EMPLOYMENT TRIBUNALS

Claimant:	Mr A Moghaddam	
Respondents:	1. Chancellor and Scholars of the University of Oxford 2. Professor Q Sattentau 3. Professor M Freeman	
Heard at:	Reading	**On: 25-31 January, 1-3 February** (in chambers) **15-17 February and 16 March 2022**
Before:	Employment Judge Gumbiti-Zimuto Members: Mr D Palmer and Ms S Hockey	
Appearances		
For the Claimants:	Mr J Crozier, counsel	
For the Respondent:	Ms J Danvers, counsel	

JUDGMENT

The claimant's complaints are not well founded and are dismissed.

REASONS

1. In a claim form presented on the 17 May 2019 the claimant made complaints of unfair dismissal, discrimination on the grounds of race, discrimination on the grounds of disability, whistleblowing detriment, a failure to provide a written statement of amended terms and conditions of employment, and a declaration that the claimant was a permanent employee of the respondent.

2. The respondents are, the Chancellor, Masters & Scholars of the University of Oxford (the first respondent), Professor Quentin Sattentau (the second respondent) and Professor Matthew Freeman (the third respondent). The respondents deny the claimant's claims.

3. The parties agreed a list of claims and issues that the Tribunal had to determine and set these out in final document produced on the 21 January 2022. The claimant during the hearing abandoned some of the claims and in this judgement we seek to address just those matters which the claimant proceeds with. The matters that the claimant does not pursue were set out in

the helpful and detailed submissions produced by counsel for the claimant at paragraph 100.

4. The claimant gave evidence in support of his own case. The claimant produced a detailed and lengthy statement which gives a careful analysis of the documents provided to the Tribunal with a clear and coherent chronology of events. The respondents relied on the evidence of the second and third respondents, together with evidence from Mr Andrew Souter (Manager of Human Resources for the Sir William Dunn School of Pathology); Professor Anton van der Merwe (Professor of Molecular Immunology and Director of Graduate Studies within the Dunn School); Professor Stephen Gunn (Professor of Early Modern History and a member of the pool for the University's appeal panel from 2017 to 2021); and Professor Sir Andrew Pollard, (Oxford Vaccine Group, and Chair of the Academic Integrity Panel investigating the claimant's complaint). All the witnesses produced statements as their evidence in chief.

5. The Tribunal was also provided with an electronic bundle of document running to 2695 pages in an electronic PDF. We heard the evidence in this case over 8 days (25-31 January 2022, 1-3 February 2022), and we discussed this case in chambers on 15-17 February 2022 and 16 March 2022. It is with great regret and the sincerest of apologies that it was not possible for the Tribunal's decision to be provided to parties until more than 100 days had passed since the last date of Tribunal deliberations. The continuing delay was due to the workload of the Employment Tribunals being such that insufficient time was set aside for the Employment Judge to be able to produce the judgment and reasons in a timely fashion. The Tribunal is particularly conscious of the effect that the events under consideration in this case have had on the claimant's health and his financial resources. The undue delay in producing this judgment can only have adversely further contributed to that.

6. We made the following findings of fact which we considered necessary to determine the issues in this case.

7. The claimant was born in Iran.

8. The claimant was employed by the University of Oxford, first respondent (referred to hereafter as "the respondent") as a senior postdoctoral scientist from 1 May 2003 until 31 March 2019.

9. The claimant worked in the laboratory of the second respondent, Professor Quentin Sattentau. The third respondent, Professor Matthew Freeman, was the Head of Department of the Sir William Dunn School of Pathology ("the Dunn School"), which is a department within the Medical Sciences division of the University from 2013.

10. From 1 May 2003 the claimant was employed under a series of fixed term contracts of varying length. The claimant's employment on these contracts was dependant on funding from various grants, some from external sources and some from internal resources.

11. The claimant was employed starting on grade 7 point 10 in 2003 until 2016, when his grade went up to 7 point 11.

12. The claimant complains that Professor Sattentau has failed to support his progression to the status of an independent research scientist: instead, Professor Sattentau has used the claimant's fixed term contract status, and reliance on grant funding for his research, as a means to appropriate the claimant's scientific ideas, results and projects. The claimant says that Professor Sattentau, with the endorsement of Professor Freeman, has blocked his establishment as an independent researcher.

13. From September 2018 onwards the claimant complained about scientific misconduct by Professor Sattentau and discriminatory practises within the department. The claimant says that these were protected disclosures and that his dismissal on 31 March 2019 was because of the disclosures and also victimisation because he complained about race discrimination. The claimant further complains that he was subjected to further detriments by Professors Sattentau and Freeman on the grounds of his whistleblowing and because of his race by their disengagement from seeking alternative funding for his work, by their refusal to allow him to apply for funding in his own right and by their failure to renew his contract and thus resulting in his dismissal. The claimant says that this was an unfair and unlawful dismissal.

14. In 2006, the claimant described a novel molecular mechanism for vaccine-driven adverse immune reactions; the claimant's research in this field resulted in the publication of a paper in the Journal of Immunology in 2011.

15. In 2014, in the Journal of Allergy and Clinical Immunology, the claimant published a paper on peanut allergy which attracted considerable media attention. The claimant complains that in breach of academic authorship guidelines Professor Sattentau insisted that he should be the senior author and the claimant should share the first author status with a DPhil student.

16. In 2015, Professor Sattentau was the lead applicant for a successful research grant application to the Biotechnology and Biological Sciences Research Council (BBSRC). The funds obtained enabled the claimant's contract of employment to be extended until 31 March 2019.

17. Also in about 2015 the claimant made an application for an increase in salary which was rejected. The claimant subsequently appealed the decision to refuse him an increase in his salary. The appeal was supported by Professor Sattentau, the appeal was successful, and the claimant's salary was

increased. Notwithstanding this around this time the claimant felt that he was not receiving the support he should have been from Professor Sattentau.

18. The claimant met with Professor Freeman to discuss his concerns about Professor Sattentau, the lack of support, recognition and his career progression. The claimant's recollection of that meeting on 15 April 2016 is that Professor Freeman told him that as long as he worked in Professor Sattentau's lab he should expect his research to be exploited by Professor Sattentau and that Professor Freeman would not allow the claimant to acquire permanent status, to apply for grants on his own, or as a co-applicant.

19. Professor Freeman recalls that the claimant spoke of his concerns regarding his career but does not recall all the details of the conversation. He recalls the claimant was unhappy that he was struggling to be seen as an independent scientist. Professor Freeeman says he explained to the claimant that he would not be seen as fully independent while he was part of another principle investigator's (PI) group. Professor Freeman did not recall the issues raised by the claimant regarding his grant applications or that his research demonstrated he was being treated unfairly or differently from other post-doctoral research assistants (PDRAs). What Professor Freeman recalls is providing the claimant with advice that if the claimant wanted to be viewed as an independent scientist, he needed to apply for roles as a PI outside the Dunn School. Professor Freeman agreed that he would have said that it would be unlikely that the claimant would be successful with such an application in the Dunn School.

20. In 2016 the claimant produced a NRI review paper in which he compiled, organised, and discussed relevant literature and identified significant research paths. The claimant worked with Professor Sattentau to get the NRI review paper published but the paper was not published.

21. The claimant had developed a mini group within Professor Sattentau's lab. The claimant was running the mini group "*with autonomous research managerial tasks, with research leadership across institutes and with international collaborators*". The claimant had funding dedicated to his research and wanted to be seen as an independent researcher within Professor Sattentau's lab carrying out research as he saw fit. The claimant had two students, SH and JL who worked with the claimant while completing their own DPhil theses. Direct supervision of the claimant by Professor Sattentau was less frequent but they did meet to discuss the research and for student supervision.

22. In 2018 the claimant wrote to Professor Sattentau about a proposed grant application. Professor Sattentau replied on the 8 February 2018 stating that Professor Freeman was of the view that lead investigators on grants should be the PI, and he suggested that the he should apply for a Wellcome Trust grant focusing on the claimant's research.

23. In March 2018, Professor Sattentau presented a preliminary outline for the grant application to a grant panel at Wellcome Trust. The claimant complains that this was without his consent. Professor Sattentau explained that he wanted to progress the application as soon as possible to ensure they had the best chance possible of being successful within a timeframe that would not leave gaps in the claimant's future salary and research funding. Professor Sattentau was unable to recall whether he spoke to the claimant about the preliminary application but stated that he did not think it was necessary for him to have discussed the meeting with the claimant given it was just a preliminary discussion to get a better understanding of whether the Wellcome Trust would be interested in funding the research and to increase the chances of success if they were interested.

24. In his meeting with The Wellcome Trust Professor Sattentau confirmed that for the application to be strong, they needed to have published some of the current data before applying. The proposal included details of the claimant's MRC grant plan. Professor Sattentau considered this information would be helpful to inform the Wellcome Trust of the proposed research direction. As the claimant had worked on his experimental approach with Professor Sattaentau in his laboratory he did not consider it would be contentious if he included it in the proposal. Professor Sattenatu considered that inclusion of this information would not prevent the claimant applying for his own grants on the subject.

25. Professor Sattentau told the claimant that if the claimant did not publish a paper that year (2018), there would be no funding to support his employment after the grant funding from BBSRC expired. The claimant was told by Professor Sattenatu that it was necessary to produce publications to support the Wellcome Trust grant application. However, the claimant told Professor Sattentau that he would not accept his manuscripts or their ideas being used without his shared authorship. Professor Sattentau's view was that authorship of papers was a sensitive issue which requires careful consideration of each authors' contribution, and that without knowing how a paper might develop, it was very difficult to commit to the authorship before a paper has been drafted.

26. The claimant described the impact events were having on him at this time. "*By April 2018 I was feeling very depressed and pessimistic, in an overwhelming way I had never previously experienced."* The claimant goes on to describe how matters came to a head narrowly avoiding personal catastrophy.

27. In the Spring of 2018 the claimant points out that Professor Sattenatu was pressing him for a paper to support the Wellcome Trust grant application, this was despite the claimant having informed him that the data did not justify a paper at that time. The claimant felt threatened by Professor Sattentau's approach: *"On 5 July 2018 (p.888-889), came a long and threatening email; this email stated that if the paper was not produced to support his WT*

application then the security of my funding, and consequently my employment, was under threat. It did not contain any course of actions or scientific/technical advice. Instead there was a singular push to producing a paper for his WT, no matter what."

28. In September 2018, Professor Sattentau sent to the claimant a near-final draft of a review manuscript with an author arrangement that listed the claimant as third author, after his two students and with Professor Sattentau as sole senior and corresponding author. The claimant described this as a watered down version of his 2016 NRI manuscript. The claimant considers what happened here to be authorship misconduct.

29. Professor Sattentau however states that the literature review was based on JL's review but had been written by him orientated towards immunologists and it no longer looked much like the original review. Professor Sattentau placed himself as senior author because he had made significant amendments, and he placed JL as first author given it was based on her review. Professor Sattentau stated that he put a lot of work into the review and he had deliberately not looked at the claimant's NRI review he had put in his own thoughts and did his own research which was entirely divorced in conception from claimant's NRI review. At this stage he states that he was unaware of the claimant's contribution to JL's review.

30. The claimant objected to Professor Sattenatu's review being submitted. There followed an exchange of email correspondence in which the claimant and Professor Sattentau set out their differing views. It became clear to Professor Sattentau that he would not be submitting an application to The Wellcome Trust and he informed the claimant of this. The claimant was also by this stage making it clear that he did not want to pursue an application to The Wellcome Trust. Professor Sattentau explained that the consequences of not securing funding were that the claimant's work might not be able to be continued. There were no other options being considered for funding of the claimant's work at this time. By this stage, late 2018, Professor Sattentau found the claimant's correspondence "*to be a very personal attack and I felt that it would be incredibly difficult for us to continue working together without some assistance."* The claimant and Professor Sattentau were not exploring together ways to secure funding for the claimant's continued employment by this stage.

31. Professor Sattentau informed the claimant that the literature review did not need to be published, but the result would be that they were less likely to get grant funding without any publications relating to the claimant's work. The claimant's working relationship with Professor Sattentau was unravelling fast by this stage.

32. The claimant relies on his email (p943) as a protected disclosure. In this email the claimant says that Professor Sattentau and anyone else within the Dunn

School or University would have realised that he was referencing the academic integrity codes or the ethical obligations that underpin these in his email.

33. In September 2018 the claimant had a meeting with Professor Freeman in which he complained that Professor Sattentau was plagiarising his ideas. The claimant told Professor Freeeman that Professor Sattentau had written a review paper based on the claimant's work and named himself senior author. The claimant felt that it was he who should be named as senior author. The claimant felt that Professor Sattentau was trying to take credit for his work and he wanted Professor Freeman to intervene. It was Professor Freeman's view that it was not inappropriate for Professor Sattentau, given his position as the PI, to list himself as senior author if he had written the review paper.

34. During the meeting Professor Freeman said to the claimant "*why are you still here*" and quoted Sir Isaac Newton telling the claimant if he could see further it was because he '*stood on the shoulder of giants*'. The claimant complains that he was not being taken seriously by Professor Freeman despite his serious allegations. The claimant says that he told Professor Freeman that he was considering a formal complaint, to which Professor Freeman responded that there are formal routes for making a complaint, but the claimant's best option was to leave before he become unemployable.

35. In his evidence Professor Freeman told us that in saying this he would have been trying to reiterate the point that the claimant needed to take responsibility for his own career, and it was up to him to move away from Professor Sattentau's group if he wanted to be independent from him. Professor Freeman states that he would have "tried to be clear and direct, while polite, with my advice". Professor Freeman also explained that the quote attributed to Sir Isaac Newton, is commonly used by scientists to explain that their achievements are always built on the previous work of other scientists. Professor Freeman denies making any threat of imminent termination of the claimant's employment. Professor Freeman suggested that the claimant seek the help of Mr Souter (HR Manager).

36. The claimant's evidence makes it clear that he that he was told by Professor Freeman that there was a block on his ability to become PI and he was not able to apply for grants as PI or co-PI while he was in the Dunn School. The claimant stated that Professor Freeman's "block" was arbitrary and placed a total ban on local career progress regardless of the merit of the candidate. The claimant also says that the "block" was without transparency or accountability and in the claimant's case this became a vehicle of discrimination. The claimant pointed out that Dr MB was in fact promoted when she too should have been blocked. Dr MB was a white female.

37. The claimant's interpretation is not accepted by Professor Freeman. In his evidence Professor Freeman stated that there was nothing to stop the

claimant applying for research funding if the funding bodies terms of reference allowed it. His view was that there is a limited number of grants that a person in the claimant's position, can apply for often however there is a requirement for the applicant to be a PI. Professor Freeman made it clear that, *"I would not perjure myself*" and would not in application allow an applicant to state that they had had a status they did not have. Professor Freeman stated that he considered that the circumstances of Dr MB were very different from that of the claimant. Professor Freeman stated that his position on progress to a PI position in the Dunn School was made clear from his arrival in his current post, because he was often asked about it, he set the position out in a document he created in 2018.

38. The claimant met with Mr Souter on 27 September 2018. The claimant explained his concerns regarding Professor Sattentau. The claimant explained that Professor Sattentau had not properly supported his career and had not properly given the claimant the credit he was due. The claimant explained that he wanted to start complaint proceedings based on academic misconduct and to be independent within Professor Sattentau's lab. Mr Souter explained the grievance process and also suggested that he speak with Professor Sattentau to try to mediate the situation to find a way to restore the working relationship.

39. Professor Sattentau had contacted Mr Souter by email and set out his view of his dispute with the claimant and complained that the claimant's emails had turned into harassment of him. Mr Souter arranged to meet with Professors Sattenatau and Freeman. In the meeting, Professor Sattentau explained his concern of the increasing risk that there would be no funding for the claimant's employment after April 2019. Professor Sattentau told Mr Souter that the claimant's research was not at a place where an application could succeed in its current form and that the claimant did not want Professor Sattentau to submit a review paper to support a grant application. It was agreed that Mr Souter would continue to communicate with the claimant to see how the claimant's relationship with Professor Sattentau could be restored.

40. The claimant saw his GP on 28 September 2018. The claimant also made a self-referral to the occupational health service and saw spoke with a OHS physician on 30 September.

41. On 1 October 2018, the claimant met again with Mr Souter, in this meeting the claimant said that he wanted an investigation into Professor Sattentau's misconduct. Mr Souter said his aim was to assist with repairing the claimant's relationship with Professor Sattentau to assist them to be able to work together.

42. The claimant told Mr Souter that Professor Sattentau was threatening his job in the emails he had sent him. The claimant also explained that he felt that he had been treated unfairly over the years by both Professor Sattentau and the

Dunn School. The claimant explained that he wanted his concerns investigated by the University. Mr Souter understood that the claimant did not want to work with Professor Sattentau until his complaint had been resolved.

43. Mr Souter explained that there was concern about how funding could be secured for the claimant's ongoing employment. The claimant's response was that if his complaints were upheld, he was sure the University would find some way to support him. If they were not upheld, he accepted that he would be made redundant. The claimant said that he would put his complaint in writing.

44. Following the meeting the claimant sent an email to Mr Souter asking for advice on how to continue supervision meetings with the students that he and Professor Sattentau supervised. In a further email sent on 2 October 2018, the claimant stated that he would prefer not to attend supervision meetings with Professor Sattentau. The claimant suggested that they could meet separately with the students. Mr Souter responded to the claimant stating that he thought that the joint meetings with the students should be postponed.

45. The claimant met with Mr Souter a third time on 2 October when he told him that he felt he was being discriminated against. Mr Souter asked the claimant what the protected characteristic was to which the claimant replied by saying that he was not treated the same as other people in the department, they were promoted, and he was not. It is the claimant's view that it was obvious that he was talking about racial discrimination. The claimant accepts that he did not mention race as he felt uncomfortable about doing so. The claimant relies on this as a protected act. The claimant says that Mr Souter tried to persuade him not to make a complaint by saying that they should first try and explore an informal route. The meeting ended with Mr Souter saying that he would await the claimant's written complaint.

46. In a meeting with Mr Souter on 2 October 2018, Professor Sattentau disputed the claimant's allegation against him of unfair treatment; they discussed funding for the claimant with Professor Sattentau pointing out that the claimant's reluctance to engage with him made submitting a grant proposal difficult and that the chances of securing any funding would be low because there were no papers ready for submission.

47. In a further meeting on 2 October 2018 the claimant made it clear to Mr Souter that he wanted an investigation into his complaints against Professor Sattentau. The claimant stated that he had been discriminated against because of a protected characteristic. Mr Souter spoke to the claimant about making a grievance and the meeting ended with Mr Souter stating that he would await the claimant's written complaint.

48. The claimant also sent an email to Mr Souter on 2 October in which he asked for information about Professor Sattentau's contact with the Wellcome Trust,

his contact with the Journal of Immunology and a list of people from within the department who had progressed to PI status.

49. Meanwhile Professor Sattentau, in what he describes as an attempt to get the claimant and himself working together, on 4 October 2018, sent the claimant a copy of the literature review with the claimant named as senior author. The claimant forwarded the email to Mr Souter pointing out that the change in authorship was a serious matter. The claimant asked for a meeting with Professors Sattentau and Freeman too discuss how his research would be conducted and his students supervised during the period of any investigation. The claimant relies on this email as a protected disclosure (p986).

50. The claimant and Mr Souter met again on 5 October 2018 and discussed the disclosure of the information the claimant had requested. Mr Souter informed the claimant that the claimant would be supported through a grievance process.

51. The claimant wrote an email to the respondent's office of Registrar on 5 October 2018 in which the claimant stated that he had been subjected to a systematic appropriation of his scientific output and rightful authorship resulting from his research; that he had been subject to continuing threats to his employment in order to make me him accept the appropriations and inappropriate authorship assignments. The claimant asked to meet someone at *"University level to obtain some independent advice for a formal action I would like to take against the alleged person in particular and my institute in general"*. The claimant relies on this as a further protected disclosure (p996).

52. Of his correspondence with the office of the Registrar the claimant reflects that in his exchanges he was not informed about the Public Interest Disclosure (whistleblowing) code of practice (PIDA). The claimant had complained about receiving reprisals after making his complaint and specifically asking if there was a body which protected staff in such cases, however there was no mention of the code of practice.

53. On 8 October 2018 the claimant met with Mr Souter and discussed the supervision of students. Mr Souter had by then also discussed the supervision of students with Professor Sattentau. Mr Souter told the claimant that in order to avoid disruption to the students Professor Sattentau would assume the supervision of the students until the issues had been resolved. The claimant questioned how, as he was a co-supervisor, he could be removed as a supervisor. The claimant also set out proposals which related to the authorship of manuscripts that he had been working on with his students. Mr Souter considered that what the claimant told him presented the prospect of a way to resolve the situation between the claimant and Professor Sattentau. Mr Souter also gave the claimant the answer to some of the information that he had requested.

54. The claimant met with Professor Anton Van Der Merwe, Director of Graduate Studies, on 10 October 2018, complaining that he had been told that Professor Sattentau would be taking full supervision control of his students and that he was unhappy about this. The claimant also informed Professor Van Der Merwe that a dispute had arisen around scientific output and manuscript authorship. After speaking with Professor Sattentau and Mr Souter it was agreed that it would be of assistance to the students if both Professor Sattentau and the claimant remained the students' supervisors but they were to meet with the students separately.

55. In an email of 12 October 2018, the claimant wrote to Professor Freeman complaining about recent events which he described as a clear case of discrimination. The claimant met with Mr Souter once more on 15 October 2018 when they agreed to a meeting with Professor Freeman and Mr Souter.

56. The claimant made a Freedom of Information request which was declined. The claimant wrote several emails, including one on 15 October 2018, to explain the context of his request. The claimant relies on this is a further protected act. The claimant subsequently wrote appealing the decision on 13 November 2018. This he relies on as a further protected act.

57. The claimant met with Mr Souter again on the 16 October 2018 and once more discussed Mr Souter's decision to remove the claimant as a supervisor to his students, they discussed the papers that the claimant was working on with students, they discussed funding for the claimant and the fact that the claimant's complaints against Professor Sattentau would need to be made to the Registrar's Office.

58. The claimant met with Professor Freeman and Mr Souter on 17 October 2018. The purpose of the meeting was to try and find an informal resolution. The claimant felt that he was being stopped from pursuing his complaint, but Mr Souter said they wanted to make it clear that the claimant was free to advance a formal complaint. They discussed issues around authorship of papers and supervision of students. Professor Freeman reminded the claimant that if there were no grants when his contract comes to an end then there would be no possibility of extending his employment. The claimant made it clear that he would not permit Professor Sattentau to apply to the Wellcome Trust with any manuscript that the claimant was associated with.

59. The claimant explained that he would like to be employed for a further three years to enable him to publish more papers and secure a fellowship elsewhere. The claimant said that he could be awarded some bridging funds, however, Professor Freeman said that bridging funding was only provided where there was a pending grant application to bridge. The claimant stated that his only option would be to bring a discrimination complaint. The claimant set out the practical milestones to resolve the current situation, it was made clear that Professor Sattentau would still be the PI on any grant application.

Mr Souter was to speak to Professor Sattentau about applying for grants together with the claimant.

60. During this meeting the claimant says that Professor Freeman downplayed his concerns, defended Professor Sattentau, belittled him by saying he was not fellowship material. Professor Freeman did not recall saying that he did not consider that the claimant was fellowship material but accepted that if the claimant had asked how competitive he thought he would be, he would have told him that he did not think he would be very competitive. We consider it more likely than not that the claimant's recollection of what was said in this instance is correct.

61. Following the meeting the claimant prepared a note in which he summarised important questions he had raised including whether Professor Freeman was supportive of Professor Sattentau's misappropriation of his work, the claimant's lack of career progress and whether the clamant had been discriminated against. The relies on this as a protected disclosure.

62. The claimant compares himself with Dr EG and Dr MB whose publication records and achievements are comparable to his but however achieved PI positions. The Tribunal formed the view that only the very broadest of comparisons can be made the circumstances of each are unique and different. There are material differences between their circumstances.

63. The claimant states that from the three types of employment across the University of Oxford, Medical Sciences Division or School of Pathology, short-term contract, permanent contract, or tenure position. Ethnic minorities are found in a much bigger proportion under short-term contracts, a sharp contrast to the white staff whose proportion dramatically rises as one moves to permanent, and then tenure positions where those from a white background constituted 79.6%, 85.1%, and 92.3% of all of the tenure positions across the University, within the Medical Sciences Division, or at Dunn School respectively.

64. Although the claimant ran a mini group inside Professor Sattentau's lab he complains that Professor Sattentau interfered in his research attempting to take control of it. The claimant and Professor Sattentau were co-supervisors of PHD students SH and JL. The claimant says *"I had to endure stressful competition and unconstructive and damaging interferences by*" Professor Sattentau that fundamentally prevented the claimant from progressing his career.

65. On 8 November 2018 the claimant met with Professor Van Der Merwe. Professor Van Der Merwe confirmed the criteria for a primary supervisor and that they needed to be a PI. The claimant voiced his concerns that he had not been consulted about being removed as supervisor and continued to question what had happened. In frustration Professor Van Der Merwe told the claimant

that he was sounding paranoid. They also discussed the formal process of removing a supervisor from their role in some detail. The claimant relies on this meeting as a protected disclosure.

66. On 23 November 2018 the claimant wrote to Mr Souter and Professor Freeman. In the email exchange that followed Mr Souter made it clear that Professor Sattentau did not want to write a grant application with the claimant and that the claimant could not write a grant with another PI in the department.

67. By the Winter of 2018 time the claimant was suffering from severe anxiety and depression. On 10 December, the claimant's GP signed him off work until 2 January 2019.

68. On 13 December 2018 the claimant wrote a formal letter to Mr Souter asking for a written statement confirming that he was a permanent employee pursuant to regulation 9 of the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulation 2002. On 20 December 2018, Mr Souter replied explaining the First Respondent's position which denied the claimant the claimed status.

69. On 21 December 2018, the claimant received an end of contract letter, to "remind" him that his current employment was due to end on 31 March 2019. The claimant was invited to attend a meeting to discuss the expiry of his fixed term contract.

70. The claimant went back to work around 6 January 2019. However, the claimant was not well or recovered from his condition of anxiety and depression. The claimant was unable to concentrate, and frequently had panic attacks. Around this time the claimant overheard Professor Sattentau talking about the termination of his employment, this resulted in the claimant's depression deepening *"with a lack of energy and drive, and a sense of worthlessness."* The claimant was unable to sleep and as a result he was exhausted and restless. The claimant saw an OHS physician on 15 January 2019 who recommended that the claimant try working flexibly from home or outside my office/lab. On 21 January the claimant saw his GP who signed him off work for a month.

71. On 30 January 2019, the claimant sent an email to Mr Souter to say that he was not well enough to attend a meeting to discuss his current situation.

72. The claimant wrote to Mr Souter on 20 February 2019 and again asked that his employment status be recognised as permanent.

73. On 26 February 2019 the claimant provided a further fit note stating that he was signed off work until 19 April 2019.

74. On 28 February 2019 the claimant was informed that unless he secured alternative employment before that date his employment would end on 31 March 2019. The claimant was told that he had the right to appeal the decision does not continue his employment.

75. On 6 March 2019, the claimant wrote to the Dunn School informing of his intention to raise an academic integrity complaint with the University Registrar.

76. Also in March 2019 Professor Van Der Merwe was involved in dealing with an issue which arose relating to the claimant and one of his students SH. As a result of the breakdown in the relationship between the claimant and SH the claimant was removed as her supervisor.

77. On 22 March 2019 the claimant appealed the decision to dismiss him, complaining that he had been subjected to discriminatory treatment. The claimant relies on this as a protected act.

78. On 31 March 2019, the claimant's employment came to an end he was still on sick leave sufferring work-related severe depression and anxiety.

79. The claimant's appeal took place over some 15 months from the date of his dismissal, in May 2020. The claimant considers that the respondent ran sham internal procedures to engage him in a protracted and exhausting battle with the sole aim of eliminating his resolve to seek justice.

80. The claimant says that his dismissal left him with a severe disability the nature of which he describes in his witness statement (paragraph 352 on page 146). The claimant has suffered financial difficulties and his relationships have been affected. The claimant has applied for over 100 positions in academia and industry with no success. The claimant attributes this to the lack of support from his erstwhile employer, the unfavourable circumstances around his dismissal, his inability to publish his recent scientific output, his appearance of *over-qualification for roles*, lack of industry experience, his age, all are factors in his failing to secure alternative employment.

81. The claimant believes that he has been discriminated against on grounds of his race for many years during employment with the respondent. The claimant says he was kept on fixed-term contracts long after they ceased to be appropriate, and when it was apparent to the respondents that he was in fact working on long-run research in an autonomous way. He says he was prevented from achieving independent researcher status; Professor Sattentau, with full backing from Professor Freeman, sought to appropriate and takeover his research. The claimant asserts that Professor Sattentau throughout this time consistently treated his white students and postdocs "*in a strikingly favourable way"* crediting them with shared or sole last authorships, which he actively prohibited from the claimant from when his contributions

warranted it. The claimant points out that in the Dunn School an open search reveals a striking trend in favour of white student authorship in Professor Sattenatu's lab, and the respondent's response to the claimant's questionnaire reveals the absence of BAME staff at senior levels. While the claimant was in reality the real principal investigator of his projects, his ability to conduct research and apply for funding was crippled by the unfair employment conditions of the respondent, which made him and his science open for the abuse of Professors Sattentau and Freeman. The respondents do not accept the claimant's assertions.

82. **Successive fixed-term contracts (Regulation 8, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 ('FTE Regs 2002')**

83. *The claimant accepts that the Tribunal cannot make a declaration pursuant to regulation 9(5) of the FTE Regs 2002 due to the operation of regulation 9(6). Is such a declaration required in order for the Tribunal to make a finding that the claimant's contract of employment became permanent prior to his dismissal; does Regulation 8 only apply where at the time of issuing the claim the employee was still employed under a contract purporting to be a fixed-term contract?*

84. *If not, it is admitted by the respondent that the claimant had in excess of four years of continuous employment as at 1 April 2016.*

85. *Was the claimant's employment under any fixed-term contract commencing on or after 1 May 2007 justified on objective grounds? The respondent relies on the objective justification set out by Professor Sattentau.*

86. The effect of Reg. 8 FT Regs 2002 is to void any restriction on the duration of a contract of employment imposed upon any subsequent renewal which post-dates four years continuous service, unless the fixed term was "justified on objective grounds". The effect of this provision is that the contract is automatically converted to a permanent contract of employment, of indefinite duration, upon renewal and unless the fixed term is justified.

87. The extensions of the claimant's contract after 1 May 2007, when the claimant had acquired four years continuous employment, must be justified on objective grounds. If any of these is not justified the claimant became a permanent employee. The question of justification has been approached by the Tribunal considering whether the further extension was to achieve a legitimate objective, that it was necessary to achieve that objective and is an appropriate way to achieve the objective.

88. The role of Post-Doctoral Research Assistant (PDRA) is a training step on the career ladder towards the individual achieving the status of an Independent Research Scientist with their own laboratory and funding stream who leads

their own projects as PI. University research funding is usually awarded through project grants lasting one to three years, some external programme grants lasting five years or longer. It is these grants which fund PDRA's salaries.

89. The claimant's initial contract, 2006-2010, was a for fixed term of 3.5 years and was supported by an MRC programme grant. Although the claimant's research did not directly relate to the main project under the grant, Professor Sattentau considered that the overarching focus of the grant and the claimant's research, given that the MRC were not strict about what their funds were spent on, allowed the grant to be used to pay for the claimant's salary.

90. The claimant's funding was funded from grants which did not relate directly to his research in 2010-2012. The grant funding in 2012-2013 was by a grant based on the claimant's research. In 2014 bridging funding was used to pay the claimant's salary pending the outcome of the application for a BBSRC grant application based on the claimant's research. From 2014-2016 the claimant's salary was paid out of funding from the Bill & Melinda Gates Foundation. From 2016 the claimant's salary was paid from the BBSRC grant.

91. The claimant states that the respondent did not consider properly or at all whether there was any objective justification for any of the fixed-term extensions to the claimant after 2007. The claimant says that the respondent's justification fails to identify any objective per se, but merely refers to a context. The respondent does not explain how or why any objective is met by use of a fixed-term contract: it cannot be reasonably necessary to employ an employee on a fixed term contract merely because funding may or will expire. Throughout the period 2003-2016 the claimant was moved repeatedly from one grant to another, many of which had little or nothing to do with the work the claimant was carrying out. The claimant says there was no justification for extensions beyond 1 May 2007.

92. Throughout his employment the claimant was aware that his ongoing role at the university was dependent on funding being available to support it. University research funding is normally via grants and such grants normally fund PDRA's salaries. The reason, accepted by the claimant, his contracts were fixed term was that it was funded by a pot of money that was limited and there was never a permanent source of funding available for his research. The respondent contends that employing a worker on a fixed term contract because there is no expectation of a source of funding for the work on an indefinite basis is one of the most obvious examples of an objective ground that could be thought of.

93. Our approach has been to consider the question of justification first. The Tribunal concluded that the funding of PDRA's like the claimant by grant funding was well established at the respondent university. There is no

suggestion at all that it was misused in the claimant's case. In the claimant's case it was accepted that this ongoing role at the University was dependent on funding. There was no alternative permanent source of funding available for the claimant's salary. Even though grant funding came from sources which did not directly relate to the claimant's research the funds enabling the claimant to continue in employment and to carry on his research were grant funds. While there was not always a direct correlation between the grant funds and the length of the claimant's employment contract, the funds were always grant funding (or bridging funding between grants). The flexible use of the grant funding allowed the claimant to continue to carry out his work.

94. The Tribunal conclude that it was a legitimate objective to ensure that there was funding available for the claimant to carry on his work by finding funds from available grant sources, there was no alternative so it was necessary to achieve that objective by securing such funds. In our view it was an appropriate way to achieve the objective by managing the claimant's contracts in a time restricted manner that broadly fits with the funds available. Such an approach gives certainty to the claimant and to the respondent.

95. **Failure to provide statement of changes (s.4 Employment Rights Act 1996 ('ERA 1996')**

96. *Did the respondent fail to provide the claimant with a statement containing particulars of a change to the claimant's employment? The claimant says he should have been provided with such a statement notifying him that he was no longer a fixed-term employee on or before 1 June 2007.*

97. In view of our conclusions in relation to the issue on Regulation 8, this claim does not fall to be determined by the Tribunal.

98. **Unfair Dismissal (s.94/98 ERA 1996) (relevant only to the First Respondent)**

99. *It is agreed that the claimant was dismissed within the meaning of s.95 ERA and that the effective date of termination was 31 March 2019.*

100. *Was the reason for the claimant's dismissal a potentially fair one within the meaning of section 98(2) of the Employment Rights Act 1996 (the respondent relies upon redundancy as its reason)? Did a redundancy situation exist, namely, had the need for employees to carry out work of a particular kind in the place where the claimant was employed by the respondent ceased or diminished, or was it expected to cease or diminish?*

101. *If so, was the dismissal fair or unfair under s.98(4) ERA 1996? In particular, did the respondent act within the range of reasonable responses in respect of:*

a. *carrying out reasonable consultation with the claimant about the redundancy;*
b. *the selection process, in terms of the selection pool and the criteria applied within such a pool;*
c. *looking for alternative employment for the claimant;*
d. *dismissing the claimant?*

102. Section 139 Employment Rights Act 1996 provides that an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to (a)the fact that his employer has ceased or intends to cease (i) to carry on the business for the purposes of which the employee was employed by him, or (ii)to carry on that business in the place where the employee was so employed, or (b)the fact that the requirements of that business (i) for employees to carry out work of a particular kind, or (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.

103. The claimant's case is that that there was no redundancy. Secondly if the respondent had properly acknowledged him as a permanent employee it would have had to consider the fact that the work that the claimant was employed, the claimant's projects and supervision of students, continued. The claimant also contends that in the process followed by the respondent there was no consideration of alternative options. The claimant was invited to a consultation meeting but this did not take place as during the relevant time the claimant was unwell and unable to participate. The claimant criticises Mr Souter for his actions in sending the consultation invite letter in December 2018 and his action in January 2019 around consultation. The respondent is criticised for sending a dismissal letter when the claimant was unwell, and Mr Souter was well aware of that situation. The claimant points to the respondents five stage redundancy process and states that stage 1 (consider alternatives) was not done; stage 2 (invitation letter) this was sent to someone who is signed off work and very unwell; stage 3 (consultation and consider redeployment) and stage 4 (priority candidates) these stages never took place in any meaningful way. The claimant says that he was made redundant without consultation or any meaningful search for alternative employment. The claimant also goes on to say that he was a disabled person and that the respondent failed to make reasonable adjustments thus rendering the dismissal also unfair.

104. The respondent contends that the lack of funding was genuine and the claimant was well aware of it. By 2015 the grants that had been used to fund the claimant's work, which could have been justified because of the link to the claimant's own work had run dry and the grants that Professor Sattentau had available to him could not be used to fund the claimant's employment. In the absence of funding to support it, the claimant's role undertaking the research he had been doing ceased on 31 March 2019, the respondent says this amounted to a redundancy. Responding to the claimant's criticism of the procedure followed the respondent says that the claimant was involved in extensive discussions with Professor Sattentau

throughout his final contract as to the risk of his employment ending and options to try to avoid that happening.

105. The Tribunal is satisfied that the reason for the claimant's dismissal was redundancy. In the absence of any funding for the claimant's research work the requirements of the respondent for the claimant to carry out work that work ceased. The fact that the work, the claimant's research work, could have continued if funding was available does not mean that there was not a redundancy situation. There was no funding for continuing to employ the claimant and without such funding his employment could not continue. We are satisfied that was a redundancy.

106. The Tribunal considers that the claimant was well aware that his employment was at risk if there was a failure to secure funding. The claimant was however in dispute with Professor Sattentau over matters concerning professional conduct. These matters made it difficult for the claimant to work together with Professor Sattentau, the claimant did not want to work with Professor Sattentau (he refused to participate in joint supervision sessions). Professor Satttentau was affected by the criticisms which came from the claimant and which he considered amounting to harassment. In our view it was this break down in the relationship between the claimant and Professor Sattenatu that sabotaged the prospect of the claimant's employment with the respondent continuing. The dispute resulted in the claimant and Professor Sattentau not being able to work together to agree on how to make applications for grant funding the absence of which both recognised would have a terminal effect on the claimant's employment. Nice considerations about whether there should have been adjustment to the procedure in our view would have made no difference at all without grant funding. This is illustrated by the claimant's reaction to the offer of assistance to find alternative employment. In his witness statement the claimant says as follows:

> "I need to clarify what AS's and MK's suggestion for helping me to find alternative employment for me meant. A postdoc without funding or fellowship, which was the situation I was in, can only apply for vacancies that are already funded for specific research assignments. I would therefore have had to start afresh on completely new project, leaving behind the research I had invested in over the previous two decades almost my entire research career. This was not an attractive position to be in: any PIs (i.e. those recruiting for postdocs) would see from my CV that I was an almost independent scientists with my own independent mind and research aspiration, and 52 years of age. Even with new fixed-term research funding, and engaged temporarily with a project which was not mine, I would have lost the opportunity to be able to establish myself in a long-term independent research, and would face a real hurdle in establishing myself in a permanent position (I explain this problem further in relation to mitigation post-dismissal, below)."

Wrongful Dismissal (relevant only to the First Respondent)

107. *Did the respondent breach the contract of employment by failing to provide the claimant with adequate notice pay? The claims he should have been given three months of notice.*

108. This claim is no longer pursed by the claimant.

Whistleblowing Detriment

109. *Did the claimant disclose that the authorship of his work was being appropriated by the Professor Sattenatu and/or that the conduct and academic integrity policies had been breached, on the following occasions:*

    a. *26 September 2018, to the Professor Sattentau by email;*
    b. *26 September 2018, to the Professor Freeman in a meeting;*
    c. *27 September 2018, to the Professor Sattentau by email;*
    d. *1 October 2018, to Andrew Souter in a meeting;*
    e. *2 October 2018, to Andrew Souter in a meeting;*
    f. *4 October 2018, to Andrew Souter and Professor Freeman by email;*
    g. *5 October 2018, to the University Registrar's Office by email;*
    h. *17 October 2018, to Andrew Souter and the Third Respondent in a meeting;*
    i. *18 October 2018, to Andrew Souter and the Third Respondent by email; and*
    j. *8 November 2018, to Anton van der Merwe by email.*

110. The test for whether there has been a protected disclosure is defined in section 43B Employment Rights Act 1996. There are five elements as summarised by HHJ Auerbach in Williams v Michelle Brown AM (2020) UKEAT/0044/19 at [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."

The information disclosed must have "sufficient factual content and specificity such as is capable of tending to show" breach of a legal obligation. It is not necessary for C to specify the precise legal obligation which, in his reasonable belief, had been breached. Having identified the information which was disclosed, the Tribunal should ask whether the claimant believed, at the time of the alleged disclosure, that the disclosed information tended to show one or more of the matters specified in Section

43B(1)(a) -(f) of the 1996 Act and, if so, which of those matters.

111. The Tribunal is satisfied that the claimant disclosed on each of the occasions relied upon that Professor Sattentau had appropriated or stolen his research. The claimant's statements must be seen in the context of the review paper produced by Professor Sattentau which the claimant considers having been based on his work. We do not understand this to be disputed by the respondents. The Tribunal is satisfied that there was a disclosure of information and not merely an allegation.

112. *In respect of each disclosure above, did the claimant reasonably believe that the information disclosed tended to show that a person had failed, was failing, or was likely to fail to comply with a legal obligation to which that person was subject, namely ICME authorship guidelines, the European Charter for Researchers and the respondent's Code of Practice on academic integrity, as well as contractual obligations to comply with those policies?*

113. The claimant contends:

> "14. The legal obligation relied upon by C is the obligations which underlie the authorship and academic integrity codes set out by R1 or to which R1, funding bodies and academic publishers are party. These include: R1's Academic Integrity Code of Practice [p.289]; the recommendations of the International Committee of Medical Journal Editors [p.2256]; the Concordat to Support Research Integrity [p.1907A]; and policy documents and guidelines produced by other bodies (e.g. p.1907AA; 2960; 1758).
>
> 15. C was cross-examined on this point and, consistently with his witness statement (C, §217, §278), confirmed that he believed that these codes had effect through legal obligations R1 had entered with research funders and publishers. This is not only a reasonable belief but, as AP subsequently confirmed under cross-examination, it is in fact often the case that publishers and research funders do tie their conditions of funding/publication to the ICMJE, Concordat or other similar integrity and authorship rules."

114. The respondent counters that the claimant now presents a convoluted breach of legal obligations which was not in his mind at the time that he made his disclosure of information. The respondent says that this is a new way of putting his case, made necessary because the codes and guidelines he refers to set out no legal obligations. In paragraph 181 of his closing submissions the respondent points out that there was a failure by the claimant to make the case now presented at the time the disclosures were made, in his appeal when he was in receipt of legal advice, in his particulars of clam or in his witness statement. The respondent invites us

to conclude that the "convoluted route to a breach of legal obligation" was not genuinely in his mind at the time.

115. The Tribunal concluded that when the claimant disclosed the information that Professor Sattentau was appropriating his ideas, work and results he did have in mind a breach of the obligations which underlie the authorship and academic integrity codes. Set out by the respondent, funding bodies and academic publishers are party to. While this may not have been explicitly stated by the claimant it is in our view clear when taken in their proper context, and illustrated in what the claimant told Professor Freeman during their meeting on 17 October 2018:

> "R3 dismissed one count after another of research misconduct by R2, without showing any interest in engaging with or considering my complaint. R3 brushed away my allegations of plagiarism and unwarranted authorship making an arbitrary claim that authorship decisions are entirely delegated to PI's who also research data under their auspices … I reminded R3 that research organisations and funding bodies were obliged to follow such criteria, stressing that authorship is not decided by the position or status but by qualified contribution."

116. The claimant's beliefs may well have been wrong but we consider that they were reasonable having regard to what the claimant knew of events at the time and the discussions that he had had about the issues with Professor Sattentau and others at the time. The claimant honestly believed that there was misconduct by Professor Sattentau and that the misconduct was a breach of his legal obligations. In such circumstances we are satisfied that the claimant belief was reasonable.

117. *In respect of each disclosure above, did the Claimant reasonably believe that the disclosure of information was in the public interest?*

118. On behalf of the claimant it is said that his belief and its reasonableness can only be determined on considering all the relevant circumstances, including the wider ramifications of the disclosure in those affected, the impact on those affected, the nature of the wrongdoing, and the nature of the wrongdoer. The public interest does not have to be the predominant motive, or any part of the motive, for making the disclosure. The public interest in issues of academic integrity and appropriation of scientific interest follow from the nature of the subject matter and are illustrated by the extensive rules and obligations which are set out by the respondent and other regulatory bodies and organisations. Professor Pollard readily accepted that authorship is important, for the reasons set out in the International Committee of Medical Journal Editors recommendations.

119. The respondent states that the claimant was not really thinking about the public interest at all when he made his disclosures. There is nothing in the nature of the disclosures that suggests a public interest. The interest that

the claimant seemed to have in mind was personal in character. Any belief that the disclosure was in the public interest is not reasonable.

120. The Tribunal is satisfied that the subject matter of claimant's disclosures was a matter that it is in the public interest. It is clear from the evidence that the claimant's private interests were a predominate factor in his raising his complaints about Professor Sattentau. However, the evidence makes clear that the claimant also considered that it was important to raise the issues to support others like NK who are also from a minority ethnic group who he believed to have been victim of similar misconduct to himself at the hands of the second respondent. The claimant believed that the disclosure was made in the public interest and the claimant's belief was reasonably held.

121. ***Was the Claimant subjected to the following behaviour and, in each instance, was such behaviour a detriment****?*

122. *Escalated and sustained threats about his job security, specifically between 26 September 2018 and 17 October 2018.*

123. The claimant contends that he was subjected to direct written threats of termination of employment/research projects, made by Professor Sattentau in emails on 26 and 27 September 2018. The respondent denies that there was any such threat made but rather the claimant was having it stated explicitly by Professor Sattenatu that the effect of the claimant's position on the review manuscript was likely to affect the ability to obtain funding and with that the claimant's employment would not have a source of funding.

124. The Tribunal prefer the interpretation on these events put forward by the respondents. Professor Sattentau had produced a review manuscript which produced a adverse reaction from the claimant who made it clear that he objected to it being published and considered that it was taken from his ideas and did not give him the credit he was properly due. Professor Sattentau's response was to say the review was based on his own work and partly on work done by JL, he went on to explain the reason for writing the review is to stand a better chance of getting a grant, failing to get a grant would mean the claimant's work could not continue.

125. The detailed email exchanges between the claimant and Professor Sattentau led him to conclude that the claimant and himself had a difference of opinion that was extreme and the claimant had responded to Professor Sattenatu's efforts to "*rescue our project and your career*" with "*hostile and abusive language*". Although Professor Sattentau did not share the claimant's perspective on the issue he explained to the claimant, "*Now that I wont' be applying for the Wellcome Trust grant the options for continuing this work will be severely limited.*" This was a statement of the factual position that they had arrived at. The claimant considered this was a line which was part of a "*calculated approach to steal my ideas and work".*

126. Professor Sattenatu made it clear that funding was an issue not just to the claimant but also to Mr Souter who in turn passed the information to the claimant in their meeting on 1 October 2018. The claimant puts forward that Mr Souter made an oral threat alluding to the claimant's contract ending soon and disruption to his work if he proceeds with formal complaint. The Tribunal however accept the evidence of Mr Souter that he was concerned that if the claimant pursued a complaint without also working with Professor Sattentau to secure further funding there would be no further funding to pay the claimant's salary. Mr Souter explained to the claimant that there was concern about how funding could be secured for his ongoing employment and that he was concerned to encourage the claimant to focus on securing funding so that his employment could continue.

127. The claimant says that there were oral threats of imminent termination of the claimant's employment and the claimant becoming inevitably unemployable, made by Professor Freeman on 26 September and 17 October 2018. Professor Freeman denied saying that the claimant would be unemployable. Professor Freeman states that he said that the claimant would be *"unemployed if the money runs out"*. We consider that it is more likely than not that Professor Freeman is correct in his recollection of what he intended to say was. There is a similarity between what the claimant heard or understood he heard and what Professor Freeman says he said that is capable of creating a mix up. In our view it is possible that the claimant misheard or even that Professor Freeman misspoke but we are satisfied that what was intended was as Professor Freeman said to indicate that if the money ran out the claimant's employment would end.

128. The claimant also refers to the written reference to the claimant's inevitable termination of employment by Professor Van Der Merwe, made in by SH in an email on 1 March 2019. This refers to the comment, "*During my discussion with the director of graduate studies at the start of your conflict with Quentin I was told that the grant money would run out at the end of March. As this would leave you without a salary I assumed you would be moving elsewhere, I apologise if this was incorrect."* There would inevitably have been concern and discussion about the position of the claimant's students in the prevailing circumstances and the fact that the claimant is leaving or might be leaving in our view is likely to be a factor in any such discussion.

129. We have not been able to accept the proposition that there was escalated and sustained threats about the claimant's job security. The possibility of the claimant's employment ending if there was no grant funding is something that was discussed by those affected and in those discussion with the claimant the fact that if there was no grant funding the claimant's employment was at risk.

130. *Humiliated the claimant in meetings on 26 September 2018 and 8 November 2018*

131. The claimant contends that during a meeting on 26 September 2018, Professor Freeman humiliated the claimant by responding to his serious complaint in a belittling tone and asking *why he was still there* (i.e. working at the Sir William Dunn School of Pathology). The claimant says that Professor Freeman continued in a condescending way suggesting that the claimant was soon to be unemployable. Professor Freeman while not recalling a comment to the clamant asking why he was still there accepted that it is possible that he said something on those lines. We are satisfied that it more likely than not that he did say that. Professor Freeman denied that the that he would have said that the claimant was soon to become unemployable.

132. We accept the explanation given by Professor Freeman that this would have been in light of their previous discussion, where he had encouraged the claimant to apply for a faculty position elsewhere if he wanted to pursue a career as an independent researcher. In doing so he was seeking to reiterate the point that the claimant needed to take responsibility for his own career and it was up to him to move away from Professor Sattentau's group if he wanted to be independent from him. We set out in the preceding paragraphs our conclusions on the question of Professor Freeman making a comment about the claimant being unemployable.

133. The claimant also complains that Professor Van Der Merwe shouted at him using a threatening tone in their meeting of 8 November 2018, in response to the claimant's query about departmental procedure for removing a supervisor.

134. Professor Van Der Merve accepts in part the allegation made by the claimant in this respect. In his evidence he states that when he met the claimant on 8 November 2018, he confirmed to the claimant the criteria for a primary supervisor and when the claimant voiced concerns that he had not been consulted about being removed as supervisor in the first instance, explained that he had not been removed as a supervisor. However, when the claimant continued to question what had happened despite after having been provided with an explanation, in frustration, he said the claimant was sounding paranoid. In answer to questions, he stated that the claimant was criticising why he was not invited to meeting with Professor Sattentau and Mr Souter if he was going to be removed as a supervisor it was important to have him present at the meeting. As Professor Van Der Merwe had supported the claimant he felt that the claimant's criticism was unreasonable. The claimant did not accept what Professor Van Der Merwe was saying was right. Professor Van Van Der Merwe was upset but says that he also reassured the claimant that he was on his side and made it clear he was good supervisor. Professor Van Der Merwe said that it was not good that he got upset but he thought that he did repair the situation by the end.

135. In our view a fair appraisal of this meeting on the 8 November does not merit the conclusion that the claimant was humiliated in the meeting with Professor Van Der Merwe.

136. *Professor Freeman belittled the claimant on 17 October 2018 by telling him that he was not fellowship material.*

137. As set out above the claimant says that Professor Freeman belittled him by saying he was not fellowship material. We noted that Professor Freeman did not recall saying that he did not consider that the claimant was fellowship material but accepted that if the claimant had asked how competitive he thought he would be, he would have told him that he did not think he would be very competitive. We it more likely than not that the claimant's recollection of what was said in this instance is correct.

138. We have noted that the claimant is right to say that Professor Freeman said that he was not fellowship material. We also note that Professor Freeman explained this in some detail. The claimant was requesting that Professor Freeman let him apply for fellowship post in the department. It was in response to this that Professor Freeman accepts that he would have said if asked directly that the claimant was not competitive for a fellowship, or as we found something like he was not fellowship material. In response to the suggestion that Professor Freeman could not view the claimant as someone with a fellowship because of his race Professor Freeman was clear, he said, "*I reject that entirely there is a long list of reasons why [*the claimant was*] not competitive – race is not part of that."*

139. The response that Professor Freeman gave to the claimant must have been painful for him to hear. The claimant considers that it is wrong. It was however Professor Freeman's view. In his evidence to us during the hearing, and we consider it is likely that when he was talking to the claimant on 17 February 2018 also, Professor Freeman was trying to be direct and clear to the claimant in what he said. We accept that his intention was not to belittle the claimant.

140. *Professor Van Der Merwe called the claimant "paranoid" on 8 November 2018*

141. This is dealt with in the paragraphs above.

142. *Suspending and removing the claimant's supervision duties, both between 8 and 12 October 2018 by Professor Sattenatu and from 16 March 2019 onwards in respect of SH by Professor Van Der Merwe.*

143. The claimant was temporarily suspended from supervision duties in respect of his students by Mr Souter after he had discussed the position with Professor Sattentau. In doing this Mr Souter acted outside the respondent's procedure as was made clear by the evidence of Professor Van Der Merwe. When the issue was brought to Professor Van Der Merwe's attention he confirmed to the claimant that he could not be removed as supervisor by Mr Souter and he was reinstated.

144. In March 2019 Professor Van Der Merwe was copied in on email correspondence between the claimant and SH. The claimant considered that SH was acting improperly, was getting involved in his dispute and withholding data from him. Professor Van Der Merwe considered that it was the claimant who was being inappropriate. Professor Van Der Merwe considered that the claimant was bullying the student SH and offered her his support in his role as Director of Graduate Studies.

145. Professor Van Der Merwe met with SH on 4 March 2019 and set out her concerns. In this meeting SH said that she felt uncomfortable meeting the claimant in person given his hostility towards her. Professor Van Der Merwe found the claimant's emails to SH to be "incredibly inappropriate", given that the claimant was her supervisor. Professor Sattentau explained that SH had found his emails upsetting. Professor Van Der Merwe considered that if the claimant continued to supervise SH there was an increasing possibility that he would continue to send her emails that she would find distressing. The claimant had been raising with Professor Van Der Merwe that SH was withholding data from him. After meeting with Professor Freeman and SH when SH confirmed that she felt harassed by the claimant and that she no longer wanted to be supervised by the claimant it was agreed to assist SH with the removal of the claimant as her supervisor. Professor Van Der Merwe considered that the claimant has sent some inappropriate emails to students that had placed on the students undue pressure.

146. *Professors Sattentau and Freeman deliberately fail to seek and/or secure funding for the claimant's continued employment in particular bridging funding.*

147. The claimant avers that numerous potential external funding avenues were available, such as MRC, BBSRC, Asthma UK, and BHF. The claimant requested in writing on 18 October 2018 (to Professor Freeman) to be able to submit a joint grant (such as his previously aborted MRC proposal) without response. The claimant thought that internal funding avenues were available. The claimant states that his work could have been funded through Professor Sattentau's other available reserved funding, including HIV related grants, of which Professor Sattentau had at least three active at the time of dismissal.

148. There were indeed funding sources that could have been applied for, Professor Sattentau had wanted to apply for a grant from the Wellcome Trust. The claimant objected to that. Despite the claimant's belief that there was available to Professor Sattentau funding that could be used to pay his salary. This was not correct. The funding that Professor Sattentau had for HIV he did not consider to be properly capable of funding the claimant's salary having regard to the terms of the funding. The Bridging Funds were only available in circumstances where they bridged an outstanding application. It was open to the claimant to apply for grant funds either alone or as co-applicant, so long as the terms of the grant funding body allowed.

149. The Tribunal consider that the break down in the relationship between the claimant and Professor Sattentau was the primary reason why Professor Sattentau felt unable to proceed with applications for grant funding. The lack of cooperation between the claimant and Professor Sattentau came about because they could not agree on the production of a published paper, without which Professor Sattentau considered there was no real prospect of an application for grant funding being successful.

150. *Refuse to share scientific data relating to his ongoing projects*

151. The claimant complains that SH refused to share data or communicate any updates on the progress of experiment findings relating to her project, which was directly supervised by the claimant and was consistently supported by Professors Van Der Merwe, Sattentau and Freeman. The evidence shows that SH exchanged email with the claimant during March 2019. In those emails the claimant was asking SH to provide him with data from her work. At that time the claimant was off sick and SH was saying that she wanted to wait until the claimant was better before sharing her data with him. The claimant raised with Professor Van Der Merwe the fact that SH was improperly withholding data from him. SH in a meeting with Professor Van Der Merwe on 4 March 2019 explained that she was reluctant to share data from her experiments with the claimant and would prefer to meet with him in person to share the data when the claimant was better. Later in her emails SH says that she was feeling uncomfortable about meeting with the claimant in person because of his hostility towards her. In an exchange of emails with Professor Van Der Merwe the claimant requested details of the procedure regarding students withholding data: Professor Van Der Merwe explained the process to the claimant.

152. Tracking the email correspondence between the claimant and SH it is clear that over time the correspondence between her and the claimant became hostile. Professor Van Der Merwe considered that the claimant's part in the correspondence was such that it was appropriate for him to provide support to SH as the claimant's conduct in correspondence was bullying towards the student SH. The Tribunal do not consider that there was a detriment to the claimant in the refusal of SH to share her data with the claimant at this time.

153. *In emails on or around early March 2019, Professor Van Der Merwe made unfounded allegations about his conduct and scientific competence and undermined his work generally*

154. In this respect the claimant complains that it was alleged that he failed to perform in vivo experiments competently resulting in animal experimentation ethical lapse. The claimant complains that Professor Van Der Merwe made an allegation of shortcomings in his supervision responsibilities, including allegations of sending unpleasant and hostile emails to SH, and threatening the claimant with the possibility of a harassment allegation.

155. Professor Van Der Merwe's response to this allegation was that he found the claimant's emails to SH to be inappropriate as the claimant was her supervisor and she had found the claimant's emails upsetting. Professor Van Der Merwe considered that the claimant had not taken on board SH's comments and sent an email to the claimant to explain the details of his discussion with SH explaining that while SH had previously been prepared to meet to discuss the data she now felt uncomfortable doing so, he asked the claimant to refrain from sending hostile emails SH.

156. On 6 March 2019, the claimant sent a long email to Professor Van Der Merwe in which he complained that he had treated the claimant and SH differently. The claimant said that Professor Van Der Merwe had unfairly taken SH's' word for her allegation that a mistake had been made in an experiment. Professor Van Der Merwe believed that the claimant had admitted to the mistake in an email. Professor Van Der Merwe explained that he was unwilling to force SH to comply with the claimant's wishes regarding sharing the data and that if he was unhappy with that decision he could make a complaint about.

157. The conclusion of the Tribunal is that there was no unfounded allegation made by Professor Van Der Merwe, in his role as Director of Graduate Studies he was being asked to give his views and opinions in respect of the matters that were in dispute between the claimant and SH. In doing so he had tried to convey to the claimant what was being said by SH and gave his views on the position as he saw it.

158. *Refuse to renew his contract*

159. The claimant's contract was not renewed because there was no funding for his role. The claimant alleges that the respondents could have found funding for the claimant's continuing employment but chose not to do so. The claimant was involved in extensive discussions with Professor Sattentau during his final contract as to the risk of his employment ending and options to try to avoid that happening. There was no funding to support the claimant's continued employment.

160. To the extent that there were detriments suffered by the claimant, we have not been able to conclude in respect of any of the matters set out above that it was on the ground that the claimant had made a qualifying disclosure or disclosures.

Direct Race Discrimination

161. Section 13 Equality Act 2010 provides that a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others. Section 136 provides that 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.

162. At stage 1 of the burden of proof exercise, 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 discrimination, in the absence of an adequate explanation. It is unusual to find direct evidence of discrimination 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'.

163. 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'.

164. 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 (or protected act) 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' .

165. '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'.

166. The claimant relies upon his Iranian ethnic origin. He relies upon a hypothetical comparator. The claimant makes reference to actual colleagues to whom he asks that the Tribunal have reference when constructing a hypothetical comparator: Marion H Brown, Eva Gluenz, Monika Gullerova, Natalia Gromak, Omer Dushek, Neil C Shepphard, Fedde Groot, Frank Wegmann, Christopher Duncan, Anna Katharina Simon, Clare Jolly and Dr Rebecca Moore (Russell). The claimant understands from the results of an ACAS questionnaire that nine white colleagues were promoted in the material time period compared to no non-white colleagues but has not been provided with all of their names.

167. The claimant does not rely on actual comparators: s.23 EqA 2010 requires that there must be "no material difference between the circumstances" of the complainant and the comparator. However, the claimant places heavy reliance on the treatment of a number of his white former colleagues who, on the claimant's case, were treated preferably to him. These comparators are intended to inform the Tribunal's assessment of how a hypothetical comparator would be treated.

168. We were referred to the guidance in Igen Ltd -v- Wong [2005] ICR 931

169. *Was the Claimant less favourably treated than a hypothetical comparator in the following ways?*

170. **The respondent's keeping the claimant on fixed term contracts from 1 May 2007 without objective justification**.

171. For the reasons set out above we have come to the conclusion that the claimant being placed on successive fixed term contracts was justified. The use of fixed term contracts for PDRA's was the norm. There is no evidence that the claimant being kept on such contracts for the period of his employment was less favourable treatment.

172. **Professors Sattentau and Freeman blocking the claimant's career progression, both in terms of salary scale (grading structure) and progress to independent status within the department.**

173. The claimant says that Professor Sattentau's carried out pervasive and premeditated appropriation of his scientific output, of research funding proposals and manuscript authorship, which with Professor Freeman's support and help compromised the claimant's career progress. The claimant lists several matters which he says show that he was treated less favourably by Professor Sattentau: The NRI Review; Application to the Wellcome Trust without informing the claimant; Professor Sattentau developing his own review manuscript to take priority over the claimant's NRI review; Professor Sattentau requiring the claimant to produce the RC paper for him and his application to the Wellcome Trust; Declining to recognise the claimant as senior author on JI 2011 paper, the JACI 2014; claimant not formally registered as JL supervisor upon registration; Professor Sattentau not honouring the career development plan, of which he denied any input at the AIP hearing but was compelled before the Tribunal to accept that he helped prepare. The claimant points to the contrast in the treatment of white PDRA's who were given senior authorship positions, something not accorded to any non-white students and the wider publication record of Professor Sattentau's lab where 90% of first or senior authors are white and 89% of all authorship goes to white students.

174. The respondents say that the claimant's suggestion that Professor Sattentau should not have been an author at all on the claimant's papers is farcical, as he contributed to each paper in a meaningful and substantive way and at the time was acknowledged by the claimant as substantial. The respondent contends that the email exchange between the claimant and Professor Sattentau shows that the claimant had no problem confronting him: if he had issues with authorship at the time he would have raised them in writing. Professor Sattentau's contributions to the JI paper, JACI paper, the NRI draft show that there is no real question that the should have been an author on these papers. The respondent says that the approach to the Wellcome Trust was not part of a "Machiavellian ruse" to steal the claimant's science but rather a way to continue the research that the claimant was working on. The initial presentation to the Wellcome Trust was in order to progress smatters as soon as possible and reduce the chance of running out of money. As to senior authorship the respondents says that the claimant and Professor Sattentau have a

different understanding of when some is appropriately a senior or co-senior author. Professor Sattentau's view was genuinely held and led to him and not the claimant being senior author on the disputed papers. *"The fact that some individuals were senior or co-senior authors on papers drafted with Professor Sattentau does not undermine the reason that the Claimant was given first author on his papers or the genuine nature of Professor Sattentau's normal approach. Those individuals were, in Professor Sattentau's view, simply in different circumstances.*"

175. The claimant relies on Professor Freeman's decision not to allow the claimant to progress to a principal investigator (independence), obtain fellowship to move towards independence, or apply for funding as a co-applicant, as conveyed to him in meetings of 13 April 2016, 26 September 2018 and 17 October 2018 as further acts of less favourable treatment. The claimant was on grade 7.10 from 2007 until 2016. The claimant says this contrast with the RM who was recommended for grade 8 and further that the claimant was only put forward for a pay increase because he asked for it.

176. The claimant was prevented from being promoted to PI level, or from being able to apply for fellowships within the Dunn School and was prevented from applying for Co-Investigator status on grants. The claimant states that there is a history of such internal promotions and opportunities being provided to PDRAs. Approximately 20-25% of all PIs within the Dunn School during the period 2003-2019 were internal promotions: all white. Others from within or outside the Dunn School were assisted to apply for co-Investigator position. Why not the claimant? To the extent that the respondents seek to rely on Professor Freeman's 'rules' the claimant relies on case of MB who was promoted by Professor Freeman in breach of his own rules.

177. The respondents accept that Professor Freeman had a policy not to allow PDRAs to become a Group Leader (PI) within the Dunn School and that this was communicated to the claimant both before and after he made his alleged disclosures. The reason given for the policy by Professor Freeman is that if a PI is still working in the same department as their previous supervisor, it is difficult for them to be seen as truly independent. Professor Freeman communicated his policy on this to all PDRAs within the Department. Since he started as Head of Department no Dunn School PDRAs have been sponsored internally to undertake an Early Career Fellowship, nor have any been appointed to internal faculty positions. MB's contract was made permanent, but she was not allowed to become a Group Leader at the Dunn School in Professor Freeman's time; it had already happened. All the PDRAs who achieved independence within the Dunn School during the Claimant's employment did so *prior* to Professor Freeman's time. PDRAs from the Dunn School have progressed to Early Career Fellowships in other departments at the University and in other institutions; just not internally within the Department. The respondent states that there has been no less favourable treatment: the Claimant has been treated in the same way as everyone else. There has been no

unreasonable conduct let alone unexplained unreasonable conduct to potentially shift the burden. The reason for Professor Freeman telling the claimant he could not progress to independence in the Dunn School is clear: it was because that was his policy for the reasons he has given.

178. The claimant also relies on the alleged less favourable treatment of the claimant by him being denied a progression to grade 8. The claimant was kept on a pay grade of 7.10 for over thirteen years. The claimant contrasts the position of RM who in 2018, Professor Sattentau recommended to the Professor Freeman that RM, a White postdoc in his lab, be promoted to grade 8. The claimant states that this was evidently discriminatory as, in contrast to the claimant, RM did not run independent research and was less experienced in terms of teaching contribution, faculty membership and project management. Professor Sattentau agreed to pass RM to HR for assessment in relation to the recommended promotion. By contrast, in response to the claimant's repeated requests to Professor Sattentau for promotion to grade 8, he persistently and unfairly discouraged the claimant from making a formal request and cautioned that his request would be declined by Professor Freeman.

179. The respondent points out that it was accepted by the claimant that at the University you must already be doing Grade 8 duties to be regraded. In that sense it is not what might be described as a 'promotion' (ie., an appointment to a different higher role), although being Grade 8 does provide a higher salary. It has no relationship to becoming a Group Leader or Independent Research Scientist.

180. Professor Sattentau put the claimant forward for a Grade review in 2006 that was unsuccessful. Professor Sattentau explained that he did not suggest they re-apply for a progression to Grade 8 or for an increase in the claimant's increment between 2006 and 2016 because the claimant's low publication rate caused him to think such an application would be unsuccessful. In that period, up until 2015, the claimant only published 2 sole first author papers. In 2015 the claimant had another joint first author paper and towards the end of 2015 they were awarded the BBSRC grant.

181. When the claimant raised the possibility of an allowance for his bus ticket in January 2016 Professor Sattentau could have just said 'no the Department does not allow it' but did not he suggested the possibility of applying for a grant with the claimant listed as Grade 8 and he suggested, as an alternative, to apply to move up an increment via a merit award. At that time, Professor Sattentau thought that if the claimant was on a grant at the higher grade he would automatically be re-graded. Professor Sattentau explained being on Grade 8 might mean some funders would not fund the claimant as a Co-PI (this is not disputed as being true). It was the claimant who said that he felt that being a PI or Co-PI on an MRC grant would be crucial and would be 'helped with another high impact publication'. Therefore, the Grade 8 application was not made, notwithstanding Professor Sattentau's willingness to do so.

182. The respondent states that there is no evidence of the claimant being 'denied a progression to Grade 8' or that the initial rejection of the request to increase from 7.10-11 amounted to unexplained unreasonable treatment so as to give rise to an inference.

183. As to the comparison with RM the respondents say it is not a good one. The claimant does not dispute that RM was receiving a £3,000 pa sum for a lab management role, which need to be regularised as it was going to be removed. Professor Sattentau explained that this role and her other responsibility took up c.80% of her time. Her duties (in addition to being a PDRA) were in not comparable to the additional duties the claimant said he had such as, training on a particular machine from time to time. Professor Sattentau had said he *would* put the claimant forward for Grade 8 if he wished, so there was no difference in treatment.

184. The claimant also relies on the allegation that Professor Freeman declined to support the claimant to apply for UKRI fellowship in May 2018.

185. In a letter dated 31 May 2018 Professor Sattentau told the claimant that Professor Freeeman had said that the UKRI fellowship scheme poses problems for Oxford University as it requires commitment towards a permanent position at the end of the fellowship, and Oxford University will almost certainly not agree to this. In a later email Professor Sattentau told the claimant that the outcome from the meeting with Professor Freeman was not ideal with respect to UKRI fellowship, and that unfortunately Oxford University is very rigid in its terms of employment. However, he pointed out that other competitive fellowships are available.

186. Professor Freeman dealt with this in his evidence as follows: "Professor Sattentau also asked for my thoughts on Dr Moghaddam applying for a UKRI Future Leaders fellowship. This is an ECR fellowship, designed to provide the individual with a first fully independent position as a PI. At the time, the University was considering its position regarding whether to support this specific scheme. These fellowships were new and, unlike other ECR fellowships, required institutions to commit to offering the applicant a permanent position at the end of the fellowship. This would have been very difficult to accommodate as there would be no guarantee that a permanent position would be available, nor that the applicant would have achieved the normal standards of faculty appointments. I therefore was not able to confirm one way or another what the University's position would be about supporting such fellowships. I did, however, make it clear that I would be unlikely to support such an application as I did not agree with Dunn School PDRAs holding ECR fellowships within the department."

187. The respondent explains that the claimant had always been told he would not be supported by the Dunn School for an internal Early Career Fellowship. The UKRI fellowship required a commitment to a permanent role afterwards and funding by the University: a decision that was being taken centrally and not within either Professor Sattentau or Professor Freeman's gift.

188. The claimant says that Professor Sattentau and Freeman met in February 2018 and discussed Professor Sattentau's takeover of projects and research proposals developed by the claimant, thereby aborting the claimant's BBSRC 2015 career development plan.

189. The claimant's view of events is contrasted to the explanation given by Professors Sattentau and Freeman. Their position is that following on from the claimant's 1 February 2018 in which the claimant said he wished to be recognised as running a mini-group in Professor Sattentau's lab, something that Professor Sattentau considered he was effectively doing unofficially already, there was a discussion between Professors Sattenatu and Freeman about the scientific focus of Professor Sattentau's group and applying for Wellcome Trust grant to fund the claimant's employment. The evidence of Professors Sattentau and Freeman on this meeting cannot be gainsaid by the claimant, the claimant gives a different interpretation to events which is indicative of a take over of his scientific work by Professor Sattentau as opposed to an indication of support for the claimant to enable his employment to continue.

190. The claimant goes on to point to Professor Sattentau, with the support of Professor Freeman diminishing his chances for career progress by presenting and using the claimant's research proposal for funding under Professor Sattentau's sole name which he presented to the Wellcome Trust on 12 March 2018, thereby depriving the claimant of opportunities to apply for funding in his own name.

191. The extent of the deterioration of the claimant's relationship with Professor Sattentau is illustrated by the contrary interpretations around the proposed Wellcome Trust grant application. Professor Sattentau says that Wellcome Trust funding most suitable because it provided longer grants, thus giving the claimant the security he was seeking and enable him to apply for other grants as a co-investigator (funding body rules permitting), and additionally, as a number of Dunn School PI's had such grants, the chances of success were good.

192. The claimant says that Professor Sattentau halted his career progress by persistently declining to consider or help the claimant's research proposal application to MRC or other suitable funding bodies, as co-applicant with Professor Sattentau as a main applicant. The claimant says that this occurred throughout 2018-2019.

193. The respondents take issue with this stating that Professor Sattentau did submit a grant application to the MRC with the claimant in 2015 and there was no reason to suppose that he would not do so again in 2018. The email correspondence is referred to on 5 July 2018 when Professor Sattentau suggested applying for a MRC grant and when the claimant mentioned his intention to apply for grant based on AGE data on 15 August 2018 Professor Sattentau said "OK great". The respondents say that Professor Sattentau did not decline to consider the claimant's application

to the MRC as Co-Investigator. He did support it but suggested further steps should be taken to make it stronger. The claimant did not take those steps.

194. The claimant alleges that Professor Freeman refused to consider the claimant's longstanding research projects and move towards independence by applying for funding, as a co-applicant, including with alternative PIs in the department as the main applicant.

195. Professor Freeman was consistent in his position on this issue explaining that he would not prevent grant application that was made, where the terms of the grant application allowed it. There is no evidence to suggest that this was not correct or what happened.

196. The claimant says that Professor Sattentau promoted white students and postdoc in his lab but denied the claimant shared senior authorship. The claimant and Professor Sattentau disagree about the way authorship is assigned on papers. Professor Sattentau gave evidence that he used the same process when dealing with authorship in respect of all his students regardless of race.

197. The conclusion of the Tribunal is that we do not accept that Professors Sattentau and Freeman blocked the claimant's career progression, in terms of salary and progress to independent status within he department. They applied the same cireria to the claimant as was applied to others in terms of salary and grade and grant applications. There was only one example of a difference in treatment in respect of progression with the department, the case of MB. However, the case of MB was materially different to the claimant and does not suggest that the claimant was treated less favourably.

198. **Professor Sattentau appropriates the claimant's scientific ideas, results and projects and unfairly claim authorship of his work.**

199. The claimant says that Professor Sattentau declined the claimant senior authorship of 2011 Journal of Immunology publication that was mainly conceived, led planned and written by the claimant. The claimant also says that Professor Sattentau declined the claimant's senior authorship of 2014 Journal of Allergy and Clinical Immunology publication that was mainly conceived, led, planned and written by C, leading to lose major discovery accreditation. Additionally, the claimant says Professor Sattentau compelled the claimant and imposed himself, on 3 March 2016, as an author on a major literature review manuscript (NRI 2016) that was solely conceived, researched and written by the claimant, who had decided to submit it as a sole author.

200. The claimant also says that throughout 2017-2019 Professor Sattentau pressed the claimant and used coercive measures to obtain senior authorships of the two major research manuscripts the was writing on the immunobiology of protein posttranslational modifications (PTMs) under

oxidative stress. Professor Sattentau persistently refused to consider or discuss the claimant's senior authorship.

201. The Tribunal consider that Professor Sattentau acted in good faith in respect of authorship on all papers. His views on authorship were accepted by the claimant at the time, or at least appeared to be accepted. The breakdown in relationship and the claimant's disappointment at how he considers he has been unfairly treated has caused him to re-evaluate the authorship decision and now what was not subject of complaint at the time is now viewed with suspicion. We accept the evidence given by Professor Sattentau in which he explained how he understood authorship should be assigned. In his decisions we are satisfied that Professor Sattentau was acting conscientiously in accordance with this understanding.

202. The claimant complains that Professor Sattentau, with Professor Freeman's support, imposed himself as the main author and applicant of an innovative research funding proposal to BBSRC in 2015, which was solely conceived, mainly developed and majorly written by the claimant.

203. The BBSRC rules required that the investigator have a centrally funded contract that extends beyond the period of the grant application that is at lecturer level or equivalent. The claimant did not comply with this Professor Sattentau did. We do not consider that the evidence shows that Professor Sattentau imposed himself on the claimant as main author and applicant of 2015 BBSRC proposal.

204. The claimant complains that despite recruitment of JL to work in the claimant's mini group and under his supervision on a project written and led by the claimant in 2017, the claimant was not formally assigned as a co-supervisor along Professor Sattentau.

205. The clear evidence is that this was an administration error that went unnoticed until December 2017.

206. Throughout 2017-2019 Professor Sattentau pressed the claimant and used coercive measures to obtain senior authorships of the two major research manuscripts the was writing on the immunobiology of protein posttranslational modifications (PTMs) under oxidative stress. Professor Sattentau persistently refused to consider or discuss the claimant's senior authorship.

207. The claimant says that Professor Sattentau pressurised the claimant to give up his NRI review manuscript and pressed ahead to reproduce a version of it under his own senior authorship, which he finally sent to C on 24 September 2018 despite the claimant's previous objections'.

208. JL produced a review paper which was assessed by Professor Sattentau, Professor van der Merwe and the claimant at a meeting on 1 May 2018. It was agreed that the paper was high quality and could be published if re-

written. Professor Sattentau and the claimant agreed that the claimant would revisit the NRI Review. In July 2018 Professor Sattentau asked JL to provide him with a copy of the review paper with a view to rewriting it for publication. Professor Sattentau carried out literature research for the review paper and prepared a first draft which was sent to the claimant. The claimant made it clear that he objected to the manuscript and wanted it stopped and instead wanted his NRI Review paper submitted for publication. The intention of Professor Sattentau approaching the journal of Immunology about publishing the review paper was in order to support an application to the Wellcome Trust.

209. The Tribunal do not consider that Professor Sattentau's intention was to appropriate the claimant's scientific ideas, results and projects and unfairly claim authorship of his work. We consider that the explanation given by Professor Sattentau that he was trying to support the claimant by securing funding from Wellcome Trust and publishing a version of the review paper which was based on work that the claimant had done was all done openly by him with his intentions made clear. The claimant makes clear in his evidence his objections to Professor Sattentau and his feeling of being misused by him, however we do not consider that he is right about that we consider that the break down in relationship and the loss of trust has caused the claimant to re-interpret events with a malign purpose where none existed.

210. **The respondents threatened his job security**.

211. The claimant relies on communications with Professor Sattentau such as when on 23 April 2018 he wrote to the claimant *'…no paper this year, no more funding…no more project to pursue*', and other communications such on 25 June 2018 when he wrote '*I'm concerned about the timing of grant submission as there is no guarantee that we will get bridging funding for your salary…*'. The claimant characterises these as threats to his job security. There are other examples relied by the claimant as set out in section 16 d of the agreed list of issues.

212. The Tribunal rejects this contention from the claimant. The comments relied on may have had been viewed as threatening by the claimant because of the fact they referred to the threat to the claimant's security of employment. They were not however intended as threats when spoken by Professor Sattentau, they were expressions of what he considered a fact and reality of the situation. Without funding the claimant's employment was not capable of being continued, without an article or publication the chance of securing grant funding for the claimant's work was diminished. The Wellcome Trust application was intended by Professor Sattentau to be supportive of the claimant, he did not see it that way he considered that it was an attempt by Professor Sattentau to steal his science and keep it for himself. The explanation to the claimant that a Review paper needed to be published was met with suspicion by the claimant and he felt unable to support it and refused to agree to publication of Professor Sattentau's review which he considered plagiarised his work. The matters listed in

section 16 d of the list of issues are not threats as characterised by the claimant.

213. The claimant also complains about his meeting with Professor Freeman on 26 September 2018 when he was asked why he was still working at the department that he would soon be unemployable as a threat. Again this was not a threat as Professor Freeman explained in his evidence that in saying this he was trying to reiterate the point that the claimant needed to take responsibility for his own career, and it was up to him to move away from Professor Sattentau's group if he wanted to be independent from him. When in a meeting on 17 October 2018, Professor Freeman pointed out that the claimant had only 5 months of contract left he was stating the factual situation. Professor Freeman did express or confirm limitations on the claimant's ability to apply for grants but he was not saying that the claimant could not let him apply for funding.

214. When Mr Souter pointed out in a meeting on 27 September 2018 that the complaint process would be a disruptive process and given that the claimant's contract was coming to an end in 6 months time it may not be wise. This in our view cannot fairly be considered a threat to the claimant's employment. When in a meeting on 1 October 2018 Mr Souter said to the claimant "*The cold hard facts are that if Quentin doesn't secure funding there is no money for this science to continue. And that's the problem that we're in because we are then genuinely in a redundancy situation",* he was stating a matter which was a cold hard fact. While Mr Souter may have tried to persuade the claimant not to make a threat by pointing out the disadvantages of persuing a grievance by telling him that even if he was to achieve a favourable outcome of the investigation, he would still be left without funding at the end of it , he was not threatening the claimant's job security.

215. **Subject C to unfair criticism and belittle and humiliate him**

216. The claimant says that in an email to him on 5 July 2018, Professor Sattentau unjustly blamed the claimant's conduct of experiments for not getting data that Professor Sattentau hoped for, and unfairly criticising the claimant's strategy for a paper so as to force the claimant to prepare a long compilation of data which Professor Sattentau could take advantage of as part of his Wellcome Trust application. Further that Professor Sattentau criticised and derided the claimant's supervision of SH; targeted the claimant's publication record in a caustic and unconstructive way, so as to bully the claimant to produce the manuscripts Professor Sattentau wanted for his Wellcome Trust application.

217. Professor Sattentau had formed the view that there was not enough focussed research to prepare a data paper for publication, because he felt that the claimant had carried out research in too many different areas at once and had not focussed on one particular area which would allow for the drafting of a paper or for preparing a grant application. In his email to the claimant, on 5 July 2018, he voiced his concerns regarding whether a

paper could be produced within the next month or two which could be published. He recommended that the claimant focus on completing one priority study as this would give the best chance of funding success. Professor Sattentau also provided the claimant with guidance on grant applications he could apply for and suggested the two grants. In the view of the Tribunal this email could not be said to either unfairly criticise the claimant or deride the claimant's supervision of students.

218. The claimant objects to the reference to him as hostile and abusive made by Professor Sattentau. The Tribunal however note that the content of the claimant's email on the 26 September 2018 which included reference to Professor Sattentau stealing from him was such that Professor Sattentau could reasonably have viewed the claimant as being hostile and abusive in its content.

219. The claimant says that Professor Freeman belittled him and mocked his serious complaint of academic misconduct, in the meeting on 26 September 2018, by using a disdainful tone to ask why he was still working at the institute, and implying that whatever the claimant might have achieved was because he '*stood on the shoulder of giants'.* The Tribunal accept the evidence given by Professor Freeman as to why he said what he did about the claimant continuing to work with Professor Sattentau and do not consider that the evidence taken as a whole justifies the conclusion that the claimant was being belitted or mocked in respect of his complaint of academic misconduct.

220. Professor Freeman is alleged to have derided and humiliated the claimant in their meeting on 17 October 2018 and insulted him by saying the claimant was not *fellowship material.* While Professor Freeman was not clear about the exact words he used in the meeting he was clear that his view broadly aligns with what the claimant said. His view being that the claimant was not competitive for a fellowship. What was said by Professor Freeman was his opinion he did not deride or humiliate the claimant in the way it was said.

221. The claimant also complains that on 4 March 2019 SH, the claimant's student at the time, wrote an unsettling and baseless email to the claimant, accusing him of being aggressive, threatening, and bullying, and mocking his concerns of a '*grand conspiracy*', subsequent to the claimant's warning it would be an infringement if SH withheld project data whilst still under the claimant's supervision. An independent third party Professor Van Der Merwe considered that the claimant was being inappropriate in this email exchange with the claimant, his behaviour being, in Professor Van Der Merwe view, bullying the student SH. We considered Professor Van Der Merwe to be a compelling witness on this issue. We have not been able to conclude that the claimant was subjected to a baseless email making accusations against him, the student's views do not appear to have been unreasonable.

222. **The suspension of supervision of students**

223. The claimant also complains that on or around 8 October 2018, Professor Sattentau suspended the claimant's supervision of his students. The claimant is wrong to say that Professor Sattentau suspended the supervision of his students, he did not. The topic of suspension of supervision of students was discussed by Professor Sattentau and Mr Souter. In the light of those discussions, it was Mr Souter who told the claimant that in order to avoid disruption to the students Professor Sattentau would assume the supervision of the students until the issues had been resolved. The claimant himself had said that he did not want to participate in joint supervision sessions of the students with Professor Sattentau. Mr Souter failed to follow the respondent's procedure in doing this and as the matter came to the attention of Professor Van Der Merwe he acted to correct the position and the claimant's supervision was continued.

224. **The dismissal of the claimant**

225. The claimant complains that Professors Sattentau and Freeman failed to seek or secure alternative funding for the claimant's continued employment and dismissed him. The claimant considers that the respondents would have used bridging funding or other internal funding sources.

226. The position was made very clear to the claimant that there was a real risk of no further employment after the end of his contract if there was no new grant or sources of funding for the claimant's employment. The previous sources of funding from Professor Sattentau's other grants could not be used to fund the claimant's work because there was no longer the necessary link with the claimant's work to justify paying the claimant's salary. We accept this explanation given by Professor Sattentau. The break down in the relationship between the claimant and Professor Sattentau resulted in no agreement being reached about publications and ultimately the Wellcome Trust application proposed by Professor Sattentau never materialised because Professor Sattentau decided that without a publication there was no point in applying for the grant.

227. **On grounds of race**: We concluded that there was no less favourable treatment of claimant in relation to the matters above. The claimant in our view was not treated less favourably in the decisions set out above which went against the claimant's interests. To the extent that there was less favourable treatment of the claimant we have concluded that this was not because of the claimant's race. We are of the view that the claimant has not shown facts from which we could conclude that he has been subjected to detriments because of his race. In respect of each aspect of the case where the claimant shows adverse outcomes there is a clear and credible explanation that is presented by the respondent and which we accept.

228. The claimant has set out several people on whom he relies as comparators. The Tribunal notes that section 23 provides that on a comparison of cases for the purposes of section 13 there must be no

material difference between the cases relating to each case. In our view it is clear from the evidence of Professor Sattentau that there were material differences in the case of the claimant and his comparators. The claimant recognises this and states that he does not rely on actual comparators per se, however, he relies on the treatment of a number of his white colleagues who were treated preferably to him to inform the Tribunal's assessment of how a hypothetical comparator would be treated. The Tribunal has not found the comparators of assistance in considering the circumstances of the claimant and drawing any inference of discrimination on grounds of race. The circumstances of each case are different and it is not really possible to make any assessment that allows for a meaningful comparison for the purposes of assessing whether there has been discrimination on the grounds of race.

229. This is a case where there was no suggestion of discrimination on any grounds for many years. The claimant complains of discrimination of the grounds of race in regards to what he now considers to be a lack of support to help him achieve PI status and in the decision to dismiss him. Yet the claimant has continued to work with Professor Sattentau for many years, just under 16, without complaint for most of that time. We also note that this was a case where Professor Sattentau says he considered the claimant to be a friend. There is nothing in the surrounding circumstances of this case that gives a suspicion of race, such as inexplicable actions or unreasonable decisions by the respondents from which an inference of discrimination might be drawn.

230. **Victimisation**

231. Section 27 of the Equality Act 2010 provides that a person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act, or A believes that B has done, or may do, a protected act. Each of the following is a protected act: bringing proceedings under the Equality Act; giving evidence or information in connection with proceedings under the Act; doing any other thing for the purposes of or in connection with the Act; making an allegation (whether or not express) that A or another person has contravened the Act.

232. The claimant says that his complaint of discrimination in a meeting with Mr Souter on 2 October 2018 in which he told Mr Souter he had been treated absolutely with discrimination was a protected act. The claimant was not explicit in saying that he was making an allegation of breach of the Equality Act, however it is clear that Mr Souter would have realised that he may well have been doing so when he asked the claimant what the protected characteristic was that he was relying. Mr Souter believed that the claimant was making a complaint of discrimination under the Equality Act, he was unclear what the protected characteristic was. It was put to Mr Souter that he was must have been clear that the claimant was complaining about race discrimination. Mr Souter denied this saying he had *"no idea this is what is going on"*. Mr Souter went on to explain: *"Sometimes people do not understand what discrimination is, I was trying*

to pin that down. The claimant was talking about people who gone on to PI… I had no information about people's ethnicity. The other point is what I perceive he was trying to do was complaining about the policy because it was impossible for anyone to move to PI."

233. In his email to Professor Freeman on 15 October 2018 the claimant wrote: *"I have worked over 15 years in this department and have actively participated in teaching and research with important contributions, so why am I treated (ignored, unsupported, coerced) the way I am? If this is not a clear case of discrimination, I wonder what else it could be."* There is again no specific reference to a particular protected characteristic.

234. In his email of the 25 October 2018 to the University Information Compliance Team the claimant makes the following comment: "*This is not a case of revealing personal data but being transparent on institutional support for fellowship applications, and when the institute for non-transparent reason selectively declines to include certain information, with no justification (since the information regarding other applicants were released without breaching confidentiality), is this not a case of cover-up for actions that might have been misconduct or discriminatory".* There is no clear reference to a protected characteristic.

235. In his email of 13 November 2018 to the Head of the University Information Compliance Team the claimant states: "*I would appreciate if you can confirm on what ground then the institute can decline to provide such information, especially if they may provide evidence of misconduct or discrimination. In other words, if a department within the University withholds information for unduly reasons, what would be the procedure to obtain this."* The claimant is not making any allegation of discrimination here what he is asking for in information that might show discrimination. There is no mention of what type of discrimination.

236. In his letter dated 22 March 2019 the claimant included complaints of racial discrimination in respect of career progression and racial discrimination in respect of the claimant's eventual dismissal. This is a clear protected act. We are of the view that it is the only protected act as the other matters on which the claimant relies do not meet the definition of a protected act as set out in 27 (2) of the Equality Act 2010.

237. The list of issues provides at paragraph 19 "was the claimant subjected to any of the detriments listed at paragraph 12?" To the extent that the claimant has been able to show that he has been subjected to a detriment the Tribunal is satisfied that in respect all the matters complained of at paragraph 12, other than the decision to dismiss the claimant, all the allegations occurred before the claimant's protected act occurred. They cannot amount to victimisation because there was no protected act.

238. In respect of the decision to dismiss the claimant and, if we are wrong on the question of whether there were protected acts before 22 March 2019, to the extent that the claimant was subjected to a detriment we do not

consider that any of the suggested acts of detriment were done because the claimant did a protected act. In respect of the decision to dismiss the claimant this was clearly not because the claimant did any protected act. The claimant's own case is that the reason for this was because of the claimant making a complaint about academic misconduct by Professor Sattentau. The Tribunal have concluded that it was the break down in relationship between the claimant and Professor Sattentau that left them in the position where there were no funding options available for the claimant's employment to continue.

239. **Failure to make reasonable adjustments**

240. The relevant period which the claimant relies on in relation to his claim for a failure to make reasonable adjustments began on 10 December 2018 (when he was signed off sick). The claimant relies upon the fact that he was likely to remain unwell for at least twelve, months from that date. We must consider the evidence that was available in respect of the claimant's impairment at the relevant time. Had the impairment lasted at least 12 months or was likely to last at least 12 months.

241. The focus of this case is whether at the relevant time the claimant's impairment had a substantial and long term adverse effect on his ability to carry out day to day activities: had it lasted 12 months or was it likely to lats at least 1 2months? The respondent says that the claimant was suffering a first episode of stress, anxiety and depression in the period December 2018 to 31 March 2019. The respondent says there was nothing to suggest the substantial adverse effects had lasted for 12 months and nothing to suggest they may well last for 12 months at the relevant time, from December 2018.

242. The claimant speaks of symptoms of anxiety and exhaustion at the end of 2017 and early 2018. In April 2018 the claimant describes being suicidal, by November he was diagnosed as having extremely severe depression, anxiety and stress. In December 2018 the claimant was signed off from work, returned briefly in January before being signed off again.

243. The Tribunal is not satisfied that on balance the evidence from which we can conclude that he had suffered substantial adverse effects on his day to day activities for a period of 12 months by December 2018 alternately by December 2018 the impairment was likely to last at least 12 months. The claimant in December 2018 was excepting to be back at work in January. In January the claimant was signed off for a further period at that stage the claimant's position was not such that it could be said between January and March 2019 that he was likely to continue for 12 months.

244. If we are wrong on the question of the question of the claimant's disability and the claimant was disabled at the relevant time we would have reached the following conclusions.

245. Did the respondent know or could they have been expected to know, that the claimant had the disability? The respondent says that the claimant did not communicate to the respondent that he had the disability. The respondent says it had neither actual or constructive knowledge of the claimant's disability.

246. On 1 October 2018 the claimant told Mr Souter that he was seeing his GP because of all the stress and problems he had with Professor Sattentau. He was not communicating news of disability as such but problems he was having which were causing his stress and distress. Mr Souter was told that the claimant had been of medication. When the claimant was off work in December 2018 he was expecting to be back at work in January 2019 and if anything was said to Mr Souter about his condition it is likely to have been his intention to return to work soon. The claimant did eventually communicate to Mr Souter that he was receiving treatment for depression and anxiety. If the claimant's condition had amounted to disability at the relevant time the information that the claimant was passing on to the respondent in our view was such that the respondent would have been aware of the claimant's condition or ought to have been aware.

247. The claimant relies on the PCP put as the respondent following its procedure for ending fixed term contracts, including those portions of the procedure which included the practise of face to face meetings and a procedural time line which ended on the date of the contract expiry. The claimant argues that the PCP put him at a substantial disadvantage because he could not engage in the process of attending meetings for consultation or engage in the procedural countdown. The claimant goes on to say that the adjustment that could have been made were to rearrange meetings to take pace when the claimant was fit enough to attend. The claimant was ill through out the consultation period and to postpone the claimant's dismissal until he was well enough to engage with the process was another adjustment that was reasonable.

248. The respondent contends that Mr Souter did agree to have face to face meetings rearranged and provided the claimant with written information. In respect of the adjustment of postponing the dismissal the respondent says this was not reasonable.

249. The conclusion of the Tribunal is that a postponement of the dismissal was not a reasonable adjustment. The claimant's dismissal, in the absence of funding, was an inevitability by March 2019. The claimant was told by Professors Sattentau and Freeman that without funding his employment could not be maintained. There was no identified way in which the claimant's employment could be continued. The claimant's complaint against Professor Sattentau about academic matters illustrate the break known in their relationship. In the a context of this breakdown neither the claimant or Professor Sattentau could work together to find ways of getting funding too continue the claimant's work. Without funding there was not a way to continue the claimant's employment.

Employment Judge Gumbiti-Zimuto

Date: 26 August 2022

Sent to the parties on:
12 September 2022

GDJ
For the Tribunals Office

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