2206530/2021

EMPLOYMENT TRIBUNALS

Claimant: **Mr L. Hasan**
Respondent: **University College London**

London Central (CVP)

Hearing: 9-11, 14-17 November 2022
Panel discussion 18 November 2022

Employment Judge Goodman
Mr P. Secher
Mr D. Shaw

Representation:
Claimant: in person
Respondent: Marianne Tutin, counsel

RESERVED JUDGMENT

1. The claimant was not unfairly dismissed by the respondent

2. The claimant was not victimised by the respondent

REASONS

1. The claimant was employed by the respondent (UCL) as teaching fellow in Arabic in their Centre for Languages and International Education (CLIE) from October 2007. Relationships with colleagues within the Centre were troubled from 2017. The claimant raised three grievances in 2018 and 2019 about CLIE's Director and Assistant Director, which were investigated, and in 2020 rejected. From March 2019 to July 2021 he also brought a sequence of ten claims in the employment tribunal against UCL and (in total) thirteen named colleagues. He alleged dishonesty and forgery on the part of colleagues and managers. He was dismissed with notice on 15 June 2021, on grounds of an irreparable breakdown in working relationships and trust and confidence, said to be some other substantial reason justifying dismissal.

Claims and Issues

2. This claim, number eleven in the series, was presented to the tribunal following the dismissal. It is claimed that the dismissal was unfair, that he was dismissed because he made a protected disclosure about the marking of student exams, and that his dismissal was an act of victimisation for having brought employment tribunal claims from 2019, and for three grievances (June 2018, January 2019, May 2019) against the Director and another colleague.

3. This eleventh claim is the only survivor. In the course of seven preliminary hearings, the other ten have either been struck out as having no reasonable prospect of success, or withdrawn, sometimes after deposit orders were made. The claimant received some legal advice in the summer of 2022, but for the most part has not been represented. He was not represented at this hearing.

List of Issues and Amendment Application

4. A final list of issues was drawn up at the last case management hearing. Claims withdrawn after that hearing were then deleted from it. Shortly before the hearing started the claimant sent a revised list. That list is appended to this judgment. The substantial change is to add two protected disclosures, numbered 2 and 3. The respondent objected to this late addition, and on the first hearing day the tribunal heard and refused an application to amend the claim.

5. Full reasons were given (and recorded) in the hearing. In summary, the addition of an allegation, in May 2018, or otherwise, that Christine Hoffmann had forged emails, or that in 2019 the marks of student AE had been altered, was not alluded to in the claim form, save by a general reference to the claimant's three grievances, where no mention of these matters could be found. There had been seven case management hearings of the eleven claims, where claims and issues had been carefully discussed. The only explanation given for making these changes at the last minute was that the claimant sent the draft with his changes to his representative in August 2022, but they had since parted company. Whatever the merits of that, the respondent had not, as a matter of fact, had notice, and was now faced with additional claims which required more evidence, not to mention additional preparation, when they were already having to manage the last minute disclosure (21 and 24 October 2022) of the claimant's many documents, and of his witness statement (4 November 2022). As for relative disadvantage, the forgery allegation was one of the respondent's reasons for dismissing him, so he was not deprived of the opportunity for redress, and the AE allegation was similar in character to the protected disclosure in 2018, which does form part of the claim, so his challenge to the integrity of the examination system will be considered by the tribunal in that context.

Conduct of the Hearing

6. The case was listed for hearing in person, at the claimant's request. Shortly before the hearing, the first day was converted to a remote hearing because of a planned rail strike, with the intention that the remainder should be held in person. The claimant had applied last week for a postponement of the entire hearing on the basis that he needed more time to prepare. When the postponement was refused, and after testing his IT capability in preparation for the first day, he asked for the all the hearing to be held remotely, as he would find it easier, while he was suffering stress and anxiety, to avoid travel each day. The case was therefore converted to remote hearing.

7. The claimant is not a native speaker of English, but he has lived on the UK a long time, and has taught at several universities using English as the medium of instruction. In discussion at case management hearings it had been agreed that he would not need an Arabic interpreter. In making his request to convert to a remote hearing, he asked for an Arabic interpreter because he anticipated greater difficulty in understanding online proceedings. Instructions were given to book an Arabic interpreter, but none was available at short notice for the first day, when the claimant decided that it was not as difficult as he had thought, and an interpreter was not required after all. Recognising that he is not a native speaker, he was invited to ask for words to be explained or repeated whenever he was unclear. In the event, the only question he asked respondent's counsel and the tribunal panel about language was whether we knew what a synonym was. This was a rhetorical question, as one of the disputes

with the external examiner was whether the Arabic word for synonym should have been used when setting a paper. There was an example of confusion where he misheard ”elevate” for “alleviate” in the dismissal hearing. This is a mistake a native speaker could have made. There was an occasion where the tribunal checked, to be on the safe side, that the claimant knew what ”impropriety” meant. We were more than once puzzled by his references to “forgery” of documents, and to check, we asked if he could define the word. In answer he gave the example of altering a document without permission so as to increase the amount of money shown on it – an accurate definition. Our puzzlement was because we could not understand what he said had been done to the three emails that amounted to forgery. In short, having heard the claimant ask and answer questions and make submissions over the course of five and a half days, we were satisfied that his understanding of English is very good, better even than many native speakers, even though some mistakes (for example, use of prepositions) would indicate it was not his first language, and his syntax sometimes broke down under pressure. We concluded that if he had difficulty telling the respondent – or the tribunal – what had happened, or why he complained about something, the problem was not language but logic, a lack of structured exposition.

8. Like many litigants in person the claimant sometimes found it hard to formulate a question, rather than make a statement of his own. The tribunal chair would on occasions formulate what seemed to be the question, after hearing these statements, for the claimant to put to the witness, if he agreed that was the point.

9. When the claimant came to question the first two witnesses it was explained to him that the tribunal was not deciding whether his grievances should have been upheld, although we were of course concerned with the process and the way they had been conducted. The hearing was to decide whether he was unlawfully dismissed (including whether he was dismissed for a protected disclosure) and whether dismissal was an act of victimisation. It was necessary at times to restrict the time for questions on the substance of the grievance.

10. At the start of the hearing, and on several days thereafter, the claimant asked for an order for disclosure of recordings of Arabic language oral examinations. He was asked to explain how these recordings were needed to help the tribunal decide the issues. He was not able to explain this.

Evidence

11. The tribunal heard evidence from the following witnesses:

Luay Hasan, the claimant
Joanna Ryan, senior employee relations manager, gave hearsay evidence about management of the claimant’s first and second grievances, before she joined UCL. She then managed all three through the investigation, hearing outcome and appeal stages. She also gave evidence about arrangements for the dismissal hearing.
Christine Hoffmann, Director of CLIE, and the principal object of his grievances, gave evidence about her interaction with the claimant within the Centre.
Li-Yun Liao, Mandarin and Arabic Language and Module senior coordinator, and also Lecturer in European and International Social and Political Science. She taught Mandarin within CLIE, and took over coordination of Arabic language teaching when the claimant stepped down from his coordinator role in 2016
Jackie Loveland, School Manager of the UCL School of Management, chaired the panel hearing the claimant’s three grievances
Sara Collins, Director of Operations in the Faculty of Engineering Sciences, made the decision to terminate the claimant’s employment.
Stella Bruzzi, Executive Dean of the Faculty of Arts and Humanities, heard the claimant’s

appeal against dismissal.

12. The claimant had submitted a witness statement from **Mohammed Bouabdallah,** Senior Lecturer in Arabic at the University of Westminster, and a former part-time Arabic teacher at UCL, giving opinion evidence on the clarity of the instructions in the UCL Arabic language examination papers for 2015, 2016 and 2017. He was not called as the respondent did not seek to question him. We gave this evidence little weight, for the following reasons. Insofar as it was an expert opinion, we could not be satisfied it was independent; we had not seen what he had been asked to answer, nor did he explain the facts on which his opinion was based, or why the external examiner may have been mistaken about any papers, nor - by reason of its late disclosure - had the respondent been given an opportunity to consider it or seek its own opinion.

13. There was a main bundle of documents of 3,147 pages, plus index, and a supplementary bundle of the claimant's late disclosure (21 and 24 October 2022) of his own documents of 1,602 pages, plus index. There was some duplication between bundles. We read those to which we were directed, or those referenced in the witness statements.

14. The respondent had prepared a cast list and chronology, cross referenced to the main bundle. This was useful, because the chronology was hard to follow from the claimant's witness statement.

Findings of Fact

15. UCL, once a constituent college of the University of London, is a major university employing around 13,000 staff. CLIE, where the claimant worked, is part of the Institute of Education, and has over 200 staff, equating to 147 full-time equivalents. It teaches and examines foundation courses and degree preparation courses for international students, as well as summer schools. It also teaches academic English, and nine foreign languages, "across a wide range of credit bearing modules for UCL students".

16. The claimant was engaged in 2003 as an evening teacher in Arabic language classes on some kind of zero hours contract. In 2007 he was engaged on a fractional (part-time) contract. In 2008 he was engaged as teaching fellow on a full-time contract. Other teachers of Arabic language worked on a part-time basis. He became coordinator for the Arabic language module. Christine Hoffmann was his line manager.

17. One of these Arabic language colleagues was Dr Lamia Jamal-Aldin. Documents in the claimant's bundle, which he relies on to show difference in treatment, show that in 2009 there was an episode where he complained about her behaviour towards him in front of the student in an oral examination, and at a meeting. His complaint was investigated as a grievance. Most of the substance was upheld. The grievance panel noted that the disputes related to teaching and examination methods, which the department was investigating. Christine Hoffmann's reprimand of Dr Jamal-Aldin was found to have been an adequate response to her conduct. The claimant made a further complaint about Dr Jamal-Aldin in 2011. This time the complaint was investigated as a protected disclosure, and was not upheld, but the investigator strongly recommended mediation between the claimant, Dr Jamal Aldin, and their line manager Christine Hoffmann, and also, noting that the reasons for conflict related to real difficulties of long standing, that if agreement could not be reached on what type of Arabic was taught and how it was to be taught, Arabic should not be offered as a subject. Dr Jamal Aldin later left to take up a post at another institution. Other part-time Arabic teachers were engaged: Zaina Franjie-Eyres and Najwa al-Abed. Difficulties seem to have continued: in March 2015 a group of students complained that the examination they had to sit was more difficult than the standard they had been taught, and made particular complaints about the structure and

organisation of teaching.

18. In November 2016 the claimant decided to step down as coordinator, because he was not satisfied that he was paid adequately for the additional responsibility when compared to other coordinators. He also reduced his hours, and moved to a 0.9 full-time equivalent contract. He rejected an offer from Dr Hoffmann of an additional contract with responsibility for the reading and writing exams. Dr Hoffmann decided to appoint the Mandarin language instructor, Li-yun Liao, as acting coordinator of Mandarin and Arabic.

The 2017 Examinations

19. UCL, like other UK universities, has a detailed assessment framework for examinations. This includes the appointment of an external examiner for each subject who is an academic in the field from another institution, to provide independent oversight of the accuracy and fairness of marking and grading.

20. In February 2017 the new acting coordinator, Li-yun Liao, emailed the claimant about not having incorporated into his examination paper the feedback he had been given about a passage of text. The claimant's reply is to the effect that he did not accept proposals made by people who did not speak Arabic, and he should have been allowed to attend the coordinator's meeting. Christine Hoffmann backed up Li-yun Liao and was met with a long response from the claimant about his experience and competence as an examiner, that he should be allowed to attend meetings, and concluded with a reference to his decision to step down as coordinator as he had considered the proposed salary increase inadequate given the stress involved. Dr Hoffmann responded disputing many of his complaints, and proposed they meet, but the claimant replied that her points were inaccurate, that they should either approve the exam, or invite him to the coordinators meeting, or ask a member of the Arabic team to deal with it. He could not cope with the stress, and he was not going to reply to emails.

21. As part of the exam validation process the external examiner is sent the examination papers in advance. In April 2017 claimant was asked by him to amend his paper for the reading and writing examination. He complied, acknowledging a mistake, but declined to make a couple of amendments, because he did not consider them grammatically correct, and said he would discuss it with the external examiner later. He also said it would be difficult to alter the text question in time, as requested, and unfair to students already been asked to write to a particular text. Dr Hoffmann replied that difficulty was not going to be a valid excuse for not complying with an external examiner's input.

22. A few days later, the claimant was absent at short notice from an oral examination, and Najwa al-Abed had to take over. That prompted a complaint from her about the claimant, and his lack of collegiality in the past as a coordinator and as an examiner. She spoke of "repeated incidents of arguing over marking students", which had once involved calling in a third party. She spoke of being deprived of information about the examining process and that conversation with him led to "criticism, blame, attack and patronising or condescending attitude". She made a further complaint about the claimant's conduct of the oral examination of May 2017, in particular, that he had a double standard for the use of colloquial speech by students he had taught (marked leniently) as against students she had taught (marked down), and that it could take a good ten minutes to compromise. She also complained that he downgraded the input of the student presentation, had a "special philosophy" of allowing students who were not ready to pass to a higher level, and set them easy tasks.

23. Also at the end of April 2017, a group of five finals students complained that the level of the Arabic written exam they had just sat was ".. Unreasonably difficult… Most of us didn't even understand the questions". They also wanted to discuss the teaching quality. Dr Hoffmann

replied that the paper been written by the claimant (who had taught them) and that the External examiner had also seen it. Their concerns would be discussed at the Examiners' meeting.

24. The Examiners meeting for all CLIE language modules took place on 15 June 2018. The claimant and Zaina Frangie-Eyres were entitled to attend, but did not. Dr Hoffmann, Adam Salisbury (Deputy Director), Ms Liao and Najwa al-Abed attended, together with many staff from other subject areas. The Arabic external examiner himself (Yousif Qasmiyeh) was unable to attend, and the meeting was supplied with an agreed summary of the discussion between him, Dr Hoffmann, Adam Salisbury and Li-yun Liao in a Skype meeting the previous day. (The claimant had been ready to answer questions for this meeting, but he was not present, as he is no longer a coordinator, and was not called on). The external was reported as having expressed concern about a mismatch between the course and examinations at certain levels. In particular, the marks for the reading and writing examination at level C were substantially lower than those obtained for the other components (oral, project, in class assessment). It was also noted that the examiner responsible for the level 5 reading and writing paper had not agreed to implement some of the external's suggestions, and that students of the level C reading and writing exam had been "set up to not pass the component" as they did not understand the task set. In the oral examinations, the examiners sometimes "did not nuance their marking for the different marking criteria, there was no diversification of marks and explanatory comments, and he recommended that two marks be changed". The Examiners' meeting concluded that reading and writing examination component should be excluded from the results for the level C modules for "material irregularity". The meeting minutes show that the two changes to oral marks resulted in passes, and had otherwise been fails.

25. In July 2017, when the examination process was complete, the external examiner wrote a report providing his feedback. He set out recommendations. He explained that the decision to exclude the reading and writing component from level C was based on the papers for those courses, a selection from other courses, and that he had seen the exam scripts, projects, in-class course assessments, and recordings of the oral examinations. In other remarks, not limited to level C, he observed that there was no explanation for how or why the first and second marker reached an agreed mark than that was higher than had been recorded by either of them in the first and second marking. He gave three examples: a student awarded 6 by each marker, but an agreed mark of 7, a student awarded 7.5 by each marker, but with an agreed mark of 12.25, and a student 15 by each marker, with an agreed mark of 16.5. He complained that in some cases it was not possible to decipher the first mark from the scripts. The report does not state whether this observation related to reading and writing, or to oral examinations, or occurred across the board, but the tribunal was interested that Dr Liao's witness statement describing conflict between the claimant and Najwa El-Abed, gave as an example their meeting to agree marks (they being the first and second markers of student scripts), which had been so contentious and lengthy, that after a second meeting, where the prospect of reaching an end seemed so remote, she had had to tell them to add up their marks and divide by two. It had by then taken seven hours in total to discuss one (out of seven) papers. Dr Liao did not recall whether this was a discussion of the reading and writing or of the oral marks.

Team cooperation

26. The next academic year started in September 2017, with a dispute between the claimant and Dr Hoffmann what he should be paid for the coordinator work he did at the beginning of September 2016, before he stepped down as coordinator, in which he asserted that it was she who had reduced his hours to 0.9, rather than him. Dr Hoffmann was trying to get the claimant to come to a meeting to talk about the external examiner's feedback (she had first proposed in July they meet to discuss this), staff concerns, workload communications, and the (poor) team relationship. The claimant then challenged her "credibility and accuracy" and

insisted that from now on every single issue should be kept to email. He would also only communicate with Li-yun Liao in that way. Dr Hoffmann replied that she had undertaken to discuss student feedback with him, and proposed three-way meeting with a member of the HR team as mediator. She sent him a proposed agenda for a meeting on 2 October, inviting him to add items he wanted to talk about.

27. Najwa al-Abed complained again, of the claimant's "outrageous and professional manner" that put her under pressure and created uncooperative working relationships and unfriendly atmosphere with her and Zaina. She wanted an informal grievance meeting with the claimant.

28. There was an incident at the beginning of October when the claimant rang in sick 20 minutes before student assessment interviews, and was taken to task for this by Adam Salisbury. The claimant replied with a set of complaints about how he had to bear the burden of most of the oral examinations earlier in the year because Najwa al-Abed had gone sick

29. On 2 October the claimant lodged a grievance about Dr Hoffmann, which he told her was "my case against, you". She replied with the information he asked for. He countermanded disputing what she said point by point, including his concern with "your credibility and accuracy". He said her replies to his questions were "naïve, elusive and unprofessional".

30. On 9 November there was a team meeting, attended by a member of the HR team, which Najwa al-Abed left in tears after the claimant criticised a draft assessment paper she had sent him two months earlier. She wanted to lodge a grievance about him. Li-yun Liao asked Dr Hoffmann to intervene, and the claimant said of Ms Al-Abed: "it looks to me like a pre-planned scenario to undermine my viewpoints and abilities and embarrass me".

31. A few days later, on 12 November 2018, the claimant said he had been advised by his doctor to rest. Next day the claimant asked for an occupational health report to be prepared, with Dr Hoffmann, rather than Ms Liao, drafting the referral. The resulting report of 7 December 2017, said the claimant felt victimised to step down from the role of coordinator, and also that he had made a formal complaint to HR, which had "full details".

32. The fact that it was interaction with his team that was causing the claimant stress is shown by the fact that his November 2017 sickness absence continued until the end of March 2018, but he continued to work at LSE, where he had an 0.2 FTE contract.

33. On 14 December 2017 the claimant and Dr Hoffmann met in the company of an HR team member to discuss his grievance on an informal basis, with a view to reaching resolution. Discussion throughout the morning did not reach any conclusion on the issues the claimant had raised, and it was adjourned. The adjourned meeting did not resume until 29 May 2018. Even then it was not constructive, and it was left that Dr Hoffmann would respond in writing.

34. Meanwhile, on 10 January 2018, the claimant emailed Dr Hoffmann about a meeting she had held with students. He copied this email to her line manager, to the Director of HR, and to the Provost of UCL. He described his complaint about her as: "victimisation, harassment, bullying, unfair treatment, unfair payment and illegal actions". She had "illegally and for no academic reason" increased student marks, in order to protect herself against the risk of students complaining about her. He also complained that she had listened to student complaints about the Arabic course: instead she should have stopped the meeting and complaints and defended her staff. Dr Hoffmann was upset. She feared that that the wide circulation of this email damaged her reputation.

35. In January 2018 Li-yun Liao went back to HR, saying that their earlier suggestion of a mediated meeting to resolve her difficulties with what she saw as the claimant's bullying of other

teachers, and his failure to do reasonable tasks, had not worked, and that his continuing sickness absence was adding to his colleagues' workload. This was affecting the reputation of the Arabic course, and some students had dropped out. It might be necessary to take it down a formal route. The HR response was that there was another matter which had to be resolved.(It was the claimant's grievance against Christine Hoffmann). She should wait until that grievance had been resolved before starting formal performance management. That not might be until the Easter break.

36. The claimant's fit note of 24 March 2018 said he was now fit for work, but recommended a graduated return to work, on a two-day a week basis to begin with. The claimant replied to a request to come in by saying that he would not come in the following week, as expected, because he had booked a holiday, and that if he was now required to cancel it would be victimisation and unfair treatment. (We were told that during the student vacation staff are expected to work, and most spend the time marking the coursework they had been teaching, but that as the claimant had not been teaching, he had no marking, and was expected to come in). He also wanted to discuss return to work arrangements with Christine Hoffmann, not Li-yun Liao, saying Dr Hoffmann was now named as his line manager in the OH referral, and in any event too many meetings would damage his health. Dr Liao replied that she would allocate his oral exams to colleagues.

37. Later in April the claimant was asked to cover a student exam preparation workshop on 23 April. He did not attend, nor did he inform his colleagues. Najwa al-Abed had to prepare at very short notice and teach it instead, and it was being videoed and posted for other students to watch. This prompted a complaint from her to Li-yun Liao that if the claimant was unable to teach it, he should have told them that the previous week. Zaina Frangie-Eyres added that they were "trying to make the best of an intolerable situation", but they were undermined by his actions, and the "stalemate situation" was affecting their health. The claimant meanwhile said that it was not reasonable to expect him to teach the workshop, when he was only given a few days' notice. He was out of touch with what his colleagues had been teaching.

38. Reviewing these events, the tribunal observes that well before any protected disclosure, formal grievance or tribunal claim, this was an unhappy team. The claimant had challenged the decisions of his line manager and his head of Department, on occasions saying to each that the other was his manager. He had challenged his head of Department's credibility. He had complained about his colleagues. They were complaining about him. His line manager wanted to make an informal grievance about him, and he had made an informal grievance about his head of Department. There was a lot of discussion by email, rather than face-to-face, always a bad sign. The claimant was avoiding discussion with his head of department about his work. In making this observation, the tribunal recognises that not all interpersonal disputes are black and white, but he was resistant to being managed. .

Protected Disclosure

39. On 24 May 2018 the claimant wrote to the Vice Provost for Education and Students, Professor Anthony Smith, about the marking of the May 2017 exams. The letter starts with a description of how he used to set exams when coordinator, and how the system changed after he stepped down. He then stated his concerns about the 2017 exam papers: (1) they were written by the tutor, not a team (2) the external examiner discussed these papers with three members of staff who did not speak Arabic, although Arabic teachers were available if invited. (3) in the previous year students who were not ready for that level of Arabic language had got no marks, but their marks were changed to make sure they passed the exam so as to "avoid further complaints against Dr Christine Hoffmann". (It is not clear if this is complaint is about 2015 or 2017). (4) "the Arabic language exam paper of level C was approved by the external examiner and there was no amendments required for it, however most students found and got very low

marks (20 to 25%), but all marks were dramatically changed to make sure these students have passed, but this time because they were BASc department students, where the vast majority of students were doing languages at CLIE, and Dr Hoffmann has been trying to keep relationships with their department". He said that when he marked these papers at least 10 out of the 15 got below 25%, and in the orals, 10 out of 15 at least failed (25 to 35%) "or got 40%". However, all of them have been passed: "simply because they are BASc department students". "These changes were made with no consultation with the Arabic tutors and after all scripts and marks were agreed and signed by the two markers and submitted to the office, and the marks were shown on the scripts not the marks which were definitely higher, were offered to some students later". He then added, (5), this year (2018) he had not set the papers but he had marked them, and he thought the exam paper was written badly with grammatical errors and ambiguous questions.

40. He concluded that it was not fair that some students marks were changed just because they had submitted complaints, or were studying in specific departments, while other student complaints were ignored. It was illegal to change some students' marks, not just for the written exams but for the oral exams as well, "just to keep good relationships (more students for the next academic year) with their departments", and it was offensive to tutors who made such efforts to teach students for the year, that some marks were not given fairly at the end. He wanted a thorough investigation "to make sure all students get a fair and right marks they deserved", and he was happy to submit further details.

41. Professor Smith replied that he took these issues very seriously and in the first instance the claimant was to use the meeting due to take place between himself Dr Hoffmann and HR the following week as an opportunity to discuss them, concluding "I will then be in a better position to pick up the issues from then".

42. The meeting he was referring to was the adjourned mediated discussion of his informal grievance about Dr Hoffmann, and as we know, it was not concluded.

43. Professor Smith seems to have had no further involvement. As far as we can see, neither he nor the claimant followed it up. What the claimant did do, a month later, was to lodge the first of his formal grievances against Dr Hoffmann.

Grievance One

44. The grievance covers eleven pages. The topics are unfair payment (the dispute about payment for coordination complaining that others were paid more), workload (he had to write more papers than the French team, and had been asked to teach six hours a day, two days in a row in October 2017, and oral examinations, having been asked to conduct oral examinations on his return from sick leave when a colleague had been excused the previous year on medical grounds.) The next complaint is of "victimisation, bullying and unfair treatment": he had not been invited to the coordinator's meeting after he stepped down as coordinator or to join the meeting with the external examiner, and Dr Hoffmann had decided to disregard his level C paper, at which the external had not objected, and the BCA paper, where he had proposed small amendments. In earlier years there had been no criticism of his papers. Dr Hoffmann had also been enquiring about his work at LSE, while his colleague Najwa El-Abed had substantial part-time contracts at SOAS and Kings. The oral timetables for March 2018 and March 2017 had not been agreed with him, with the excuse that he was on sick leave at the time; she had asked him to work in the Easter break; he been reprimanded by Adam Salisbury for non-attendance for student assessment when Zaina had had support when she was ill in previous years. She had allowed a student to move up from C to D, the student being one who complained that his exam papers in 2017 were too difficult; she had suggested that the former Spanish coordinator, who had learnt some Arabic, could be

responsible for the exam papers, and had done that "on purpose to offend me and undermine my abilities" (we know that this proposal was abandoned). He then referred to "illegal actions". The acting coordinator Li-yun Liao, had breached confidentiality by disclosing to colleagues that he was on a fractional contract after he stepped down. She disregarded level C and BCA Arabic exam papers in 2017, written by him, without discussion. This was "despite there was no comment from the external examiner or some few comments and suggestions which most of them were implemented". Lastly in this section, she had changed students marks in 2017 "for both oral examinations and R and W exam papers to make sure they all passed and keep the students and their department happy and carry on to study languages at CLRIE". Then there is a section about undermining his abilities and achievements, by reference to student comments, not being allowed to meet the external examiner, taking him out of turn in a general meeting, allowing a student to criticise his class teacher in a student meeting, and making the student feedback available to other staff. She had appointed the Mandarin coordinator to coordinate Arabic as well, and had allowed an "inadequate" colleague to be final editor of the exams. They were paid more than him for the work. There was a complaint about not being sent an email asking him to send a GP fit note when he was off sick in November 2017. (We know that when this came to light on February 2018 Dr Hoffmann had apologised for the oversight). She had not told him which colleagues had told her that he had some work at Westminster University; she had told colleagues that he stepped down as coordinator, without copying it to him, and he doubted this email was genuine. There was a detailed comment on various student complaints and Dr Hoffmann's decisions on the level at which they should be examined, a complaint that the former Spanish coordinator had been asked to accept responsibility for exam papers, though Dr Hoffmann had denied doing that, and a complaint that the external examiner's report did not say that the level BCA exam papers were written on purpose to make students fail it, and if he did, he should have had a chance to discuss it with him at the Skype meeting before the main Examiner's meeting. Finally, he was concerned that the reference to an earlier complaint in 2015 was not genuine, and his query on this had not been answered. He said that witnesses who could comment on this included the external examiner, the colleague who had reported student complaints in 2015 (Dr Federica Mazzara), and the three students who had complained about Dr Hoffmann in March 2015.

45. By way of resolution he wanted Dr Hoffmann to be given a formal warning by HR, a full apology to him from Dr Hoffmann, restrictions on his examination work, an admission that he had been victimised and bullied since stepping down as coordinator in November 2016, an admission that students were complaining about Dr Hoffmann and not him, an admission that she had submitted forged documents (identified as the email in November 2017 to his colleague saying he was stepping down as a coordinator, the email to him about submitting a GP note in November 2017, and the email from Dr Mazzara in 2015). He wanted compensation for the money he should have got in November 2016, and damages for his health difficulty consequential on her actions, and for the Arabic course coordinator post to be advertised so that everyone could apply for it, including him.

46. As this is claimed as the protected act in the discrimination claim, we examined it especially carefully to see whether it alleged, explicitly or by implication, any breach of the Equality Act. All we could find was the word "victimisation". We could not find any set of words or facts which amounted to a complaint that any unfair treatment he received was because of a difference in sex or ethnic origin or disability, or because he had suggested that a protected characteristic was the cause of unfairness on another occasion. Nor did the claimant ask us to consider that any particular part of this grievance in fact alleged that the reason for unfair treatment was a difference in sex or ethnic origin.

47. Dame Nicola Brewer, Dr Hoffmann's line manager, commissioned a Department Manager in Civil Engineering, Kati Massey, to investigate the grievance. In November and December 2018 Kati Massey interviewed the claimant, Najwa El-Abed, Adam Salisbury, Li-yun Liao, Christine

Hoffmann and Zaina Frangie-Eyres, about the matters raised. She set out the evidence ad her findings in a long report on 14 February 2019.

Grievance Two

48. At the time the report was concluded, the claimant had just lodged a second grievance about Dr Christine Hoffmann, on 20 January 2019.

49. There are two versions of this grievance in the hearing bundle. (The claimant believed he had sent both on the same day). The first version (V1) is addressed to Professor (Becky) Francis. In it he says that in July 2018 Christine Hoffmann had asked the other two Arabic tutors whether they would be interested in the coordinator role. The claimant was not asked, but had written to say he was interested. In September 2018 he noted that Dr Liao was no longer copied into emails, and she told him she was stepping down. The claimant asked for the vacancy to be advertised, and five days later it was. Now he learned that Dr Liao was in fact continuing. He believed this had been done to make sure that he was not appointed. (He does not give a date, but we know from the bundle that he learned Ms Liao was continuing on 14 January 2019). The second subject of the grievance is headed "bull(y)ing and threatening to reduce my contract", which says that he had five emails, the latest November 2018, saying that if he did not do something his contract would be reduced. He had been forced to conduct a level 1 in-class assessment in December 2018, which had been written by another tutor and was inadequate, and forced to teach students who were not at the right level, despite having pointed this out.

50. The second version (V2) is addressed to "Dear HR staff". It is similar but not identical. For example it refers to the claimant's coordinator role, and notes that he was told the post no longer existed "for some incident regarding the in-class assessment of level A Arabic this year". The second part includes some additional examples of "harassment bull(y)ing and threatening to reduce my contract". These additions are: teaching unsuitable Medicine students, not being allowed to teach a small workshop, being forced to include a struggling student from Dauphine University, and not following OH recommendations. The significant addition at the end: "therefore I strongly believe that Dr Hoffmann has committed a discrimination act against my gender (male) and our ethnicity (Arabs) as Arabic is the only language at CLE which is coordinated by a non-Arabs person who cannot speak or read Arabic at all and victimisation act which did not inform me about this post and then rejected my application for this post by cancelling it, plus the other acts, bull(y)ing and harassment which are all against the law and UCL guidelines and policy".

51. In order to find out which version was seen by whom, the tribunal has followed up the enquiries made about it. We could see that Dr Hoffmann, when asked to comment on grievance two, gave factual responses on all the points raised in V2. She did not mention the discrimination allegation however. We could also see that the very detailed final grievance outcome letter sent to the claimant on 1 June 2020 by Jackie Loveland, only gave findings on the specific points made in version 1, and was silent on the V2 added material. The grievance hearing in September 2019 never got as far as the second grievance, so the minutes do not assist. In our finding, this tends to show that Jackie Loveland was unaware that the claimant had alleged discrimination because of race or sex. She only knew that the word "victimisation" had been used, in a context synonymous with unfair treatment, but without any facts suggesting that the claimant believed the unfair treatment was because of race or sex. Dr Hoffmann however was aware of it. We do not know what she thought about it, as the claimant did not ask her.

Early 2019- Further difficulty in the Arabic team

52. At this point we note that the prompt for the second grievance was that the claimant had been asked to conduct an in-class assessment. On the day he had photocopied an old version of the assessment paper to use, rather than the current one. He reported this mistake to Dr Li-yun Liao, adding that there was little difference between that, The current version, and another version just been sent by Najwa El-Abed. He was asked to use the same assessment paper as the other group had for their assessment class.

53. Six weeks after this routine exchange, on 13 January 2019, he emailed her again, this time copying in his Arabic teaching colleagues, the department office, and HR, with an attack on the colleague who had written the in-class assessment at level 1 in the autumn of 2018. He said it was "not just unprofessional and inaccurate, but a shambolic and naïve assessment… full of mistakes", and if it was close to the previous year's paper, the external examiner could not have seen it. He did not want his students to have these assessments. Dr Liao responded that the paper had been circulated to everyone in the team for comment in September 2018 and he had not picked up any mistakes at that stage.

54. Najwa El-Abed, copied in, commented that the claimant was "looking for a scapegoat to blame for his students' performance", and decided to file her own grievance about the claimant.

55. Li-yun Liao told the claimant she was concerned about the tone of his email and asked for a meeting to discuss this. He complained that she had copied her email to all those who had seen his to her, a breach of confidence, that the issues were important, and he wanted to "raise up my concerns". He then went sick for two weeks. On returning he was asked to book the meeting. He said he was busy catching up with work. He was asked to see her on the 25 or 26 of February. He did not reply.

56. Then he did not attend the meeting to discuss the second grievance with HR on 4 March. He went sick again. At this point Ms Liao informed HR that she believed that the claimant was bullying her, "as I am a female Chinese manager and deliberately to make my work difficult" by ignoring her orders, and sending unpleasant emails late at night or weekends to harass her. She did not however follow up with a formal process.

57. On 22 March 2019 the claimant was told that the grievance hearing was to take place on 10 May. Two days later, 25 March 2019, he presented his first claim to the employment tribunal, complaining of discrimination against Arabs in relation to the coordinator vacancy but also referring to material going back to the altercation with Dr Jamal-Aldin in 2010.

The 2019 Level 3 Reading And Writing Exam Papers

58. In the autumn of 2018 the claimant had sent in his draft exam paper for level 3 reading and writing for examination in summer 2019, but, as he later explained, he overlooked that not all of it was photocopied to the office. He sent it on 16 December to Adam Salisbury, saying he would be happy to do the final check before it was sent to the external examiner. He also asked for any amendments suggested by the external examiner to be sent to him.

59. On 25 April 2019 he complained to Adam Salisbury that on checking the final version of the paper he had been shocked to see that it had been amended by someone else. This was offensive and disrespectful. He could have looked at it even if he was on sick leave. Adam Salisbury replied at length, and a touch officiously, that no individual owned a paper, marking had to be standardised, he had not been to a team meeting since November 2018, he had already said he had not was not able to do extra duties, he had been off sick, and finally, although he had been asked to check the paper and provide a list of actual errors, he had not in fact identified any. When the claimant asked questions about this reply he refused to enter

into further correspondence, saying they were busy enough already, and got a long and angry response from the claimant on 7 May. The claimant said his exam had been dealt with "in unfair, unprofessional and malicious way to victimise me and undermine my long achievements and excellent record of work at CLIE". We note this as an example of lack of cooperation on the part of the claimant (he did not say if he had in fact noticed any mistakes), and the lack of sympathy on the part of his colleagues.

60. But by now, on 6 May 2019 the claimant had also emailed two groups of students, 42 in all, saying that the Arabic reading and writing exam they had sat on 30 April had been amended by someone else, which he found "non-academic and unprofessional. He apologised to them for that. He mentioned that the line numbers had not been accurate, some of the grammar was not accurate, and vocalisation had been added, when his draft had not been vocalised – (though it is not entirely clear here whether the claimant is talking about vocalisation in the level 3 paper or the level 1). The tribunal understands that vocalisation would make it easier for the students, not more difficult. The tribunal notes that although he was *apologising* to students, he does not identify the inaccuracies here any more than he did to his colleagues, Most of it concerns the claimant's feelings that had been sidelined by colleagues.

61. On 8 May the claimant was signed off sick for another two weeks with stress at work. On 12 May he submitted his third grievance.

Grievance Three

62. This grievance concerns Adam Salisbury and Christine Hoffmann. It repeats the request to work for six hours two days in a row, and then tells the story of the preparation of the level 3 exam paper for summer 2019, adding that when he saw the mistakes on 25 April 2019 he told Ms Liao that the person who made the amendments should complete the checking. Adam Salisbury had refused to answer his questions about the process. Now he wanted to complain about the victimisation, bullying and harassment and unfair treatment on the part of Dr Hoffmann and Mr Salisbury. Other than using the words "victimise" and "victimisation", there is no mention of any facts that suggest that a difference in sex or ethnicity or an earlier complaint of discrimination was involved.

63. The claimant's postponed hearing on grievance one was now due to take place on 14 May 2019, but he asked again that it be postponed, and it was. HR then decided to hear grievances one and two together, as they concerned the same people and some of the same subject matter. On 22 May he was asked to send in names of any witnesses, or any documents he wanted to use for his second grievance. On 4 June he was told grievance three would be considered with the other two, for the same reasons. Then he was told the grievance hearing (on all three) would be held on 3 July 2019, and he should provide information by 26 June. He asked for the hearing to be postponed again, and it was, when he provided a fit note.

64. One cause of the increase in stress must have been that on 22 May 2019 (10 days after lodging grievance three) he was also told that there was to be a disciplinary investigation of the emails he had sent to the 42 students. On 31 May 2019 he was offered three dates in mid-June for a meeting with the disciplinary investigator, Kate Cheney. Next day he had presented his second claim to the employment tribunal, and gone sick with stress again.

65. The grievance hearing was then fixed for 12 September 2019. He was asked to provide documents and witness names by 5 September, but did not.

66. He presented further claims to the employment tribunal on 21 July and 30 August,

67. The claimant tried again to have the grievance hearing postponed, but the respondent now

had an occupational health opinion that he was fit for workplace meetings, if not for work, and it was refused.

The Grievance Hearing

68. The claimant's grievance was heard on 12 September 2019 by Jackie Loveland, of the UCL School of Management, Sian Lunt, Director Of Operations at the Bartlett, Faculty of the Built Environment, and David Ladd, computing officer in the Department of Chemistry. Kati Massey was there as investigation manager. HR support was provided by Joanna Ryan. Christine Hoffmann attended as the respondent to the grievance, but not Adam Salisbury. There was a notetaker.

69. What happened at this meeting is important because way the claimant challenged Kati Massey and Christine Hoffmann in this meeting led eventually to the investigation that resulted in the decision to dismiss him.

70. The Claimant did not bring a companion. He first asked for a postponement of a few days, and then if he could listen, but asked questions and statements later. His request was refused because it was difficult to assemble eight individuals for a one-day meeting. Kati Massey then presented the *conclusions* of the investigation report, which in her and exposition covered two and half pages of the hearing notes. On the allegation that Christine Hoffmann had forged emails, Kati Massey found this was not proved, and she did not agree that Christine Hoffmann lacked credibility, rather she had expressed herself honestly and clearly in correspondence.

71. The claimant was then invited to comment and question Kati Massey. He did not address any question of fact. He said he believed the investigation report had been written by Christine Hoffmann, and suggested that Kati Massey was working in the capacity of Christine Hoffmann's lawyer. She had taken her side on every point. He also complained that Kati Massey met the witnesses without waiting for the claimant to sign off her notes of the meeting with him. He was told that she was anxious to avoid delay, and had made sure to follow up with witnesses any points where she needed clarification. He complained that the one and a half hours allocated to his interview with her was not enough to go through the points he wanted to discuss, and was told that following the meeting he had been asked for information, but he had not replied to her questions, or made additional comments. He asked why the witnesses had been interviewed, was told because it they had worked closely with both him and Christine Hoffmann. At this point the claimant said that "all the witnesses that were asked to interview are receiving benefits from Christine Hoffmann and will only speak in her support". Adam Salisbury had an arrangement that he could work from Sweden, rather than London, and the claimant suggested that Christine Hoffmann was paying him an additional financial allowance. Li-yun Liao should not have been allowed to manage him, as she lacked experience and was less well-qualified. Najma Al-Abed was being allowed to work 0.5 FTE at Kings, and 0.3 FTE at SOAS, as well as at UCL, so would not contradict Christine Hoffmann for fear her contract arrangements could be threatened. Zaina Frangie-Eyres had an 0.7 contract, but it was only in work two days a week. He described all the witnesses as "orphans of Christine", an Arabic expression meaning they were her dependents. All the witnesses had been deliberately chosen to side with Christine Hoffmann. The. investigator had not looked for contradictory evidence. By promoting Li-yun Liao, and allowing him to manage the claimant, Christine Hoffmann was "creating a dictator".

72. After this, he made some specific complaints. He had not been provided with the timetable in April 2017. There was a wrangle about whether Christine Hoffmann or Li-yun Liao was his line manager in April 2017. The claimant referred to a statement by Zaina Frangie-Eyres about a student complaints in March 2016, and that the students had not been interviewed - he was told that is because this was beyond the scope of this grievance, as was the detail of Leon

Liao's appointment. He complained that Li-yun Liao has been made aware of the occupational health report when he had asked Dr Hoffmann to make the referral, and was told that he had not asked for the information not be communicated to his line manager. On the question of changing student marks in June 2017, he was told that Kati Massey had relied on the examiners' meeting minutes is an accurate representation of what happened. It was not uncommon to change marks. He also disputed the finding that occasionally coordinators did not speak the language being coordinated. There was further discussion about flexibility of hours, and the different grading of teaching fellows.

73. When it came to the claimant asking questions of Christine Hoffmann, he began by asking: "if she is aware that the previous Director of Languages was fired for corruption more than ten years ago." Dr Hoffmann could not see the relevance of the question. This tribunal asked him why had said this – did he mean to suggest she too was corrupt?. He replied that in his opinion, yes she was. The claimant then stated that other staff in the team were paid at grade 8 (it appears he was at grade 7) and the grading system was explained. There were some questions about specific arrangements for teaching within the team, about Li-yun Liao's appointment, and about the process for receiving student feedback. The claimant moved on to the 2017 reading and writing papers, that he had not been allowed to 'refuse' external examiner's feedback, and that the exam had been cancelled. Dr Hoffmann replied the exam had later been passed by the external examiner, rather than being cancelled. The marks had then been disallowed for material irregularity. He complained that some students had been allowed onto the course without his agreement, and went on to fail.

74. It was now mid-afternoon. Joanna Ryan pointed out that the claimant had introduced new evidence that had not been disclosed in advance - he had produced documents at random from a plastic bag he brought with him, which he held up, but did not hand over, and the panel had no opportunity to examine them. This included the external examiner's July 2017 report, a document the respondents did not include in the bundle for this hearing, but was included by the claimant in his late disclosure. Some of the documents he produced (the claimant told us this was over a hundred pages) were written in Arabic, which none of the panel could read. He was asked if he could submit them. The meeting was adjourned for the day, because it was not going to be possible to cover the other areas of grievance. The claimant said it would be necessary for him to bring new evidence "to prove his point and support his point of view". He explained that he had not submitted his documents beforehand because he wanted to explain the documents to the panel.

The Rest of the Grievance Process

75. Jackie Loveland wrote to the claimant at length on 29 November 2019.The reconvened grievance hearing was set for 17 January 2020, and the claimant was to provide questions and documents by 3 January. He was told this was because of the way he conducted the hearing which should have finished on the day. He had produced documents without copies for the panel, many of them were written in Arabic and had to be transcribed for the further hearing. He had spent a long time looking for particular documents, and sometimes they were already in the bundle. He had referred to new matters which were not in the original grievances. As a result the panel could not follow the points he was making or assess their relevance to the grievances they were considering.

76. A section of this letter specifically complained about his challenge to Kati Massey's independence, with the assertion that she was working as Christine's lawyer or that Christine had written the report. He not in fact asked Ms Massey any questions, though she had to be there for three hours. More generally, they noted that he had made some very serious allegations about Christine Hoffmann creating a dictator, that the witnesses were orphans of Christine, that each of the people interviewed had been accused of lying to protect alleged

favourable working arrangements provided by her, and that some of them were receiving improper payments from her. He had provided no evidence to support these allegations. His conduct obstructed a fair process.

77. He was sent some guidelines on how the reconvened hearing would be conducted, asked to review it carefully, and told that if he did not comply the hearing could be terminated early or not to go ahead at all. The panel would consider the evidence available when reaching their decision.

78. The claimant later asked for a postponement of the 17 January 2020 hearing. He had not submitted any documents or questions. The postponement request was refused. He was signed off sick for one month with stress at work. The reconvened grievance hearing took place in his absence.

79. He was sent the notes of that meeting on 7 February, and told he could provide a closing statement by 21 February. On 14 February 2020 he asked for, and was sent, the notes of 17 September meeting. He did not provide a closing statement, nor ask for the deadline for this to be extended.

80. On 1 June 2020 the claimant was sent a fifteen page report on the grievance outcome. There many specific findings which we do not need to recite. His grievances were not upheld.

81. In the concluding section the panel stated that while there was no evidence that the claimant had lied during the proceedings, or made statements knowing them to be false, they were concerned about how he had conducted himself. He had accused several individuals of dishonesty to varying degrees, without any evidence, and did not seem to understand how serious some of the allegations were. He did not just say that he disagreed with some of evidence, he "made serious criticisms about the integrity of anyone associated with them". Alleging that Dr Hoffmann had forged documents, or that witnesses had made statements in exchange for preferential conditions or even financial gain, were taken very seriously. Thus although the claimant had not been dishonest, "we do find that there is a potential case to answer that (he) has behaved in a manner which (h)as amounted to acting in bad faith and/or vexatiously". The panel was also seriously concerned whether there had been a breakdown in the relationship (on both sides) between (the claimant) and his colleagues within CLIE, and UCL as his employer, more generally. They recommended a review by someone senior and independent of CLIE, to consider whether the relationship had broken down, and whether it was capable of repair, or whether a disciplinary process was appropriate in the light his conduct, or in the light of the steps needed to assess the viability of an ongoing working relationship.

Grievance Appeal

82. On 5 June 2020 the claimant appealed the grievance outcome, on grounds of the procedure adopted, and the decision itself. He asked for a rehearing, otherwise a review. He was offered an appeal hearing on 28 July, which was then postponed at his request. It was rescheduled for 21 September 2020. The claimant did not provide any advance questions or documents. There being no questions for her, Jackie Loveland was not asked to attend the appeal hearing. Professor Robert Kleta of the Medical School chaired the remote grievance appeal on 21 and 28 September. The other panel members deciding the appeal were Monica Bhandari from the Faculty of Laws and Rozz Evans from Library Services.

83. The claimant had some questions about the February 2020 hearing he had not attended, and was told that questions he had raised back in August 2019 had been sent to Dr Hoffmann and the replies considered. He next asked why been asked to submit questions and documents in

advance, and was told that this was unusual, and was because of the way he conducted himself in the September 2019 meeting, producing documents at random and raising new matters. The claimant said he had good reasons for not attending the January 2020 reconvened grievance hearing. He wanted a further grievance hearing, so he could put his case forward and question respondents. He was told by the chair that the grievance appeal was not a rehearing opportunity. The decision to take the reconvened grievance hearing in his absence was within UCL policy. He was then urged to engage with the current process, and direct the panel to relevant information and evidence in the bundle. The claimant said he had not submitted questions because if he questioned witnesses, he needed to follow up their answers with further questions, and he did not send anything for the reconvened January hearing because he believed the hearing was contrary to UCL policy.

84. By the end of the first morning the claimant felt unwell, and asked for the hearing to be reconvened later so he could question Jackie Loveland about going ahead with the January hearing his absence, and challenge accusations about his conduct in September meeting. He also wanted answers on Christine Hoffmann's response to the allegations of changing student marks and forging emails.

85. By now the panel had heard his points about procedure, but still had to hear his points about the decision itself, so they reconvened on 20 September, the claimant having been warned that if he did not attend, there would be no further date offered. Jackie Loveland would not be called because he had not notified any questions for her. At this meeting a week later, the claimant complained that the investigator had not interviewed the complaining students and Dr Mazzara about the 2015 episode. The claimant was asked to clarify which points in the grievance outcome report were not accurate. He confirmed the quotations from the notes of the September hearing, used as examples of the conduct to which HR objected, but denied that he had accused Dr Hoffmann of lying. Professor Kleta then asked the claimant to consider the recommendations of the grievance panel, and what recommendations the appeal panel should make. Asked to sum up, the claimant repeated that it was not fair to hold the second hearing when he had a sick note, that the investigator had not contacted the witnesses he had asked to be interviewed, and Dr Hoffmann had not been properly questioned about the changes to student marks. He wanted a rehearing, and he wanted Christine Hoffmann to be (independently) investigated about the changing student marks.

86. Professor Kleta sent his outcome decision to the claimant on 9 October 2020. He did not uphold the appeal, and said why over ten pages. He explained why it was within procedure, and, in the circumstances, fair to consider the grievance in his absence. The panel could not guess his questions when the bundle itself was over 200 pages long, and it was that not their job to represent him. On the decision itself, he not explained what parts he disagreed with, other than continuing to dispute Kati Massey's findings. If he thought more information was needed, he could have provided further material himself and the grievance panel could then have considered whether they needed more information. He had asked for an Arabic speaker to be on the panel, but he had never submitted any Arabic documents. As for questioning the external examiners opinion, a department manager could reasonably trust the external to be independent, that was why they were appointed. There was then a summary of all the opportunities the claimant had been given to provide documents and ask questions, with the conclusion that he had had had plenty of opportunity to participate, but had not put forward his case. Dealing specifically with the allegations made against Dr Hoffmann in the September 2019 meeting, the claimant had reiterated his allegation of forgery, and had repeated his allegations about punishing members of staff who did not give evidence in her support because she had agreed to specific working arrangements. He had implied dishonesty on her part. This behaviour was unacceptable. It was not appropriate to infer that everyone's evidence and actions were compromised without any evidence to support the allegation. He had also repeated the allegation of forgery, despite the grievance panel having found there

was no evidence to support the accusation.

87. He concluded by saying that the appeal panel supported the grievance panel's finding that his conduct during the proceedings had led to a breakdown in the relationship between herself and colleagues in CLIE, and with his employer, UCL. The appeal panel therefore recommended that consideration was given to a formal process being initiated to make a determination on those issues.

88. The next day, 10 October, the claimant presented claim 7 to the employment tribunal against UCL and Jackie Loveland, and claim 8 against Kati Massey and Joanna Ryan. (On 14 January 2020, just before the reconvened hearing of his grievance, he had presented claim 6 against UCL).

Abortive Disciplinary Procedure

89. While the grievance process was ongoing, the claimant had, on 25 September 2019, a fortnight after the grievance hearing, been asked to attend a disciplinary investigation meeting about his May email to the 42 students. This was to take place on 7 October, though then rescheduled for 21 October. He attended, and on 6 November 2019 he checked the meeting notes. The whole matter then seems to have been shelved pending completion first of the grievance process, and then the grievance appeal. Not until 18 January 2021, when the claimant was waiting for the meeting that might result in termination of employment, was the claimant told that this earlier matter was not to proceed because so much time had passed.

90. This episode plays no part in his dismissal, but we could understand why the university considered the terms of his email to the students undermined his colleagues and managers, and could be held to be misconduct. It demonstrates his damaging attitudes to colleagues at the time.

Enquiry as to Further Appeal

91. After getting the grievance appeal outcome, the claimant asked HR if he could appeal again, to the Provost. He was told no, this route was only available to academic staff.

Investigation leading to dismissal

92. Following up on Professor Kleta's recommendation of a formal process to consider the breakdown in the relationship between the claimant, his colleagues, and UCL, Joanna Ryan wrote to the Head of HR reporting the position on 12 November 2020, and on 3 December 2020 the claimant was invited to a formal hearing on 8 January 2021 to discuss the issue of his continued employment, with a note of the matters they were to consider, and a warning that one outcome could be dismissal. He was asked to provide documents by 4 January.

93. On 11 December he was signed off work again with stress. On 14 December he asked for a postponement, and the date was reset for 15 January 2021. On 11 January he asked for another postponement, and was signed off work for six weeks.

94. He was referred to occupational health. He postponed the occupational health interview from 19 to 26 January, then did attend until 4 February. The occupational health report prepared that day advised that he was not fit for work, but his symptoms should improve on resolution of his workplace issues, and he was fit to attend workplace meetings.

95. On 6 February the claimant presented claim 9 to the employment tribunal, naming UCL, Professor Kleta and Joanna Ryan as respondents.

96. He was now invited to attend a rescheduled hearing on 26 February. The claimant asked for another postponement, so he could find a representative, and it was reset for 17 March 2021.

Dismissal Hearing

97. When it came to the full hearing, which was remote, he requested a further postponement, saying that in addition to stress, he had symptoms of Covid, but did not produce medical evidence of that. The postponement was refused, and he attended the hearing, without a companion. Sara Collins, chairing, said she proposed to go ahead because the hearing had been postponed a number of times, and reaching a conclusion might alleviate some of his stress.

98. The claimant was reminded of the matters for consideration at the hearing, which had been notified by letter:

(a) the creation of an unacceptable and untenable working environment for staff within CLIE due to the views held by him about them,
(b) the inability of the University to manage and address his concerns, due to his lack of faith in any of its procedures, as demonstrated by his allegations of impropriety, extending to the investigator of the grievance, and/or
(c) a mutual breakdown of trust and confidence between him and the University.

99. The claimant said that he respected all at UCL, including his colleagues, but did not consider himself obliged to spend time with them outside work, even if that made him seem antisocial. He was shocked by the allegations, as "everything is perfect" with his colleagues. He disputed that he had accused them of dishonesty, or being a liar, or even inaccurate. He was discussing a grievance, so could not have been expected to "praise" people. He added that he is not a native English speaker, and due to disability (we assume this is stress) was under pressure at the grievance hearing. He would have expected HR to step in if he said anything appropriate. He always been respectful to his colleagues and they to him. Those he was accused of calling dishonest had called him aggressive, rude and antisocial, and they had not been taken through any HR procedures. In any case, how could his colleagues know that he accused them of lying if the meeting was confidential. If it could be shown he had called colleagues liars, or dishonest he would resign to save their time. On the working environment, he said he would always be unhappy if his grievance was not upheld, but the fact that he had had appealed, or had wanted to appeal again to the Provost, did not mean he did not trust the panel, it was because he was off sick for one of the meetings.

100. He was asked to address the point that he had accused Kati Massey of working on behalf of Christine Hoffmann. He said he just asked her why she did not interview the people he named as witnesses, and had ignored his statements. In any case when he said this he was disappointed and emotional. She had spent longer interviewing the other witnesses than him. He did not mean to imply that she was not independent. He added that wanting to appeal to the Provost did not mean he did not trust UCL's procedures. On working relationships, he said that he was happy that Li-yun Liao was his manager because it made his job less stressful. (When he amended the notes after the hearing he added that if he had an Arabic speaking manager, his work would be harshly critiqued and he would be given more corrections, so he preferred a non-Arabic linguist).

101. He denied accusing Christine Hoffmann of forging documents. He did not accuse Christine Hoffmann of changing the marks, but he had a duty as a UCL employee to ensure that no illegal activity had occurred, so he raised his concerns with Professor Smith. Christine Hoffmann had "accused" him. Nor did he believe that a student complained about him, as Dr Hoffmann said, because the content of the complaint did not match what he taught. He had

not made the accusation without evidence – he had produced the examiner's report. If he had misbehaved, he should have a warning. At this point he was told that this was not about whether he was to blame, it was about whether the situation was untenable. He summed up that he brought the grievance because he felt victimised. He had been disappointed at the outcome, but respected the decision. Noticing his use of the past tense, Sara Collins asked if he and Dr Hoffmann now had a relationship of mutual respect, and the claimant said "exactly". He was now ready to work under her direction. He concluded that he was happy to be dismissed because he is professional, honest and committed, and could not stay silent against illegal activities. He had another job. He could assure them he would take no further legal action against UCL team if it was stated that he had been dismissed for those reasons, in a letter he could show to his next employer. He repeated some of these points in a letter he sent next day, confirming that he accepted the appeal panel decision and was ready to put the issue behind him.

102. Sara Collins decided to check with Christine Hoffmann what she thought about her current working relationship with the claimant. She summarised for her some of the claimant's statements from the hearing about his ability to go forward. Christine Hoffmann replied on 15 April 2021, through HR. She said that there had been an irrevocable breakdown of trust and confidence between the claimant, his peers, his line manager, the module office and herself as a result of "the protracted and ongoing serious issues" of which she had evidence. She did not believe that anything changed, adding that the opportunities for change would have been limited of late, as he had been absent from work since December 2020 due to stress, and had only recently returned. She had not noted any steps taken to improve relationships with others or herself. Issues of which she had evidence and had a significant effect on several colleagues. She was not going to mention his attendance levels, job performance or general conduct, as she had not been asked about the wider impact on the team. The allegations of lack of honesty and integrity on the part of "numerous individuals" within CLIE had led to the irrevocable breakdown of trust.

103. At the beginning of May 2021, the claimant was signed off work for stress for four weeks, and on 11 June for another 2 weeks.

104. Sara Collins decided to dismiss the claimant on notice. She asked the claimant on 28 May if he wanted to get the decision in writing, or attend a meeting to hear it. He asked for a meeting, which was to take place on 15 June, but on 14 June he asked to postpone the meeting. Rather than postpone it, he was sent a letter instead.

105. She told the claimant once more that she had not been investigating his conduct but determining the impact of those circumstances, and so whether there was a breakdown in working relationships between himself, CLIE, and trust and confidence between him and the university. Because he had continued to dispute the accuracy of the grievance findings, she had reviewed the documentation closely. She had concluded that although the words "dishonest" or "liar" did not appear, his allegation, without any evidence, that his colleagues' evidence could not be trusted came to the same thing. He had implied that none of the witnesses was truthful, or had given a statement in good faith, and that Dr Hoffmann would punish those who did not support her. He appeared unable to consider that their evidence was given because they did not agree with his own assessment of events. He still considered that Kati Massey had not acted independently. It was one thing to question an investigators outcomes, and another to say that they had investigated "in a wilfully improper manner". With regard to Ms Liao, he had repeatedly over several meetings suggested that she was not suitably qualified to act as coordinator, or to manage him. He had made such statements repeatedly over the course of the grievance process. He had also made allegations of document forgery on the part of Dr Hoffmann. He had the right to make the grievances, and to appeal against the outcome, she acknowledged that the process could involve criticism of

a colleague or line manager, but there was a difference between being critical and the "breadth and seriousness of the allegations being made without evidence", which had led to difficulties in working relationships moving forward. He had maintained these remarks for more than two years. In her finding they were genuinely held, there was no language difficulty, and his words "reflected exactly what you meant to state". It was clear from the comments he added to the written notes of the disciplinary investigation, that he still doubted Kati Massey's integrity. It was not the case that everything was fine with his CLIE colleagues, Ms Liao in particular, given his past allegations, and he had not explained why he had now changed his position about his ability to work at her direction. As to saying he should have been warned about his allegations by HR, the warning message it been conveyed in the letter of 29 November 2019 from Jackie Loveland. All correspondence from then until now showed that he did not accept that portrayal of his conduct in the grievance hearing, so it could not be said that he had accepted the panel's decision. She went on to state that Dr Hoffmann had written to say that she was not aware of any improvement between him and his colleagues or his line manager or the office. It was reasonable to conclude there had been an irrevocable breakdown in relationships between himself and his colleagues, and most fundamentally, Dr.Hoffmann and Ms Liao. She had considered whether matters could be improved, perhaps by internal mediation, but given the number of those affected, she did not consider this a viable option. She had considered alternative posts outside CLIE, but could not see one for a teaching fellow in Arabic. It would not be fair to move Dr Hoffmann or Ms Liao, or other people, as they were too numerous, and had core roles in CLIE. His dismissal was to take effect on 15 June. He was paid in lieu of notice and for accrued holiday.

106. Explaining her decision, Sara Collins said to the tribunal that the claimant appeared completely unable to look at something from the perspective of another. If another's view differed from his, not only were they wrong, they were actively dishonest or untruthful. He seemed unaware that attacking credibility and honesty without evidence in a professional setting was very serious. It was also a factor in deciding that the relationship had broken down widely, not just with CLIE. She could have no confidence that the situation would not be repeated. She felt that if anyone challenged him or made a decision he did not like, there was a significant risk of the same thing happening. Even if there was an opportunity to move him, it was not feasible. The changing of exam marks was on the periphery, and she did not have the documents to consider that. She was unaware of the May 2018 whistleblowing email. She only knew about the employment tribunal claims when the claimant mentioned at the hearing.

Appeal against Dismissal

107. The claimant appealed the dismissal. He said being unhappy with any outcome, or saying that the decision was not fair, did not mean he accused decision-makers of being dishonest. He had the right to appeal a decision he was not happy with. Whatever he had said in the confidential meeting (the grievance hearing) should remain with HR. He reproduced the dismissal letter with interpolated comment, insisting that he accepted the grievance appeal outcome - wanting to appeal to the Provost did not mean he did not accept or respect it. He had never accused colleagues of being dishonest, liars or even inaccurate. Calling witnesses "orphans of Christine" could not damage relations, because they were not there.

108. The lengthy letter in effect restates his earlier arguments, but in relation to Dr Hoffmann's opinion of ongoing relationships, he said that as they had been working virtually for the last fifteen months, and he had been sick for so long before that, there was little opportunity for her to see improvements. There been no issues with colleagues recently, and he could provide emails to show that. On penalty, If the allegations against him were true, he should be getting a full-blown warning at worst, and for comparison referred to people shouting at each other (the 2009 issue with Dr Jamal-Aldin) and carrying on working. In his belief the real reason for the decision was his employment tribunal claims for whistleblowing, victimisation and

discrimination, which everyone involved in the grievance and in the HR department knew about. He wanted the Provost to step in.

109. He made some further points in a follow up letter of 1 July. He could not be dismissed for some other substantial reason because there had been no breakdown of relationships between himself and his colleagues - they were not supposed to know what he said about them. On several occasions in the last three years , since making claims to the employment tribunal, he had been pressured to resign. He repeated some of the earlier points. He Mde a new point: he had made it very clear that he i said to Ms Massey that he felt "as if" she were Dr. Hoffmann's solicitor. The penalty was too severe. He was also not a native speaker of English, it was a confidential meeting, and he was under huge pressure (suggesting if he had said it, his behaviour was not typical). He had never changed student marks, or forged emails, or allowed staff to work from abroad, or offered them extra payments (clearly a reference to Christine Hoffmann, suggesting her conduct was worse than his, but in effect repeating the allegations in his grievance hearing). He had not shouted at colleagues (a reference to Dr Jamal-Aldin). Would he have been dismissed if he had? He suggested UCL had double standards. He had new evidence – no one had considered the external examiner's report of 2018 confirming that marks had been changed. He also had many emails confirming that relations with the Arabic team were going well.

110. Professor Stella Bruzzi heard the appeal on 10 August 2021. We could see the notes she had made, based on the papers, when she then discussed the task with Rebecca Edwards of HR prior to the hearing, as she wanted to understand what made "some other substantial reason" different from other reasons for dismissal.

111. At the start of the hearing the claimant asked her to confirm that she was independent and impartial. The claimant did not believe she could be, because she was employed by UCL. He also asked if she was aware that he had nine cases against UCL at the employment tribunal, including whistleblowing discrimination. She was aware, Professor Bruzzi said, but she was there to discuss his appeal, not revisit his employment tribunal claims. The claimant said that she would be "put in a bit of trouble", if she overturned the decision to dismiss, as he could then use this against UCL as part of his tribunal claims. He went on that he believed the decision to dismiss had already been made in December 2020, and the process was just a formality. At this point he was told that he did not need to participate if he thought the decision had already been made. The tribunal observes that he was now suggesting that Professor Bruzzi was not impartial.

112. He was asked to address the first part of this appeal, namely the decision itself. He said there was no evidence his colleagues knew what is said in the grievance hearing. He was asked about colleagues' evidence suggesting a breakdown had also occurred outside of confidential meetings. The claimant asserted he had always been professional, and in any case he had barely seen his colleagues over the last few years. He rarely met Adam Salisbury as he lived in Sweden. Dr Hoffmann was not his manager and he only spoke to her to say hello when they passed in the corridor. He challenged the suggestion that some of the evidence on relationships predated lockdown (March 2020). He denied he had called anyone a liar, or dishonest. Adam Salisbury and Li-yun Liao were only three colleagues out of 100. He was happy to carry on working. He did not say Kati Massey was dishonest, he was only concerned that her investigation was inadequate.

113. Moving to the new evidence section of his appeal, he said he had proof that Christine Hoffmann had changed student marks and forged three emails. Ten of his students had their marks changed so that they would pass. That was illegal. He did not think his complaint about this had been sufficiently investigated. All that had happened was that Kati Massey asked Christine Hoffmann if she had changed the marks and Christine Hoffmann had said no. She

had trusted her without challenge. Professor Bruzzi at this point asked if he understood that examination boards could change marks. He said he had felt compelled to raises concern about this. He believed UCL wanted to get rid of him because he reported his suspicions. As for others at UCL, in eighteen years, Adam Salisbury was the only person he had had a problem with. With everyone else, relationships had been professional. He had said that Li-yun Liao was not qualified as Arabic coordinator, but that did not mean he did not respect her. Stella Bruzzi then asked some questions about the examination process and how the marks came to be changed. The claimant said he could understand if there was a change in one script, but not eleven. It was then explained that the examiner's report he had brought with him was not the same as the minutes of the exam board meeting in the grievance bundle. The grievance panel had never looked at the examiner's report.

114. The claimant returned to his point that he was dismissed for his disclosure about marking, and for the tribunal claims. Rebecca Edwards asserted he was dismissed for the reasons given in Sara Collins's letter, for not accepting the panel's decision despite the evidence, and also dismissed for a "wider pattern of behaviour" that led to the breakdown in relationships. On penalty, the claimant said he could not understand why he could not have been transferred to teach Arabic on the evening course, or move to the translation department. A number of points were revisited on why the claimant had not submitted evidence, and why he believed the marking changes did part of UCL process. Summing up, the claimant again said he believed he had been dismissed because of a whistleblowing claim he had raised at the employment tribunal in November.,

115. Stella Bruzzi agreed, exceptionally, to look at his fresh evidence about marks, and to consider the twenty-five emails he proposed to send about working relationships. She considered what the grievance investigation report said about marking. She read the minutes of the exam board in the grievance investigation bundle. She read the grievance outcome report. As far as we can see from the evidence of the witnesses concerned, and our documents bundles, the claimant did not send her the examiner's report he had produced, but not handed over, at the grievance meeting in September 2019. She asked HR to confirm that the module numbers where marks were changed were those taught by the claimant – they were, all but one.

116. She then reviewed the emails the claimant had sent as evidence that he had good working relationships now. In her view, they were all "transactional", meaning routine communication about teaching and attendance, but did not demonstrate goodwill between colleagues.

117. Professor Bruzzi wrote to the claimant on 1 September 2021 with her reasons for not overturning the decision to dismiss him. He had accused his colleagues of being dishonest in their statements to the grievance investigator without using those words. Christine Hoffmann was at the hearing. Both she and Adam Salisbury as respondents to the grievance would be aware of what was then alleged. As for not interviewing witnesses, he was told how to ask witnesses to be at the grievance hearing, but he had not taken action on this. On relations with Ms Liao, she did not believe that he could now work with her. It was clear from the "orphan Christine" comment that he did not trust or respect her. The claimant was unable to move on from the grievance, and had not accepted the outcome. With Christine Hoffmann and Ms Liao, he sad he could respect and work with them, but she did not believe him. He had accused Christine Hoffmann of forgery throughout the appeal process and said she should have been dismissed. The fact that he continued to say this without producing new evidence made her believe he could not start again, or be successfully reintegrated. He had not been misunderstood because he was not a native speaker. He had expressed himself verbally and in writing clearly and concisely. He had been warned, but had continued to maintain, without evidence, the allegations of forgery, dishonesty, and pressure on subordinates to tell untruths. He blamed others for his behaviour. As for the new evidence, the emails did not demonstrate

good working relationships; engagement with colleagues was minimal. On the exam results, he had still not submitted the external examiner's report. She concluded that the marks had been disregarded for the reasons given in the exam board minutes, and there was no suggestion that this had been at the direction of Christine Hoffmann. In her experience as an external examiner and moderator, it was "relatively normal" from an external examiner to raise concerns about a group of marks. Overall, the claimant appeared surprised to find himself dismissed, but as far as she could see the breakdown in relationships had been cumulative, and he had rarely if ever produced the evidence he said he had, or prepared for hearings. When provided with an explanation of his grievances, he resorted to criticising the investigation. The working environment in CLIE was untenable because of his views about his colleagues., and the university was unable to address his concerns because of his lack of faith in any of its procedures. He had even challenged her independence. There were no missed opportunities for relocation – if he taught in the evenings he was still within CLIE, and there were no vacancies in translation studies. Even if there were, the trust and confidence that must underlie any employment relationship could not exist "in a situation when (he) believed that the integrity of everyone with whom he interacted was compromised". She did not uphold the appeal.

Forgery of Emails

118. Throughout the grievance and dismissal process, and on several occasions during this hearing, the claimant has asserted that Dr Hoffmann "forged" three emails. One is an e-mail she sent to the other Arabic team members saying that Dr Liao would be acting coordinator, after the claimant stepped down. It was copied to him later when she realised that the claimant had not told his colleagues about the change, as she had expected. A second is an e-mail she thought she had sent him asking him to send in a fit note when he went ill with stress. she did this because his message he was not coming in was sent to the module office, rather than to his manager, and forwarded to her, so when she "replied all" she did not note that the claimant was not one of that group. When he pointed this out (he was being taken to task for not sending fit notes), she apologised immediately. The third is the e-mail exchange with Dr Mazzara from 2015 about student complaints, which Dr Hoffmann sent him much later. Pressed on why he used the word forgery, the claimant explained the first e-mail could not have been sent as early as it was dated, because it was not until a week or two later that his colleagues' attitude towards him - he thought they were less respectful when they knew he was no longer the coordinator close brackets. There is no explanation for the other two. These two were inconvenient, because they explained points of dispute in the grievance. It looked as if he called them "forgeries" because they did not support him, but by doing so he was accusing Dr Hoffmann of serious dishonesty with no credible grounds for believing that other than their being inconvenient for him. That is the same behaviour the respondent objected to when he said those who gave evidence in the grievance investigation were "orphans of Christine".

Relevant Law – Protected Disclosure

119. The statutory protection of whistleblowers is found in the Employment Rights Act 1996. As explained by L.J. Mummery in **ALM Medical Services Ltd v Bladon (2002) IRLR 807,** the purpose of the legislation is:

"to protect employees…for reasonably raising in a responsible way genuine concerns about wrongdoing in the workplace. The provisions strike an intricate balance between promoting the public interest in the detection, exposure and elimination of misconduct, malpractice and potential dangers by those likely to have an early knowledge of them, and protecting the respective interests of employers and employees".

120. By section 43B Employment Rights Act, the "whistleblowing " that is protected is:

"any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—

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

The disclosure qualifies for protection if made to the employer (among others) - section 43C.

121. Tribunals must approach the question of whether there was a protected disclosure in structured way. They must consider whether there has been a disclosure of information, not a bare allegation - **Cavendish Munro Professional Risks Management Ltd v Geduld (2010) ICR 325**, although an allegation may accompany information. **Kilraine v L.B. Wandsworth(2018) EWCA Civ 1436** makes clear that the disclosure must have "sufficient factual content" to make it a disclosure of information and not just an allegation.

122. They must then consider whether the worker held a belief that the information tended to show a class of wrongdoing set out in section 43B (the subjective element), and whether that belief was held on reasonable grounds (the objective element) – which is not to say that the belief in wrongdoing must have been correct, as a belief *could* be held on reasonable grounds but still be mistaken - **Babula v Waltham Forest College (2007) ICR 1026, CA.** Then the tribunal must assess whether the claimant believed he was making the disclosure in the public interest, and finally, whether his belief that it was in the public interest was reasonable. The belief in wrongdoing or public interest need not be explicit. As was said by the EAT in **Bolton School v Evans (2007) ICR 61** about data security**:** "it would have been obvious to all that the concern was that private information, and sensitive information about pupils, could get into the wrong hands, and it was appreciated that this could give rise to potential legal liability". However, as pointed out in **Blackbay Ventures Ltd v Gahir UKEAT/0449/12/JOJ** :

> Save in obvious cases if a breach of a legal obligation is asserted, the source of the obligation should be identified and capable of verification by reference for example to statute or regulation. It is not sufficient as here for the Employment Tribunal to simply lump together a number of complaints, some of which may be culpable, but others of which may simply have been references to a checklist of legal requirements or do not amount to disclosure of information tending to show breaches of legal obligations.

123. **Chesterton Global Ltd v Nurmohamed (2017) IRLR 837** confirms that a claimant's genuine belief in wrongdoing, the reasonableness of that belief, and his belief in public interest, is to be assessed as at the time he was making it. Public interest need not be the predominant reason for making it. Public interest can be something that is in the "wider interest" than that of the whistleblower- **Ibrahim v HCA International**. The whistleblower may have a different motive for making the disclosure, but the test is whether at the time he believed there was a wider interest in what he was saying was wrong.

124. Each of these five questions must be answered for any disclosure in order to decide whether it qualified for protection.

Is the disclosure protected? - Discussion and Conclusion

125. Taking these questions one by one, the email to Professor Smith on 24 May 2018 did contain information, not just an allegation, about marks being changed in a way that was not explained. We also find that the claimant did believe there had been wrongdoing. There were grounds for believing marks had been "fixed" to ensure passes. As far as we can tell, the claimant was not relying on the exam board minutes (from his answers we understand that he would have been sent the minutes, as someone who was invited to the meeting, but that he

had not actually looked at them then). He will certainly have seen them when given the grievance outcome, and possibly when he got the investigation report. We know that by September 2019 he had the examiner's report, which he took from the UCL internal website, Portico, as he held it up at the grievance hearing. He may have had them when he wrote to Professor Smith in May 2018. The claimant's belief that Dr Hoffmann had leaned on the external examiner seems to have been based on his exclusion from the Skype meeting when he waited in readiness, but not called on, together with the generally brisk approach his managers took to him at the time. Even if it was reasonably clear from the exam board minutes why the reading and writing marks were excluded for material irregularity at level C, it was not clear, even to the external examiner, why oral marks had been upgraded. We also noted that his colleague marking papers had accused him of being soft on his students and hard on hers, and if there was any truth in this, he will have been familiar with staff wanting students to do better than they deserve. Temptation is there, that is why externals are appointed.

126. Turning to the public interest point, the claimant has not been explicit about the legal obligation he believed had been breached when he said that what had happened was "illegal". We noted that he used this word in other contexts in a loose way to mean someone had not followed UCL's own process. The Respondent suggested that his real concern was that he had been undermined in some way, and he had no thought for public interest at the time.

127. His ostensible reason was that students would pass for the wrong reasons – so that their referring departments would refer more students, resulting in revenue for CLIE, or because there might be awkward complaints about the department if they failed.

128. It as legitimate to be concerned about cheating in marking as it is to be concerned about cheating by those sitting the exams. Both cause concern because university examinations are expected to be objective assessments of knowledge and skill. We considered this to be an area where both claimant and those dealing with his complaint would be well aware of the underlying expectation, and did not need to have it articulated. Public expectation that examinations are objective measures has statutory underpinning in the Higher Education and Research Act 2017, which set up a single regulator for the higher education sector, the Office for Students. The regulator sets quality and standards as conditions for institutions to be accepted as universities able to award degrees. Section B4 sets out the detailed requirements for assessment and awards, which must be "credible" and "reliable". In our finding Parliamentary concern that there should be a regulator reflects the public interest in the integrity of the examination system, having particular regard to employers, students, or student loan companies. The Respondent has argued that the claimant was only concerned about the marks of three students, and that this was not enough to be a matter of public interest. We do not accept this. It was not about the private interest of the claimant and two others, but a section of the public, namely paying students. In any case, he was not just concerned about three, but about ten or fifteen others who had passed orals he expected them to fail. Finally, from the public interest point of view, three or thirteen might be the tip of an iceberg, and in any case the principle was important.

129. We are quite sure that one of his motives for complaining was that he was angry and felt undermined and excluded from the examination process (where he somehow believed he should continue to be involved even though he had stepped down as coordinator at his own request), but he also had in mind that it was "illegal" to change marks without good reason, and he suspected bad reasons.

130. Where the claimant's reasonable belief might be doubted lies in the fact that he was not able to convey to the grievance investigators, or to the grievance panel exactly what he was concerned about, particularly with regard to the oral marks, because he could not or would not explain the detail of what he thought had happened– we suspect there was some of both. He

simply said that the reports were on the website and he did not need to hand them over. Throughout the grievance process and the disciplinary process he always said that he was going to provide more submissions or more documents, but never did. As this tribunal knows from hearing the claimant and reading his claim form and witness statement, he is not good at explaining himself. That does not mean he did not have grounds for his belief, just that it is sometimes necessary to work quite hard to understand what he getting at. The disclosure was protected. Its consequences have to be determined.

Victimisation – Protected Acts

131. Under the Equality Act 2010, workers are protected not just from discrimination and harassment because of a protected characteristic, but also from detriment if they complain of discrimination of themselves or others, or assist in complaints procedures. Section 27 prohibits victimisation by A of B because – "(1) (a) B does a protected act, or (b) A believes that B has done or may do a protected act".

132. Section 27(2) defines protected acts and includes: (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.

133. In assessing whether an act is protected, the question to ask is as in **Durrani v L.B. Ealing UKEAT/0560/2012**, "there must be something to show it is a complaint to which at least potentially the Act applies"

134. In colloquial speech, the word "victimisation" is often used as a synonym for unfair treatment, or being picked on. In enforcement of the Equality Act, however, victimisation requires not just unfair treatment, but unfair treatment because of a protected act, the unlawful reason for the treatment.

Protected Acts - Discussion

135. As found in the discussion of grievances one, two (V1) and three, they did not include any allegation that anyone had contravened the Equality Act, or that the grievances are brought in connection with the Act. The word "victimisation" is used, but with no context, despite the length and detail of the grievances, indicating that it was used to mean more than general unfairness.

136. Grievance two (V2), is protected, because it is explicit in its statement that unfairness is because of protected characteristics (race and sex).

137. The employment tribunal claims are protected acts, insofar as they refer to breaches of the Equality Act. Many of them refer to race and sex discrimination, some to disability discrimination as well, many others to victimization, all Equality Act claims. Given the repetition and addition of subject matter in successive claims being made against different respondents, we accept that collectively they can be viewed as a protected act. It has not been easy to identify whether any of the ten claims did not refer to the Equality Act (i.e., just to protected disclosure detriment); as we only have the claimant's confusingly laid out grounds of claim documents, rather than the ET1 form itself, in the bundle. It is possible they all did.

Reasons for Dismissal - Relevant Law

138. If a disclosure qualifies for protection, the tribunal must then consider whether that was the "sole or if more than one, the principal reason for dismissal"- section 103A Employment Protection Act. If it was, the dismissal is automatically unfair.

139. A reason is a set of facts and beliefs known to the respondent - **Abernethy v Mott, Hay and Anderson 1974 ICR 323 CA**, and **Kuzel v Roche Products Ltd (2008) IRLR 530, CA.** In assessing reasons, and what was the reason for an employer's action, tribunals must be careful to avoid "but for" causation: **Ahmed v Amnesty International (2009) IRLR 884**, and the discussion in **Chief Constable of Manchester v Bailey (2017) EWCA Civ 425 (**a victimisation claim) confirms that the tribunal must rather look for the "reason why" the employer acted as it did. However, it is not necessary to show that the employer acted through conscious motivation – just that a protected disclosure (or in a victimisation claim, protected act) was what caused the employer to act as he did - **Nagarajan v London Regional Transport (1999) ITLR 574**. Some of these cases concern the Equality Act, but the same considerations apply to analysis of why the employer acted as it did in the context of a protected disclosure.

140. Both in victimisation and protected disclosure claims when tribunals consider whether the protected act or protected disclosure was the reason for dismissal, it is permissible to consider whether the reason was some conduct that occurred in the context of the disclosure or protected act, that can be separated from the disclosure or act itself. Such cases include **Martin v Devonshires (2011) ICR 352** holding that the reason for dismissal, in a claim of victimisation, was not her false grievances, which had been made in good faith, but mistakenly, due to mental illness, but their frequency, the employee's refusal to accept that they resulted from mental illness, the time and resources taken up the with them, and medical evidence that the situation was likely to continue. It was held that where an employer could "as a matter of common sense and common justice, say that the reason for the dismissal was not the complaint as such but some feature of it which can properly be treated as separable" the complaints were not the reason for the dismissal. The appeal court added a warning:

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

In **Panayiotou v Kernaghan (2014) IRLR 500,** a police officer's initial concerns were taken seriously and investigated, but as they multiplied over the years, when he would not accept the outcomes he was given, and went on sick leave, he was dismissed. It was held reasonable that he could be dismissed both for his long-term absence (for stress arising from the grievance process) and the unreasonable way he pursued the matter: he had become unmanageable; in other words he was dismissed for misconduct, not because of any protected disclosure. A similar finding was made in **Shinwari v Vue Entertainment (2015) UKEAT/0394/14 ,** where conduct could be separated from the protected act:

> "provided an employment tribunal is astute to ensure that the factors relied on are genuinely separable from the fact of making a protected disclosure and are in fact the reasons why the employee acted as he did".

Victimisation – Burden of Proof

141. Proving what is a reason for dismissal in a protected disclosure claim under the Employment Rights Act is a matter of finding facts on a balance of probability. In victimisation, a claim under the Equality Act, proving causation can be more subtle. Because people rarely admit to discriminating, may not intend to discriminate, and may not even be conscious that they are discriminating, the Equality Act provides a special burden of proof. Section 136 provides:

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

142. How this is to operate is discussed in **Igen v Wong (2005) ICR 931**. The burden of proof is on the claimant. Evidence of discrimination is unusual, and the tribunal can draw inferences from facts. If inferences tending to show discrimination can be drawn, it is for the respondent to prove that he did not discriminate, including that the treatment is "in no sense whatsoever" because of the protected characteristic. Tribunals are to bear in mind that many of the facts require to prove any explanation are in the hands of the respondent.

143. **Anya v University of Oxford (2001) ICR 847** directs tribunals to find primary facts from which they can draw inferences and then look at: "the totality of those facts (including the respondent's explanations) in order to see whether it is legitimate to infer that the actual decision complained of in the originating applications were" because of a protected characteristic. There must be facts to support the conclusion that there was discrimination, not "a mere intuitive hunch". **Laing v Manchester City Council (2006) ICR 1519**, explains how once the employee has shown less favourable treatment and all material facts, the tribunal can then move to consider the respondent's explanation. There is no need to prove positively the protected characteristic was the reason for treatment, as tribunals can draw inferences in the absence of explanation – **Network Rail Infrastructure Ltd v Griffiths-Henry (2006) IRLR 88 -** but Tribunals are reminded in **Madarrassy v Nomura International Ltd 2007 ICR 867, that the** bare facts of the difference in protected characteristic and less favourable treatment is not "without more, sufficient material from which a tribunal could conclude, on balance of probabilities that the respondent" committed an act of unlawful discrimination". There must be "something more".

144. **Shamoon v Royal Ulster Constabulary (2003) ICR 337** discusses how, particularly in cases of hypothetical comparators, tribunals may usefully proceed first to examine the respondent's explanation to find out the "reason why" it acted as it did. **Glasgow City Council v Zafar 1998 ICR 120**, and **Efobji v Royal Mail Ltd 2017 IRLR 956**, reminded tribunals that the respondent's explanation must be "adequate", but that may not be the same thing as "reasonable and sensible".

Unfair Dismissal

145. Section 98 (1) of the Employment Rights Act 1996 provides that in a claim for unfair dismissal it is for the employer to show the reason for dismissal, and that it fell within the categories of potentially fair reasons, that is:

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

In this case, the employer relies on "some other substantial reason".

146. The tribunal must first examine the employer's reason in order to decide whether it is capable of amounting to a substantial reason which could justify **dismissal- Willow Oak Developments Ltd the Silverwood (2006) IRLR 607, Kent County Council v Gilham 1985 IRLR 18**. A difficult atmosphere at work, or the employee's difficult personality, can be substantial reasons – **Treganowen v Rob Knee 1975 ICR 405**, and **Perkins v St George's Healthcare 2005 EWCA Civ 1174**. It is for the employer to prove the facts to show the state

of affairs, rather than a vague generalisation. In **Eszias v North Glamorgan NHS Trust UKEAT/0205/06**, the claimant's made complaints about colleagues' professional standards which were "extremely frequent, unacceptably detailed and unrelenting to an extreme degree" leading to a breakdown in relations. In that case the employer had initially argued that conduct was the reason for dismissal, and then moved to some other substantial reason, and tribunals were told to "be on the lookout, in cases of this kind, to see whether an employer is using some other substantial reason as a pretext to conceal the real reason". Where loss of trust is the reason, the tribunal must be satisfied it was genuine, and not a capricious finding – **Hutchinson v Calvert UKEAT/0205/06.**

147. Once the reason has been shown, by section 98 (4) the tribunal must decide:

"…whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

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

148. In determining the question of fairness for these purposes, it is not for the employment tribunal to substitute its own view; it must consider whether the Respondent's decision fell within a band of reasonable responses open to a reasonable employer in those circumstances - **Iceland Frozen Food v Jones (1982) IRLR 439 EAT**, and **Post Office v Foley and HSBC v Madden (2000) IRLR 827 CA.** That is so not only in relation to the substantive decision to dismiss but also in respect of the question of procedural failures. Decisions taken in this regard must not be considered not in isolation but as part of the overall process, as was explained by the Smith LJ in the case of **Taylor v OCS Group (2006) ICR 1602 CA**:

"… employment tribunals … should consider the fairness of the whole of the disciplinary process. If they find that an early stage of the process was defective and unfair in some way, they will want to examine any subsequent proceeding with particular care. But their purpose in so doing will not be to determine whether it amounted to a rehearing or a review but to determine whether, due to the fairness or unfairness of the procedures adopted, the thoroughness or lack of it of the process and the open-mindedness (or not) of the decision-maker, the overall process was fair, notwithstanding any deficiencies at the early stage".

The Reason for the Dismissal – Discussion and Conclusion

149. We start with the protected disclosure. Professor Smith's response to the complaint was to invite the claimant to discuss it with HR and Dr Hoffmann at their upcoming meeting. The grievance already included complaints about marks being changed. Although the claimant said that he was going to produce further documents and evidence to support what he said in his email to Professor Smith, we know he never did. We can also see that he never set out any facts by which the grievance panel could understand that he was complaining about the unusual oral marks (as plain from the examiner's report which they were not shown). Any discussion about marking took place in the context of his grievance against Dr Hoffmann. It was more than once explained to him how this came about in relation to the reading and writing papers discussed in the exam board minutes. There is no sign that the marking issue itself troubled HR in any way, or what the issue was about the marking. The claimant has not explained what Dr Hoffmann had to do with oral marks. If the email to Prof Smith about exam marks played a part in the decision to dismiss, it was not the sole or even the principal reason for dismissal. Having read the documents and heard the witnesses, we accept that the respondent's reason focused not on the complaint

about exam marking, which in the grievance was only one among many issues, but his challenge to the integrity and independence of the investigator, to his colleagues' truthfulness when making that statements to the investigator, and his accusation that Dr Hoffmann would punish those who did not back her up. In our finding, this was the reason, not the complaint about marking exams in 2017. Whether or not it was reasonable to dismiss for that is another matter.

150. Turning to the protected acts, we note the limited knowledge on the respondent's part of the allegation contained in grievance two, V2. It seems that only Dr Hoffmann (apart from HR) had seen it. There is no evidence that Jackie Loveland had. Dr Hoffmann did not refer to it when she wrote to Stella Collins. It is of course *possible* that Dr Hoffmann had noted the allegation of race and sex discrimination, and resented it, or thought it absurd, and so on, but this remains entirely speculative. There were very many other reasons why Dr Hoffmann considered that the claimant had not and would not become a cooperative member of the team. These could include his many other grievances about her, including the informal one, colleagues' protests about the claimant, his lack of cooperation when asked to make changes to exam papers, his resentment that other people were to coordinate his exams when he had asked to step down (we wondered if what underlay this resentment was annoyance that a tactic to get a pay rise had not succeeded), his refusal to meet her to discuss setting exam papers and mark schemes, and his repeated absences due to stress during the teaching term, adding to the pressure on colleagues. The only relevant facts the claimant has proved is that Dr Hoffmann had seen the version with his allegation of race and sex discrimination, and that she did not believe he had or would change his behaviour if he remained within CLIE. There is no "something more" from which we could infer that the allegation was the reason for her not wanting him in the team. Even if there were, we considered the respondent's explanation sufficient.

151. Next in the victimisation claimant, we consider the impact, individually or cumulatively, of the ten claims presented in the employment tribunal. At the date of the dismissal, claims had not been brought against either of the decision-makers. There was no claim against Ms Ryan until 10 February 2020. No doubt the HR team would have been aware of the nine claims made from March 2019 to 6 February 2021. Dr Hoffmann would have been aware, but until contacted by Sara Collins, she had no input into the dismissal process. Sara Collins did not know about the claims until told about them by the claimant. Stella Bruzzi agreed she did know there had been claims, but little more. The claimant told her they were about whistleblowing; we cannot see any mention that they were also about the Equality Act. In considering whether these claims materially influenced the decision to dismiss, and the decision not to uphold the appeal against dismissal, we do not consider that the claimant has proved facts about these either that would enable us to make an inference that he was dismissed because he had brought proceedings in connection with the Equality Act. Even if he had, we accepted the explanation that there were more weighty reasons for dismissing unconnected with the employment tribunal claims.

152. So we turn to whether the respondent's reason was some other substantial reason capable of justifying dismissal.

153. We concluded that the respondent's concern that the damage to the Arabic language team in CLIE was beyond repair was a substantial reason justifying dismissal. It was not capricious. It was founded on the claimant's behaviour during a long process. Their long and detailed letter of dismissal lays out all the facts, accurately, and explains in more detail why the lack of trust in his colleagues, or the institution, made the relationship unsustainable. He only made the allegations in one meeting, but although told firmly in November 2019 how damaging they were, he never apologised, or stated that he had not meant it. He repeated the allegations at the grievance appeal stage, even added to them by doubting Professor Bruzzi's independence. The claimant said he was not warned in the meeting that this conduct was unacceptable, but when told that it was, he took no notice and carried on. Warning or no warning, as a tribunal we do not understand how the claimant could not understand how outrageous his accusations about colleagues were. He was entitled to dispute the investigator's decision, or the statements, if he could point to where they were wrong or mistaken, but simply to say that all the evidence was false, because the witnesses had a financial interest in supporting Dr Hoffmann, or that the independent investigator had not acted independently, showed that his only purpose in bringing a grievance was to be told that he was right and others were wrong. He was not interested in the facts. There would be nothing wrong in saying these things if he was able to show how the evidence was false, or how the independent investigator had failed. The respondent was always careful to add that he had made the allegations without supporting facts. The claimant never went into detail of why the evidence the investigator had heard from its colleagues should not be believed. He did not use the words lying or being dishonest, but that was what he was saying. He will then have confirmed to the decision-makers on dismissal and on appeal that he would not accept UCL processes when he challenged their independence (a challenge continued at employment tribunal when he asked each of them in cross examination what they were paid for their hearing work, the answer being nothing, because it was part of the job). If he did not understand what he was doing wrong, it was not a problem of language, rather a problem of culture. We did not understand, nor did the decision makers, why he continued to assert that three emails had been "forged" by Dr Hoffmann.

154. We are also aware that Stella Bruzzi, coming to the matter late, apprehended that there was a grievance about the marking, and understood that if it was a justified grievance it might well explain his otherwise outlandish behaviour. She conscientiously looked at materials made available to her. The claimant still did not engage in any explanation of his concern about marks, and did not even supply the examiner's report he had brandished at the September 29 meeting.

155. This tribunal explained to the claimant at the outset, and before he started to question the respondent's witnesses, that we did not have to decide whether his grievances were justified, or had been wrongly decided. We were only looking at the reasons for dismissal. Nevertheless, we were interested in the marking issue, partly to decide whether there was a protected disclosure, partly because it was a long theme in the evidence. The claimant had also, as mentioned, applied on the first day of the case, and on several successive days, for the respondent to disclose the recordings of the oral examinations. At that stage in the case, we would not have read every document, and it was not obvious on the face of it how recordings in Arabic could assist when none of us was competent in Arabic. He was asked if he could explain how these were relevant, and

also necessary, for us to decide why he was dismissed. He was never able to do so. His concern became a little clearer when we saw the examiner's report in his own bundle, as distinct from the exam board minutes in the main bundle. We concluded it was not surprising the respondent did not understand why he was so concerned about marking. He was unable or unwilling to get into detail on this, though he did state his case on other grievances, such as workload, or sending sick notes to his manager, in detail. As for his concern about the reading and writing examinations, it seemed the external did rely to some extent on the reports and student complaints, but nevertheless there was an explanation why the marks had been deleted.

156. We take into account that it is possible that the claimant may not have been the only guilty party if relationships were plainly very difficult, at any rate with peers. We have not had to go into that. As regards those who had to manage him, his behaviour is hard to justify. Plainly Ms Liao found herself unable to manage him. Dr Hoffmann could not get him to meet her to discuss the external examiner's concerns. Wherever fault lay in particular episodes, or if others expressed themselves bluntly on occasion, the claimant was generally uncooperative, and team relationships had broken down. They could not be repaired when the claimant still believed, without grounds, that false evidence had been given, that his Head of Department forged emails, and that staff from outside the department who carried out a detailed investigation were not independent, and that his colleagues gave false statements for fear of Dr Hoffmann. Some of the material we have heard and read was not available to the dismissing officers, but all of it bears out that the claimant was uncooperative, would not come to meetings to discuss concerns, and was ready to blame and sometimes attack his colleagues. It lends credence to the report Dr Hoffmann made to Sara Collins, and to the impressions made on Sara Collins and Stella Bruzzi when they heard the claimant. They could assess how implausible it was when he said that he could work with Dr Liao in contemptuous terms, or when he said he had not alleged dishonesty or in bad faith as reasons why his grievances were not upheld. We conclude that this was a substantial reason justifying dismissal, and that it was UCL's reason for dismissing. Although this came to light on the grievance process, it was not about his raising grievances, it was about ignoring any facts, and simply saying contrary views were held in bad faith.

Fair to Dismiss for that reason

157. We could not fault the process by which they decided to dismiss. It was not UCL's fault that the claimant was surprised to be dismissed, when the grievance panel and the grievance appeal panel had both concluded with statements that the working relationship was seriously damaged, and merited further consideration. He had adequate notice. He was invited to provide statements and documents and did not, even at the dismissal appeal stage when Professor Bruzzi was ready to consider new evidence on marking. He had detailed and fair hearings by senior and experienced personnel who did not know the personalities (though Professor Bruzzi had remembered an earlier conversation with Dr Hoffmann when CLIE might have moved to a different faculty, she had had no other dealings with her). His disciplinary hearing was not postponed when he said he had covid symptoms, but he did not produce a test result, or a GP note, and he had lost goodwill by then after requesting so very many postponements. He was otherwise fit for a meeting.

158. There was adequate evidence that his allegations were made and meant, and that others he worked with knew of them. Sara Collins had reason to doubt his accuracy or

sincerity when he said he could carry on working at his managers' direction, and to seek their opinion, which accurately reflected the position. She had good reason for considering that as the claimant was unrepentant in his allegations he was likely to repeat the behaviour. Stella Bruzzi was conscientious in considering his appeal points and trying to get to the bottom of the marking issue. They both had good reasons to decide that mediation would not solve the problem, and they considered whether there were alternative roles. Both knew the claimant had not engaged with the grievance process by looking for facts and evidence to explain what he complained of, and that he did not trust UCL's process.

159. We concluded that a reasonable employer could dismiss an employee who made baseless accusations of lack of integrity on the part of colleagues and managers so persistently that working relationships were broken beyond repair, and he could not be managed. UCL went about it reasonably. The dismissal was fair.

Employment Judge Goodman
24th Nov 2022

JUDGMENT AND REASONS SENT to the PARTIES ON

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. 24/11/2022

OLU
FOR THE TRIBUNAL OFFICE

APPENDIX- LIST OF ISSUES

Case Nos: ~~2201127/2019~~[1]; ~~2202159/2019~~[2]; ~~220770/2019~~[3]; ~~2203220/2019~~[4]; ~~2203545/2019~~[5]; ~~2200135/2020~~[6]; ~~2206646/2020~~[7]; ~~2206647/2020~~[8]; ~~2200521/2021~~[9]; ~~2204296/2021~~[10] and 206530/2021[11]

IN THE LONDON CENTRAL EMPLOYMENT TRIBUNAL

B E T W E E N:

MR L HASAN

Claimant

-and-

~~(1) DR C HOFFMANN~~[12]

(2) UNIVERSITY COLLEGE LONDON

~~(3) MR A SALISBURY~~[13]

~~(4) MS L LIAO~~[14]

~~(5) PROF. R KLETA~~[15]

~~(6) MS J RYAN~~[16]

~~(7) MS J LOVELAND~~[17]

~~(8) MS K MASSEY~~[18]

~~(9) MR M BLAIN~~[19]

~~(10) MS C MILANO~~[20]

~~(11) MR M SPENCE~~[21]

~~(12) MS S COLLINS~~[22]

~~(13) MS S BRUZZI~~[23]

~~(14) MS R EDWARDS~~[24]

Respondents

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1 Claim dismissed 9 March 2022 upon withdrawal – included for background only. 2 Claim dismissed 9 March 2022 upon withdrawal – included for background only. 3 Claim dismissed 17 July 2022 upon withdrawal – included for background only.

4 Claim dismissed 9 March 2022 upon withdrawal – included for background only.

5 Claim dismissed 17 July 2022 upon withdrawal – included for background only.

6 Claim withdrawn 13 June 2022 – included for background only.

7 Claim withdrawn 10 June 2022 – included for background only.

8 Claim withdrawn 10 June 2022 – included for background only.

9 Claim withdrawn 10 June 2022 – included for background only.

10 Claim withdrawn 13 June 2022 – included for background only.

11 All allegations withdrawn 13 June 2022 except claims for automatic unfair dismissal, ordinary unfair dismissal and victimisation in respect of dismissal.

12 Removed as Respondent on 9 March 2022.

13 Removed as Respondent on 9 March 2022.

14 Removed as Respondent on 17 July 2022.

15 No allegations are made against this Respondent now claim withdrawn and they are removed.

16 No allegations are made against this Respondent now claim withdrawn and they are removed.

17 No allegations are made against this Respondent now claim withdrawn and they are removed.

18 No allegations are made against this Respondent now claim withdrawn and they are removed.

19 No allegations are made against this Respondent now claim withdrawn and they are removed.

20 No allegations are made against this Respondent now claim withdrawn and they are removed.

21 Removed as Respondent on 17 July 2022.

22 Removed as Respondent on 17 July 2022.

23 Removed as Respondent on 17 July 2022.

24 Removed as Respondent on 17 July 2022.

FINAL LIST OF ISSUES
for Hearing on 9 – 22 November 2022

NOTE: *paragraphs 2. and 3. are the additions proposed by the claimant, but not allowed at the hearing on 9 November. They remain so that the reasons for refusing the application to amend can be understood. Paragraph 9 was agreed to be an amplification of 8, which requires the tribunal to find the reason for dismissal, rather than a new issue.*

Alleged protected disclosure – Claim 11

1. On 24 ~~and 29~~ May 2018, did the Claimant email the Vice-Provost of Education and Student Affairs regarding UCL illegally improving the marks of ten students in the June 2017 exams?

2. On ??, did the Claimant raise complaints that Dr. Hoffmann had changed student marks and, or, forged emails during the course of the 2018 exams.

~~1.~~3. Did the Respondent (through the actions of Dr. Hoffmann and, or Mr Salisbury, change a student's ('AE') marks (initially level 'C') in 2017. As a result, if AE have completed of course, as Required to attend the Claimant's course in 2019/20.

~~2.~~4. Was information disclosed which in the Claimant's reasonable belief tended to show that a person had failed, was failing, or was likely to fail to comply with a legal obligation to which he was subject?

~~3.~~5. If so, did the Claimant reasonably believe that the disclosure was made in the public interest?

~~4.~~6. Was the disclosure made to one of the categories of people listed in s.43C-H ERA 1996?

~~5.~~7. Was the disclosure made in good faith? If the disclosure was not made in good faith, is it just and equitable in all the circumstances to reduce any award by up to 25%?

Automatic unfair dismissal because of making a protected disclosure – Claim 11

~~6.~~8. Was the reason or principal reason for dismissal the fact that the Claimant made the alleged protected disclosure set out at paragraph 1-3 (if proven and qualifying)? UCL contends he was dismissed for some other substantial reason, namely the breakdown in (1) working relationships between the Claimant and his colleagues, and (2) trust and confidence between the Claimant and UCL, which is a potentially fair reason.

Ordinary unfair dismissal – Claim 11

9. Was the reason for dismissal some other substantial reason, a potentially fair reason for dismissal under s.98(1)(b) Employment Rights Act 1996. UCL contends he was dismissed for some other substantial reason, namely the breakdown in (1) working elationships between the Claimant and his colleagues, and (2) trust and confidence between the Claimant and UCL.

~~7.~~10. Was the Claimant's dismissal , a potentially fair reason for dismissal , taking into account the reasons provided in the invitation letter dated December 2020.

~~8.~~11. Did UCL follow a reasonable process in effecting the dismissal?

~~9.~~12. Was dismissal within the range of reasonable responses open to UCL?

~~10.~~13. If the dismissal was unfair, should any award be reduced on the grounds that (1) the Claimant would have been dismissed fairly in any event, and/or (2) the Claimant's actions caused or contributed to his dismissal; and if so, what percentage reduction is appropriate?

Victimisation – Claim 11

Alleged protected acts

~~11.~~14. Did the following acts occur:

(1) The Claimant brought proceedings under EqA 2010 by way of submitting claims to the Employment Tribunal in 2019 (Claims 1 to 5);

(2) The Claimant brought grievances on:

(a) 27 June 2018 against Dr Hoffmann;

(b) 2~~1~~0 January 2019 against Dr Hoffmann; and

(c) 1~~5~~2 May 2019 against Dr Hoffmann and Mr Salisbury.

~~12.~~15. Do any of the above acts amount to protected acts?

Dismissal

~~13.~~16. Was the Claimant dismissed because he had done, or UCL believed he had done or may do, a protected act?

Updated following PH on 10 and 13 June 2022 and subsequent withdrawals by email 30 June 2022