2022, no formal application to amend had been forthcoming. Even in relation to the application that had been made, that had arisen following the Claimant's preparation of a draft of the List of Issues, when it was pointed out to the Claimant that several matters had not appeared in the Claim Form.

"Blue" issues

45. In relation to the applications which were accepted by the Claimant to be fresh matters and thus requiring amendment, i.e. the matters highlighted in



blue, my overall conclusion was that the Claimant would be put to very little practical hardship if the amendments were refused, whereas the Respondents would be faced with needing to undertake further investigations into the matters raised, which could in turn lead to further disclosure obligations, and the requirement to call additional witnesses. The balance of hardship therefore lay in favour of the Respondent and in favour of refusing the amendment applications.

“Purple” issues

46. I then moved to consider the two sections highlighted in purple, which were asserted by the Claimant to have been included in her further and better particulars, but which were not accepted by the Respondents as having been included in the pleaded claims. I noted that the two sections, 2.54 and 2.55, had been included in the Claimant's further and better particulars in response to requests relating to the sections of the claim form relating to the provisions, criteria or practices advanced by the Claimant as part of her claim of failure to make reasonable adjustments. The Claimant had subsequently withdrawn her reasonable adjustments claim, and I had dismissed that claim on withdrawal at the preliminary hearing in February 2021.
47. In my view therefore, the sections were not included in the claim form and therefore were required to be considered by way of an application to amend. For the same reasons as informed my conclusions in relation to the sections highlighted in blue, I considered that the balance of hardship lay in favour of the Respondent and that the application to amend should be refused.
48. My overarching comments about the balance of hardship above applied to these two sections. In my view, the particular matters raised do not add anything material to the already very detailed asserted detriments and therefore the Claimant would not be put to any material hardship by the matters not being included as elements of specific detriment. Furthermore, the matters were referred to within the Claimant's further particulars provided in August 2020, and could have been included in her original Claim Form, but were only raised as detriments in the application to amend nearly two years later. On the other hand, the Respondents, if faced with having to deal with these matters as specific claims of detriment, would have to revisit the Responses and the disclosure undertaken, and could potentially require the involvement of additional witnesses.

“Green” issues

49. I finally then moved to consider the sections highlighted in green. The Claimant contended that these were already included within the Claim Form, but that if it was considered that they had not, permission to amend the Claim form to include them should be granted. The Respondents, on the other hand, contended that the matters were not set out within the Claim Form and therefore required permission to amend, which should be refused.
50. I ultimately considered that some of the highlighted sections were indeed to

be found within the Claim Form and therefore were matters which could be advanced as specific elements of detriment, less favourable treatment and/or harassment. However, in relation to others I was not satisfied that they were included within the original Claim Form and therefore required formal permission to be granted to amend. With regard to those latter sections, for the same reasons as informed my conclusions in relation to the blue and purple sections, I considered that the balance of hardship lay against granting the amendments.

51. I comment on each of the highlighted green areas as follows.

2.4. Whilst it is difficult to see how the specific fact of the engagement of the Sixth Respondent to seek additional information from the Claimant's previous employer adds anything material to the Claimant's principal concern, the contention that that amounted to detriment is contained in paragraph 23 of the Grounds of Complaint and, therefore, section 2.4 does fall to be determined at the final hearing.

2.18. Similarly, whilst it is difficult to see that the assertion that the instruction of the Sixth Respondent to telephone the Claimant to withdraw the offer adds anything to the asserted detriment arising from the underlying decision that the offer be withdrawn, the matter is raised as an act of detriment in paragraph 42 of the Grounds of Complaint and, therefore, this matter can also proceed to be adjudicated upon as part of the final hearing.

2.25 Whilst the failure to pay the Claimant is included in the Grounds of Complaint, it was specifically referred to as an "*unlawful deduction in wages*". The assessment of that claim will involve a fairly straightforward consideration of whether any sums were lawfully due. The inclusion of the failure to pay the Claimant as an assertion of detriment will involve a qualitatively different analysis.

In my view therefore, this matter required amendment. It was referred to within the original Grounds of Complaint, and therefore was entirely capable of being referred to as an assertion of detriment as well as an assertion of an unauthorised deduction from wages, and the amendment to refer to it as a claim of detriment was made well over two years after the point was originally pleaded. Bearing in mind that if there was indeed a failure to pay the Claimant then she has a claim in respect of that, and will therefore be awarded compensation in respect of that, I did not consider that the Claimant would suffer material hardship through the matter not being addressed as one of detriment.

From the Respondent's perspective, whilst the matter may already be able to be addressed evidentially in relation to the unauthorised deductions from wages claim, further analysis will need to be undertaken of the connection of any failure to any protected disclosure the Claimant may have made which may potentially lengthen the hearing. I therefore concluded that it would not be appropriate to allow this element to be included by way of

amendment.

- 2.27 I formed a similar view in relation to this section. Whilst the Claimant did assert in her Grounds of Complaint that the Respondent's letter of 9 February 2020 contained contradictions, that was not pleaded as a matter of protected disclosure detriment. It did therefore require amendment and for the same reasons as I outlined in relation to section 2.25 I considered that that should not be permitted.
- 2.29 Paragraph 51 of the Grounds of Complaint refers to the First Respondent having stated that its actions in seeking to withdraw the accepted offer were done because of "*information received*". However, no reference was made to the use of that information as being an act of detriment or discrimination. The relevant paragraph went on to say that the asserted detriment was that the First Respondent did not seek to clarify the information with the Claimant. It did not refer to the use of the information. The reference to the use of such information in section 2.29 is therefore qualitatively different to the Claimant's previous reference to such information.

For the same reasons as I have previously expressed in relation to my refusals to grant amendments, I considered that it would be appropriate to refuse to allow this section to proceed by way of amendment. It adds little, if anything, to the Claimant's primary concern of detriment in the form of the withdrawal of the job offer itself, and would require the Respondents to further investigate the use of the asserted information.

- 2.30 Paragraph 57 of the Grounds of Complaint does refer to an assertion that the Respondents' failure to address the grievance set out in the Claimant's letter of 9 February 2020 was an act of detriment and/or discrimination. The paragraph was however confined to that letter and did not make reference to any other pre-action correspondence. To the extent that the allegation relates to the letter of 9 February 2028 therefore, it is already pleaded and can proceed to be considered by the Tribunal at the final hearing. However, if the Claimant contends that any other correspondence should be included, then that would be a fresh matter and any application to amend in respect of that is refused, for the reasons specified in relation to the other applications to amend.
- 2.40.1 Paragraph 53 of the Grounds of Complaint, and its lettered subparagraphs which form the basis of the asserted detriments set out at sections 2.32 to 2.40 of the List of Issues, refers to detriment and/or discrimination having been caused by the Third Respondent. However, paragraph 63 of the Grounds of Complaint makes clear that the Claimant asserts that the First Respondent is liable for each act or omission done by the other Respondents. The First Respondent may, in any event, be liable for the actions of the other Respondents, particularly the Second to Fourth Respondents, by virtue of common law principles of vicarious liability, and possibly

the application of sections 109 and 110 of the Equality Act 2010. In my view therefore, these matters, and indeed several other subsequent matters which fall to be considered in the same way, were included in the original Claim Form as claims against the First Respondent, as well as the named individual Respondent, and therefore can proceed to be considered in that manner at the final hearing.

2.44 Whilst there is reference in paragraph 54 of the Grounds of Complaint to the accessing of the Claimant's confidential medical records as an act of detriment and/or discrimination, it does not go further and assert a breach of the Claimant's personal data. Such an assertion potentially brings in concepts of data protection, which would be of an entirely different character and would involve further investigation by the Respondents and the need potentially to adduce additional evidence. In my view, that would involve an application to amend, which I considered should be refused for the reasons specified in relation to the other applications to amend.

2.49 The allegation set out at paragraph 60 of the Grounds of Complaint is that the Sixth Respondent wrote to the Claimant on 5 March 2020, stating that the First Respondent's decision, presumably the decision to withdraw the job offer, had been made as a result of the Claimant's meeting with the Second Respondent on 30 January 2020, and because "*something concerning had come to light*". The paragraph refers to the letter being an act of detriment and/or an act of discrimination.

The paragraph does not however assert that the First Respondent's provision of information to the Fifth and Sixth Respondents so that the letter could be sent was itself an act of detriment and/or discrimination, and that is therefore a fresh allegation against the First Respondent. For the same reasons as I have advanced in relation to the other applications to amend, I considered that it should be refused.

2.52 Paragraph 40 of the Grounds of Complaint refers to the Second to Sixth Respondents taking part in a telephone conference on 31 January 2020, during which the decision was made to inform the Claimant that the offer of employment had been withdrawn. The substance of section 2.52 is set out within that paragraph and can therefore be considered by the Tribunal at the final hearing.

10.3. This is perhaps another example of the Claimant seeking to particularise her claim in granular, and arguably excessive, detail. The fact that the First and Second Respondents engaged the Fifth and Sixth Respondents to seek information about the Claimant from her previous employer does not, in my view, add anything material to the Claimant's claims. Paragraph 24 of the Grounds of Complaint does however refer to the First Respondent "*and those responsible for engaging*" the Fifth and Sixth Respondents to obtain additional information regarding the Claimant's absence at her previous employer as an act of discrimination. In my view, the

Second Respondent can be considered to fall within the scope of "those responsible". I therefore considered that this matter was included in the initial Claim Form and can proceed to be considered at the final hearing.

- 10.16 Paragraph 42 of the Grounds of Complaint refers to the Sixth Respondent telephoning the Claimant on 31 January 2020 to inform her that the First Respondent was withdrawing the offer of employment. Clearly there must have been an instruction to the Sixth Respondent by one or other of the Second to Fourth Respondents, and potentially the First Respondent vicariously. I was therefore content that the instruction to the Sixth Respondent to make the telephone call had been broadly asserted within the Claim Form. Again however, I found it difficult to see what particular detriment the Claimant will have suffered from an instruction to the Sixth Respondent to call the Claimant to inform her that the offer was being withdrawn, when that was merely the method of implementing the underlying decision which is the core of the Claimant's complaint, i.e. the decision to withdraw the offer of employment.
- 10.22 This has already been addressed in relation to the detriment claims at section 2.25 above.
- 10.25 This has already been addressed at section 2.29 above.
- 10.34 to 10.38. These relate to the same point as was addressed at section 2.40.1 above.
- 10.39. This is the same matter as was addressed at section 2.44 above.
- 10.44. This is the same matter as was addressed at section 2.40.1 above.
- 10.47. This is the same matter as was addressed at section 2.52 above.
- 13.8. This does not really involve an amendment, but I would agree with the Claimant's assertion that the allegation that there was a failure to provide her with notice is one which can lie generally as an assertion of discrimination against the First Respondent without needing to identify any individual.
- 13.12. This has already been dealt with at section 2.25 above.
- 13.15. This has already been addressed at section 2.29 above.
- 13.26, 28, 30 and 31 These are the same matters as were addressed at section 2.40.1 above
- 13.39 This is the same matter as was addressed at section 2.52 above.

**Case No: 1601135/2020**

Employment Judge S Jenkins  
Date: 19 August 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON 22 August 2022

FOR THE TRIBUNAL OFFICE Mr N Roche

## APPENDIX

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### LIST OF ISSUES

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#### *Jurisdiction*

1. The Claimant has included the following incidents paragraph numbers 2.12 – 2.15; 2.23; 2.25, 2.27, 2.29, 2.30; 2.52; 2.54-2.55 2.56 – 2.63; 10.14; 10.16; 10.22; 10.25; 10.47, 13.10, 13.12, 13.15, 13.39; 13.40-13.46 in this list of issues which are all claims that arise from information provided or acts occurring after the claim was submitted. C attaches an application to amend to include these incidents within the current claim on the grounds that these could not have been presented as they were unknown at the date the claim was issued.
  - a. The parties have identified the claims below as follows.
    - i. Those highlighted Blue are new claims.
    - ii. Those highlighted Green – there is a dispute in whether they are pleaded or not.
    - iii. Those highlighted Purple – C asserts are in the F&BPs, R does not accept these are pleaded claims.
  - b. The Respondents do not agree that these new claims should be included in the list of issues. The parties will make representations to the Judge who will decide this point.
  - c. The Respondents state that no application to amend has been made.

#### *Public Interest Disclosure (whistleblowing)*

- 1.1 For C's whistleblowing detriment claims:
  - 1.1.1 Pursuant to s. 48(3) Employment Rights Act 1996 (ERA) has C brought her claims within the relevant time limit?
    - (a) Was the claim brought 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 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.
- 1.2 Did C disclose information pursuant to s.43B(1) ERA to NTU?

- 1.2.1 In March 2019 C stated to NTU's Deputy Director of HR that she had been directed to do an investigation and chair a disciplinary hearing panel into another member of staff but had been told whatever the evidence C was to dismiss the person [C's RF&BPs R1-4 §16, 21], [C's RF&BPs R5-6 § 2];
- 1.2.2 In letters dated 8 March 2019 from C to Cillian Ryan and 18 April 2019 from C to Professor Edward Peck, C raised various breaches of health and safety legislation at NTU that implicated two members of senior team raising, among other things, staff workload, the lack of resources and the impact this was having on employees of NTU [C's RF&BPs R1-4 §16, 21] [C's RF&BPs R5-6 § 2].
- (a) C will rely on written disclosures dated 8 March and 18 April 2019. Other communications will be referred to as background.
- 1.3 Did C disclose information pursuant to s.43B(1) ERA to R1?
- 1.3.1 [GOC §32a] On 30 January 2020 did C the Claimant make it clear to R2 that she had blown the whistle at NTU [C's RF&BPs R1-4 §21], [C's RF&BPs R5-6 § 2]?
- 1.3.2 [GOC§32a/b] On 30 January 2020 did C say to [R2] that whilst at NTU she had been directed to do an investigation and chair a disciplinary hearing into another member of staff but had been told whatever the evidence C was to dismiss the person [C's RF&BPs R1-4 §21], [C's RF&BPs R5-6 § 2].
- 1.3.3 [GOC§32a] On 30 January 2020 did C say to [R2] that whilst at NTU she had raised various breaches of health and safety legislation that implicated two members of NTU's senior team. C explained that as a consequence of raising this she was victimized, harassed and bullied resulting in C's doctor advising her to take time off due to her "blood pressure". C also informed R2 that some of the matters were in the public domain and that there was a settlement agreement between her and NTU [C's RF&BPs R1-4 §21], [C's RF&BPs R5-6§ 2].
- 1.4 Did any of the information in 1.2 or 1.3 above disclose facts pursuant to s.43B(1) ERA;
- 1.4.1 Did C possess a reasonable belief that the information disclosed therein tended to show;
- (a) NTU had failed to comply with a legal obligation to which they were subject namely:
- (i) Statutory and contractual obligations towards both C and other members of staff:
- (A) NTU failed to limit the hours their staff worked to those that they had contractually agreed to work pursuant to their employment contracts and contracts C was aware had been agreed with the unions and NTU causing, among other things, stress and long term sickness absence in employees, breaching their duty not to force an excessive workload;
- (B) NTU causing such illness and their subsequent failure to take any action to



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improve this situation was a breach of general duties of care C understood, as a result of her experience including her participation on the Health and Safety committee at NTU, that employers have towards their employees;

- (C) NTU's failures were also breaches of the duty to ensure that employees can carry out their own duties in a safe and non-hostile, suitable working environment with adequate support;
  - (D) NTU failed to create safe system and place of work;
  - (E) NTU's behaviour, in particular their response to C's disclosures was a breach of their duty to take reasonable steps to protect from unacceptable behaviour such as bullying, harassment, victimisation or unauthorised interference in work;
  - (F) NTU have an obligation to address and also run procedurally and substantively fair, impartial and/ or non-discriminatory disciplinary procedures;
  - (G) NTU have an obligation not to victimise or cause someone detriment because they make public interest disclosures.
  - (H) C was generally aware of legislation including the Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations (1999).
- (ii) the obligation to protect the health and safety of staff.
- (A) C was on the Health and Safety committee at NTU. The impact of health and safety the working hours was having on the staff at NTU and the failure of NTU to take any action was raised by C and the unions in these meetings. It felt obvious to C that an employer has an obligation not to make their staff unwell and C had in her mind the obligations identified in (i) above. Clearly to C, NTU were in breach of their obligations if staff were being made to work over their contracted hours and/ or were being victimised and subjected to detriments and they were suffering from poor health as a result. In addition, there were formally published concerns and other information from the Unions that C was involved with and in wider publications which brought these breaches to C's attention.

(b) The health and safety of individuals were put at risk (see R&BPs).

1.4.2 The Respondents have received these particulars on 04 July 2022 and have not had time to review them.

1.5 If so, did C reasonably believe that the disclosures were made in the public interest?

1.5.1 Did C preface any alleged disclosures by stating that they were hypothetical; and/or

1.5.2 Did C ask for the discussion to remain confidential.

(a) The Claimant states this is a question of fact and not an issue in the case. This is not a document to record factual matters. No other factual matters (that are not substantive claims) are included in this list.

1.6 Is it admitted that each of the disclosures set out above were made to C's employer?

**Detriments (s.47B & s.48 ERA)**

2. Was C subjected to the following act(s) /failure(s) to act and, if so, was it a detriment for s47B(1) ERA purposes:

2.1 [GOC§22] R5 - R6 contacted C by telephone on 28 January 2020 to state "there was a question mark surrounding" C's departure from NTU and that C had been absent "since October 2019".

2.2 [GOC§23] R1 became aware of C's absence from NTU and caused C a detriment by engaging R5 - R6 to seek information on C from NTU.

2.3 [GOC§23] R1 became aware of C's absence from NTU and caused a detriment to C by requiring additional information regarding her absence and resignation from NTU.

2.4 [GOC§24] R2 became aware of C's absence from NTU and R1 and R2 discriminated against C by engaging R5 - R6 to seek information about C's absence from work at NTU, causing her detriment.

2.4.1 R1-6 says not referred to as an act of detriment in the ET1.

2.5 [GOC§28] R1, R5 and R6 sought further information from C about any absence and her departure from NTU.

2.6 [GOC§29] R2 acted to C's detriment and or discriminated against C by discussing with and or seeking further information from R5 – R6 about C's absence and or departure from NTU.

2.7 [GOC§29] R2 spoke to R5 - R6 stating "as you know [C] is due to start with us next Monday. However, I've just heard a report that she hasn't been at [NTU] since October. I had thought that the reference from [person unknown] was a little strange and clearly we need some additional information. Can we have a chat about how we proceed".

2.7.1 R says detriments 2.6 and 2.7 are repetitions.

2.8 [GOC§30] R5 - R6 acted to C's detriment by seeking information regarding C's absence and departure from NTU.

- 2.9 ~~[GOC§31] R5 – R6 acted to C’s detriment by contacting a Dean of NTU stating he believed that C had “left under a cloud”. [Deleted because repeated at 2.31 below].~~
- 2.10 [GOC§40] The raising of and or consideration of C’s whistleblowing by R1-6 during this meeting on 31 January 2020 was to C’s detriment.
- 2.10.1 R1-6 says it does not make sense and is not a detriment.
- 2.11 [GOC§40] R1-6 attempting to obtain C’s occupational health report in advance of the meeting on 31 January 2020 was to C’s detriment.
- 2.12 R2 saying to R3-6 that there was a litigiousness about C in the meeting on 31 January 2020 was to C’s detriment.
- 2.13 R1-6 failing to believe that C could have disclosed her absence as part of the application process to R1 was to C’s detriment.
- 2.14 R6 saying that it was necessary to get to the bottom of C’s absence from NTU when C had disclosed her absence to R1 as part of the application process was to C’s detriment.
- 2.15 Unknown person informing any of R1-6 that "Her manager (one down from VC) had 'dossier' of her complaints".
- 2.16 [GOC§40] The raising of and or consideration of C’s health and absence having been caused by her whistleblowing, by R2 during the meeting on 30 January 2020 and afterwards.
- 2.17 [GOC§42] The telephone call on 31 January 2020 from R6 to C purporting to withdraw an offer of employment from R1 [GOC§42].
- 2.18 [GOC§42] R1-4 instructing R6 to make the telephone call from R6 to C on 31 January 2020 purporting to withdraw the offer of employment from R1.
- 2.18.1 R1-6 says this is not a pleaded detriment.
- 2.19 [GOC§43] R3 writing on 31 January 2020 to C purporting to terminate her contract of employment.
- 2.20 [GOC§43] R1 [Who?] failed to follow any process prior to its decision to terminate the contract of employment. Failures include:
- a) not enquiring as to the causes of a suspected absence;
  - b) not to follow the Articles when dismissing senior staff;
  - c) not to follow any investigation process;
  - d) not allow C to be heard about the concerns;
  - e) not to allow C to appeal against the termination decision.
- 2.20.1 C says it does not have to name anyone in R1.
- 2.21 [GOC§44] R1 [Who?] failed to provide notice by post in accordance with clause 25 of C’s contract.
- 2.21.1 C says it does not have to name anyone in R1.
- 2.22 [GOC§46] The failure of R1 – R4 to comply with the Articles of R1.
- 2.22.1 R says this is the same as 2.20(b).

- 2.23 The failure of R1-4 to agree a process to manage the news that C was being blocked from starting her role either internally or externally.
- 2.24 [GOC§48] If C has been dismissed, the failure of R1 to pay C for her contractual notice period of three months.
- 2.25 Failure to pay C from 1 February 2020 following the Ultra Vires decision to dismiss.
- 2.25.1 C says this is in para 47 of the GoC.
- 2.26 [GOC§50] R1 assertion that it was entitled to withdraw an offer of employment, when a contract had been entered into.
- 2.27 R1 providing changing and contradictory reasons for the termination of C's employment.
- 2.27.1 C says this is in paragraphs 42, 51, 53 and 57 of GoC.
- 2.28 [GOC§51] R1 [Who?] in failing to clarify "information received" with C which R1 stated caused the attempted withdrawal of its offer of employment.
- 2.28.1 C says it does not need to name anyone.
- 2.29 Use of "information received" about C, referred to in the letter of 7 February 2020, which should be protected and cannot be used lawfully for any purpose.
- 2.29.1 R1-6 says they don't understand it and if admitted as a new claim, they are unable to reply to it.
- 2.30 Failure of R1-4 to respond to or agree to urgent requests made by C in pre-action correspondence.
- 2.30.1 R1-4 says they don't understand it and if admitted as a new claim, they are unable to reply to it.
- 2.30.2 C says this is in para 57 of GoC.
- 2.31 [GOC§52] R5-R6 making a call to the Dean at NTU to ask about C's departure and saying that C left "under a cloud".
- 2.31.1 R1-6 says this is a repetition of 2.9.
- 2.31.2 C says 2.9 struck through. Not removed due to numbering changes.
- 2.32 [GOC§53] R1 and or R3 writing purporting to summarily terminate C's employment on 7 February 2020.
- 2.32.1 R1-4 – repetition of 2.19.
- 2.32.2 C says 2.19 refers to 31 Jan 2020 letter. 2.32 refers to letter 7 Feb 2020. 2.19 amended to capture this.
- 2.33 [GOC§53a] (see 2.40.1) R1 and or R3 writing asserting C had misled R2.
- 2.34 [GOC§53b] R1 and or R3 writing asserting C lacked integrity and honesty;
- 2.35 [GOC§53c] R1 and or R3 writing asserting C had not before 30 January 2020 indicated issues with her employment at NTU.
- 2.36 [GOC§53d] R1 and or R3 writing asserting C had not before 30 January 2020 indicated her absence from work from April 2019 at NTU.
- 2.37 [GOC§53e] R1 and or R3 writing asserting C was not forthcoming with the reason for

and length of her absence from work at NTU.

- 2.38 [GOC§53f] R1 and or R3 writing asserting C had refused to release the medical declaration form to R2.
- 2.39 [GOC§53g] R1 and or R3 writing asserting C's medical declaration did not provide overall dates of absence.
- 2.40 [GOC§53h] R1 and or R3 writing asserting C had implied criticism of her former employer NTU.
- 2.40.1 R1-4 says that 2.33 to 2.40 wrongly include R1 since these allegations are pleaded against R3 only.
- 2.41 [GOC§55] R1 and or R3's categorization of C's disclosures to NTU as "implied criticism" of her former employer.
- 2.41.1 R1-4 says this is the same as 2.40.1.
- 2.42 [GOC§53i] R1 and or R3 writing asserting C had sought to dissuade R2 from raising the matter with R3.
- 2.42.1 R1-4 says that this wrongly include R1 (see 2.40.1).
- 2.43 [GOC§53j] R1 and or R3 writing asserting C misled R6 about the outcome of the meeting on 30 January 2020 with R2.
- 2.43.1 R1-4 says that this wrongly include R1 (see 2.40.1)
- 2.44 [GOC§54] R1's occupational health adviser, contrary to assurances made, provided R access to confidential medical records that were accessed and relied upon and breached C's personal data.
- 2.44.1 R1-4 says that there is no breach of personal data pleaded and that this should be removed.
- 2.45 [GOC§57] R1 and or R3's failure to address C's grievance dated 9 February 2020 which contained information about legitimate procedural and factual challenges and failure to treat that letter as a grievance.
- 2.46 [GOC§57] R1 failure to follow their own policies or the ACAS code of practice.
- 2.47 [GOC§59] R1 (and or others unknown) instructed its solicitors to write on 14 February 2020 now asserting C had committed a repudiatory breach, asserting C made misrepresentations and or mislead R1.
- 2.48 [GOC§59] R1 (and or others unknown) instructed its solicitors to write on 14 February 2020 therein failing to comply with the Articles of R1.
- 2.49 [GOC§60] R1 informed R5 and or R6 (and or others unknown) so R5/R6 could write on 5 March 2020 asserting R1's decision was made as a result of something concerning having come to light and seeking to falsely explain that the something concerning was C's decision to leave NTU.
- 2.49.1 R1-6 says that no allegation against R1 is pleaded in GOC§60
- 2.50 [GOC§60] R5 and or R6's solicitors wrote on 8 March 2020 upon the instructions of R5 and or R6 stating they would not answer further correspondence.
- 2.50.1 R1-6 says this is a repeat of 2.49.
- 2.51 [GOC§61] R1's failure to award C the title of professor.

- 2.52 C's purported dismissal determined by R2-R4, R6.
- 2.52.1 R1-6 say not pleaded.
- 2.53 [GOC§41] In the unlikely event that R2 did not inform R3 – R6 of C's whistleblowing, did R2 manipulate them to agree in the decisions from 31 January 2020.
- 2.54 R1-6 disregarded C's occupational health clearance [C's RF&BPs R1-4 §11(iii)(f)].
- 2.55 R1-6 were influenced by the fact that C's absence was caused by her protected disclosures [C's RF&BPs R1-4 §11(iii)(i)].
- 2.56 R1 and their Board of Governors failed to engage or comply with their obligations in relation to C including failure to consider C's application for Deputy Vice-Chancellor in or around 12 February 2021 and address the position that that role was removed from her Ultra Vires.
- 2.57 R1's Board of Governors' failure to respond to any of C's correspondence.
- 2.58 R1-6's continued spurious applications, tendentious correspondence and attempts to delay the hearing of this claim.
- 2.59 R1-6's continued failure to admit that C clearly made protected disclosures.
- 2.60 R1-4's exposure of without prejudice correspondence to the Tribunal without the consent of C.
- 2.61 R1 appointing someone to recruit for the role of Deputy Vice-Chancellor.
- 2.62 C receiving a call from Anderson Quigley, agents of R1 who were recruiters appointed to recruit for the role of Deputy Vice-Chancellor following C's unlawful termination.
- 2.63 R1 and R4's failure to produce R4's notes of the meeting on 31 January 2020 pursuant to C's data subject access request.

### *On the grounds of a disclosure (s47B ERA)*

3. Was the Claimant subjected to a detriment on the grounds of a protected disclosure?
4. Is R1 vicariously liable for the acts of R2-6 set out GOC§21-31, 39-42, 60 to 64 [C's RF&BPs R1-4 §1-2]?
5. Did any of R1-6 know about the disclosures in para 1.4?
- 5.1 C says this is not an issue of law, but a factual assertion by R1 which is not appropriate for this list of issues.

### *Automatically unfair dismissal s.103A*

6. Was C dismissed? If so, when?
- 6.1 R1-6 wants to know what C alleges about the dismissal. R1-6 says it is entitled to know what C's primary case is.
7. R1 alleges that it accepted C's repudiatory breach of contract on 31 January 2022 or alternatively on 07 February 2022 [GoR§55].
8. Was the reason or the principal reason for the Claimant's dismissal the protected disclosures set out above?

**Disability:**

9. Was C perceived to be disabled by R1, R2, R3, R4 and or R6?
- 9.1 C asserts the perception of disability arises from the information before R2 including:
  - 9.1.1 [GOC§32b] C provided detailed information as to her sickness absence at NTU including a copy of her GP's letter to Occupational Health to R2 at the meeting on 30 January 2020. Perceived disability arose from knowledge of absence from work at NTU being signed off work from April 2019 until December 2019 with anxiety, insomnia and work related stress.
  - 9.1.2 C asserts that the information provided on 30 January 2020 [GOC§36] "established C had an impairment with a substantial long-term effect on normal day-to-day activities, which was made clear given the length of C's absence."
  - 9.1.3 C asserts R's knowledge of the following:
    - 9.1.3.1. C's absence from work at NTU being signed off work from April 2019 until December 2019 [C's RF&BPs R1-4 §7], [C's RF&BPs R5-6 § 7];
    - 9.1.3.2. C's absence being due to anxiety, insomnia, and work-related stress [C's RF&BPs R1-4 §7];
    - 9.1.3.3. R2 acknowledged the effect of C's situation on C's blood pressure [GOC§35], [C's RF&BPs R1-4 §7];
    - 9.1.3.4. R2 acknowledged the long-term effect and impact on C [GOC§35c] [C's RF&BPs R1-4 §7];
    - 9.1.3.5. R1 and R2 were aware that anxiety and stress are recurring conditions, acknowledged by R2 in the meeting with C on 30 January 2020 even though C reported to be recovered to the point of being able to take the role working at R1 [C's RF&BPs R1-4 §7];
    - 9.1.3.6. R2 was aware C had been victimized, harassed and bullied having made disclosures resulting in C requiring time off from work [C's RF&BPs R5-6 § 2].
  - 9.1.3.1.1 R1-6 says 9.1.3 should not be in the list of issues.

**Section 13: Direct discrimination on grounds of perceived disability:**

10. Did C suffer direct discrimination in that she was subjected to less favourable treatment because of her perceived disability, contrary to section 13 of the Equality Act 2010 (EqA)?

**Less Favourable Treatment**

- 10.1 [GOC§22] On 28 January 2020 R5 – R6 contacted C by telephone to state "there was a question mark surrounding" C's departure from NTU and that C had been absent "since October 2019".
- 10.2 [GOC§23] R1 became aware of C's absence from NTU and caused C a detriment by requiring additional information regarding her absence and or her resignation from NTU.

- 10.3 [GOC§23] R2 became aware of C's absence from NTU and R1 and R2 caused C a detriment by engaging R5 – R6 to seek information on C from NTU.
- 10.3.1 R1-6 says 10.2-10.3 are not in the ET1 as acts of discrimination and 10.3 is not claimed against R2, C refers to GoC§24.
- 10.4 [GOC§24] R1 (and those unknown who engaged R5-6) sought additional information regarding C's absence or sought to enquire into the cause of that absence from NTU.
- 10.5 [GOC§25] R1, R5 and R6 and others unknown for seeking an explanation for C's alleged 3-month absence (October 2019 to January 2020).
- 10.6 [GOC§28] R1, R5 and R6 sought further information from C about any absence and her departure from NTU.
- 10.7 [GOC§29] R2 acted to C's detriment and or discriminated against C by discussing and or seeking further information from R5 – R6 about C's absence and or departure from NTU.
- 10.8 [GOC§29] R2 spoke to R5 – R6 stating "as you know [C] is due to start with us next Monday. However, I've just heard a report that she hasn't been at [NTU] since October. I had thought that the reference from [person unknown] was a little strange and clearly we need some additional information. Can we have a chat about how we proceed".
- 10.8.1 R1-6 says 10.7 and 10.8 are repetitions.
- 10.9 [GOC§30] R5 – R6 sought information regarding C's absence and departure from NTU.
- 10.10 ~~[GOC§31] R5 – R6 discriminated against C by contacting a Dean of NTU stating he believed that C had "left under a cloud". [Deleted because repeated at 10.26 below].~~
- 10.11 [GOC§40] In advance of the meeting on 31 January 2020, R1-4 specifically tried to obtain C's health questionnaire and GP letter from their Occupational Health officer.
- 10.12 [GOC§40] On 31 January 2020 the raising of and or consideration of C's health and or her absence from work was an act of discrimination.
- 10.12.1 R1-6 says it does not make sense and is not less favourable treatment.
- 10.13 [GOC§40] On 31 January 2020 the raising of and or consideration of C's health having been caused by her whistleblowing.
- 10.14 R6 saying that it was necessary to get to the bottom of C's absence from NTU when C had disclosed her absence to R1 as part of the application process was an act of discrimination.
- 10.15 [GOC§42] The telephone call on 31 January 2020 from R6 to C purporting to withdraw an offer of employment from R1.
- 10.16 [GOC§42] R1-4 instructing R6 to make the telephone call from R6 to C on 31 January 2020 purporting to withdraw the offer of employment from R1.
- 10.16.1 R1-6 says not pleaded.
- 10.17 [GOC§43] R3 writing to C purporting to terminate her contract of employment.
- 10.18 [GOC§43] R1 [R1-4 asks who?] failed to follow any process prior to its decision to terminate the contract of employment. Failures include:



- a) not enquiring as to the causes of a suspected absence;
- b) not to follow the Articles when dismissing senior staff;
- c) not to follow any investigation process;
- d) not allow C to be heard about the concerns;
- e) not to allow C to appeal against the termination decision.

10.18.1 C says it does not have to name anyone in R1.

10.19 [GOC§44] R1 [who?] has failed to provide notice pursuant to clause 25 of her contract of employment.

10.19.1 C says it is not required to name someone in R1.

10.20 [GOC§46] The failure of R1 – R4 to comply with the Articles.

10.20.1 R1-4 says this is the same as 10.18(b).

10.21 [GOC§48] If C has been dismissed, the failure of R1 to pay C for her contractual notice period of three months.

10.21.1 R1-4 says this is the same as 10.19.

10.22 **Failure to pay C from 1 February 2020 following the Ultra Vires decision to dismiss.**

10.22.1 R1-4 says this is not a pleaded claim.

10.22.2 C says this is in para 47 of the GoC.

10.23 [GOC§50] R1 assertion that it was entitled to withdraw an offer of employment, when a contract had been entered into.

10.24 [GOC§51] R1 [R1-4 asks who?] failed to clarify “information received” with C which R1 stated caused the attempted withdrawal of its offer of employment.

10.24.1 C says it is not required to name someone in R1.

10.25 **Use of “information received” about C, referred to in the letter of 7 February 2020, which should be protected and cannot be used lawfully for any purpose.**

10.25.1 R1-4 says this is not a pleaded claim.

10.26 [GOC§52] R5-R6 making a call to the Dean at NTU to ask about C’s departure and saying that C left “under a cloud”.

10.26.1 R1-6 says this is a repetition of 10.10.

10.26.2 C struck through 10.10 above. It remains only for numbering consequences.

10.27 [GOC§53] R1 and or R3 write purporting to summarily terminate C’s employment on 7 February 2020.

10.28 [GOC§53a] R1 and or R3 writing asserting C had misled R2.

10.29 [GOC§53b] R1 and or R3 writing asserting C lacked integrity and honesty;

10.30 [GOC§53c] R1 and or R3 writing asserting C had not before 30 January 2020 indicated issues with her employment at NTU.

10.31 [GOC§53d] R1 and or R3 writing asserting C had not before 30 January 2020 indicated her absence from work from April 2019 at NTU.

- 10.32 [GOC§53e] R1 and or R3 writing asserting C was not forthcoming with the reason for and length of her absence from work at NTU.
- 10.33 [GOC§53f] R1 and or R3 writing asserting C had refused to release the medical declaration form to R2.
- 10.34 [GOC§53g] R1 and or R3 writing asserting C's medical declaration did not provide overall dates of absence.
- 10.34.1 R1-4 says 10.28 to 10:34 are not pleaded against R1.
- 10.35 [GOC§53] R1 and or R3 writing asserting C had implied criticism of her former employer NTU.
- 10.35.1 R1-4 says is not pleaded against R1 – says this is the same as 10.34.1.
- 10.36 [GOC§55] R1 and or R3's categorization of C's disclosures to NTU as "implied criticism" of her former employer.
- 10.36.1 R1-4 says is not pleaded against R1 – says this is the same as 10.34.1.
- 10.37 [GOC§53i] R1 and or R3 writing asserting C had sought to dissuade R2 from raising the matter with R3.
- 10.37.1 R1-4 says is not pleaded against R1 – says this is the same as 10.34.1.
- 10.38 [GOC§53a] R1 and or R3 writing asserting C misled R6 about the outcome of the meeting on 30 January 2020 with R2.
- 10.38.1 R1-4 says is not pleaded against R1 – says this is the same as 10.34.1.
- 10.39 [GOC§54] R1's occupational health adviser, contrary to assurances made, provided R access to confidential medical records that were accessed and relied upon and breached C's personal data.
- 10.39.1 R1-4 says that there is no breach of personal data pleaded.
- 10.40 [GOC§57] R1 and or R3's failure to address C's grievance dated 9 February 2020 which contained information about legitimate procedural and factual challenges and failure to treat that letter as a grievance.
- 10.41 [GOC§57] R1 failure to follow their own policies or the ACAS code of practice.
- 10.42 [GOC§59] R1 (and or others unknown) instructed its solicitors to write on 14 February 2020 now asserting C had committed a repudiatory breach, asserting C made misrepresentations and or mislead R1.
- 10.43 [GOC§59] R1 (and or others unknown) instructed its solicitors to write on 14 February 2020 therein failing to comply with the Articles of R1.
- 10.44 [GOC§60] R1 informed R5 and or R6 (and or others unknown) so R5/R6 could write on 5 March 2020 asserting R1's decision was made as a result of something concerning having come to light and seeking to falsely explain that the something concerning was C's decision to leave NTU.
- 10.44.1 R1-6 says R1 is not included and this isn't pleaded.
- 10.45 [GOC§60] R5 and or R6's solicitors wrote on 8 March 2020 upon the instructions of R5 and or R6 stating they would not answer further correspondence.

- 10.46 [GOC§61] R1's failure to award C the title of professor.
- 10.47 C's purported dismissal determined by R2-R4, R6.
- 10.47.1 R1-6 says not pleaded.
11. Rs asserts that if any of the treatment above was afforded to C would that treatment have been afforded to a hypothetical comparator who had had the same time off sick as C, who had made the same application to R1, in the same circumstances, but who was not perceived to be disabled?
12. If any of the treatment above was afforded to C was that treatment afforded because of C's perceived disability?

**Section 26 EqA Harassment**

13. Did the Respondents engage in unwanted conduct related to C's perceived disability? The unwanted conduct alleged is:
- 13.1 [GOC§22] R5 – R6 contacted C by telephone to state “there was a question mark surrounding” C's departure from NTU and that C had been absent “since October 2019”.
- 13.2 [GOC§28] R1, R5 and R6 harassed C by seeking to obtain further information from C about any absence and her departure from NTU.
- 13.3 [GOC§29] R2 acted to C's detriment and or discriminated against C by discussing and or seeking further information from R5 – R6 about C's absence and or departure from NTU.
- 13.4 [GOC§29] R2 spoke to R5 – R6 stating “as you know [C] is due to start with us next Monday. However, I've just heard a report that she hasn't been at [NTU] since October. I had thought that the reference from [person unknown] was a little strange and clearly we need some additional information. Can we have a chat about how we proceed”.
- 13.4.1 R1-6 says conduct 13.3 and 13.4 are repetitions.
- 13.5 ~~[GOC§31] R5 – R6 discriminated against C by contacting a Dean of NTU stating he believed that C had “left under a cloud”. [Deleted by C due to 13.17 below]~~
- 13.6 [GOC§42] The telephone call on 31 January 2020 from R6 to C purporting to withdraw an offer of employment from R1.
- 13.7 [GOC§43] R1 [R1-4 asks who?] failed to follow any process prior to its decision to terminate the contract of employment. Failures include:
- a) not enquiring as to the causes of a suspected absence;
  - b) not to follow the Articles when dismissing senior staff;
  - c) not to follow any investigation process;
  - d) not allow C to be heard about the concerns;
  - e) not to allow C to appeal against the termination decision.
- 13.7.1 C says it does not have to name anyone in R1.
- 13.8 [GOC§45] R1 [R1-4 asks who?] initial failure to provide notice pursuant to clause 25 of her contract of employment.

- 13.8.1 C says it does not have to name anyone in R1.
- 13.8.2 R1-6 say this is not pleaded as harassment.
- 13.9 [GOC§46] The failure of R1 – R4 to comply with the Articles of R1.
- 13.9.1 R1-4 says this is the same as 13.7(b).
- 13.10 The failure of R1-4 to agree a process to manage the news that C was being blocked from starting her role either internally or externally.
- 13.11 [GOC§48] If C has been dismissed, the failure of R1 to pay C for her contractual notice period of three months.
- 13.12 Failure to pay C from 1 February 2020 following the Ultra Vires decision to dismiss.
- 13.12.1 C says this is in para 47 of GOC.
- 13.13 [GOC§50] R1 assertion that it was entitled to withdraw an offer of employment, when a contract had been entered into.
- 13.14 [GOC§51] R1 [R1-4 asks who?] failed to seek to clarify “information received” with C which R1 stated caused the attempted withdrawal of its offer of employment.
- 13.14.1 C says it does not have to name anyone in R1.
- 13.15 Use of “information received” about C, referred to in the letter of 7 February 2020, which should be protected and cannot be used lawfully for any purpose.
- 13.15.1 R-14 says they don’t understand it and if admitted as a new claim, cannot reply to it.
- 13.15.2 C says this is in para 57 of GoC
- 13.16 Failure of R1-4 to respond to or agree to urgent requests made by C in pre-action correspondence.
- 13.17 [GOC§52] R5-R6 making a call to the Dean at NTU to ask about C’s departure and saying that C left “under a cloud”. [note 13.5 above]
- 13.17.1 R1-6 says this is a repetition of 13.5 above.
- 13.17.2 C says 13.5 struck through. It remains only for numbering consequences.
- 13.18 [GOC§53] R1 [R1 asks who?] and or R3 writing purporting to summarily terminate C’s employment on 7 February 2020.
- 13.18.1 C says it does not have to name anyone in R1.
- 13.19 [GOC§53a] R1 and or R3 writing asserting C had misled R2.
- 13.20 [GOC§53b] R1 and or R3 writing asserting C lacked integrity and honesty;
- 13.21 [GOC§53c] R1 and or R3 writing asserting C had not before 30 January 2020 indicated issues with her employment at NTU.
- 13.22 [GOC§53d] R1 and or R3 writing asserting C had not before 30 January 2020 indicated her absence from work from April 2019 at NTU.
- 13.23 [GOC§53e] R1 and or R3 writing asserting C was not forthcoming with the reason for and lengthy of her absence from work at NTU.
- 13.24 [GOC§53f] R1 and or R3 writing asserting C had refused to release the medical

declaration form to R2.

- 13.25 [GOC§53h] R1 and or R3 writing asserting C had implied criticism of her former employer NTU.
- 13.26 [GOC§53g] R1 and or R3 writing asserting C's medical declaration did not provide overall dates of absence.
- 13.26.1 R1-4 says that 13.19 to 13.26 wrongly include R1.
- 13.27 [GOC§54] R1's occupational health adviser, contrary to assurances made, provided R access to confidential medical records that were accessed and relied upon and breached C's personal data.
- 13.28 [GOC§55] R1 and or R3's categorization of C's disclosures to NTU as "implied criticism" of her former employer.
- 13.28.1 R1-4 says this is the same as 13.26.1 above.
- 13.29 [GOC§53i] R1 and or R3 writing asserting C had sought to dissuade R2 from raising the matter with R3.
- 13.30 R1-4 says this is the same as 13.26.1 above [GOC§53j] R1 and or R3 writing asserting C misled R6 about the outcome of the meeting on 30 January 2020 with R2.
- 13.31 R1-4 says this is the same as 13.26.1 above [GOC§53g] R1 and or R3 writing asserting C's medical declaration did not provide overall dates of absence.
- 13.32 [GOC§57] R1 and or R3's failure to address C's grievance dated 9 February 2020 which contained information about legitimate procedural and factual challenges and failure or to treat that letter as a grievance.
- 13.33 [GOC§57] R1 to 4's failure to follow R1's own policies or the ACAS code of practice.
- 13.34 [GOC§59] R1 (and or others unknown) instructed its solicitors to write on 14 February 2020 now asserting C had committed a repudiatory breach, asserting C made misrepresentations and or mislead R1.
- 13.35 [GOC§59] R1 (and or others unknown) instructed its solicitors to write on 14 February 2020 therein failing to comply with the Articles of R1.
- 13.35.1 R1-4 do not understand this detriment.
- 13.36 [GOC§60] R1 informed R5 and or R6 (and or others unknown) so R5/R6 could write on 5 March 2020 asserting R1's decision was made as a result of something concerning having come to light and seeking to falsely explain that the something concerning was C's decision to leave NTU.
- 13.36.1 R1-6 says R1 is not included, and this isn't pleaded.
- 13.37 [GOC§60] R5 and or R6's solicitors wrote on 8 March 2020 upon the instructions of R5 and or R6 stating they would not answer further correspondence.
- 13.38 [GOC§61] R1's failure to award C the title of professor.
- 13.39 C's purported dismissal determined by R2-R4, R6.
- 13.39.1 R1-6 say not pleaded.
- 13.40 R1 and their Board of Governors failed to engage or comply with their obligations in

relation to C including failure to consider C's application for Deputy Vice-Chancellor in or around 12 February 2021 and address the position that that role was removed from her Ultra Vires.

- 13.41 R1's Board of Governors' failure to respond to any of C's correspondence.
- 13.42 R1-6's continued spurious applications, tendentious correspondence and attempts to delay the hearing of this claim.
- 13.43 R1-6's continued failure to admit that C clearly made protected disclosures.
- 13.44 R1-4's exposure of without prejudice correspondence to the Tribunal without the consent of C.
- 13.45 R1 appointing someone to recruit for the role of Deputy Vice-Chancellor.
- 13.46 C receiving a call from Anderson Quigley, agents of R1 who were recruiters appointed to recruit for the role of Deputy Vice-Chancellor following C's unlawful termination.
- 14. C claims harassment related to disability and relies on each of the above complaints and conduct set out above as unwanted conduct related to her perceived disability that had the purpose or effect of violating her dignity, or creating an intimidating, hostile, degrading, humiliating and or offensive environment for her.
- 15. Was the conduct set out above unwanted conduct afforded to C for a reason related to disability?
  - 15.1 For the avoidance of doubt, C relies on her perceived disability.
- 16. Did the conduct have the purpose of violating the C's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her? Alternatively did it have that effect, taking into account the perception of C, the other circumstances of the case, and whether it was reasonable for the conduct to have that effect?

***s. 13(1) ERA Unlawful deduction of wages***

- 17. Was C entitled to receive wages after 1 February 2020? If so
- 18. Did C suffer an unlawful deduction from her wages, on the basis she has not been paid since 1 February 2020? [GOC§18-19, 47]?
  - 18.1 C asserts that she has not been dismissed, as the purported dismissal fails to comply with the Articles of R1.
    - 18.1.1 R1-4 says C must set out her case on her dismissal and her entitlement to wages in order for Rs to respond.
  - 18.2 R1 to R3 assert that C's argument that she remained entitled to wages is misconceived for the reasons set out in §51-55 of their GoR.

***Breach of contract***

- 19. Was C contractually entitled to 3 month's notice of termination?
- 20. Was C terminated in breach of her entitlement to notice?
- 21. Further to paragraph 5 above, if C has been dismissed, is C contractually entitled to

three-month notice period?

**Jurisdiction**

22. Have C's claims been brought in time?

**Remedy**

23. C seeks reinstatement.

24. Is C entitled to receive compensation?

25. Would C have been dismissed in any event?

26. 1.1.1 For failing to provide accurate information about her previous employment?

27. 1.1.2 For covertly recording the meeting on 30 January 2020?

28. Did C contribute to her dismissal?

28.1 C states this is not pleaded.

29. Has C mitigated her loss?

30. Is C entitled to a declaration?

31. Should a recommendation be made?