EMPLOYMENT TRIBUNALS

Claimant: Dr M Krysmann

Respondent: University of Central Lancashire

Heard at: Manchester **On:** 12-23 September (but not 19 September) 2022

Before: Employment Judge Phil Allen
Ms A Roscoe
Dr B Tirohl

REPRESENTATION:

Claimant: Dr Kelarakis (the claimant's husband) and (for part) in person
Respondent: Mr B Williams, counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The respondent did not treat the claimant unfavourably because of pregnancy and/or maternity leave in breach of section 18 of the Equality Act 2010. The claims under section 18 of the Equality Act 2010 do not succeed and are dismissed.

2. The respondent did not treat the claimant less favourably because of sex. The claims under section 13 of the Equality Act 2010 for direct discrimination because of sex do not succeed and are dismissed.

3. The respondent did not treat the claimant less favourably because of race. The claims under section 13 of the Equality Act 2010 for direct discrimination because of race do not succeed and are dismissed.

4. The respondent did not subject the claimant to a detriment because the claimant had done a protected act or the respondent believed that the claimant had done, or may do, a protected act (save in relation to the allegations addressed below in which there was a majority decision). Those claims for victimisation under section 27 of the Equality Act 2010 do not succeed and are dismissed.

The judgment of the majority of the Tribunal (2-1 with Dr Tirohl dissenting) is that:

5. The claimant was not subjected to a detriment by Professor Davidson by the sending of an unfair and untruthful email about her on 10 September 2019 (part of allegation 15) or by the sending of emails which sought disciplinary action against the claimant on 24 May, 25 June and 9 July 2019 (allegation 17) because the claimant had done a protected act. Those claims for victimisation under section 27 of the Equality Act 2010 do not succeed and are dismissed.

REASONS

Introduction

1. The claimant is a Polish national. On 28 May 2013, she began her employment with the respondent as a Lecturer within the School of Pharmacy and Biomedical Sciences. She took a period of maternity leave from which she returned in early 2018. Whilst on maternity leave, she was promoted to Senior Lecturer. The claimant alleged that she was treated less favourably/unfavourably/detrimentally in thirty-four ways, because she was pregnant, on (or had been on) maternity leave, because she is a woman, because she is Polish, and/or because those responsible believed that she would do a protected act, or (after her grievance) that she had done a protected act.

2. The claimant's claims were for: direct sex discrimination (section 13 Equality Act 2010, and in contravention of section 39 Equality Act 2010); discrimination because of pregnancy and maternity (section 18 Equality Act 2010, and in contravention of section 39 Equality Act 2010); direct race discrimination (section 13 Equality Act 2010, and in contravention of section 39 Equality Act 2010); and victimisation (section 27 Equality Act 2010, and in contravention of section 39 Equality Act 2010).

Claims and Issues

3. There were five preliminary hearings in this case, on: 16 November 2020; 23 February 2021; 10 January 2022; 1 February 2022; and 1 July 2022. After the hearing on 23 February 2021, a schedule of allegations was prepared by Employment Judge Horne. The claimant subsequently sought to amend her claim to rely upon additional allegations and that application was determined on 10 January 2022 by Employment Judge Ross (some limited amendments were allowed; others were refused). After the preliminary hearing on 1 February 2022, Employment Judge Ross prepared a table of allegations and a list of issues (which was to be read together with the table of allegations).

4. At the start of this hearing, it was confirmed with the parties that the table of allegations and the list of issues identified by Employment Judge Ross (after the preliminary hearing on 1 February 2022), remained the allegations to be considered and the issues which needed to be determined. In this Judgment the Tribunal has determined the liability issues only, as it had previously been confirmed that the liability issues would be determined first. The remedy issues were left to be determined later, only if the claimant succeeded in any of her claims.

5. The tables containing the allegations to be considered and the issues to be determined are appended to this Judgment. In the tables: M identifies a complaint of direct discrimination because of maternity; S identifies a complaint of direct discrimination because of sex; R identifies a complaint of direct discrimination because of race; and V identifies a complaint of victimisation.

6. In the course of cross-examination, the claimant agreed that she was no longer alleging that allegations 9 and 24 (regarding the delayed stress risk assessment) were direct discrimination because of sex. At the end of the evidence, but before submissions were heard, the claimant's representative also confirmed that the claimant was no longer pursuing allegation 32 (regarding the failure to undertake annual appraisals) as Professor Forbes' evidence had been that he had failed to undertake any formal written appraisals for anyone for whom he was responsible for appraisals.

7. During the period when the claimant was giving evidence, there was a discussion about the claimant's victimisation claims. Some of the alleged detriments identified as being alleged victimisation, pre-dated the protected acts relied upon as recorded in the list of issues. The Tribunal identified that, in a victimisation complaint, a claimant can rely upon an allegation that she has been subjected to a detriment because the alleged discriminator believed that she may do a protected act. The claimant asserted that the respondent (and the alleged discriminators employed by the respondent) believed that the claimant would be raising a grievance and therefore doing a protected act from 11 October 2018 (when she first emailed Mr Arciniega about her complaint). Accordingly, the list of issues needed to be read so that issue 3.3 said "*If so, has the claimant proven facts from which the Tribunal could conclude that the detrimental treatment was because the claimant did a protected act or that the respondent/the alleged discriminator believed that the claimant may do a protected act?*". The precise wording of that amendment to the list of issues was discussed and agreed at the end of the fifth day of the hearing.

8. The respondent's representative accepted in his submissions that the acts relied upon by the claimant as protected acts, were protected acts, being: the grievance of 11 March 2019 and the four grievances combined were ultimately collectively that grievance; and the grievance appeal on 17 December 2019.

Procedure

9. The claimant was represented for most of the hearing by her husband, Dr Kelarakis. He undertook the cross-examination of the respondent's witnesses and made submissions on her behalf. He was not able to attend the hearing on the second and third days, during which the claimant gave evidence and was cross-examined. During those days the claimant represented herself. Mr Williams, counsel, represented the respondent.

10. The hearing was conducted entirely in-person with both parties and all witnesses attending the Employment Tribunal in-person.

11. An agreed bundle of documents was prepared in advance of the hearing. The bundle was of a very significant size, running to five volumes and 2251 numbered pages. A few pages provided by each of the parties were also added to the rear of

the fifth volume without being individually page numbered. The Tribunal read only some parts of the bundle, reading only the pages referred to in witness statements or to which the Tribunal were directed either during questioning or at other times during the hearing. It was unfortunate that the parties had not proved able to agree a more limited bundle, as the size of the bundle was not helpful in hearing and determining the case. Where a number is referred to in brackets in this Judgment, that is the page number of the relevant document in the bundle (or at least one of the occasions when that document appeared in the bundle, as, for a significant number of documents, they were included in the bundle in multiple places).

12. The Tribunal was provided with a file containing the witness statements which had been exchanged by the parties. On the first day, the Tribunal read the witness statements and the documents in the bundle which were referred to in those statements.

13. The Tribunal heard evidence from the claimant, who was cross examined by the respondent's representative, before being asked questions by the Tribunal. The claimant's evidence was heard from the start of the second day of the hearing, until mid-morning on the fourth day. The claimant was also given the opportunity to explain to the Tribunal anything which she wished to add which she believed she would have been asked by her representative by way of re-examination (had her representative been present throughout her evidence). The claimant took the opportunity to do so.

14. The following witnesses each gave evidence for the respondent, were cross examined by the claimant's representative, and were asked questions by the Tribunal panel. On occasion the Tribunal asked the witnesses some questions which it was thought the claimant would have asked had she been professionally represented (albeit the need for such questions reduced for later witnesses as the claimant's representative came to understand what needed to be put to each witness):

a. Professor Colin Davidson, a Professor of Neuropharmacology, and the Head of School for the respondent's school of Pharmacy and Biomedical Sciences from January 2018 (initially in an Acting capacity);

b. Mrs Janette Grey, the Executive Dean of the respondent's Faculty of Health and Care since January 2020 (initially on an interim basis) and the person who chaired the claimant's grievance appeal;

c. Mr Pedro Arciniega, HR Business Partner for the respondent's school of Pharmacy and Biomedical Sciences;

d. Professor Robert Forbes, a Professor of Clinical Pharmaceutics at the respondent's school of Pharmacy and Biomedical Sciences; and

e. Mrs Vivienne Ivins, the Head of the Respondent's School of Justice since June 2018, and the person who heard the claimant's grievance.

15. It should be noted that the Tribunal did not hear evidence from some of the individuals who are referred to in the facts below and/or who were the subject of the

claimant's allegations. That included, in particular, Dr Snape and Dr Lawrence, as well as other members of the respondent's HR team. No reason was provided for any decision not to call any particular witness.

16. The Tribunal ensured that regular breaks were taken throughout the hearing and that the Tribunal did not sit late on any day. It was made clear to the claimant, prior to her evidence being heard, that if she wished to take a break at any time she should say so (this having been identified as a potential reasonable adjustment arising from the medical evidence seen during the time taken to read statements and documents). No other reasonable adjustments were requested or identified.

17. The case had been listed to be heard over ten days. Following the announcement of the death of Her Late Majesty Queen Elizabeth II, all Courts and Tribunal hearing centres were closed on Monday 19 September 2022 as a mark of respect for the State Funeral. The Tribunal did not sit on Monday 19 September 2022. The hearing was therefore conducted over nine days. The hearing was nonetheless concluded in the time available.

18. After the evidence was heard, each of the parties was given the opportunity to make submissions. Some additional time was allowed on the morning of the eighth day of the (actual) hearing to enable written submissions to be prepared and sent to the Tribunal and the other party. Written submissions were read in advance of oral submissions; oral submissions being heard on the afternoon of the eight day (of actual hearing).

19. Judgment was reserved and accordingly the Tribunal provides the Judgment and reasons detailed below.

Facts

20. The Tribunal heard a significant amount of evidence about a wide range of matters which related to the claimant's employment. This Judgment focuses only upon the issues to be determined and the facts which were relevant to determining those issues. As a result, a significant part of the evidence heard by the Tribunal is not referred to in this Judgment.

21. The claimant commenced employment for the respondent on 28 May 2013 in the role of Lecturer in Physical Chemistry within the School of Pharmacy & Biomedical Sciences. The claimant's evidence was that, prior to her appointment, she had an extensive research record within the area of biomaterials and pharmaceutical chemistry.

22. The Tribunal was referred to a number of policies and procedures operated by the respondent. A SHE procedure, addressed issues with stress in the workplace (254). The appraisal scheme (396) provided that an appraisal meeting should take place between May and September each year and made clear that all information required to map out the academic workload for the year should be gathered in advance of the appraisal meeting, enabling a full discussion to take place during the meeting (401). A document called "*workload model expectations*" (404) provided that: workload plans were to be formally agreed through the appraisal process; and workload should be initially allocated ahead of the academic year and revisited as

part of regular conversations in one to ones with academic leads. Based on the evidence heard, the Tribunal did not find any evidence of the respondent complying with the aspects of its own procedures regarding appraisal and workload planning, with the claimant at the material time.

23. The respondent's grievance procedure (116) did not include any absolute timescales for the time in which a grievance would be addressed, but did say that an initial meeting under the formal procedure would normally be within two weeks of receipt of the initial grievance and that the outcome of the grievance would normally be within one week of the hearing. Much of the grievance procedure reflected what would normally be found in such a procedure, however it also included a less usual element which provided the employee raising the grievance with the choice between alternative formats to the grievance meeting (118). Those options were: a single meeting at which all evidence would be heard; or the manager hearing the grievance meeting separately with the person raising the grievance and others. The written procedure very clearly provided that this was the choice of the employee raising the grievance.

24. During the first nine years of the claimant's employment there were never any concerns or complaints about the claimant's performance. From March 2015 until July 2017 (when he went on adoption leave) Professor Seville was the Head of School and it was clear that the claimant had a positive working relationship with him. In January 2017 the claimant agreed with Professor Seville that she would take both maternity leave and shared parental leave and the periods for which the leave would be taken was agreed. It was agreed that the claimant would deliver the vast majority of her required lectures for the 2016/17 academic year prior to the commencement of her leave. It was agreed that the respondent would recruit someone to act as maternity leave cover for the claimant's role as a Lecturer. At the time when the claimant went on maternity leave, her line manager was Professor Forbes. Professor Forbes evidence was that in all his dealings with the claimant she worked very hard for her students, including to minimise any impact on them of her maternity leave.

25. When Professor Seville commenced a period of adoption leave, in July 2017, Professor Davidson was appointed Acting Head of School. As is not unusual with adoption leave, this was arranged at very short notice. Professor Davidson's evidence was that there was a lot of uncertainty within the School at the time and the School faced significant financial pressures. Professor Davidson wanted to employ a Lecturer who would focus on the remedial help which a particular group of students required to progress, as too many students were not progressing. He made the decision that, if the School did not employ the proposed maternity cover for the claimant's leave and certain other cost-saving measures were taken, the School would have sufficient funds available to employ a Lecturer in the new role identified. Professor Davidson's statement referred to discussions about this with Professor Jackson (the Executive Dean of the Faculty) and Professor StJohn Crean (the Pro Vice Chancellor (Clinical)) but it was clear to the Tribunal that the decision to reverse the recruitment of a person to cover the claimant's maternity leave was Professor Davidson's. Professor Davidson outlined this proposal in an email of 24 August 2017 (455). That email focussed on budget and the identified need for the new post.

26. The maternity-cover post had already been advertised when the decision not to proceed with it was made. Professor Forbes emailed Mr Arciniega (the person responsible for HR in the School) (462) on 11 September 2017 to ask what the candidates for the role should be told, and he also explained that he would distribute the claimant's duties for four months across the team (highlighting that there would need to be reduced expectation in other areas of delivery as a result). It was clear to the Tribunal from his evidence, that Professor Forbes had not made the decision to reverse the recruitment of the maternity cover and did not agree with it. In an email on the same date sent to Professor StJohn Crean (461), Professor Davidson emphasised that he'd rather spend the money on the student-faced fixed term Lecturer (he wanted to appoint), rather than the maternity cover role, and he made clear that he felt the claimant's maternity leave could be covered within the existing staff, describing Professor Forbes concerns as "*mountains and mole hills*".

27. On 30 August 2017 Dr Snape sent an email to various staff, making proposals about cover for the claimant's responsibilities during her maternity leave (457). This showed that the teaching duties were allocated to a number of different people within the School. In his evidence, Professor Forbes described the workload as having been scattered to the four winds. Dr Snape was a Principal Lecturer in the School. It was clear from the evidence of Professor Forbes, that he relied upon Dr Snape to implement the detailed workload planning. There was no evidence that Dr Snape made the decision to reverse the recruitment of a maternity cover Lecturer, nor was there any evidence that he was involved in that decision. It was clear from the email of 30 August 2017 that he was the central decision-maker in identifying who, within the Theme/School, should cover the work once the decision had been made not to recruit someone to the maternity cover role.

28. During the claimant's absence on maternity leave and shared parental leave, she applied for the role of Senior Lecturer. She was appointed. There was no dispute between the parties that a Senior Lecturer would be expected to take on additional managerial responsibilities. There was a dispute between the parties about the extent to which the promotion to Senior Lecturer would, in any event, have resulted in a change to an individual's other duties. The claimant's appointment to the role of Senior Lecturer in Clinical Pharmaceutics with a start date of 1 October 2017, was confirmed in a letter of 25 September 2017 (475). That letter also referred to the appointment being subject to satisfactory completion of a twelve-month probation period.

29. There was a change to the way in which the respondent's relevant courses were managed and taught, around the time when the claimant took maternity (and related) leave. One significant effect of the change was that the undergraduate module for which the claimant had had primary responsibility prior to her maternity leave, and which she evidenced took up a significant amount of her working time, ceased to be provided at the end of academic year 2017/18. In a table produced by Dr Snape as part of the claimant's grievance (1684) it was recorded that the module was no longer running after the claimant returned from maternity leave due to a new course which was running instead. Dr Snape's table included the statement that those duties, undertaken by the claimant prior to her maternity leave, had ceased to exist. The claimant in her evidence disputed this explanation, albeit she acknowledged that the precise module had ceased. Her evidence was that the same chemistry teaching was still required after her maternity leave, as it was effectively

replicated as part of new module(s)/course(s) taught in the subsequent academic year. She contended that the relevant module and teaching was not re-allocated to her.

30. The claimant returned from maternity leave in January 2018. The claimant's evidence was that she picked up some of her previous workload, supervision of laboratory sessions, management of research laboratories, and supervision of research students. There was an acceptance from all parties that, in the interests of the students, the claimant would not have been expected to immediately pick up all the work she had previously undertaken with the students for that academic year. The claimant did, however, expect the respondent to have identified the work to which she would return for the new academic year 2018/19. As the claimant quite correctly identified, an impact of Professor Davidson's decision not to employ someone to undertake the role of maternity cover for the claimant, was that there was not an easily identified workload which could be returned to the claimant after her return from maternity leave.

31. On the claimant's return to work, on 12 January 2018, Professor Forbes met with the claimant. The Tribunal was provided with notes of the discussion (476) which totalled four lines (none of which addressed workload). It was common ground between the parties that Professor Forbes had not undertaken a formal appraisal of the claimant at any time in 2017 or 2018. The formal workload planning provided for under the respondent's policies, accordingly, never took place. Professor Forbes evidence was that he was not good at formal paperwork for anyone, and he had not undertaken formal written appraisals with anyone (albeit he believed that his meetings with the claimant in some way meant that the equivalent to appraisals had taken place). There was a widespread acceptance from all relevant witnesses that Professor Forbes was not good with paperwork. It was very clear to the Tribunal from the evidence heard from him, that Professor Forbes fundamentally failed to plan at all for what would be the claimant's workload on her return to work, or (more importantly) for what her workload would be for the next academic year.

32. On 20 February 2018 Professor Forbes held a probationary review meeting with the claimant, which was noted on a probationary schedule (483). In his witness statement, Professor Forbes stated that this meeting was a formal discussion about what the claimant wanted to achieve in her new role. It was common ground between the parties that the claimant wished to progress to be appointed to the position of Reader, and Professor Forbes' evidence was that this was discussed in this meeting. His statement referred to the claimant being made Module Leader for one module and being told that the respondent was looking for other appropriate leadership roles for her as part of her duties as Senior Lecturer. The schedule which recorded the meeting made no reference to the respondent looking for other appropriate leadership roles. When Professor Forbes was questioned about the absence of workload planning for the claimant following her return from maternity leave, he relied upon the schedule as evidencing what had been done.

33. Dr Forbes, in his oral evidence, explained that because the claimant had a new job, he did not believe that it was incumbent upon the first respondent to restore all the claimant's duties to her. He confirmed that, with hindsight, it would have been easier if someone had been appointed to cover the claimant's duties during maternity leave as she then would have had identified duties to which she would

have returned, which would have been an easier thing to do than addressing her duties where they had been scattered to the four winds including with the new course(s). He also acknowledged that there were lots of things which could've been done differently.

34. On 24 September 2018, Dr Stasik, a Lecturer in Biosciences, sent Professor Forbes an email which said: "*Jane has told me that Marta will not be offering UG research projects this year (for Biosciences). Marta herself seems not to be aware of that, as she has send me description of two projects she is ready to supervise. Could you please clarify the situation?*". Professor Forbes responded on the same day "*Suggest you hold Marta in reserve until we have had chance to discuss with her her work load capacity. Should be clear next week. Sorry can't be clearer*". Dr Snape was copied into Professor Forbes' response. Dr Stasik acknowledged the email with thanks.

35. Professor Forbes denied that there was a deliberate attempt to keep the claimant's workload low. He explained the email exchange of 24 September with reference to the upcoming meeting he was due to have with the claimant and his wish to discuss the claimant's workload with her before agreeing that she could undertake the supervision. There was no evidence that Professor Forbes raised that issue in the subsequent meeting on 3 October. Professor Davidson's evidence was that he would not have issued such an instruction as there was a shortage of people to be allocated research projects and he was not personally involved in instructing the claimant not to undertake them. On 12 October 2018, the claimant exchanged emails with Professor Davidson (665) about biomedical project supervision, was encouraged by Professor Davidson to supervise two or three projects, and the claimant confirmed that she had agreed to take three students.

36. With regard to research projects, the claimant compared herself to James Gillies and Joseph Hayes. The Tribunal heard no evidence about their workloads, the students they were supervising, or whether there had been any similar exchange about such supervision.

37. On 3 October 2018 the claimant attended a meeting with Professor Forbes and Dr Snape (636). It was to discuss workload issues. The claimant's evidence was that she had not been expecting there to be two people at this meeting and she found the meeting to be intimidating, with a negative atmosphere. The claimant's workload was discussed. The claimant's evidence was that the conversation was about "*jobs being at risk*" and the "*School being in a difficult situation*". Professor Forbes' evidence was that he did not say that the claimant's job was at risk, although his oral evidence was unclear when he was challenged about whether that was said in the meeting at all. The Tribunal did not hear from Dr Snape, but the comments he provided on the claimant's document during the grievance process (1693) appeared to acknowledge that it was said, as he explained why the comment had been made rather than denying that it was said at all.

38. The claimant was offered the Transition Module in this meeting. It was common ground that the claimant did not want to take on the module. The claimant described it as being an unprepared module for which delivery should have already started, and that she expressed serious concerns about the lack of time to prepare the module to the standard required. Professor Forbes' evidence was that the

claimant's main concern was that she wanted something more substantive, and she was concerned about being back in the same position the following year (as the transition module might not be needed in later years). The Transition module was, in broad terms, to assist struggling students in the context of the course changes being implemented. As a result, the module was limited in scope, but also potentially limited in time. It did not appear to the Tribunal to have been the most attractive module for a Senior Lecturer to take as a responsibility, and that was certainly the claimant's perception.

39. Following the meeting on 3 October 2018, Professor Forbes emailed the claimant and thanked her for agreeing to talk to another employee about the Transition module. On 8 October, the claimant responded by email and explained that as she had been offered the opportunity to choose between two modules, she had selected the other module (not the Transition module).

40. The other module had been offered to the claimant because Dr Snape had said that he would do the Transition module. Dr Snape changed his mind and withdrew the offer. As a result, the other module was not available, and the respondent needed someone to take on the Transition module.

41. Emails were exchanged between Professor Forbes, Dr Snape, and Professor Davidson, between 8-10 October 2018 following the claimant's decision (656). Dr Snape observed that the claimant's workload was (in his view) the lowest in the Theme. Professor Davidson emphasised that the claimant needed to pick up "*appropriate work*" having moved to be a Senior Lecturer and the Transition module was important. Professor Forbes confirmed he was seeing the claimant on 10 October. Within that email exchange Dr Snape said (657): "*Although a year has passed since she was made SL, some of that she was on mat. Leave. I'm not sure if that counts as she wasn't actively doing the job during that time, so she may still be on probation. HR could advise*". It was not in dispute that Dr Snape was wrong, and the claimant had completed her probationary period in the Senior Lecturer role at the end of September 2018.

42. The claimant met with Professor Forbes on 10 October 2018. She was informed that the option she had been willing to accept had been withdrawn. Professor Forbes informed the claimant that the respondent still needed the claimant to undertake the Transition module. There were no notes taken of this meeting. The claimant emailed Professor Forbes at 1.18 am on 11 October recording her main points from the meeting (653). That recorded her shock and great concern. The email recorded that Professor Forbes had promised to put things right, had promised to allocate the claimant leadership of some specific sub-modules, and had stated there would be no further discussion about the Transition module. Professor Forbes evidence was that he informed Professor Davidson that it had been agreed that the claimant would lead a specific course.

43. On 11 October Professor Forbes emailed Professor Davidson confirming what had been agreed with the claimant at the previous day's meeting and describing how he and Dr Snape were happy that this balanced the claimant's leadership and workload (656). Professor Davidson emailed the claimant, Professor Forbes, and Dr Snape, later on 11 October (654). His email placed pressure on the claimant to undertake the Transition module and explained that the claimant had plenty of

capacity in her workload to do it. He said he would ask Professor Forbes to co-lead on it if the claimant wanted. He described that the claimant leading the other module, which had been agreed by Professor Forbes, was a non-starter because it needed a "*Practice person*" to lead the course. He ended the email by saying that, as Acting Head of School, he was asking the claimant to take on the Transition module.

44. In the evidence which he gave to the Tribunal, Professor Davidson was confused and confusing about the modules offered to the claimant and the reasons why he decided the offers made by Professor Forbes were to be retracted. He accepted under cross-examination, that his witness statement referred to entirely the wrong job number when explaining his reasons for saying the claimant could not take on responsibility. After that had been identified, Professor Davidson explained that he could not remember which modules he was referring to or why, after this length of time. However, in explaining why he had not agreed that the claimant could lead on the module which Professor Forbes had agreed on 10 October, his evidence was that it was an advanced pharmacy practice course and therefore, in Professor Davidson's view, it needed to be led by a pharmacy practitioner and not someone (like the claimant) with pharmaceutics expertise (not in pharmacy practice).

45. The claimant was, unsurprisingly, unhappy with the respondent's approach to her workload and the fact that two agreements reached with her line manager had been withdrawn. She emailed Mr Arciniega on 11 October 2018 (650) and explained what had occurred with the allocation of her workload, maternity leave, and the failure to return her previous duties to her. She said "*At this point I do not know if this was done deliberately, or it was simply an act of negligence*". She asked Mr Acriniega to keep what she was raising confidential. Mr Arciniega responded by email at some length later that morning, outlining his view of what had occurred and explaining the claimant's options to her. Those options included confirming with her manager that she would return to the normal duties of her role (described as option one), speaking to her trade union representative, or raising a formal grievance. The claimant responded to say that she would follow action one. The emails were only exchanged between the claimant and Mr Arciniega. Mr Arciniega's evidence was that the email trail was not circulated to anyone else, and he did not tell anyone else about it.

46. The claimant emailed Professors Jackson, Davidson, and Forbes, in the evening of 11 October (655), and explained that she was experiencing a significant level of stress as a result of the actions of Professor Forbes. She said that she would be unable to attend any further "*intimidation*" meetings with Professor Forbes, would be contacting her union, and said she would be happy to meet Professor Jackson. Within the email, the claimant referred to victimisation and her maternity leave.

47. The claimant's evidence was that she met with Professor Jackson on 15 October 2018. The claimant emailed Professor Jackson some notes, weblinks, and screen shots, following the meeting (666). The claimant's evidence was that Professor Jackson requested a meeting with herself, Professor Davidson, and Professor Forbes, to resolve the issues.

48. On 1 November 2018 the claimant's trade union officer, Ms Styles-Lightowlers, emailed Professors Forbes and Davidson (copying in others including

Professor Jackson) about the management of the claimant's workload since her return from maternity leave.

49. An occupational health report, regarding the claimant, was sent to Professor Davidson on 2 November 2018. In his email of 2 November (680) Mr Arciniega recorded his understanding that the claimant had asked that the occupational health report should be shared with Professor Davidson only (and therefore presumably not with Professor Forbes, which would be consistent with what she said in her email of 11 October). The report (2150) recorded that the claimant perceived that she was affected by work related stress. The claimant was recorded as being fit to work. It advised: "*It would appear that Mrs Krysmann is affected by work pressure, adjustments can be identified by completing a stress risk assessment*".

50. Following receipt of the report, Professor Davidson emailed Mr Arciniega and Professor Forbes (680) saying that he had no idea what a stress risk assessment was. He asked whether HR would do it, and also asked Professor Forbes to pick it up as the claimant's line manager. Mr Arciniega responded by email very shortly after and explained why he felt the stress risk assessment should be undertaken by Professor Davidson and not Professor Forbes. He provided a template stress risk assessment and a guidance document. Professor Davidson did not undertake the stress risk assessment even after he received Mr Arciniega's response. At the Tribunal hearing, Professor Davidson's evidence was that he did not undertake the stress risk assessment because at the time he had no idea what one was, he was concerned that it may lead to liability, and he thought it should be undertaken by someone else (he referred to that being someone from the large Occupational Health or HR teams, or someone with clinical responsibility). It was clear that Professor Davidson had not read the respondent's policy which outlined who was responsible and why, nor had he at that time read the template stress risk assessment which Mr Arciniega had sent to him. The Tribunal also heard evidence from Mr Arciniega about a telephone call from Professor Davidson to his mobile (the only time when Professor Davidson had called it), in which they spoke about the stress risk assessment, although he could not recall the date of that conversation.

51. In his role as Acting Head of School, Professor Davidson had identified that he felt it would be beneficial if people sharing an office were from different Themes within the School, as a way of moving away from Themes working in silos, towards delivering more integrated teaching. Asking people from different disciplines to share offices and interact with each other was agreed with the senior management team to be a good idea. Professor Davidson's evidence was that, once the decision to ask some people to move offices was made, he did not arrange who would move or make the decisions about how the proposal should be implemented. Professor Lawrence, a Principal Lecturer, was asked to organise the office moves. On 5 November 2018 Professor Lawrence emailed all staff asking them to let her know whether there were any urgent requests to move, or good reasons not to move, before decisions were made. The claimant emailed back to say she did not think the relocation would affect her, but she would prefer to stay where she was (685). No evidence was presented to the Tribunal by the respondent about who else was identified as being required to move offices (save for the claimant detailing one other person who was also asked to move) or how that decision was reached. The evidence of the respondent's witnesses was that the decision about who should

move, was a decision reached by Professor Lawrence and the team who worked with her on the project (who were named in an email by Dr Smith).

52. On 16 November 2018 the claimant and her trade union officer, Ms Styles-Lightowlers attended a meeting. Professor Jackson did not attend. Professor Davidson and Professor Forbes did. The claimant and her representative were under the impression that the meeting was intended to be the one arranged by Professor Jackson to address the issues raised. Professor Davidson's evidence was that the meeting was to discuss workload issues. Professor Forbes' evidence was that the meeting was to try to respond to the claimant's complaint email and to reach a resolution in relation to the claimant's workload. Professor Forbes evidence was that it wasn't a helpful meeting, and he didn't think that it moved things forward. There were no notes taken of the meeting.

53. It was not in dispute that at the start of the meeting Professor Davidson said "*Lots of sh*t like this has fallen into my hands since Peter left*". There was a dispute about whether Professor Davidson gestured towards the claimant when saying this. The claimant alleged that he did, which was supported by the statement made by Ms Styles-Lightowlers for the grievance process on 7 June 2019 (1487) in which she described Professor Davidson as waving his hand towards the claimant when making the comment. Unsurprisingly, the claimant was taken aback by this comment and felt that it was made with reference to the workload issues which she had faced since her return from maternity leave.

54. Following the meeting, Professor Davidson emailed Professor Jackson and the claimant with the three actions which he believed had arisen from the meeting (701). One of those, was that someone other than Professor Forbes should appraise the claimant.

55. On 20 November 2018 Ms Styles-Lightowlers sent an email to Professor Jackson and Mr Arciniega about the 16 November meeting (707). It was headed (after referencing the meeting) "*Maternity and Equality issues*". In it she summarised the meeting. She detailed the comment made at the start by Professor Davidson. She described that the claimant had expressed her discomfort to the vulgar vocabulary being used while referring to the claimant and the problems she was experiencing (but in that email there was no reference to the comment having been accompanied by a gesture). The email described Professors Davidson and Forbes as having had a "*heated disagreement*" in the meeting. It said that the claimant had rejected Professor Davidson's offer to act as her line manager and asked that she be line managed by Professor Jackson or Professor StJohn Crean. The email concluded that it would not be appropriate for Professor Forbes to attend the future meeting that was being arranged with Professor Jackson.

56. Professor Davidson emailed a number of people, including the claimant, about support for open access costs. Funded open access was something which had a benefit for the respondent and the writer of the paper, but which had a significant cost. Those written to were people who had written papers and who were informed that if a paper had come back at least 3* then it might be possible to make it open access (2196). The fund to support papers being open access was £30,000. Professor Davidson's evidence was that only approximately a relatively limited number of papers per year could be funded in this way with the funds available, and

that the vast majority of those would be 4* papers. It was, perhaps, unfortunate that the email inviting submissions did not make that clear. On 26 November 2018 Professor Davidson was sent an email about a paper which the claimant had submitted, and for which she asked for open access funding. After an exchange of emails, the claimant submitted her paper to Professor Davidson that afternoon (727). Professor Davidson's evidence was that he read the paper submitted by the claimant very shortly before meeting with her on 26 November.

57. At 5.20 pm on 26 November Professor Davidson sent an email to the claimant about her paper (727) (although the email was only seen by the claimant after her meeting with him and others). In it he listed a number of people who could review the article and said "*I have had a quick look and in my opinion this is not 3* as it is a single technique study with not a lot of data, it is also unclear what the implications of the study are. However, don't take my word for it, please send it to one of the above*". In cross-examination, Professor Davidson accepted the point the claimant's husband was making in questioning, that there was data in it and it was not in fact a single technique study. That email was sent ten minutes before Professor Davidson was due to meet the claimant. It was his evidence that the timing was coincidental, and that he certainly had not reviewed the paper shortly before the meeting because the meeting was about to take place.

58. The meeting on 26 November 2018 was chaired by Professor Jackson, Professor Davidson's line manager. It was attended by Professor Davidson, Mr Arciniega, the claimant, and her trade union representative, Ms Styles-Lightowlers. Professor Forbes had not been invited to the meeting, which would appear to have been in accordance with what Ms Styles-Lightowlers had proposed in her email of 20 November. It is clear that the meeting was not a success.

59. It was not in dispute that, in the meeting, Professor Davidson referred to the claimant's paper as being a "*little paper*". The claimant perceived this to be a comment which belittled her paper and described it as worthless. Professor Davidson's explanation was that he used the phrase literally, that is he was describing a short paper which he felt did not have the length required to be a 4* paper.

60. There was a dispute about why the paper was referred to in the meeting. The claimant asserted that Professor Davidson referred to it while telling the claimant that she would not be promoted to Reader because she published little papers. Professor Davidson's evidence was that he was explaining, in the context of a conversation about the claimant's stated wish to progress to Reader, that if she wished to do so she would need to write lengthier papers.

61. The meeting was not minuted or fully noted, but Mr Arciniega summarised the agreed action points in an email sent the following day (714). That email confirmed that it had been agreed that Professor Forbes would not continue as the claimant's appraiser, and that Professors Jackson and Davidson would meet with the claimant in January 2019 to discuss her career route and to identify appropriate opportunities.

62. Ms Styles-Lightowlers emailed Professor Jackson and Mr Arcienega on 28 November (730). That email (which was copied to the claimant but not Professor Davidson) stated that Mr Davidson's comment had been that the claimant had

authored loads of little papers which were not good enough for her to progress as a Reader. The comment was described as a "*dig*". Reference was made to the email sent about the paper shortly before the meeting had started, and the two combined were described as being a deliberate act of intimidation and bullying. It was stated that the claimant did not feel comfortable having Professor Davidson as an appraiser. The email ended by saying "*Marta would like to file an official complaint against Colin*".

63. It was clear to the Tribunal that the claimant and her husband felt very strongly about the relevant paper and fundamentally disagreed with Professor Davidson's view of it. They perceived Professor Davidson's remark to have undermined a part of their research output. The paper was ultimately confirmed, as part of the respondent's REF process, as being a 3* paper. In cross examination Professor Davidson conceded that parts of the statement made in his email were in error. He, however, emphasised that the respondent (and the sector generally) sought longer articles, which crossed departments, and showed genuine social benefit. He also emphasised that his email did direct that the review could/should be undertaken by others. The respondent's witnesses maintained that all of the papers which were ultimately provided open access funding were 4* papers. As a result, even had the claimant's paper been identified as a 3* paper at the time, it still would not have received open access funding. There was no evidence before the Tribunal which showed this to be incorrect.

64. At 1.39 am on 27 November 2018 the claimant responded to the email from Professor Davidson regarding her paper (733). She criticised his review in some detail. She also said the following: "*I suspect that your lapse of judgement in this regard is because you have not been properly informed about the recent publication trends in Chemistry?*" and "*In my view, only qualified academics with in depth understanding of interdisciplinary research should be involved with the REF submission and the leadership of the research centres. It is our duty to prepare the REF submission in a responsible manner, recognising research excellence whenever it occurs, even if the academics involved do not necessarily fall within our favoured "clique" of people*".

65. In response to the claimant's email, Professor Watkins (who had been copied into the emails) responded on 27 November and explained that she had asked Professor Davidson to review the paper. She said that she would not support the paper being funded for gold open access. The claimant responded to Professor Watkins on the same day, emphasising information about the journal in which the article had appeared, and suggesting that Professor Davidson had not read the paper at all.

66. On 28 November 2018 Professor Davidson emailed Mr Arcienaga (731), provided the full email trail regarding the claimant's paper, and explained that as he had had time to reflect on the emails, he would like to ask HR to instigate a disciplinary procedure against the claimant. He referred to the tone and content of the emails. His evidence was that he never sent such emails in the heat of the moment and he had thought about it in the time after he had received the emails, before deciding to send the 28 November email.

67. Mr Arciniega responded to Professor Davidson's email on 28 November 2018 (738). He stated that he thought an investigation would be the most appropriate way forward at that stage. However, he said that due to his involvement in the meeting from which much of it stemmed, a different HR officer would need to support the process. His evidence to the Tribunal was that as he had been at the meeting on 26 November he did not consider that it was appropriate for him to be involved in investigating the claimant's complaint against Professor Davidson. As a result, another HR officer provided support to the investigation process. The Tribunal heard evidence from Mr Arciniega that, in the office, he sat opposite that other HR officer and the claimant highlighted occasions when Mr Arciniega was subsequently involved in correspondence regarding matters which related to her, but Mr Arciniega did not provide HR support to the investigation which followed.

68. Professor Forbes' evidence was that, after he was not invited to the meeting on 26 November 2018 and in the light of the decision that he would no longer undertake the claimant's appraisals, he was not clear about his position as the claimant's line manager. He described it as a grey area. It was clear that he stepped back from undertaking normal line management of the claimant as a result, albeit it was common ground that some procedural matters such as approval for annual leave continued to be sent to Professor Forbes (initially). At some point in time, Dr Snape, as Principal Lecturer, took over responsibility for approving the claimant's annual leave.

69. On 7 December 2018 the claimant was invited to a meeting in a letter from Ms Swift, an HR Officer (757). The meeting was described as being to discuss the complaint the claimant had raised against Professor Davidson in the email sent on 28 November 2018. It also said that "*I also need to make you aware that concerns have been raised against you by Colin Davidson, in relation to the email trail of 26th and 27th November 2018. Full details of the concerns will be provided to you at the investigation meeting*". The claimant was given the right to be accompanied and was informed that Ms Day-Garner would be the investigating officer.

70. On 11 December 2018 Professor Davidson emailed the claimant about the proposed stress risk assessment (for the first time after he had received the occupational health report on 2 November) (793). He stated that he was not the best person to do this. He asked Mr Arciniega (who was copied into the email) for a suggestion of who should do it. Mr Arciniega responded to say that perhaps, under the circumstances, it would be best for someone other than Professor Davidson to do it. Professor Davidson suggested Mr Martin. The claimant proposed Professor Jackson (791). Mr Arciniega forwarded the email trail to Professor Jackson and asked if she would be able to provide a date in January to do it.

71. Ms Day-Garner conducted investigation meetings on 11 December 2018 with both the claimant, and Professor Davidson.

72. On 13 January 2019 Professor Davidson emailed the HR officer involved in the investigation and asked for an update. Ms Swift responded on 16 January to say that they were still in the process of investigating the concerns raised and she would provide an update when she could (810).

73. On 17 January 2019 the claimant was informed by Dr Smith that she would need to move out of her office. She objected to doing so. The claimant emailed Dr Smith summarising the discussion. Dr Smith (815) responded to say that the list of moves had been generated by a team including Professor Lawrence (and others who were named). He said that, of course, they couldn't force people to move and if staff had a genuine reason why they could not move, that would be considered. However, he highlighted that not wanting to move was different to being unable to move. Professor Lawrence forwarded the emails to Professor Davidson and explained that the claimant had refused to move. The claimant responded to Dr Smith by asserting that she had the right to dignity and would not disclose confidential and personal data.

74. Professor Davidson emailed Mr Arciniega on 17 January about the office move. He asked whether people could refuse to move. Mr Arciniega responded and confirmed that there was no issue in asking people to move, but he suggested finding out the specific concerns so that they could be explored.

75. After receipt of the advice from Mr Arciniega, Professor Davidson emailed the claimant on 18 January (827) and asked the claimant whether she had any specific concerns which meant that she was unwilling to move offices, so that those could be considered. The claimant responded and said that she did not have time to collect her medical records or provide confidential private information. She said Professor Davidson would hear back from occupational health, HR, and her trade union representative. She asked for it to be confirmed that there would be no forced office move and no further discussion about it.

76. The Tribunal was shown an email from Professor Davidson to Mr Arceniega, copied to Professor Jackson, of 18 January 2019, in which he forwarded the email trail culminating with the claimant's response and said: "*Ok what do I do now? If Marta is well enough to come to work then I am assuming she is well enough to move office, is that a reasonable assumption? Seems like people in this School can refuse to do teaching and refuse to move office and there is nothing I can do about it*".

77. On 21 January, in an email, Professor Davidson reassured the claimant that he had never asked for her medical records and did not need to see them, he just needed a brief description of why she was unable to move (836).

78. The claimant shared her office with two others. Neither were Polish. One was a man who was not asked to move offices. There was no evidence that Ms Crombie was asked to move. Professor Forbes was asked to undertake a stress risk assessment for Ms Crombie in January 2019. He did it quickly. It was identified, as part of that assessment, that Ms Crombie did not want any major changes in her office personnel, or any office moves whilst she was undertaking a phased return to work. On 21 January 2019 Professor Forbes emailed Professor Davidson (845) and explained that it had been identified as part of Ms Crombie's stress test that she would benefit from continuity in the room. He asked that there be a delay in any office move for the claimant for six months. Professor Davidson forwarded the email to Professor Lawrence and suggested that they may need to re-assess the office moves as they were encountering quite a few problems.

79. On 22 January 2019 the claimant approached Professor Forbes for assistance with the proposed office move. She sent an email to Professor Forbes which thanked him for his efforts. She explained that she had found the discussions about this to be extremely upsetting and questioned why she had been selectively targeted (853). In the evening of 22 January, Professor Forbes emailed Professor Davidson and explained that, after speaking to the claimant, the office moves could be a stressor for her, and it needed to be addressed. He urged Professor Davidson to arrange the outstanding stress risk assessment as a matter of urgency (845). Professor Forbes also emailed the claimant that evening (852) and explained why the moves had been proposed. He suggested that it had been thought that the claimant's role as a course leader had been a factor in the decision to move the claimant. In fact, Professor Forbes was not involved in the room move decisions at all (as he said in the same email) and therefore he did not know the reasons why the claimant had been identified as someone to move. The claimant challenged Professor Forbes' statement in an email sent in response.

80. On 23 January 2019 Professor Jackson emailed the claimant about the lack of a stress risk assessment, apologised for the delay which she described as undoubtedly her own fault, and explained the delay was due to her workload. She suggested that someone in the medical department undertook the stress risk assessment as it would prove challenging for it to happen any time soon, if she needed to do it (876)

81. Following on from that exchange of emails, the claimant emailed Professor Jackson on 23 January 2019 asking that she not be bullied out of her office, at least until the stress risk assessment. The email was copied to Professor Davidson and others. Professor Davidson sent an email in response to Mr Arciniega, copied to Professors Jackson and StJohn Crean, and Mr Lee (877) in which he asked what he was supposed to do now, and went on to say "*The onslaught of emails from Marta many of which are directed at me and not at all accurate are causing me significant stress. I am really disappointed that this is dragging on in this way*". After explaining his workload priorities, he said "*I do not have time to deal with Marta's daily emails and could do without the stress*".

82. Professor Davidson's evidence was that he agreed to put the planned office move on temporary hold following receipt of Professor Forbes' email of 21 January. That was confirmed in an email of 25 January 2019 from Mr Arciniega to Professor Davidson (885) in which he recorded that Professor Davidson had separately instructed that the office moves be paused while the claimant's stress risk assessment was carried out. In practice, the proposed office moves were discontinued, and the claimant was not required to move offices. Her representative was keen to emphasise that the allegation was that it was <u>proposed</u> that she move offices (at a time when her stress risk assessment remained outstanding), it was not that she was actually required to move offices. In her evidence, the claimant asserted that the proposed office moves had not served any business need and they had been introduced by Professor Davidson to intimidate and humiliate the claimant and to push her to breaking point. The Tribunal accepted that the office moves were introduced in order to try to further cohesion within the School, as evidenced by Professor Davidson.

83. The claimant was absent from work on ill health grounds from 28 January 2019 until March 2019. The reasons for absence were certificated as stress and stress-related (2152).

84. Prior to returning to work, the claimant sent an email on 5 March to Ms Parker, which raised the possibility of a phased return to work (1454). Ms Parker responded and copied in Professors Davidson and Forbes, asking Professor Forbes to contact the claimant to discuss a phased return to work.

85. Professor Forbes provided the Tribunal with detailed evidence about domestic issues which he faced at the time. He explained that, at the time, he had no additional band-width to deal with anything more than his Lecturing duties. He also explained that he was spending much of his time and energy outside working hours at his parent's house, which had limited internet access. However, the evidence which he gave (which it is not necessary to re-produce in this Judgment) was about his ability at the time to focus and address work matters outside his core duties, rather than it being technically impossible to respond to emails. The Tribunal had no doubt that the evidence he gave about the issues which he faced and the reasons why he was not responding to emails at that time, was true. He subsequently had a period of ill-health absence himself which followed from the stressful situation which he faced. His evidence was that this explained why he did not respond to the claimant's email about a phased return to work at that time, and the Tribunal accepted that it did so. Professor Davidson's evidence was that it was not his responsibility to respond to an email about a phased return to work from the claimant, as he was not the claimant's line manager. That was why he did not respond.

86. On 12 March the claimant emailed Professor Jackson about the absence of any response to her enquiry about a phased return to work. That email was responded to and the chain was forwarded to Professor Davidson. On 14 March 2019 Professor Davidson emailed Professor Jackson (979) and stated it was "*unbelievable*" because Professor Forbes was supposed to do this, and he was not sure why he had not done so.

87. At the time the claimant would not have been aware of Professor Forbes' issues or the reason why he had not responded. It was clear that she found the absence of a response frustrating. The claimant compared her treatment to the treatment of Ms Crombie. The Tribunal heard no evidence whatsoever about any phased return to work requested or taken by Ms Crombie, or any responses to such a request.

88. In March 2019 the claimant put herself forward to take on the School's marketing role. Professor Davidson emailed Professor Jackson on 4 March 2019 about the claimant's proposal (921) and said "*WRT Marta, she has been leading on the website and Erasmus but to my knowledge has not excelled in these roles. On that basis I'd say no. In addition, for someone who has been off on stress I think she probably needs to come back and focus on the bread and butter teaching on a phased return*". There was no evidence presented to the Tribunal which showed any issues with the claimant's work in either of the roles referred to.

89. On 11 March 2019 the claimant provided a document which set out the details upon which she wished to rely in her grievance. At that time, the issues raised were against Professors Davidson and Forbes (only). The claimant raised her grievance by emailing Professor Jackson (946). The grievance set out that the claimant believed that she had been subjected to race and sex discrimination and discrimination in relation to maternity. She also alleged bullying and harassment. The formal grievance document made clear the things that the claimant was alleging, but it did not provide any detail about what had occurred.

90. The claimant was selected to participate in an innovative chemistry education project at Adam Mickiewicz University of Poznan. This was clearly a prestigious appointment for the claimant. The claimant's evidence was that Professors Seville and Forbes had been very supportive in 2017 about it. There was no dispute that Professor Forbes both agreed that the claimant could undertake the appointment and encouraged her to do it. The claimant was due to undertake the visiting Professorship in April 2019. The claimant emailed Professor Forbes for permission to attend on 14 March (1008). She received no response and emailed Dr Snape and then Professor Jackson. An email from Professor Jackson on 29 March (1461) explained that Professor Forbes was absent due to sickness and Professor Davidson was on paternity leave. As a result, the claimant did not receive the approval she was seeking. Instead, the claimant took the time required as annual leave.

91. In late March 2019 the claimant was booked to invigilate an exam when it conflicted with the annual leave she had booked in April 2019. The claimant responded to explain she was on annual leave at the time and raised the issue with Mr Arciniega. The claimant was then allocated to undertake some marking on a particular module by Ms Oga, to which she responded to say she could not do so due to annual leave and her busy schedule. Dr Snape emailed in response on 3 April (1467) saying that he had been asked to find a solution to the issue and suggested that the claimant could do the marking on a Monday which immediately preceded her annual leave commencing on the Tuesday (9 April). The claimant agreed to take twelve papers to mark on the Monday. The claimant's representative in his submissions was highly critical of somebody with laboratory responsibilities being required to undertake marking on their last day prior to a period of extended leave, because of the need to ensure that the laboratories were health and safety compliant prior to leave. The claimant herself did not give any evidence about that.

92. The Tribunal was provided with a copy of the stress risk assessment ultimately undertaken for the claimant. It recorded the date of the assessment as 1 May 2019 (2158). The assessment was undertaken by Professor Gardner, the Deputy Head of the School of Medicine. Amongst other things, it recommended clarification of the claimant's workload and noted that the claimant was anxious about being put under pressure to move office. The Tribunal heard no evidence that any of the recommendations made in the report were ignored.

93. In May 2019 Ms Ivins was asked to hear the claimant's grievance, as she was the Head of School in an entirely different School to the claimant. The Tribunal was provided with no explanation for the delay between the grievance being raised and Ms Ivins being appointed. Ms Ivins' evidence was that, as the claimant's email raising her grievance contained no details as to the nature of the claimant's

grievances, she asked that a meeting be arranged so that she could understand the claimant's grievance. That was accepted as not being in accordance with the respondent's grievance procedure. A letter was sent to the claimant on 22 May 2019 (1079) which explained that the meeting had been arranged and provided details about it. That letter expressly acknowledged that the initial meeting was not normal practice.

94. On 24 May 2019 Professor Davidson sent an email to Mr Arciniega and Mr Lee, copied to Professors Jackson and StJohn Crean, and a member of the HR team (1083). In it, he said the following:

> "*today I have received a letter from HR detailing a grievance against me from Marta Krysmann, in a letter to Prof Jackson dated March 11th 2019. It appears that I will be called to a meeting chaired by the Head of the Law School to explain myself.*
>
> *I attempted to bring a disciplinary procedure against Marta in November 2018, see emails below, but have yet to hear of any progress made on this request.*
>
> *I would like to know why my request has been ignored. The emails below are quite clear in my view: Marta appears to be trying to discredit me in front of some senior staff within the University..*
>
> *This has now been going on for 6 MONTHS and has caused me significant stress"*

95. On 11 June 2019 Ms Ivins met with the claimant as part of the grievance process. It was described by Ms Ivins as a preliminary fact-finding meeting. Ms Loftus, a member of the HR team, attended and took notes.

96. On 25 June 2019, Professor Davidson sent an email to Mr Arciniega, Mr Lee, Ms Livesey, Ms Bromley and a member of the HR team, copied to Professors Jackson and StJohn Crean, in which he highlighted that it had been seven months since he had raised the issue of disciplinary action against the claimant and one month since his previous email. He stated he had received no update and said "*I am now escalating this to our institutional leads as HR do not appear to be taking this seriously*". Professor Davidson's evidence was that the additional recipients of the email were the institutional leads to whom he believed he was escalating the matter.

97. On 8 July 2019 Professor Davidson sent an email to a member of the HR team and Ms Livesey, copied to Professors Jackson and StJohn Crean (1126). In that email he questioned why he needed to meet. He went on to say:

> "*As Acting HOS I have asked HR to start a disciplinary procedure (Nov 28, 2018 email below).*
>
> *Thus far nothing has happened and I feel ignored and not valued, not to mention the significant stress all this has been causing me for many months.*
>
> *While this is going on, or rather, not going on, Marta's grievance against me (March 2019, email to Exec Dean for CBS) is going ahead.*

Please can you let me know why I am being ignored."

98. It was not entirely clear from the evidence what ultimately happened to the possibility of disciplinary action arising from Professor Davidson's complaint. In the letter about the first investigation meeting (on 11 December 2018), the claimant was told that the investigatory meeting for her grievance would also consider the issues raised by Professor Davidson. The claimant's own perception was that she was subject to a disciplinary investigation. There was no document shown to the Tribunal which told the claimant that she was not, or that the issue was no longer being investigated. It was clear from Professor Davidson's emails that he felt the issues he had raised were not being pursued, and he particularly contrasted the progress of the process arising from the claimant's grievance with the absence of any progress of his own complaint. Professor Davidson's explanation for raising the matter and for following it up was that he was not best pleased about the emails the claimant had sent to him and he did not think that the tone was appropriate. He thought the words used effectively accused him of lying. He asked for something to be done. He wanted the claimant to be told to stop it. In his view, nothing was ever done. During cross-examination, Professor Davidson was referred to parts of the disciplinary policy when his actions were questioned, but his evidence was that he did not read the policy before seeking the action and he was not familiar with the detailed content of it, although he would have flicked through it before. No disciplinary action was ultimately ever taken against the claimant.

99. The claimant's evidence was that she usually booked a number of weeks of annual leave during the respondent's summer break. She booked these in shorter blocks, so that they could be changed more easily if she decided not to take leave as planned. The leave year ended at the end of August each year, so it was particularly important to take leave as planned in July and August to avoid it being lost at the end of the leave year (the respondent allowed carry over of some leave, but only of a limited amount). The respondent's leave booking system did not allow an odd day or days of a pre-existing booking to be withdrawn. If an individual wished to change a pre-existing leave booking, they had to cancel the block booked and then re-apply for the shorter period being sought. In 2019 the claimant did this, which resulted in a request being provided to Dr Snape to take a period of leave which had, in effect, previously been approved (as part of a longer leave booking).

100. On 1 July 2019 (1481) the claimant emailed Dr Snape and explained that she would be making some adjustments to her annual leave. On 8 July 2019 (1482) Dr Snape requested "*would it be possible to meet up tomorrow to have a chat so that we are both happy with everything*" referencing the leave and the need to ensure that a module was ready for the new academic year. In her witness statement the claimant referred to this as being that Dr Snape expressed hesitancy in approving annual leave and explained it caused her distress as her family holidays were booked on 11 July 2019. There was no evidence that the leave was refused; the complaint was that Dr Snape did not approve it without discussion. The Tribunal heard no evidence about Dr Snape's approach to other employees' annual leave requests.

101. On 22 July 2019 the claimant provided further details about her grievances, in accordance with Ms Ivins proposal that she did so. In the documents provided the claimant added to her grievances by raising grievances against Dr Snape and Mr

Arciniega (1154). The claimant's evidence was that she did so following a response received to a Freedom of Information Act request. The claimant was at about this time provided by the respondent with many of the documents upon which she relied in her complaints as a result of a disclosure request made by her. Ms Ivins's evidence was that the documents provided were substantial and were reviewed upon her return from annual leave in August 2019. The document provided was lengthy and raised a number of issues.

102. On 13 August 2019 (1198) Ms Ivins asked the claimant to break down which of her grievances were being brought against which of the individuals. The claimant responded. The respondent's HR team said it remained unclear on 2 September. The claimant responded on 5 September (1218).

103. On 10 September 2019 Dr Snape and Professor Davidson exchanged emails about a discussion which Dr Snape had had with the claimant about her workload. Dr Snape's email was sent to Professor Davidson and Mr Arciniega only. The response was sent to three other people in the School of Pharmacy and Biomedical Sciences, as well as Dr Snape and Mr Arciniega (1223). Professor Davidson inserted comments in Dr Snape's email (in capital letters). Amongst other things, he said with reference to the claimant and a particular module "*I HEARD NOT PULLING HER WEIGHT?*". There was no evidence seen by the Tribunal that supported the truth of the statement made by Professor Davidson. His witness statement made no reference to any such matters. In answer to questions asked in cross-examination, Professor Davidson asserted that someone must have told him that, but he could not remember off the top of his head who that was, and it might have been more than one person. Professor Davidson explained the additional recipients of his email as being those responsible for the relevant modules impacted by the email, who therefore needed to know what was being said.

104. A meeting took place between the claimant and Ms Hewitson of the respondent's HR department on 17 September 2019 (1248). There was also an exchange of emails around the same time. Ms Hewitson continued to ask the claimant to break down her grievance so that it was documented in a way which addressed the grievances against each individual separately. She did not accept the claimant's attempts to do so and appeared from the documents to make no attempt herself to do so. In the emails Ms Hewitson informed the claimant that it was not possible for all of those against whom grievances had been raised, to attend one hearing. She stated that the choice provided in the grievance policy applied only when grievances had been raised against on individual (albeit that nothing in the policy said that). The claimant provided four tables summarising the grievances, with copies of the grievance redacted and highlighted to show the grievances against each individual.

105. The emails between the claimant and Ms Hewitson culminated in the claimant accepting the offer of a transfer of line management (1247). The claimant's line manager was changed to Professor Marfin. However, the claimant's annual leave requests considered to be processed by Dr Snape as the Principal Lecturer.

106. The claimant's grievance hearing had been due to take place on 25 September 2019 but that was cancelled as a result of the discussions about the breakdown of the grievance. It was re-arranged for 5 November 2019. Invite letters

were sent on 2 October 2019. The arrangement was that four separate meetings would take place on that date, one after the other, with each meeting being attended by one of the individuals about whom a grievance had been raised. The meetings were limited to forty-five minutes each.

107. Professor Davidson provided some supporting evidence in respect of the grievance against him on 4 November 2019 (1543).

108. Each of the four grievance hearings took place on 5 November 2019, were noted, and the Tribunal was provided with copies of the notes including the claimant's amendments (1566). The hearings were conducted by Ms Ivins. The claimant was accompanied by her husband, Dr Keralakis (who is also an employee of the respondent).

109. The majority of what was said does not need to be recorded in this Judgment. Mr Arciniega agreed that the delay in the stress risk assessment was unacceptable. Professor Forbes confirmed that he did not doubt the claimant's professionalism and described how she had a brilliant talent to do the job. Professor Davidson apologised for his swearing at the meeting on 16 November 2018. He explained that, at the time, he was experiencing personal stress and he asserted that he was swearing at the situation he was in, not about the claimant.

110. Some documents were provided to Ms Ivins following the grievance hearing, including a document entitled "response to the grievance" from Mr Arciniega (2130). Mr Arciniega's evidence was that he did not think that he had had the opportunity to respond to all of the matters raised in the time available (particularly in the light of the questions asked) and he therefore provided the additional information, leaving it to Ms Ivins as to whether she took it into account or not. In that document Mr Arcieniega addressed the meeting of 26 November 2018 and the "*little paper*" comment and said the discussion was "*on my view less helpful*", the comment made "*was not what was needed at that juncture*", and Professor Davidson's behaviour "*was fairly strident and not what I had hoped for in that meeting*". That response was provided to the claimant, who then provided her own document in response, as well as providing a response to Professor Davidson's written response. The claimant also provided additional comments on points made by Dr Snape at the hearing.

111. The Tribunal was shown some documents prepared by Dr Snape, written as a response to the matters discussed during the grievance hearing. They were sent by him with an email on 29 November 2019 (1682). Those documents included a table which recorded Dr Snape's views about the re-allocation of work to the claimant following her return from maternity leave (1684). That showed her work broken down to three columns, each reflecting a particular module. For one module, the table recorded that all the work had returned to the claimant. For the second module, the table recorded that eight hours which had been allocated to others had not been returned to the claimant. It was not clear to the Tribunal whether that was a total of eight hours, or eight hours per relevant period (such as a week, semester or term). For the third module, the table recorded that zero hours were not returned to the claimant by other staff, albeit that was because the module was no longer running. The evidence in relation to that column has been addressed at paragraph 29 above. The claimant in her evidence agreed with the first two columns; but disagreed with the third column. The claimant herself was unable, when asked in cross-

examination, to identify what precisely had been her working hours prior to her maternity leave or what they were after her return and the new academic year commenced. She did not know whether the eight hours in column two were a total or per period. As the Tribunal did not hear evidence from Dr Snape, it was not able to hear what he had to say about the table or to clarify what had been recorded.

112. As part of the documents provided by Dr Snape, he had also commented upon the document which the claimant had prepared following the grievance hearing. Two of those comments were considered to be of particular importance:

a. In response to the claimant's observation that she believed Dr Snape should, following her return from maternity leave, have emailed the colleagues to whom he had distributed courses from the claimant's workload on 13 September 2017 to tell them to return the sessions to the claimant, he observed "*As an experienced member of staff, Marta could have approached Module Tutors herself to ask for the work to be returned*" (1689); and

b. In response to the claimant's statement that Dr Snape and Professor Forbes had started the meeting on 3 October 2018 by telling the claimant that jobs were at risk, he said "*This was not used as threatening language, but to explain to Marta that it wouldn't be to her advantage to keep on saying 'no' or refusing roles – we were helping her to protect her WL hours, and looking out for her job security"* (1693).

113. Ms Ivins produced a report which contained her outcome to the claimant's grievance (1804), which was provided to the claimant on 10 December 2019 (1844). It broke the grievance down for each of the alleged discriminators and provided findings specific to each of them. It was a lengthy and detailed document, and its content will not be re-produced in this Judgment. Discrimination was not found. Ms Ivins proposed that the parties considered mediation as part of her outcome.

114. Of the language used by Professor Davidson on 16 November 2018, Ms Ivins stated (1821) "*This is certainly not appropriate language to be used in any formal situation and could be deemed to be offensive and insulting*", before noting that Professor Davidson had freely offered an apology. Later in the report (1825) she described the language used as "*wholly unacceptable*" and (1826) "*language which should not be used in a formal meeting and is unreasonable*". Ms Ivins suggested that Professor Davidson should reflect on his use of language in formal meetings, and she suggested the introduction of a school communication policy. She suggested that both parties should consider undertaking training in emotional intelligence.

115. Ms Ivins found that Professor Davidson had used the term "*little papers*" as a colloquial term to distinguish short and concise communication papers from full (and usually lengthy) scientific papers (1822). She concluded (1827) that using the term might "*cause unintended offence*".

116. It was clear that Ms Ivins accepted what she had been told by Dr Snape, as recorded in the tables he provided, about the claimant's workload on her return from

maternity leave and the claimant being restored to her pre-maternity teaching. It was also clear from the report that Ms Ivins did not determine why the claimant had been chosen to move offices, as Ms Ivins focussed upon the grievances as brought against the four named individuals and her conclusion was that the decisions about who should move offices were made by Dr Lawrence and not Professor Davidson (or any of the other three named as being the subject of the claimant's grievance). In her evidence to the Tribunal, Ms Ivins explained that part of her view of the issues around the claimant's workload was that the new academic year took place when "*at times the management was chaotic*" in the context of course changes and an abrupt change of leadership having taken place.

117. The claimant was critical of Ms Ivins' report and her conclusions. A significant part of the claimant's witness statement addressed the detail of Ms Ivins' report and the aspects of it with which the claimant disagreed or which she felt to be false. The Tribunal found that the outcome was thorough, and Ms Ivins had spent time looking at the documents and providing a considered response. Ms Ivins undertook the task that she was required to do. The Tribunal understood that the claimant did not agree with the outcome.

118. On 17 December 2019 the claimant lodged her appeal (1852). In it the claimant contended that the respondent had failed to comply with its own grievance procedure, and she detailed how she believed that the grievance outcome had failed to address the issues she had raised. She was particularly critical of Ms Ivins statement that she had found Professor Davidson to be an honest and factual witness. A letter setting out the arrangements for the grievance appeal hearing was sent to the claimant on 14 February 2020 (1886)

119. The Tribunal was shown an exchange of emails on 2 March 2020 about an annual leave request made by the claimant (1887). The messages confirmed that Dr Snape had authorised the claimant's annual leave requested for 25-28 August 2020. A message sent confirmed that the leave had been authorised but stated that, as the claimant was taking five continuous weeks of annual leave, it was subject to all module-specific duties being covered. The email highlighted that there might be a significant amount of work required to prepare the modules for the new academic year. The claimant's email in response stated that she had received the comment on the annual leave authorisation.

120. The grievance appeal hearing took place on 3 and 16 March 2020. It was chaired by Mrs Grey, the Executive Dean of a different Faculty. It was attended by the claimant and her husband, Dr Kalarakis. Ms Ivins attended and was asked questions about her decision. Three members of the HR team attended (but not Mr Arciniega), one who took notes. Notes were provided (1889 and 1949). Within the grievance appeal meeting, when she was asked whether her findings of honesty about other witnesses contained an inference that the claimant was not, Ms Ivins stated that she had not implied that the claimant was not honest (1958). The claimant provided additional information about her grievance appeal in the period between the two dates upon which the grievance appeal was heard, including a lengthy additional statement (1905). Mrs Grey emailed the claimant on 19 March 2020 (1965) as she had decided to provide Ms Ivins with the opportunity to compile a written response to the claimant's document (which would be copied to the claimant). Ms Ivins produced such a document, following the hearing (1974).

121. The grievance appeal outcome was outlined to the claimant in a Teams call, which was followed by a detailed decision letter dated 23 April 2020 (1987). Mrs Grey accepted that it was not in dispute that the respondent had deviated from its documented grievance procedure. Her recorded view was that a single hearing with all attendees "*would have been unmanageable*". She concluded that the time taken to address the grievance was "*prolonged*" and "*in my opinion, unreasonable*". She concluded that (1991) there had been several situations where the practice demonstrated by the leadership team within the School of Pharmacy and Biomedical Sciences had not been reflective of the values of the University. She said that "*Based on the evidence provided there appears to be behavioural and cultural issues in the school e.g., use of inappropriate language in emails and lack of adherence to publish university policies/processes*" and stated she would be addressing them with Professor Jackson. Mrs Grey made recommendations, including arranging for the claimant's relevant paper to be reviewed to provide more detailed feedback.

122. The Tribunal found Mrs Grey to be a vary impressive witness whose evidence was particularly compelling. It found that she had undertaken her role thoroughly, appropriately, and with care. Mrs Grey reached the outcome she thought correct in the circumstances and in the light of what she had heard and considered.

123. The Tribunal was shown a series of Teams Messages sent by students in April 2020. These were messages sent shortly after the first lockdown as a result of the Covid-19 pandemic. Unsurprisingly, the messages display some considerable concern from the students. The claimant's evidence was that she spent hours responding to messages of concern at the time. Professor Davidson's evidence was that he was extremely busy at the time addressing issues which arose from the Pandemic. His evidence was that he had been added to a large number of Teams groups so that messages were received by him, but in practice he did not read any of the messages to which he had access.

124. On 13 April 2020 the claimant emailed Professor Davidson and Ms Cogan referred to the students' concerns and said that the students would like to have a Teams chat with both of those to whom she had written (2143). The claimant provided copies of some undated text messages she had sent to Ms Cogan which asked for support for the students. Ms Cogan responded to say she had texted Professor Davidson. The claimant's evidence was that she did not have Professor Davidson's mobile number so had been unable to text him herself. On 17 April 2020 Professor Davidson responded to a number of people and said he had drafted a response to the students (2145). The claimant's own note, which accompanied the email, recorded that she arranged a meeting with the students on 21 April 2020. In her witness statement the claimant contended that Professor Davidson's failure to respond had jeopardised student experience and satisfaction. When he was asked about this in cross-examination, Professor Davidson evidenced the significant demands on his time at the start of the pandemic and the uncertainty which existed at the time.

125. The claimant was able to pursue a second stage of appeal under the respondent's procedure. She appealed on 1 May 2020 (1993). The second stage appeal was heard by Michael Ahern, Chief Information and Infrastructure Officer. It was conducted by Teams and was heard on 26 March 2021. The Tribunal heard no evidence about why the second stage appeal hearing took so long to arrange. Notes

were provided (2075). The Tribunal did not hear evidence from Mr Ahern. Mr Ahern did not uphold the appeal. His outcome was provided in a letter of 31 March 2021 (2086).

126. The Tribunal was referred to a lengthy table produced which was headed UoA 3: allied Health Professions, Dentistry, Nursing and Pharmacy (2227). This included the relevant article for the claimant with a 3* rating. In her witness statement the claimant asserted that both papers published by the claimant were disqualified from the institutional REF submission. The Tribunal heard no evidence which showed the claimant had been disqualified as alleged. There was no evidence whatsoever that Professor Davidson blocked the papers being submitted to the REF.

127. The claimant has, with her agreement, transferred from the School of Pharmacy and Biomedical Sciences to the School of Dentistry, where she now works.

The Law

Direct discrimination

128. The claim in part relies on section 13 of the Equality Act 2010 which 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."**

129. Section 39(2) of the Equality Act 2010 provides that an employer must not discriminate against an employee. It sets out various ways in which discrimination can occur, which includes by subjecting her to any other detriment.

130. Under Section 23(1) of the Equality Act 2010, when a comparison is made, there must be no material difference between the circumstances relating to each case. The requirement is that all relevant circumstances between the claimant and the comparator must be the same and not materially different, although it is not required that the situations have to be precisely the same.

131. Section 136 of the Equality Act 2010 sets out the manner in which the burden of proof operates in a discrimination case and provides as follows:

> **"(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.**
>
> **(3) But sub-section (2) does not apply if A shows that A did not contravene the provision".**

132. At the first stage, the Tribunal must consider whether the claimant has proved facts on a balance of probabilities from which the Tribunal could conclude, in the absence of an adequate explanation from the respondent, that the respondent committed an act of unlawful discrimination. This is sometimes known as the prima

facie case. It is not enough for the claimant to show merely that she was treated less favourably than her comparator and there was a difference of a protected characteristic between them. In general terms "*something more*" than that would be required before the respondent is required to provide a non-discriminatory explanation. At this stage the Tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination, the question is whether it could do so.

133. If the first stage has resulted in the prima facie case being made, there is also a second stage. There is a reversal of the burden of proof as it shifts to the respondent. The Tribunal must uphold the claim unless the respondent proves that it did not commit (or is not to be treated as having committed) the alleged discriminatory act. To discharge the burden of proof, there must be cogent evidence that the treatment was in no sense whatsoever on the grounds of the protected characteristic.

134. In practice Tribunals normally consider, first, whether the claimant received less favourable treatment than the appropriate comparator and then, second, whether the less favourable treatment was on the ground that the claimant had the protected characteristic. However, a Tribunal is not always required to do so, as sometimes these two issues are intertwined, particularly where the identity of the relevant comparator is a matter of dispute. Sometimes the Tribunal may appropriately concentrate on deciding why the treatment was afforded, that is was it on the ground of the protected characteristic or for some other reason?

135. In most cases there is a need to consider the mental processes, whether conscious or unconscious, which led the alleged discriminator to do the act. Determining this can sometimes not be an easy enquiry, but the Tribunal must draw appropriate inferences from the conduct of the alleged discriminator and the surrounding circumstances (with the assistance where necessary of the burden of proof provisions). The subject of the enquiry is the ground of, or the reason for, the alleged discriminator's action, not his motive. In many cases, the crucial question can be summarised as being, why was the claimant treated in the manner complained of?

136. The Tribunal needs to be mindful of the fact that direct evidence of discrimination is rare, and that Tribunals frequently have to infer discrimination from all the material facts.

137. The protected characteristic does not have to be the only reason for the conduct, provided that it is an effective cause or a significant influence for the treatment.

138. The way in which the burden of proof should be considered has been explained in many authorities, including: **Barton v Investec Henderson Crosthwaite Securities Limited [2003] IRLR 332**; **Shamoon v Chief Constable of the RUC [2003] IRLR 285; Hewage v Grampian Health Board [2012] ICR 1054; Igen Limited v Wong [2005] ICR 931; Madarassy v Nomura International PLC [2007] ICR 867; Royal Mail v Efobi [2021] UKSC 33**. In **Hewage v Grampian Health Board** the Supreme Court approved guidance given by the Court of Appeal in **Igen Limited v Wong**, as refined in **Madarassy v Nomura International PLC**.

139. In his closing submissions the respondent's representative quoted from the Judgment in **Madarassy** highlighting what he described as a fuller explanation of the principles:

> "*The court in **Igen v Wong** … expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent 'could have' committed an unlawful act of discrimination. 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*"

140. The respondent's representative also relied upon **B v A [2010] IRLR 400** as authority for the proposition that the fact that an employer's behaviour calls for an explanation, does not automatically get a claimant beyond the first stage of the test outlined above; there still has to be reason to believe that the explanation could be that the behaviour was attributable to the relevant prohibited ground.

141. The explanation for the less favourable treatment does not have to be a reasonable one. Unfair or unreasonable treatment by an employer does not of itself establish discriminatory treatment: **Zafar v Glasgow City Council [1998] IRLR 36; Bahl v The Law Society [2004] EWCA Civ 1070**. It cannot be inferred from the fact that one employee has been treated unreasonably that an employee of a different race or sex or one who had not been on maternity leave, would have been treated reasonably.

142. The burden of proof similarly applies to the claims under section 18 of the Equality Act 2010 and the victimisation claim.

Pregnancy and maternity

143. The claimant claimed direct discrimination because of the protected characteristic of pregnancy and maternity. Section 18 of the Equality Act 2010 provides that:

> "**(2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably because of the pregnancy…**
>
> **(4) A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave."**

144. Unlike for race or sex discrimination, there is no requirement for a comparator for pregnancy discrimination, it is unfavourable treatment not less favourable treatment which needs to be identified. During oral submissions, the Tribunal proposed to the respondent's representative that if his closing submissions suggested that a comparator was required for the claims of discrimination on the grounds of pregnancy and maternity those submissions were wrong, and he agreed

that no comparison was required, only unfavourable treatment (and he acknowledged that might have been made clearer in the document).

145. The protected period for section 18(2) commences when the pregnancy begins and ends when the claimant returns to work from her maternity leave. If treatment is the implementation of a decision taken in the protected period, the treatment is to be taken as occurring in that period (even if implemented later). However, for section 18(4) there is no requirement for the unfavourable treatment to have occurred in the protected period (or to be the implementation of a decision made in that period), all that is required is that the reason for the unfavourable treatment was that the claimant exercised the right to ordinary or additional maternity leave. Whilst the claimant did not address this aspect of the law during the hearing, in practice almost all the claims which she brought were clearly to be understood as relying upon section 18(4). The only exception to this was the first allegation, which relied upon both sections 18(2) and (4).

146. The key question when considering whether an employer is liable in respect of a claim brought under section 18 of the Equality Act is the reason why the employee was subjected to the unfavourable treatment alleged. The claimant could not succeed in her claim simply by showing that she was on maternity leave (or had been on maternity leave) and was put at a disadvantage. She must still prove facts from which the Tribunal could conclude that the fact that she was on maternity leave (or had been on maternity leave) was the reason why she was treated unfavourably. Only then will the burden of proof, explained above, shift to the respondent to show a different non-discriminatory reason for the treatment in question. However, it is not necessary for the maternity leave to be the sole or even the principal reason, so long as it had a material influence on the respondent's decision to subject the claimant to the unfavourable treatment, consciously or subconsciously.

147. The respondent's representative cited the decision of the Employment Appeal Tribunal in **South West Yorkshire Partnership NHS Foundation Trust v Jackson UKEAT/0090/18** in his submissions. His written submissions said that the Tribunal should not simply be looking at whether problems arose because the claimant was on maternity leave, nor was the Tribunal looking at what happened as a consequence of that leave. The Tribunal needed to ask itself the reason why any treatment was meted out? That submission was entirely correct. The Judgment in **Jackson** made it very clear (should it have ever been in doubt) that it is not sufficient for a claimant to satisfy the "*but for*" test (but for the claimant's maternity leave would this have happened); the claimant must satisfy the test which considers the "reason why" the claimant was subjected to the relevant treatment.

Victimisation

148. Section 27 of the Equality Act 2010 says:

> **"(1) A person (A) victimises another person (B) if A subjects B to a detriment because – (a) B does a protected act, or (b) A believes that B has done, or may do, a protected act -**
>
> **(2) Each of the following is a protected act – (a) bringing proceedings under this Act; (b) giving evidence or information in connection with**

> **proceedings under this Act; (c) doing any other thing for the purposes of or in connection with this Act; (d) making an allegation (whether or not express) that A or another person has contravened this Act."**

149. In a victimisation claim, the first question is whether the claimant did a protected act? In this case, the protected acts relied upon were accepted by the respondent as being protected acts. The next question for the Tribunal is whether the respondent subjected the claimant to a detriment because of one or more of those protected acts, in the sense that the protected act had a material or significant influence on subsequent detrimental treatment.

150. As explained above and raised with the claimant during her evidence, for some of the allegations relied upon, the alleged detriment occurred before the claimant had done the protected acts relied upon. For those allegations, the Tribunal was required to apply section 27(1)(b) and decide whether the alleged discriminator believed that the claimant may do a protected act. If the Tribunal determined that the alleged discriminator did so believe, then it needed to decide whether the alleged discriminator subjected the claimant to the alleged detriment because of the protected act which he/she believed the claimant may do? That is, did that belief that the claimant may do a protected act have a material or significant influence on the detrimental treatment

151. That exercise has to be approached in accordance with the burden of proof. If the claimant proves the required prima facie case, her case would succeed, unless the respondent could establish a non-discriminatory reason for that treatment. If the Tribunal concludes that the protected act (or the belief that she may do a protected act) played no part in the treatment of the claimant, the victimisation complaint fails even if that treatment was otherwise unreasonable, harsh or inappropriate.

152. The word detriment in section 27 is to be interpreted widely. The key test is for the Tribunal to ask itself: is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to her detriment? An unjustified sense of grievance would not pass this test, but the test is framed by reference to a reasonable worker, so it would be enough if a reasonable worker would or might take such a view.

Jurisdiction/time limits

153. Section 123 of the Equality Act 2010 provides that proceedings must be brought within the period of three months starting with the date of the act to which the complaint relates (and subject to the extension for ACAS Early Conciliation), or such other period as the Tribunal thinks just and equitable. Conduct extending over a period is to be treated as done at the end of the period. A failure to do something is to be treated as occurring when the person in question decided on it.

154. The key date is when the act of discrimination occurred. The Tribunal also needs to determine whether the discrimination alleged is part of conduct extending over a period, and, if so, when the conduct extending over a period ceased. The Court of Appeal in **Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96** in particular provided guidance on what is conduct extending over a period.

155. If out of time, the Tribunal needs to decide whether it is just and equitable to extend time. Section 123(1)(b) of the Equality Act 2010 states that proceedings may be brought in, *"such other period as the Employment Tribunal thinks just and equitable"*. The most important part of the exercise of the just and equitable discretion is to balance the respective prejudice to the parties. The factors which are usually considered are contained in section 33 of the Limitation Act 1980 as explained in the case of **British Coal Corporation v Keeble [1997] IRLR 336**. Subsequent case law has said that those are factors which illuminate the task of reaching a decision, but their relevance depends upon the facts of the particular case, and it is wrong to put a gloss on the words of the Equality Act to interpret it as containing such a list or to rigidly adhere to it as a checklist. This has recently been reinforced by the Court of Appeal in **Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23** where it was emphasised that the best approach for a Tribunal in considering the exercise of the discretion under section 123(1)(b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, and that factors which are almost always relevant to consider when exercising any discretion whether to extend time are: the length of, and reasons for, the delay; and whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh). **Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434** confirms that the exercise of a discretion should be the exception rather than the rule and that time limits should be exercised strictly in employment cases. The onus to establish that the time limit should be extended lies with the claimant.

Conclusions – applying the Law to the Facts

The direct discrimination claims generally

156. As detailed below, the Tribunal considered each and every one of the claimant's allegations as recorded in the attached table of allegations. For each allegation, the Tribunal considered each of the claims brought by the claimant and considered the issues (from the attached/agreed list of issues) for each of those claims in respect of each allegation to which they applied. However, for the purposes of recording the decisions reached in this Judgment and explaining what was found, it is appropriate to record initially some of the Tribunal's findings as they applied collectively to the claimant's claims.

157. In the attached list of issues, issue 2.2 (which relates to all of the claimant's claims for direct sex discrimination) asked whether the claimant has proven facts from which the Tribunal could conclude that in any of the relevant allegations the claimant was treated less favourably than a man in the same material circumstances? In respect of all of the claimant's claims for direct sex discrimination, the Tribunal found that it heard absolutely no evidence whatsoever that would potentially shift the burden of proof. The Tribunal did not find the "something more" required to show that any of the allegations were because of sex, that would shift the burden of proof. That is, the claimant did not make out the prima facie case described in the section on the law above. In relation to each allegation below the Tribunal considered the named comparators and considered a hypothetical comparator and, for a limited number of the allegations a difference in treatment and of sex was identified. However, even in the limited number of cases where there was

an identified comparator of a different sex who was treated differently, the Tribunal did not find the "*something more*" required which would shift the burden of proof for the claims of direct sex discrimination.

158. In the attached list of issues, issue 2.3 asked exactly the same question as issue 2.2, but in relation to all of the claimant's claims for direct race discrimination. In the same way as for issue 2.2, the Tribunal did not find for any of the allegations that the "*something more*" required to show that any of the allegations were because of race, that would shift the burden of proof. That is, the claimant did not make out the prima facie case described in the section on the law above, to prove that she had (or might have) been discriminated against because of her race.

159. The outcome in issues 2.2 and 2.3 in practice reflected the way in which the case was argued by, and for, the claimant. Her case for sex and race discrimination was effectively that the absence of a genuine explanation for some or all of the allegations, proved discrimination, where she had been unable to identify a good reason for her treatment and she had therefore concluded that the reason must be race or sex. The respondent's representative submitted that the claimant felt she could simply lay out what she perceived to be unfair treatment, in the hope that the Tribunal inferred or somehow leapt to the conclusion that it might be because of a protected characteristic – and he submitted that was way short of what was required in law. The Tribunal has considered for itself whether the "*something more*" required to shift the burden of proof had been identified for each and every allegation of race and sex discrimination. In each case there had to be something more which shifted the burden of proof to show that the adverse treatment relied upon was because of race or sex. For all allegations, the "*something more*" required was not found to be present. That finding is not necessarily repeated for each allegation below, but should be read as applying to each and every allegation of direct race and sex discrimination. Similarly, where a hypothetical comparator was relied upon, as the something more required has not been found, the Tribunal's finding in respect of each allegation is that a hypothetical comparator in materially the same circumstances (of a different race/sex) would not have been treated differently (and similarly that finding is not repeated for each allegation, but should be read as having been found).

160. The claims for discrimination because of maternity and pregnancy raised similar issues, but the relevant findings were somewhat more nuanced and were more complex. For that reason, the position regarding the claims for pregnancy and maternity discrimination under section 18 of the Equality Act 2010 are explained in more detail below as they applied to the specific allegations. However, ultimately and for the reasons explained, the Tribunal has not found when applying issues 1.5 or 1.6, that any unfavourable treatment was because of pregnancy or was because the claimant was on compulsory maternity leave or the claimant was exercising or seeking to exercise, or had exercised or sought to exercise, the right to ordinary or additional maternity leave. The Tribunal did not find that the "*something more*" required to shift the burden existed in any of the allegations that the unfavourable treatment was because the claimant was on these grounds. That finding applies even where it is not separately re-stated for each allegation. The respondent's representative's submission was entirely right to remind the Tribunal that it needed to focus on the reason why the treatment was meted out, rather than simply looking at problems which arose because of maternity leave, or that happened as a

consequence of such leave. The full terms of the relevant test under section 18 as explained above, has not necessarily been repeated when the decision reached has been explained, but it was applied to each allegation.

161. The Tribunal would also make one observation about the way in which the claimant gave evidence and the evidence she gave about decisions made by the respondent. In her evidence, the claimant frequently homogenised the respondent's employees and presented their actions and decisions as being the actions of a single person. In particular, she frequently referred to a group of people as "*wolves*" who she alleged as acting at the behest of Professor Davidson. The Tribunal was very careful in reaching its decisions to ensure that it considered the individual decision-makers in respect of each allegation and to determine the reason for their actions. What was clear from the evidence heard was that there was often not a single agreed approach between those at the respondent. Professors Davidson and Forbes, in particular, had very different views about a number of things and an entirely different approach to people issues. There was some evidence that Dr Snape and Professor Davidson on occasion liaised about some decisions in a manner generally consistent with the claimant's assertions. However, and with that sole exception, it was clear to the Tribunal that within the respondent there were a series of independent decision-makers. In her evidence, Ms Ivins referred to management being chaotic in the School at the relevant time (at least for some of it), in the light of changes to courses and management. The Tribunal found that some of the evidence which it heard about management and the organisation of modules and workload (including that of the claimant following her return from maternity leave), reflected that chaos.

The victimisation claims generally

162. In the list of issues, it was very clearly recorded that the victimisation claims being brought relied upon two protected acts. Those were that acts which the respondent (quite correctly) accepted were protected acts. The first was the grievance which was recorded in the list of issues as being 1 March 2019, but was in fact 11 March (being the date when the claimant first put in writing the details of her complaint), with the broader definition which ensured it covered all four of the grievances which stemmed from the first grievance and which (at least in-part) were the result of the respondent stating that the one grievance needed to be separated into four discreet grievances (each of which focused on one alleged discriminator). The second was the grievance appeal of 17 December 2019.

163. As raised during the hearing and as is recorded above, the timing of some of the alleged detriments raised an additional complexity as they pre-dated the protected acts. As agreed, the Tribunal has needed to consider for the alleged detriments which pre-dated the protected acts (applying the broader test for issue 3.3): has the claimant proven facts from which the Tribunal could conclude that the detrimental treatment was because the alleged discriminator believed that the claimant may do a protected act? Whilst this issue has been addressed for each of the relevant allegations below, it is appropriate to record some broader considerations which applied.

164. On 11 October 2018 (650) the claimant made a complaint to Mr Arciniega which linked maternity leave to the issues but did not explicitly allege discrimination.

As part of his response, Mr Arciniega informed the claimant that raising a grievance was one of her options. From the date of that email, Mr Arciniega was certainly aware that there was the possibility of the claimant doing a protected act by raising a grievance asserting discrimination, as that is exactly what he had told the claimant she could do. However, the Tribunal accepted Mr Arciniega's evidence that the relevant e-mails were not forwarded to anyone else, and he did not tell anyone about them, so that exchange does not evidence any of the other alleged discriminators being aware of the possibility of a protected act as a result.

165. It was important for the Tribunal to distinguish between: what might have been detrimental treatment because of a complaint raised by the claimant which was not a protected act (or at least not relied upon as a protected act); and detrimental treatment by the alleged discriminator because they believed that the claimant may do a protected act. On 11 October 2018 the claimant emailed Professors Forbes, Davidson and Jackson, a complaint (655). On 20 November (707) the claimant's trade union representative raised a complaint after the meeting on 16 November. On 28 November (730) the trade union representative emailed Mr Arciniega and Professor Jackson and said the claimant would like to file an official complaint against Professor Davidson. On 11 December 2018 Professor Davidson attended an investigation meeting. These alleged discriminators (or at least some of them) were, therefore, aware that there had been a complaint or complaints. That fact did not evidence that they were aware that, or that they believed that, there might be a further complaint which would be a protected act. Unsurprisingly, considering the complexity of this issue, the claimant's representative did not put to the relevant witnesses whether they acted in the way that they did because they believed the claimant was going to do a protected act. The reality was that, from October 2018 (or at least early December 2018), Professors Forbes and Davidson knew that the claimant had raised a complaint or complaints, but there was no real evidence that they focussed upon, or took decisions as a result of, a belief that she would do a protected act in the future.

Allegation one – cancelling maternity cover

166. Allegation one was that before January 2018 (including in an email received on 30 August 2017), whilst the claimant was on maternity leave, a decision was taken to redistribute the claimant's work and to cancel the advertised post for maternity cover. This was alleged to be discrimination by Professor Forbes, Dr Snape, and/or Professor Davidson. It was alleged to be unlawful discrimination on the grounds of pregnancy and maternity, sex, and/or race.

167. The respondent did, as alleged, make the decision to cancel recruiting maternity cover for the claimant's role of Lecturer, having initially agreed with the claimant that it would do so and having advertised for the role. The Tribunal finds that the decision to cancel the maternity cover was not one made by Professor Forbes. He was not in agreement with the decision to do so, albeit he accepted the decision when it was made. The was no evidence before the Tribunal that the decision was Dr Snape's. Dr Snape sent the email which re-distributed the claimant's work after the decision had been made, but that did not evidence that he made the decision. The decision was one reached by Professor Davidson.

168. The evidence about why the decision was made was provided by Professor Davidson and, from the time, was recorded in emails of 24 August 2017 (455) and 11 September (461). The reason why Professor Davidson made the decision was financial. He had identified a role to which he thought it was important to recruit, and he partly found the funds to do so by cancelling the proposed recruitment of someone into the maternity cover role. Professor Davidson believed that the claimant's workload could be covered by others within the School. The Tribunal does not find that the reason why the decision was made was any of the protected characteristics alleged. A comparator of a different race or sex would have been treated in exactly the same way. The reason the decision was made was to use the money for other reasons, not the claimant's pregnancy or maternity leave. The decision was made in the context of the claimant's maternity leave and how it would be covered, but the reason for it was not that she was pregnant or on maternity leave.

169. There is no doubt that had the respondent used a maternity cover employee as the claimant expected and had she had agreed with Professor Saville, that would have made the transition back to an appropriate workload much simpler, but the absence of such a transition did not in the view of the Tribunal prove that the claimant had been treated unfavourably because of her maternity leave.

170. The claim has accordingly been decided by the Tribunal when considering issues 1.5, 1.6, 2.2 and 2.3. However, in deciding issue 1.1, the Tribunal also did not find that the decision on its own was unfavourable treatment of the claimant, as the claimant's duties were still covered whilst she was on leave, albeit in a different way to that which she had envisaged. The claimant did not approve of the decision taken, but that was legally immaterial and did not of itself in this case amount to unfavourable treatment. For issue 1.3, it did take place in the protected period (however the treatment was not found to be because of the pregnancy). This allegation was the only one which was found to have taken place in the protected period, all the other allegations occurred after the protected period had ended.

Allegations two, three and four – workload following maternity leave

171. The third allegation was that between January and October 2018, following redistribution of the claimant's duties during her maternity leave, there was a failure to reallocate them back to her. This was alleged to be discrimination by Professor Forbes, Dr Snape, and/or Professor Davidson. It was alleged to be unlawful discrimination on the grounds of pregnancy and maternity, sex, and/or race.

172. As the claimant recorded in her own witness statement, some of her duties were returned to her on her return from maternity leave. The claimant was not contending that all duties should have been returned immediately on her return, she accepted that there were some duties which it was not appropriate to return towards the end of the students' academic year from a student-focussed point of view. Her issue was with the other duties which were not reallocated for the new academic year 2018/19.

173. The clearest evidence about the return of work was the table prepared by Dr Snape as part of the grievance appeal (1684). That recorded that there were eight hours of work not returned to the claimant, albeit none of the witnesses could explain

whether that was a total of eight hours or whether it was eight hours per week, term or semester. The dispute was in regard to the third column of the table which recorded that zero hours were not returned to the claimant for a module which represented a significant part of her workload, because the module was no longer running. The Tribunal accepted the evidence of the claimant that, whilst it was correct that the relevant module itself had stopped, the same chemistry teaching was still required after her maternity leave, as it was effectively replicated as part of new module(s)/course(s) taught in the subsequent academic year. Her evidence was that that module represented a significant amount of her working time. None of the witnesses from whom the Tribunal heard evidence were in practice able to genuinely explain otherwise, the Tribunal did not hear from Dr Snape, and the claimant's own evidence was clear in this regard.

174. In his submissions, the claimant's representative argued that re-allocating work to the claimant should have been straightforward as all Dr Snape needed to do was send a revised version of his email of 30 August 2017 (457) telling those to whom he had allocated the claimant's work, to return it to her. However, the position was clearly not that straightforward. The courses and modules had changed, so that such an exercise would not have resulted in the claimant regaining the same work (as Dr Snape's table demonstrated). The course changes made the situation considerably more complex than presented by the claimant's representative. In addition, the claimant's role had changed during her maternity leave. Whilst the Tribunal did not accept that being made a Senior Lecturer meant that most of the claimant's duties would not normally have continued, nonetheless the change in role did mean that after her return from maternity leave the claimant should have taken on new/more managerial responsibilities and therefore her role would have changed to some extent even had she not been on maternity leave. The fact that, as the claimant evidenced, there were additional chemists in the team and therefore more people to undertake chemistry work, may have impacted upon the work to which the claimant returned, but did not necessarily mean that the respondent had failed to return the claimant to the same job, where her role had changed during her maternity leave.

175. Considering issue 1.1 for this allegation, the Tribunal found that the failure to allocate the claimant either the duties she had previously fulfilled or equivalent duties, for the new academic year 2018/19, was unfavourable treatment of the claimant. It would clearly have been the optimum arrangement for the claimant to have had her previous work redistributed to her for the new academic year irrespective of which modules or course those responsibilities had been re-aligned. The claimant clearly thought it was unfavourable treatment of her, not to have her duties re-assigned. The Tribunal found that it was.

176. The decision about re-allocation of duties to the claimant was made after her return from maternity leave. One of the reasons why the re-allocation of work to the claimant was problematic was because there appeared to have been no plan in place for the claimant's return and the re-allocation of work to her. It was not made in the protected period.

177. Looking at each of the alleged discriminators in turn, the Tribunal found that Professor Forbes fundamentally failed to plan at all for what the claimant would do after her return to work and/or for the new academic year 2018/19. From the

evidence available it appeared that Professor Forbes did not actively do anything to try to re-allocate the claimant's duties to her or to plan for what she would do at or after her return. His evidence was that it was very difficult because the claimant's work had been scattered to the four winds. The Tribunal found that Professor Forbes did not make the decision not to return the claimant's work to her because she had been on maternity leave. In practice he operated a management approach which was passive. As he explained in his evidence, his approach was to be conciliatory and non-directive. In practice, with regard to the claimant's workload planning on and following her return, he was simply ineffective. Professor Forbes did not take the active steps which the Tribunal would have expected of a good manager, to assist the claimant with her workload following her return from maternity leave. However, the Tribunal did not find that the reason he did not do so was because the claimant had been on maternity leave, even though the action (or inaction) arose in the context of decisions made following her return from maternity leave.

178. Professor Davidson was not involved in the decisions complained of, about the reallocation of the claimant's duties to her. He made the decision not to recruit the maternity cover proposed. But for that decision, the return of the claimant's duties to her would have been much more straightforward and in all likelihood would have been achieved more effectively. However, that is not sufficient for the discrimination allegations to be made out. The decision might have contributed to the problem and made it more complex to reallocate work on return, but that does not mean that the decision was discriminatory because of the claimant's maternity leave. Professor Davidson was also involved in the discussions about the management duties which the claimant should take on, partly in the context of the claimant not having been re-allocated a full workload. The Tribunal did not find that Professor Davidson failed to re-allocate the claimant's duties to her on her return as Head of School, as the decisions were not ones which he took as part of that role.

179. Inasmuch as there were decisions made about the re-allocation of the claimant's work to her following her return from maternity leave, those decisions appeared to have been made by Dr Snape. Part of his role was workload planning in the School. The Tribunal did not hear evidence from him about why he did not do so. His table recorded that eight hours taken away were not re-allocated, and the Tribunal has found that in practice the third column of his table showed other duties which were not re-allocated to the claimant (from the new course(s)/module(s) in which they were to be found after the course changes).

180. Accordingly, the Tribunal needed to consider whether the claimant had proven facts from which the Tribunal could conclude that Dr Snape had treated her unfavourably because she had been on maternity leave, by failing to reallocate her duties back to her following her return from maternity leave between January and October 2018. That is, the Tribunal needed to determine whether the claimant had shown the prima face case required in applying the burden of proof, that this was done because the claimant had been on maternity leave. The Tribunal found that there was not the "*something more*" required to reverse the burden of proof. The Tribunal considered particularly carefully, Dr Snape's comment on the claimant's grievance document (see paragraph 112 above). The comment made (1689) about the claimant herself being able as an experienced member of staff to have approached others and asked for her work back following her return from maternity leave, demonstrated a wholly inappropriate view of the need for a maternity returner

to recover their own work and was considered by the Tribunal to reflect an archaic mindset. The Tribunal also considered carefully that Dr Snape had told the claimant in the meeting on 3 October 2018 that she was at risk of redundancy unless she took the jobs available. That comment was ill-advised and not a very nice thing to say in that meeting. However, having considered these matters and the evidence heard, the Tribunal has not found that there is the "*something more*" required to shift the burden of proof. They matters considered were not found to be sufficient to do so.

181. As confirmed above and as it applied to all of the allegations, the Tribunal did not find that there was the "*something more*" required to shift the burden of proof to show that the claimant was treated in the way alleged because of her sex and/or race.

182. Allegation four was closely related to allegation three. It was an allegation that, over the same period, the claimant's workload was kept low. This was alleged to be discrimination by Professor Forbes, Dr Snape, and/or Professor Davidson. It was alleged to be unlawful discrimination on the grounds of pregnancy and maternity, sex, and/or race. In her submissions, the claimant addressed this allegation alongside allegation three. The Tribunal's findings on allegation four were the same as those for allegation three and for the same reasons. The reason why the claimant's workload was lower in the period, was as a result of the lack of planning to re-allocate the claimant's duties back to her and therefore the same findings applied.

183. Allegation two was the one discreet example alleged about an occasion when the claimant said her workload was deliberately kept low. That allegation was that, on 24 September 2018, there was an instruction that no final year research projects be allocated to the claimant. The claimant identified James Gillies and Joseph Hayes as named comparators. This was alleged to be discrimination by Professor Forbes, Dr Snape, and/or Professor Davidson. It was alleged to be unlawful discrimination on the grounds of pregnancy and maternity, sex, and/or race.

184. The basis for allegation two was the exchange of emails between Dr Stasik and Professor Forbes (632) (addressed at paragraphs 34-36 above). There was no evidence that Dr Snape was a party to this decision, as he was simply copied in to Professor Forbes' email in response. There was also no evidence that Professor Davidson was a party to the decision. Indeed, Professor Davidson's evidence was that he was not and he would not have said what Professor Forbes did, because there was a shortage of people to be allocated to research projects. On 12 October there was email evidence of Professor Davidson encouraging the claimant to supervise two or three projects, which the claimant did.

185. Accordingly, the person who gave the instruction which is the basis for this allegation was Professor Forbes. His verbal evidence was that he wanted to talk to the claimant at the meeting arranged for the following week (3 October) and agree workload face to face. The Tribunal accepted Professor Forbes' evidence that he wanted to speak to the claimant about her workload. Whilst the Tribunal found Professor Forbes to be a somewhat ineffective manager (in relation to the claimant), nonetheless it found him to be truthful in his evidence about this allegation and therefore accepted his evidence about the wish to speak to the claimant first. There was no evidence before the Tribunal which contradicted Professor Forbes' evidence.

The email of 24 September said only to wait until he had spoken to the claimant the following week; it did not show him refusing. The Tribunal did not find that the reason for Professor Forbes' response was that the claimant had been on maternity leave (or her sex or race).

186. In terms of the comparators (Mr Gillies and Mr Hayes), the Tribunal heard no genuine evidence about their workloads or the students they were supervising. However, in the light of the decision taken and recorded in the previous three paragraphs, nothing turned on whether the claimant was treated less favourably than her named comparators in any event. It was also not clear that the email was unfavourable treatment, but similarly that did not need to be determined in the light of the findings made and recorded above.

Allegations five and six – 3 October 2018 meeting

187. Allegations five and six arose from the meeting with the claimant on 3 October 2018. Both were alleged to be discrimination by Professor Forbes and/or Dr Snape. They were both alleged to be unlawful discrimination on the grounds of pregnancy and maternity, sex, and/or race. Allegation five was that the claimant was told at the meeting that her job was "*at risk*"; and also she was told that she was the only Senior Lecturer without Senior Lecturer duties and that she had the lowest workload. For that allegation the claimant compared herself to James Gillies and Joseph Hayes. Allegation six was that the alleged discriminators took the claimant by surprise by making the comment at a meeting which was stated to be for the purpose of discussing the claimant's workload.

188. As recorded at paragraph 37 above, the claimant's evidence was not clear about who said the complained of comment in the meeting. Professor Forbes' evidence was he did not say it, although his oral evidence was unclear when challenged about whether it was said at all. Dr Snape from whom the Tribunal did not hear, appeared to acknowledge that the comment was made in the document in which he appeared to explain why it was said (1693). The Tribunal found that Dr Snape said what was alleged.

189. Based upon the claimant's own evidence, the Tribunal also found that the comments made were a surprise to the claimant. The Tribunal found that both the comment being made and that it was made in that meeting, were unfavourable treatment of the claimant. Someone being told in a meeting that their job may be at risk was clearly unfavourable treatment.

190. The comment was made in the context of Dr Snape trying to persuade the claimant to take on responsibility for the Transition module. His explanation appeared to be that given in his comment on the document provided as part of the grievance (1693) (see paragraph 112 above). The conversation was all about Dr Snape's wish for the claimant to take the role identified. The Tribunal did not agree with Dr Snape's statement (1693) as it found that he made the comment because he was clearly frustrated that he had work for the claimant to do and she did not want to do it; it was not about job security. The Tribunal accepted the claimant's assertion that this being raised in a meeting in this way was in a general sense threatening.

191. The conversation and the claimant's workload to which reference was made, was in the context that the claimant had returned from maternity leave and had not been re-allocated her duties (as already addressed). Whilst that was the case, for this allegation the Tribunal found that the claimant has not shown the "*something more*" required to shift the burden of proof in her allegation that the reason why the comment was made (or the reason why it was made in this meeting) was because the claimant had been on maternity leave. The Tribunal felt that there was no evidence before it which shifted the burden of proof or established the prima facie case.

192. For this allegation, the comparators did not add anything to what was alleged. There was no evidence they were spoken to in the same way; however, there was also no evidence that they were in materially the same position as the claimant at the time. As confirmed above and as it applied to all of the allegations, the Tribunal did not find that there was the "*something more*" required to shift the burden of proof to show that the claimant was treated in the way alleged because of her sex and/or race.

Allegations seven and eight – options being offered and withdrawn

193. Allegation seven was that: as soon as the claimant accepted the leadership for PJ4019 this option was withdrawn; an alternative second agreement was achieved which included among other duties co-leadership of PJ4300. This was alleged to be discrimination by Professor Forbes, Dr Snape, and/or Professor Davidson. It was alleged to be unlawful discrimination on the grounds of pregnancy and maternity, sex, and/or race. That allegation was dated as having occurred on 10 October 2018. Allegation eight was closely related to allegation seven, being that: Professor Davidson overruled the claimant's second agreement with her line manager, Professor Forbes. That allegation was dated as having occurred on 11 October 2018 and was an allegation against Professor Davidson only. It was also alleged to be unlawful discrimination on the grounds of pregnancy and maternity, sex, and/or race.

194. As detailed at paragraphs 39-44 above, there were two occasions when the claimant agreed with Professor Forbes that she would take on a particular role, and on each occasion the role offered was withdrawn. The first was withdrawn because Dr Snape changed his mind about taking on the Transitions module. The second was withdrawn as a result of a decision made by Professor Davidson. Professor Davidson made the decision about the second role because his view was as an advanced pharmacy practice course it needed to be led by a pharmacy practitioner. The decisions were Professor Davidson's and Dr Snape's. The decisions were not made by Professor Forbes, who was in fact disappointed by the decisions.

195. The impact on the claimant of these decisions was that the things she thought had been agreed were taken away. Having two roles withdrawn, where the claimant thought they had been agreed, was clearly unfavourable treatment of the claimant.

196. Whilst the Tribunal has not heard from Dr Snape, the documents record that the reason why he changed his mind was because he did not wish to take on the Transitions module, having previously agreed to do so. That did not appear to be in dispute. Whilst that decision had an adverse impact on the claimant, it was not

because she had been on maternity leave (or sex or race). The claimant has certainly not shown the "*something more*" required to show that it was, to shift the burden of proof.

197. The Tribunal found Professor Davidson to be very task-focussed. His evidence, which the Tribunal accepted, was that he was focussed on achieving the best for his School and the University. He was certainly not people-focussed and had a direct management style (in the circumstances about which the Tribunal heard evidence). Professor Forbes notably contrasted his own collaborative management style, with the management style of Professor Davidson which was more directive. The Tribunal found Professor Davidson to be intractable and easily frustrated while giving evidence. However, the Tribunal found that he was focussed in his decisions on the impact for the School. The Tribunal found that the reason why he made the decision that the claimant should not fulfil the relevant role which Professor Forbes and Dr Snape had agreed with her, was not the claimant's maternity leave, sex or race, it was what he thought was best for the relevant course and its students.

Allegations nine and twenty-four – delayed stress risk assessments

198. Allegation nine was that the claimant's stress risk assessment was delayed. The claimant dated the allegation as having occurred on 2 November 2018. She compared herself to her British room-mate, in practice being Ms Crombie. This was an allegation made against Professor Forbes, Professor Davidson, and/or Mr Arciniega. It was alleged to be unlawful discrimination on the grounds of pregnancy and maternity, and/or race (the claimant confirmed whilst being cross-examined that she was not pursuing the allegation on the grounds of sex).

199. Closely related to allegation nine, was allegation twenty-four which was that the stress risk assessment took place with a six month delay and/or the recommendations were ignored. The comparator for that allegation was Ms Crombie. That was an allegation against Professor Davidson and HR (no individual being identified). It was alleged to be unlawful discrimination on the grounds of race and/or unlawful victimisation (as with allegation nine, the claimant confirmed that she was not pursuing this allegation on the grounds of sex). In the list of issues, this was dated 30 April 2019.

200. The respondent's representative stated that the respondent's position was that there was a delay, and that was regrettable. In contrast to the claimant, Ms Crombie, the claimant's comparator, had a quick stress risk assessment and the actions identified were undertaken quickly without challenge or delay. Her stress risk assessment was undertaken by Professor Forbes.

201. The occupational health report prepared for the claimant which recommended a stress risk assessment was sent to Professor Davidson on 2 November 2018. It was not sent to Professor Forbes and he was not asked to undertake the stress risk assessment because the claimant did not want the report shared with him (or, at least, that was Mr Arciniega's view at the time). The assessment was initially delayed because Professor Davidson refused to do it. The reasons for that decision were recorded in an email to Mr Arciniega (680) and were explained in evidence to the Tribunal (see paragraph 50). After a delay, Professor Davidson emailed the claimant on 11 December 2018 saying he was not the best person to do it. Mr Arciniega and

the claimant agreed that Professor Jackson would instead do it. From 11 December 2018 onwards (at least for much of the period) the delay was as a result of Professor Jackson, something which she attributes to being busy. Eventually Professor Gardner undertook the stress risk assessment on 1 May 2019.

202. The long delay in undertaking the stress risk assessment, where it was something which the occupational health report had advised should happen, fell a long way short of what the Tribunal would have expected. The Tribunal found that the extensive delay in the stress risk assessment meant that an opportunity was missed to address stressors for the claimant and to endeavour to resolve them at an early stage.

203. It was clear that such a delay was less favourable treatment than that of Ms Crombie and it was also clear that such a significant delay was unfavourable treatment. It was also a detriment.

204. The first of these allegations was made against Professor Forbes. It was never proposed that Professor Forbes should carry out the claimant's stress risk assessment, and therefore the delay in doing so was not discrimination of the claimant by him. As the rapid stress risk assessment undertaken for Ms Crombie demonstrated, he might have been a good person to do the claimant's stress risk assessment, and he certainly would have done it quicker. It was also never intended that Mr Arciniega should do the stress risk assessment. After he was contacted by Professor Davidson, he tried to assist and advise Professor Davidson in doing it. He later also endeavoured to ensure that a stress risk assessment was undertaken by those due to undertake it. He was clear in his evidence, that HR's role was to advise and not to make the decision or to undertake the stress risk assessment themselves. Any delay was not discrimination by Mr Arciniega, nor was it discrimination by unnamed members of the HR team.

205. The delay in undertaking the stress risk assessment between 2 November and 11 December 2018 was as a result of Professor Davidson. The Tribunal accepts that when he was provided with the occupational health report, Professor Davidson did not know what a stress risk assessment was. He was entirely unfamiliar with many of the respondent's policies. Despite Mr Arciniega trying to assist and advise him, Professor Davidson still refused to do it, which led to the delay until 11 December. Whilst that delay fell outside what the Tribunal regarded as appropriate management, there was nothing which showed to the Tribunal the "*something more*" required to evidence that the delay was because of race or because the claimant had been on maternity leave. In his submissions, the claimant's representative was highly critical of Professor Davidson's evidence about, and reasons for, not undertaking the stress risk assessment and for asserting that it needed to be done by someone medical. The Tribunal understood those criticisms, but what was asserted did not show the "*something more*" required to show discrimination on the grounds relied upon.

206. In determining issue 3.3, the Tribunal did not find that Professor Davidson delayed the Claimant's stress risk assessment between 2 November and 11 December because he believed the claimant would do a protected act in the future. The reason he delayed was because he did not want to do it, and he did not like being asked to do something which he perceived to be an HR process.

207. In terms of the comparison with Ms Crombie, the reason why the stress risk assessments were done at different times was because of who it was who was being asked to undertake them. Professor Forbes did the stress risk assessment for which he was responsible quickly. Professor Davidson did not and, thereafter, neither did Professor Jackson progress matters timeously.

208. After 11 December the delay was not as a result of the fault of Professor Davidson. As the claimant did not allege that she had been discriminated against by Professor Jackson, no finding of discrimination could result from the period of delay which was her fault.

209. Allegation twenty-four as recorded in the list of issues also included the contention that the recommendations of the risk assessment undertaken were ignored. The claimant gave no evidence about the recommendations being ignored and none of the witnesses were cross-examined about the outcome of the stress risk assessment and the recommendations made. There was certainly no evidence that Professor Davidson failed to implement any recommendations which were brought to his attention as a result of the stress risk assessment which was undertaken.

Allegation ten – comment in 16 November 2018 meeting

210. Allegation ten was that at a meeting on 16 November 2018 Professor Davidson made the comment, "*Lots of shit like this has fallen into my hands since Peter left*", whilst gesturing towards the claimant. It was alleged to be unlawful discrimination on the grounds of pregnancy and maternity, sex, and/or race by Professor Davidson.

211. It was admitted that the comment was made. The respondent's representative observed that the grievance officer agreed with the impropriety of the language used. The gesture was denied. The Tribunal did not hear evidence from Ms Styles-Lightowlers, but her statement for the grievance recorded that the gesture was made as alleged, albeit she did not refer to Professor Davidson gesturing towards the claimant in the email which she sent shortly after the meeting. The claimant also gave evidence that the gesture was made and directed towards her. The Tribunal found that Professor Davidson certainly waved his hands around in the meeting, and both the claimant and Ms Styles-Lightowlers perceived that he directed a gesture towards the claimant as the comment was made. The Tribunal also noted that the comment was made at the start of a meeting which was specific to, and about, the claimant, and accordingly found that the comment made was directed at the claimant's circumstances, as alleged.

212. The comment was an entirely unacceptable one to be made by a manager about an employee's circumstances at the start of a meeting with her. In her outcome report following the grievance Ms Ivins found that: it was certainly not appropriate language to be used in any formal situation, which could be deemed to be offensive and insulting; the comment was wholly unacceptable; and it was language which should not be used in a formal meeting and was unreasonable. The Tribunal entirely agreed with Ms Ivins' conclusions. The comment was unfavourable treatment of the claimant.

213. However, the Tribunal did not find that the comment was made because of sex race or that the claimant had been on maternity leave. There was nothing which showed the "*something more*" required to reverse the burden of proof.

Allegations eleven to fourteen – 26 November 2018 meeting

214. Allegations eleven to fourteen all arose from the meeting on 26 November 2018. They were all allegations of discrimination by Professor Davidson. They all alleged that it was unlawful discrimination on the grounds of pregnancy and maternity, sex, and/or race. The meeting was chaired by Professor Jackson and the evidence is addressed at paragraphs 58-62 above.

215. Allegation eleven was that, at the meeting, Professor Davidson belittled the claimant's work by calling her research paper a "*little paper*". That those words were said by Professor Davidson was not in dispute. Professor Davidson relied upon the size of the article as explaining his comment. The paper was a shorter communication and not a lengthy paper. In the document he produced during the grievance process, Mr Arciniega viewed Professor Davidson's comment and behaviour as less than helpful, not what was needed at that juncture, fairly strident and not what he had hoped for at that meeting.

216. For this allegation, the Tribunal did not find the "*something more*" required to shift the burden of proof for the claims that it was made because of the claimant's sex, race, or that she had been on maternity leave. The claimant certainly perceived that she was treated unfavourably by this comment being made about her paper. It was, however, not necessary for the Tribunal to make any further determinations about the allegation or whether the comment did amount to unfavourable or less favourable treatment. As was highlighted to the claimant during the hearing, the Tribunal was unable to undertake any evaluation of the merit or otherwise of the paper and did not need to do so to determine the allegations brought. There was no doubt that the claimant and her husband were aggrieved by what they perceived to be a remark which undermined their research output.

217. Allegation twelve was that in the meeting Professor Davidson stated that there would be no promotion for the claimant to Reader because the claimant published "*little papers*". The Tribunal did not find that to be exactly what Professor Davidson said in the meeting. The Tribunal accepted Professor Davidson's evidence that what was said was based upon his genuine belief that longer papers would be required to assist the claimant to achieve promotion to Reader. Professor Davidson was giving career advice, which was genuinely held and contained his genuine perception. That advice was not necessarily diplomatically delivered. However, the Tribunal did not find that the reason for what was said, or the reason for the style of delivery, was race, sex or because the claimant had been on maternity leave.

218. Allegation thirteen was recorded in the list of issues in somewhat lengthy and complex terms. The allegation recorded was: criticising the claimant's work and denying the claimant access to Gold Open Access funding, based on incorrect information, stating that this is not a 3* paper (nb. based on institutional REF system the paper has been assessed as 3* paper, thus fulfilling criteria for Gold Open Access). Briefly, the key facts were that the respondent did email out to the claimant and others inviting them to put forward for open access funding any paper which was

3* or above. The claimant's paper was rated 3* (at least ultimately). In fact, the respondent only provided open accessing funding for 4* papers based upon the limited budget available and the number of 4* papers. The funding of only 4* papers rather than 3* papers was not discrimination on any of the grounds alleged. It also was not something decided (only) by Professor Davidson. Professor Davidson's response to the claimant's paper either in the meeting or in the emails sent before and after the meeting, did not result in the claimant not obtaining open access funding.

219. Allegation fourteen was that Professor Davidson criticised the claimant's work when it was irrelevant to the agenda for the meeting. The claimant's evidence was that she believed the meeting was to be about her workload and she did not expect to be talking about her paper in it, which was an unpleasant surprise. The Tribunal accepted that the comment was made in the meeting in the context of a discussion about career progression. Career progression was intrinsically linked to workload and therefore was an appropriate part of the matters discussed in the meeting. As has been recorded for allegation twelve above, the Tribunal found that Professor Davidson's comment was made in the context of providing advice about progression to Reader and relayed a genuine held view about the length of papers required to achieve a Reader position. The Tribunal did not find that the claimant had shown the "*something more*" required to show that the comment about the claimant's work was made in that meeting because of sex, race or because the claimant had previously been on maternity leave.

Allegation fifteen – Professor Davidson's emails

220. Allegation fifteen was that Professor Davidson sent unfair and untruthful emails about the claimant. The list of issues recorded that the claimant had said that there were a "vast number" of such emails, but she was ordered to choose the three clearest emails and limit her allegation to those three. The claimant had identified three specific emails, which were in the bundle both as redacted versions and unredacted versions. The emails were alleged to be unlawful discrimination on the grounds of pregnancy and maternity, sex, and/or race, as well as being unlawful victimisation.

221. The earliest email relied upon was an email of 23 January 2019 from Professor Davidson to Mr Arciniega, copied to Professors Jackson and StJohn Crean and Mr Lee (877). What was said is described in paragraph 81. This was an email copied to the executive team in which Professor Davidson described his frustration at the claimant's emails and described them as an "*onslaught*". It was made clear during the hearing that the claimant's complaint about that email was more about who it was sent to, rather than what was said.

222. The second email relied upon was Professor Davidson's email to Professor Jackson on 4 March 2019 (921) (see paragraph 88). In that email, Professor Davidson stated that the claimant had not excelled in the two roles referred to. There was no evidence presented to the Tribunal which showed that the claimant had not excelled in the roles. Professor Forbes evidence was that in all his dealings with the claimant she worked very hard and he did not provide any evidence of the claimant falling short in the roles she had undertaken. The email was sent in the context of the

claimant applying for a lead role and it was a comment made by Professor Davidson to Professor Jackson.

223. The third email was the one sent on 10 September 2019 (1223) (see paragraph 103 above). It was an email in which Professor Davidson responded to an email from Dr Snape with added text inserted in the previous email and which he forwarded to a wide group of recipients. Professor Davidson's explanation for the wider circulation was that it was about modules/courses for which the recipients were responsible. Professor Davidson described that he had heard the claimant was not pulling her weight. Professor Davidson's evidence when challenged about his view, was that it was based upon a conversation or conversations which he had with people, albeit he could not name who he had such conversations with or when.

224. The Tribunal found that for all of the emails the claimant had not shown the "something more" required to reverse the burden of proof in her claims that the content of the emails was because of sex, race, or that the claimant had been on maternity leave. The Tribunal also found that she had not shown the "*something more*" to reverse the burden of proof to show that the content of the emails of 23 January 2019 or 4 March 2019 (or to whom they were sent) was because Professor Davidson believed that the claimant would do a protected act. The claimant had not done the protected acts upon which she relied at the time that either of those emails was sent.

225. For the third email of 10 September 2019, the Tribunal agreed that the content of the email was a detriment for the claimant, particularly as what was said was sent to a number of senior recipients. It placed the claimant in a negative light. However, the Tribunal panel did not reach an agreement about whether the claimant's victimisation claim as it related to that email, should succeed.

226. The majority view (Dr Tirohl dissenting) was that the claimant had not shown the "*something more*" required to reverse the burden of proof that the email of 10 September 2019 was written because the claimant had done the protected act of raising the grievance. Whilst the email was critical of the claimant and the claimant had done a protected act, there was not evidence that the reason why was the protected act. Professor Davidson had given his view in the email based upon what he had heard and, even if that view could not be supported by evidence at the Tribunal hearing, nonetheless the claimant had not established the prima facie case for her victimisation claim. The majority did not find Professor Davidson's evidence about this email to have been untruthful, even though there had been no evidence before the Tribunal which supported his view. As this was the finding of the majority of the Tribunal, the claim did not succeed.

227. The minority (Dr Tirohl) did find that the reason why Professor Davidson had sent the email of 10 September 2019 was because the claimant had done the protected act. The minority found that the "*something more*" required to reverse the burden of proof had been established. The evidence of Professor Forbes was that the claimant was a hard worker and he had no criticism of the work which she undertook. There was no evidence before the Tribunal that the claimant had not pulled her weight as Professor Davidson described in his email. Professor Davidson was unable to describe the conversations which had resulted in his view. In the absence of any evidence to corroborate what he said, Dr Tirohl did not believe the

evidence given by Professor Davidson about the content of this email. Having determined that Professor Davidson had not been truthful, and in the circumstances where the claimant had raised a grievance against him of which he was by that time fully aware, Dr Tirohl found that the prima facie case had been established and the untruthful evidence provided the "*something more*" required to shift the burden of proof. Having found that the burden of proof shifted and having found the explanation given by Professor Davidson to be untruthful, the minority found that the respondent had not proved that the reason for the email and its content was in no sense whatsoever due to the claimant having done the protected act. The minority accordingly found for the claimant on this allegation, as it applied to the email of 10 September 2019 (only).

Allegations sixteen and seventeen – instigating disciplinary action

228. Allegation sixteen was that, shortly after the claimant sent an email raising a concern about bullying/discrimination, Professor Davidson instigated disciplinary action against the claimant. This was alleged to be discrimination by Professor Davidson and/or Mr Arciniega. It was dated in the list of issues as having occurred on 28 November 2018. It was alleged to be unlawful discrimination on the grounds of pregnancy and maternity, sex, and/or race.

229. This allegation related to the first email which Professor Davidson sent to Mr Arciniega regarding the claimant's email of the early hours of the morning of 27 November 2018 in which the claimant had criticised Professor Davidson and his (brief) comments on her paper (and the subsequent email). In the email (731), Professor Davidson asked HR to instigate a disciplinary procedure against the claimant. He referred to the tone and content of the emails. Whilst Professor Davidson's email was sent on the same day as the email in which the claimant's trade union representative had raised a complaint regarding Professor Davidson, there was no evidence that Professor Davidson was aware of Ms Styles-Lightowlers' email complaint to Professor Jackson and Mr Arciniega before he sent his email (and in any event that email was not, of itself, a protected act). Professor Davidson's evidence was that he was not happy with the tone and content of the claimant's emails, which is why he raised the complaint.

230. The Tribunal found that the claimant had not shown the "*something more*" required to reverse the burden of proof in her claims for discrimination on the grounds of sex, race, or because she had been on maternity leave.

231. Allegation seventeen was closely related to allegation sixteen. The allegation was that from November 2018 and into 2019 Professor Davidson sent emails to discipline the claimant, the claimant alleged each time he received instructions about the claimant's grievance on discrimination issues. This was alleged to be unlawful victimisation, as well as unlawful discrimination on the grounds of pregnancy and maternity, sex, and/or race.

232. In considering allegation seventeen, the Tribunal considered three emails sent by Professor Davidson. These were the emails of: 24 May 2019 (1083) in which Professor Davidson asked why his request to bring a disciplinary procedure against the claimant had been ignored; 25 June (1114) in which he stated he had received no update and that HR did not appear to be taking it seriously; and 8 July 2019

(1126) in which he said that nothing had happened, and he felt ignored and undervalued.

233. That Professor Davidson sought disciplinary action be taken against the claimant and following up the fact that such action had not been taken, was found by the Tribunal to be unfavourable for the claimant and was found to be a detriment for her (even though in fact nothing whatsoever appeared to happen as a result). Asking that disciplinary action be taken, or pushing that it should have been, is a detriment (as the meaning of detriment is to be interpreted widely). A reasonable worker would take the view that the Head of School urging that action be taken, was to her detriment.

234. For those emails, the Tribunal found that the claimant had not shown the "*something more*" required to reverse the burden of proof in her claims for discrimination on the grounds of sex, race, or because she had been on maternity leave.

235. In respect of the victimisation claim, by the time of these emails the claimant had provided her detailed grievance which was accepted as being a protected act, and Professor Davidson was aware of that grievance. In each of the emails in which he asked what had happened regarding his request to pursue disciplinary action against the claimant, Professor Davidson also referred to the grievance which had been raised. The start of the email of 24 May referred to Professor Davidson having received a letter from HR detailing the grievance against him; that is the prompt for him following up disciplinary action was explained as being receipt of a copy of the protected act.

236. On this victimisation claim, the Tribunal panel was not in agreement. The majority (Dr Tirohl dissenting) did not find that the reason why Professor Davidson sent the emails was because the claimant had done a protected act. The majority found that the reason why he sent the emails was because he had asked for disciplinary action to be taken and he was following it up. Professor Davidson clearly had become frustrated with the absence of action, he felt that HR was not helping him as they should, and he perceived himself as being somewhat helpless in the absence of any action being taken. The majority took account of the timing and the contents of the emails, but found that the reason why Professor Davidson sent the emails that he did, was because he was pursuing the disciplinary action which he believed should be taken, not because the claimant had raised the grievance or done a protected act. As the majority did not find for the claimant on this victimisation allegation, it did not succeed.

237. The minority (Dr Tirohl) disagreed with the decision of the majority on this allegation of victimisation. The minority view was that the fact that Professor Davidson cited the grievance in each of the follow up emails which he sent, was the "*something more*" which shifted the burden of proof on victimisation. The minority did not find that the respondent had proved that the reason for the emails and their content was in no sense whatsoever due to the claimant having done the protected act, not least because each of the emails referenced the grievance which was being progressed to consider the protected act. As a result, in the view of the minority, the claimant succeeded in her victimisation claim (allegation seventeen). The reason

that Professor Davidson followed up the disciplinary action was because of the grievance/protected act.

Allegation eighteen – disciplinary investigation

238. In allegation eighteen the claimant alleged that HR urgently organised an investigation (as described in the disciplinary policy) at the time when the claimant's stress risk assessment was pending. This was alleged to have been discrimination by Mr Arciniega and/or HR (that being an unidentified member or members of the HR team). In the list of issues, the allegation was dated 11 December 2018 and was recorded as being an allegation of unlawful discrimination on the grounds of pregnancy and maternity, sex, and/or race, as well as being unlawful victimisation.

239. Ms Styles-Lightowlers emailed on 28 November 2018 and stated that the claimant wished to raise an official complaint. Professor Davidson emailed Mr Arciniega on the same date and asked to instigate disciplinary action. Investigation meetings were conducted with each of them by Ms Day-Garner and Ms Swift on 11 December. The invite sent on 7 December said the meeting was to investigate the claimant's complaint, but also explained that the concerns raised by Professor Davidson would be considered at the meeting. That was also explained at the start of the meeting.

240. In practice the timing and decision to arrange a meeting was a decision made by Ms Swift and Ms Day-Garner who were conducting the investigation, it was not a decision made by Mr Arciniega. Mr Arciniega made the decision that he should not be involved in the investigation and therefore the Tribunal found that this could not have been discrimination by Mr Arciniega.

241. The Tribunal found that it was entirely appropriate for the respondent to organise an investigation meeting as soon as possible. The meeting was to investigate both the claimant's complaint and that raised by Professor Davidson. Investigatory meetings should, in general, be arranged as soon as possible. The decision to progress the investigation meeting was not impacted upon by the respondent's delay in undertaking a stress risk assessment. The Tribunal has already provided its view of the delay in the stress risk assessment being undertaken, but the fact that such an assessment was unreasonable delayed did not provide any evidence that an investigation meeting being arranged in a reasonable time period was discrimination on any of the grounds relied upon. The Tribunal found that the claimant had not shown the "*something more*" required to reverse the burden of proof in her claims for discrimination on the grounds of sex, race, or because she had been on maternity leave, nor had she done so in her victimisation claim that arranging such a meeting in the time taken was in the belief that the claimant would be doing a protected act.

Allegations nineteen and twenty – proposed room move

242. Allegations nineteen and twenty both arose from the proposal that the claimant move offices. Allegation nineteen was: trying to pressurise the claimant into urgently moving offices against her will, while [he] was aware that the stress risk assessment was pending for several weeks. The allegation was dated 7 January 2019 and the claimant compared herself to her British roommates. This was an

allegation of race discrimination and victimisation. In the table, the perpetrator was alleged to have been Professors Forbes and Davidson, as well as (uniquely to this allegation) Dr Lawrence.

243. Professor Davidson made the decision to implement room moves to better integrate the Themes within the School. He asked Dr Lawrence (and a group with whom she worked) to implement that decision. The Tribunal accepted Professor Davidson's evidence about the limited role that he played and that he did not decide who would be asked to move (albeit that he saw a list of names before requests to move were made). The claimant's representative was highly critical in submissions about the decision to ask people to move rooms and he strongly asserted that the required integration could have been better achieved by allocating new appointees to rooms shared with other Themes rather than moving existing staff. However, the fact that there may have been other ways in which the required integration could have been achieved, did not advance the claimant's claims that being required to move was discrimination or victimisation. The Tribunal accepted Professor Davidson's evidence about the reason why he asked for staff to move rooms. As Professor Davidson did not make the decision that it was the claimant who should move, the claim that he treated the claimant unfavourably or less favourably or detrimentally on any unlawful ground, did not succeed.

244. Professor Forbes also did not make the decision that the claimant should move rooms. The claims against him did not succeed.

245. The Tribunal found that Dr Lawrence made the decision that the claimant should move offices. As the Tribunal did not hear from Dr Lawrence, there was no positive evidence available about why the claimant was identified as someone who needed to move. The claimant was right in her assertion that the grievance did not explain why it was that she was identified as someone who need to move, because the grievance outcome focussed on the allegations against the four alleged discriminators named in the grievance and Dr Lawrence was not one of those against whom allegations were brought. The claimant was treated differently to her comparators, as she was the only person in her room who was asked to move (based on the evidence heard by the Tribunal).

246. In considering whether the burden of proof has shifted, the Tribunal needed to consider whether the claimant had proved a prima facie case that the request to move was because of race or because Dr Lawrence believed that the claimant would do a protected act. The Tribunal did not find that the claimant had done so. She had not shown the "*something more*" required. As the claimant had not done so, the Tribunal did not need to decide why it was the claimant was asked to move and/or whether the respondent had shown that the request was in no sense whatsoever related to her race or the belief that she might do a protected act.

247. As the allegation was about the pressure to move, rather than actually being required to move, the Tribunal also considered the process followed in requesting the claimant move rooms. The claimant did not allege that Dr Smith unlawfully discriminated against her. The exchange of emails between Dr Smith and the claimant did not evidence undue pressure being placed on the claimant. Professor Davidson's emails of 18 and 21 January were perfectly reasonably worded. The

claimant was asked to move on 17 January and the move had been stopped by, at the latest, 25 January 2019.

248. Allegation twenty was dated to have occurred on 22 January 2019 and was that: a suggestion was made that the claimant might be able to keep her desk temporarily in order to facilitate the wellbeing of her British roommate, who had her stress risk assessment completed within a week. The claimant compared herself to her roommate, which for this allegation was Ms Crombie. The allegation was against Professors Forbes and Davidson and was of race discrimination and victimisation.

249. It was entirely correct that Professor Forbes first stopped the office move because of the outcome of Ms Crombie's stress risk assessment on 21 January. On 22 January the claimant thanked Professor Forbes for his efforts. Later that day Professor Forbes asked Professor Davidson to arrange the outstanding stress risk assessment and highlighted that the proposed office move was a stressor for the claimant. As a result, the office moves were stopped.

250. The Tribunal did not find that the fact that the proposed office move was initially paused because of Ms Crombie's stress risk assessment was a detriment to the claimant, where the claimant did not wish to move. It might have been less favourable treatment inasmuch as the reason for not moving related to concern for Ms Crombie, rather than the claimant, but the Tribunal did not find that the claimant had shown the "*something more*" required to show that the treatment was because of race or because there was a belief that the claimant would do a protected act. As addressed for the allegation regarding stress risk assessments, there was no evidence that the difference in timing of those assessments was discriminatory or victimisation and it was explained by the different people responsible and their willingness and speed in undertaking the assessment required. Once the claimant herself explained her reasons for not wanting to move, the proposed move was stopped relatively quickly by Professor Davidson.

Allegation twenty-one – response to request for a phased return to work

251. Allegation twenty-one was that on the 22 January 2019 the claimant asked for a phased return to work and no response was received for several days from Professor Forbes and Professor Davidson. This related to the claimant's return to work after a period of ill health. The claimant compared herself to Ms Crombie. The alleged discriminators were Professors Forbes and Davidson. It was an allegation of unlawful discrimination on the grounds of sex, and/or race, as well as being unlawful victimisation.

252. The evidence about this allegation is recorded at paragraphs 84-87. The Tribunal entirely accepted Professor Forbes' evidence about why he did not respond and therefore the reason why he did not respond was because of the pressure which he was under at the time with life events, which meant that he did not have the bandwidth to address work-related matters over and above his core duties. The Tribunal also accepted Professor Davidson's evidence that he did not respond because it was not his responsibility and he would not expect to respond to such requests. The Tribunal also accepted that, at the time, the claimant did not know the reasons for the lack of response, and she did find it frustrating. However, the

reasons for the lack of response were not sex or race or because of a belief that the claimant would do a protected act.

253. The Tribunal heard no evidence about any phased return to work undertaken by Ms Crombie and/or how it was agreed. The claimant did not evidence any difference in treatment with her named comparator. However even were the claimant to have been treated differently to Ms Crombie, for the reasons given the Tribunal did not find it to be on the grounds alleged.

Allegation twenty-two – task allocation by Dr Snape

254. Allegation twenty-two was that Dr Snape, in April 2019, allocated the claimant tasks at short notice, and tasks to be done during pre-booked annual leave. It was alleged to be unlawful discrimination on the grounds of pregnancy and maternity, sex, and/or race, as well as being unlawful victimisation. The evidence is at paragraph 91.

255. Dr Snape did ask the claimant to undertake some marking. That was shortly before the claimant was due to commence pre-booked annual leave. The claimant's evidence was that she never saw anyone else having issues with annual leave, albeit it was not entirely clear that she would have been aware if they had. The Tribunal did not hear evidence from Dr Snape about why he asked the claimant to undertake the marking when he did.

256. The Tribunal did not find that the claimant had shown the "*something more*" required to shift the burden of proof for her allegations of discrimination on the grounds of sex or race, or for her victimisation claim.

Allegation twenty-three – Visiting Professor

257. Allegation twenty-three was also an allegation about events in April 2019, which related to the claimant undertaking the role of Visiting Professor at Adam Mickiewicz University, Poznan, Poland. The claimant contended that this was initially encouraged as part of her professional development, but was not approved when the time came for the claimant to deliver her lectures. This was an allegation of discrimination by Professors Forbes and/or Davidson and was alleged to be unlawful discrimination on the grounds of pregnancy and maternity, sex, and/or race, as well as being unlawful victimisation.

258. It was clear from the evidence, that Professor Forbes agreed that the claimant could undertake the role and encouraged her to do it. When the time came for the claimant to undertake the role and for it to be approved, Professor Forbes was absent (or at least about to commence a period of ill-health absence when subject to the stressors addressed for allegation twenty-one). Professor Davidson was absent on paternity leave and did not respond.

259. The Tribunal found that the reasons why Professors Forbes and Davidson did not respond at the time when agreement was sought was because they were both absent (or not in a position to do so). It was not entirely clear to the Tribunal why this particular issue became time-critical and had not been addressed and agreed well ahead. It was also clear from Professor Forbes' evidence that, after the meeting of

26 November 2018 (from which he was excluded at Ms Styles-Lightowlers request), there was some lack of clarity about his role as the claimant's line manager and he was not sure which elements he should undertake. That may have led to some confusion and lack of clear arrangements. It was unfortunate that the claimant's role was not approved at the time, when required. In any event, the Tribunal did not find that the claimant had shown the "*something more*" required to shift the burden of proof for her allegations of discrimination on the grounds of sex or race or because she had taken maternity leave, or for her victimisation claim.

Allegations regarding the grievance (allegations twenty-five and twenty-seven to thirty)

260. Allegation twenty-five arose from the approach to the grievance hearing. The complaint was that after it had initially been confirmed that the grievance would be heard in a single hearing where all the parties were present at the same time, the commitment was later withdrawn. This was an allegation of discrimination by Mr Arciniega, Ms Ivins, and/or HR (generally). The allegation was dated 24 June 2019. It was alleged to be unlawful discrimination on the grounds of sex and/or race, as well as being unlawful victimisation.

261. The respondent did not follow its own procedures in the way in which the grievance hearing was conducted. The claimant was not allowed to select the approach to the hearing in the way in which the procedure outlined. The decision was taken to require the claimant to separate her single grievance into four separate grievances identifying precisely the complaints which she was bringing against each of the alleged discriminators. The Tribunal found the way in which the respondent addressed with the claimant its wish to separate her grievance, was onerous and cumbersome for the claimant and did not demonstrate the respondent's HR team taking the steps which would have been expected they would take if they had concerns about confidentiality. The claimant was effectively required to undertake steps which the Tribunal would have expected the HR team to have undertaken, at least once the claimant had initially detailed her grievances in full.

262. However, there was no evidence whatsoever that the approach taken was because of sex, race or because of the protected act (being the detailed complaint which was being investigated). The Tribunal found that Ms Ivins conducted the grievance in the way which she thought best in the light of the complex grievance raised and the issues she identified around confidentiality and logistics/arrangements for the hearing, with four alleged discriminators. Mr Arciniega had little, if any, involvement in the way in which the grievance hearing was conducted, having (for good reasons) made the decision not to be involved in the grievance process. Whilst the Tribunal did not necessarily find that the respondent's HR team conducted the grievance in the most effective manner and the respondent certainly did not adhere to what was said in its procedure, nonetheless the Tribunal did not find that the claimant had shown the "*something more*" required to shift the burden of proof for her allegations of discrimination on the grounds of sex or race, or for her victimisation claim

263. Allegation twenty-seven reflected allegation twenty-five, being that the claimant was required to re-submit her grievance and have it heard separately, rather than having all the "interrelated" grievances heard at one meeting. That was

an allegation of discrimination by Mrs Ivins and/or HR. It was alleged to be unlawful discrimination on the grounds of pregnancy and maternity, sex, and/or race, as well as being unlawful victimisation.

264. The claimant's grievance was heard in four consecutive meetings on the same date, rather than as part of a single meeting conducted on the same day. Whilst the claimant's representative was critical of this process as it did not enable the claimant to present her grievance in the same unbroken way, the Tribunal did not find that the approach taken was a discriminatory one or amounted to victimisation. The reasons for the Tribunal's finding were the same as those explained for allegation twenty-five.

265. Allegation twenty-eight was alleged to be discrimination by HR. The allegation was that HR took two years to complete grievance hearing, first and further appeal. It was also that HR failed to provide clear grievance procedures, failed to deal with the claimant's grievances promptly, and failed to deal with any grievances in a consistent manner. It was alleged to be unlawful discrimination on the grounds of pregnancy and maternity, sex, and/or race, as well as being unlawful victimisation.

266. There is no doubt whatsoever that the claimant's grievance took an inordinate length of time to complete. It took a long time to even start, and once it had commenced, it took far too long to complete each stage. As was acknowledged by Mrs Grey in her grievance appeal decision, the time taken to address the grievance was prolonged and unreasonable. The respondent was keen at the Tribunal hearing to emphasise the complexity of the grievance, the number of documents involved, and the particular reasons for the time taken in each part of the process. As with the other allegations relating to the grievance, whilst the Tribunal could entirely understand why the claimant was unhappy with the length of time which the process took and the respondent would have been expected to have tried to ensure that the process was addressed considerably quicker than it was, the Tribunal did not find that the claimant had shown the "*something more*" required to shift the burden of proof for her allegations of discrimination on the grounds of sex or race or because she had taken maternity leave, or for her victimisation claim

267. Allegation twenty-nine was that the grievance outcome was deficient. This was an allegation against Mrs Ivins, of discrimination on the grounds of pregnancy and maternity, sex, and/or race. Closely linked to allegation twenty-nine was allegation thirty. That was the allegation that Mrs Ivins, in her grievance outcome, had misrepresented or failed to address the "facts and incidents" referred to in the grievance. It was alleged to be unlawful discrimination on the grounds of pregnancy and maternity, sex, and/or race, as well as being unlawful victimisation.

268. The Tribunal found that the outcome of the grievance was full and thorough, and Ms Ivins had spent time looking at the documents and providing a considered response. The Tribunal accepted that Ms Ivins undertook the task that she was required to do. The Tribunal understood that the claimant did not agree with the outcome reached. The Tribunal found that the grievance process followed was not unreasonable, albeit that it might not (with the benefit of hindsight) have been ideal. It was thorough and Ms Ivins took the time required to look at the documents and to provide a considered response. It is not the role of the Tribunal to forensically examine each aspect of Ms Ivins' findings. It was clear that the claimant had done so

and did not agree with many of the things which were said. She did not agree with Ms Ivins' views about those from whom she heard. In submissions it was particularly emphasised that the claimant's case was that Ms Ivins failed by a large margin to understand the managerial style of Professor Davidson. Nonetheless, and even if there were shortcomings in Ms Ivins' analysis of parts of the evidence or her willingness to challenge or disbelieve the respondent's senior employees (and that was not necessarily the case), as with the other allegations regarding the grievance process, the Tribunal did not find that the claimant had shown the "*something more*" required to shift the burden of proof for her allegations of discrimination on the grounds of sex or race or because she had taken maternity leave, or for her victimisation claim, even for any deficiencies or omissions which she was able to raise about the report provided.

Allegations twenty-six and thirty-one - annual leave approval

269. Allegation twenty-six was that on 8 July 2019 Dr Snape discriminated against the claimant by: expressing hesitancy in approving annual leave (that had been previously approved by line manager) by referring to a module that the claimant was due to be teaching in the coming year. It was alleged to be unlawful discrimination on the grounds of pregnancy and maternity, sex, and/or race, as well as being unlawful victimisation.

270. The limited evidence heard about this allegation is recorded at paragraphs 99-100. Dr Snape did meet with the claimant to discuss her annual leave booking, which would support the assertion that he expressed hesitancy in approving annual leave. The reference to the leave having been previously approved, related to the withdrawal and re-booking of leave, where the claimant chose to cancel some days which she had booked but where she wished to retain other days which the system would record as having been cancelled and needing to be re-booked.

271. Dr Snape's responsibilities included approving leave. There was no evidence that he refused the leave on this occasion. The allegation was that he hesitated in approving it. There was no evidence which showed the "*something more*" required to shift the burden of proof for the claimant's allegations that such hesitation was because of sex or race or because she had taken maternity leave, or because she had done protected acts.

272. Allegation thirty-one was that Dr Snape placed conditions on the grant of annual leave to the claimant which in practice would result in the leave being cancelled. This allegation was dated as occurring on 2 March 2020. It was alleged to be unlawful discrimination on the grounds of sex and/or race, as well as being unlawful victimisation.

273. As with the previous allegation, there was no evidence showed the "*something more*" required to shift the burden of proof for the claimant's allegations of discrimination on the grounds of sex or race, or for her victimisation claim.

Allegation thirty-three – responding to students

274. Allegation thirty-three was an allegation which was alleged to have occurred on 10, 13 and 16 April 2020 (that is early in the first stages of the Covid-19

Pandemic). This was an allegation of discrimination by Professor Davidson. The allegation was that when a group of students requested that the claimant arrange a meeting with Professor Davidson, he did not reply either to a series of Teams messages or to emails. It was alleged to be unlawful discrimination on the grounds of sex and/or race, as well as being unlawful victimisation.

275. Prof Davidson's evidence was that he did not respond to Teams messages. His evidence being that he was added to a number of Teams groups but did not look at the messages. The Tribunal accepted that Professor Davidson would have been extremely busy at the relevant time addressing the issues which arose at the height of the Pandemic, including the concerns of a large number of students who faced considerable uncertainty at a time when the answers to many of the concerns would not have been know.

276. The Tribunal found that there was no evidence whatsoever that the speed of Professor Davidson's response was in any way related to the claimant at all, let alone any evidence that showed the "*something more*" required to shift the burden of proof to show that the reason for the lack of response was on the grounds of sex or race, or because the claimant had done a protected act when she raised her grievance or appealed against the grievance outcome.

Allegation thirty-four

277. Allegation thirty-four appeared in the list of issues as being an allegation from 2020. What was alleged was that the outputs published by the claimant were not sent for assessment within UoA3. The alleged discriminator was recorded in the list of issues as being UoA3, but in practice was clarified during the submissions as being Professor Davidson. It was alleged to be unlawful discrimination on the grounds of sex and/or race, as well as being unlawful victimisation

278. The Tribunal heard no real evidence about this allegation. It was not even addressed in the claimant's representative's written submission. The claimant's evidence was that her paper was disqualified from being submitted to the REF. The Tribunal was shown a table which included the claimant's paper. There was no other evidence that the claimant's papers were disqualified or not sent for assessment as alleged. As already addressed, Professors Davidson and Watkins gave a view on one of the papers, but there was no evidence that they disqualified it (or any other paper) from being submitted. As part of the grievance appeal outcome, the relevant paper was re-submitted for assessment. The facts alleged were not proven. There was no evidence whatsoever that Professor Davidson blocked the claimant's papers from being submitted as alleged.

Jurisdiction and time limits

279. In this claim, had the Tribunal found all of the allegations and found that they were a continuing course of conduct, then the claims would have been presented to the Tribunal within the time required. For the vast majority of the allegations on their own, if they were found, the claim would not have been entered in time unless what was found was a continuing course of conduct with later acts (also found), or unless it was found to be just and equitable to extend time. As the Tribunal has not found for the claimant for any of the complaints brought, it is simply not possible for the

Tribunal to endeavour to identify which of the acts (not found) would or might have been found to have been in time (either if found in isolation or if found with other allegations). Accordingly, the Tribunal has not needed to determine the jurisdiction/time issues. However, as the respondent's representative very fairly conceded that time was not the respondent's best case, in the light of the fact that there was no prejudice to the respondent (it having been able to call evidence and having defended the claims brought), and as the claimant's representative highlighted that the reason for any delay was the claimant waiting for the progress of the respondent's internal grievance procedure in the hope that the matters would be resolved without the need for proceedings being issued, it may well have been the case that the Tribunal would have found it just and equitable to extend time had they needed to consider that issue in respect of any specific allegations which otherwise would have been out of time.

Summary

280. For the reasons explained above, the Tribunal did not find for the claimant in any of her claims. A minority of the Tribunal would have found for the claimant on two allegations that she was subjected to unlawful victimisation when: Professor Davidson sent an unfair and untruthful email on 10 September 2019 (part of allegation fifteen); and Professor Davidson sent emails on 24 May, 25 June and 8 July 2019 which sought disciplinary action against the claimant (allegation 17). However, as the majority of the Tribunal did not find for the claimant on those allegations, none of the claimant's claims have succeeded.

Employment Judge Phil Allen
17 October 2022

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
28 October 2022

FOR THE TRIBUNAL OFFICE

Schedule of Allegations Table for Final Hearing

No.	Date	Brief description	Perpetrator	Comparator	Complaint
1.	Before January 2018 (email received on 30/8/2017)	Whilst the claimant was on maternity leave, a decision was taken to redistribute the claimant's work and to cancel the advertised post for maternity cover.	Professor Forbes, Dr Snape, Professor Davidson		M, S, R
2.	24/9/2018	Instruction that no final year research projects be allocated to the claimant)	As above	James Gillies Joseph Hayes	M, S, R
3.	January – October 2018	Following the redistribution of the claimant's duties during her maternity leave, failure to reallocate them back to the claimant.	As above		M, S, R
4.	January – October 2018	Keeping the claimant's workload low.	As above		M, S, R
5.	3/10/18	Telling the claimant at a meeting that her job was “at risk” (also telling the claimant that claimant is the only SL without SL duties and that claimant has the lowest workload).	Professor Forbes, Dr Snape	James Gillies, Joseph Hayes	M, S, R
6.	3/10/18	Taking the claimant by surprise by making the comment at a meeting which was stated to be for the purpose of discussing the claimant's workload.	Professor Forbes, Dr Snape		M, S, R
7.	10/10/18	As soon as the claimant accepted the leadership for PJ4019 this option was	Professor Forbes, Dr Snape, Professor		M, S, R

		withdrawn. An alternative 2nd agreement was achieved which included among other duties co-leadership of PJ4300 (also recovery of prematernity load and assuming Dr Alhnan's SL duties).	Davidson		
8.	11/10/2018	Prof Davidson overruled claimant's 2nd agreement with her line manager, Prof Forbes	Professor Davidson		M, S, R
9.	2/11/2018	Delaying the claimant's stress risk assessment (SRA).	Professor Forbes, Professor Davidson, Mr Arciniega	"British roommate"	M, S, R
10.	16/11/2018	Making the comment, "Lots of shit like this has fallen into my hands since Peter left", whilst gesturing towards the claimant.	Professor Davidson		M, S, R
11	26/11/2018	At a meeting, belittling the claimant's work by calling it a "little paper".	Professor Davidson		M, S, R
12.	26/11/2018	In the meeting stated that there will be no promotion to Reader because claimant publishes "little papers"	Professor Davidson	Professor Davidson	M, S, R
13.	26/11/2018	Criticising the claimant's work and denying the claimant access to Gold Open Access funding, based on incorrect information, stating that this is not a 3* paper (N.B. based on institutional REF system the paper has been assessed as 3*	Professor Davidson		M, S, R

		paper, thus fulfilling criteria for Gold Open Access)			
14.	26/11/2018	Criticising the claimant's work when it was irrelevant to the agenda for the meeting.	Professor Davidson		M, S, R
15.	November 2018 – into 2019	Sending unfair and untruthful emails about the claimant. (Whilst the claimant says that there were a "vast number" of such emails, she will choose the three clearest emails and limit her allegation to those three).	Professor Davidson		M, S, R, V
16.	28/11/2018	Shortly after the claimant sent an email raising a concern about bullying/discrimination, Professor Davidson instigated disciplinary action against the claimant.	Professor Davidson, Mr Arciniega		M, S, R
17.	November 2018 - into 2019	Sending emails to discipline the claimant each time he received instructions about the claimant's grievance on discrimination issues. (The claimant agreed to provide her three clearest examples and to limit her allegation to these three.)	Professor Davidson		M, S, R, V
18.	11/12/2018	HR urgently organised	Mr Arciniega		M, S, R, V

		an investigation (as described in the disciplinary policy) at the time when claimant's SRA was pending	HR		
19.	7/1/2019	Trying to pressurise the claimant into urgently moving offices against her will, while he was aware that SRA was pending for several weeks.	Professor Forbes, Professor Davidson, Dr Lawrence	"British roommates"	R, V
20.	22/1/2019	A suggestion was made that the claimant might be able to keep her desk temporarily in order to facilitate wellbeing of British roommate, who had her SRA complete within a week.	Professor Forbes, Professor Davidson	"British roommate"	R, V
21.	05/3/2019	Claimant asked for phased return to work. No response was received for several days from Prof Forbes and Prof Davidson.	Professor Forbes, Professor Davidson	Elaine Crombie	S, R, V
22.	April 2019	Allocating the claimant tasks at short notice, tasks to be done during pre-booked annual leave.	Dr Snape		M, S, R, V
23.	April 2019	Visiting Professor at Adam Mickiewicz University, Poznan, Poland, that was initially encouraged as part of claimant's professional development was not	Professor Forbes, Professor Davidson		M, S, R, V

		approved when the time came for the claimant to deliver the lectures.			
24.	30/4/2019	SRA took place with 6 months delay. <u>Recommendations were ignored</u>	HR Professor Davidson	Elaine Crombie Breach of duty of care	S, R, V
25.	24/6/2019	Confirmed that a "single hearing will take place where all the parties will be present at the same time".	Mr Arciniega HR Ms Ivins	The commitment was later withdrawn	S, R, V
26.	8/7/2019	Expressing hesitancy in approving annual leave (that had been previously approved by line manager) by referring to a module that the claimant was due to be teaching in the coming year.	Dr Snape.		M, S, R, V
27.		Requiring the claimant to resubmit her grievance and have it heard separately, rather than consider all her "interrelated" grievances at one meeting.	HR Ms Ivins		M, S, R, V

28.	Various	HR took 2 years to complete grievance hearing, first and further appeal. HR failed to provide clear grievance procedures, failed to deal with the claimant's grievances promptly, and failed to deal with any grievances in a consistent manner.	"HR"	Violation of grievance Policy. ACS policy.	M, S, R, V
29.	10/12/2019	Grievance outcome was deficient	Ms Ivins		M, S, R,
30.	10/12/2019	Misrepresenting or failing to address the "facts and incidents" referred to in the claimant's grievance. (The claimant will provide further details of the three clearest facts and incidents that were represented or ignored.) please see Appendix 4	Ms Ivins	Grievance policy/ incomplete understanding of the case/ lack of impartiality	M, S, R, V
31.	2/3/2020	Placing conditions on the grant of annual leave which in practice would result in the leave being cancelled.	Dr Snape		S, R, V
32.	2018-2020	Failure to conduct annual appraisals	Professor Forbes		M, S, R
33.	10/4/2020,	PJ3300 students	Professor		M, S, R, V

	13/4/2020, 16/4/2020	requested the claimant to arrange meeting with Professor Davidson. Professor Davidson did not reply to series of messages via Teams / emails.	Davidson		
34.	2020	Outputs published by the claimant not sent for assessment within UoA3.	UoA3	Ignoring the REF code of practice.	M, S, R, V

Annex
Complaints and Issues

1. Pregnancy and Maternity Discrimination (Equality Act 2010 section 18)

1.1 Did the respondent treat the claimant unfavourably as set out in her Schedule of Allegations Table document?

1.2 What was the unfavourable treatment-what said or done, or not done, to the claimant, by whom and when? (See Schedule of Allegations Table document)

1.3 Did the unfavourable treatment take place in a protected period?

1.4 If not did it implement a decision taken in the protected period?

1.5 Was the unfavourable treatment because of the pregnancy?

1.6 Or was the unfavourable treatment because the claimant was on compulsory maternity leave or the claimant was exercising or seeking to exercise or had exercised or sought to exercise the right to ordinary or additional maternity leave?

2. Direct discrimination on grounds of sex and/or race (Equality Act 2010 section 13)

2.1 What are allegations i.e. what was said or done/not done to the claimant, by whom and when? (See Schedule of Allegations Table Document)

2.2 Has the claimant proven facts from which the Tribunal could conclude that in any of those allegations the claimant was treated less favourably than a man in the same material circumstances? Where the claimant relies on a real male comparator, the comparator is listed in the Schedule of Allegations Table document.

2.3 Has the claimant proven facts from which the Tribunal could conclude that in any of those allegations the claimant was treated less favourably than a person or a different race was or would have been treated? Where the claimant relies on a real comparator of a different race, the comparator is listed in the Schedule of Allegations Table document.

3. Victimisation (Equality Act 2010 section 27)

3.1 Did the claimant do a protected act? The claimant relies on presenting a grievance on 11 March 2019 (and 3 grievances

combined with that grievance) and filing a grievance appeal on 17 December 2019.

3.2 Did the respondent subject the claimant to a detriment? What is the detriment i.e. what did the respondent say or do or not do to the claimant and when? The detriments are set out in the claimant's Schedule of Allegations document, where there is a “V” in the complaint column.

3.3 If so, has the claimant proven facts from which the Tribunal could conclude that the detrimental treatment was because the claimant did a protected act? [Note paragraph 7 of the Judgment for the revision to this issue]

4. Time limits

4.1 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

4.1.1 Was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the act to which the complaint relates?

4.1.2 If not, was there conduct extending over a period?

4.1.3 If so, was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the end of that period?

4.1.4 If not, were the claims made within such further period as the Tribunal thinks is just and equitable? The Tribunal will decide:

4.1.4.1 Why were the complaints not made to the Tribunal in time?

4.1.4.2 In any event, is it just and equitable in all the circumstances to extend time?