



## EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4104572/2020

5 Final Hearing in person held in Glasgow on 15, 16, 17, 18 & 19, 22, 23, 24, 25  
& 26, and 29 & 30 August 2022 (with some evidence heard remotely by Cloud  
Video Platform on 18, 26 & 30 August 2022); 1 September 2022 (closing  
submissions in person); Members' Meetings held in chambers in person on  
2 September and 3 October 2022; and Members' Meeting held remotely on  
Microsoft Teams on 21 December 2022

10 Employment Judge I McPherson  
Tribunal Member Jackie Anderson  
Tribunal Member Donald Frew

Professor Jeanette Findlay

Claimant  
In Person

15 The University of Glasgow

Respondent  
Represented by:  
Mr N Maclean -  
Solicitor

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous, reserved Judgment of the Employment Tribunal is that:

- 25 1. The claimant's claim, insofar as it relates to the Mentoring PCP, is not out of  
time, and the Tribunal allows that part of the claim to be considered on its  
merits.
2. The claimant's claim, insofar as it relates to the Care Commitments PCP, is,  
however, out of time, and the Tribunal refuses to exercise its just and  
equitable jurisdiction, in terms of **Section 123 of the Equality Act 2010**, to  
30 allow that part of the claim to be considered by the Tribunal.
3. The Tribunal finds that the claimant was not discriminated against, on grounds  
of her sex, directly, or indirectly, by the respondent, when her 2020 application

for promotion to Professor was not granted by the respondent, who notified her on 30 April 2020 that her application was not successful.

4. In these circumstances, the claimant's complaints that, in respect of that unsuccessful promotion application in 2020, she was unlawfully discriminated against by the respondent, on grounds of her sex, contrary to **Sections 13 and 19 of the Equality Act 2010**, are not well-founded, and her claim against the respondent is accordingly dismissed in its entirety by the Tribunal.

## REASONS

### Introduction

1. This case called before us, as a full Tribunal, on the morning of Monday, 15 August 2022, for a 15-day Final Hearing for full disposal, including remedy, if appropriate. Notice of this Final Hearing had previously been issued by the Tribunal to both parties on 18 March 2022. In the event, we managed to conclude the evidence after 12 days, with day 13 used for closing submissions, and 3 further days for private deliberation by the full Tribunal in chambers.

### Claim and response

2. The claimant, acting through her then solicitor, Ms Hayley Johnston, Slater and Gordon, Edinburgh, presented her ET1 claim form in this case to the Tribunal, on 24 August 2020, following ACAS early conciliation between 16 June and 30 July 2020. She complained of unlawful, indirect sex discrimination by the respondent, contrary to **Section 19 of the Equality Act 2010**.
3. She sought a declaration, and recommendation, from the Tribunal, and compensation from the respondent. Her claim was accepted by the Tribunal administration and served on the respondent by Notice of Claim issued on 28 August 2020, for an ET3 response to be lodged by 25 September 2020.
4. An ET3 response was not lodged by the due date, because, on 18 September 2020, Ms Gillian Moore, solicitor with Shepherd and Wedderburn LLP,

Glasgow, sought an extension of time to do so in terms of **Rule 20**. That extension of 21 days, to 16 October 2020, was granted by Employment Judge Frances Eccles, without a Hearing, on 23 September 2020.

5. Thereafter, an ET3 response was presented, on 16 October 2020, defending the claim, and showing Mr Neil Maclean, solicitor at Shepherd and Wedderburn LLP, Edinburgh, as the respondent's representative. That response was accepted by the Tribunal on 20 September 2020, and a copy sent to the claimant and ACAS.

### Earlier procedural history of the case

6. Following Initial Consideration by Employment Judge Shona MacLean, on 21 October 2020, she instructed the claim and response proceed to the listed Case Management Preliminary Hearing on 22 October 2020. On that date, the case called before Employment Judge Ian McPherson. The claimant was represented by Ms Karen Murray, solicitor with Slater and Gordon, Manchester, and the respondent was represented by Ms Gillian Moore, solicitor with Shepherd and Wedderburn LLP, Glasgow.

7. Having heard parties' legal representatives in Case Management Preliminary Hearing, and considered their duly completed PH Agendas, the Tribunal noted and recorded that the respondent did not object to the claimant's application of 21 October 2020, seeking leave to amend the ET1 claim form to add a further head of complaint, namely direct sex discrimination by the respondent, contrary to **Section 13 of the Equality Act 2010**, and, accordingly, the Tribunal allowed the amendment, in terms of the track changed amended particulars of claim.

8. Having allowed the unopposed amendment for the claimant, the Tribunal allowed the respondent's representative a period of not more than 21 days from date of that Preliminary Hearing, i.e., on or before 4.00pm on Thursday, 12 November 2020, to answer the amended claim, and to do so by amending the existing response.

9. Further, the Tribunal noted and recorded that the claimant was insisting on her pled complaints of alleged unlawful sex discrimination, both direct, and indirect, contrary to **Sections 13 and 19 of the Equality Act 2010**, and further noted and recorded that, in the event of success with her claim, in whole, or  
5 in part, the claimant, who remained in the continuing employment of the respondent, sought an award of compensation against the respondent, as also a recommendation from the Tribunal.
10. The respondent defended both heads of complaint, and parties' representatives were agreed that, there being no jurisdictional or preliminary  
10 issues requiring a discreet Preliminary Hearing, it was appropriate to list the case for Final Hearing before a full Tribunal for full disposal, including remedy, if appropriate.
11. Further, having taken account of the ET Presidential Guidance and Direction in connection with the Conduct of Employment Tribunal Proceedings during  
15 the Covid-19 Pandemic, the Tribunal ordered that the case be listed for a 7-day public Final Hearing by Cloud Video Platform ("CVP"), for full disposal, including remedy, if appropriate, before a full Tribunal chaired by Employment Judge Ian McPherson, if available, which failing any other Employment Judge,  
20 on dates to be thereafter intimated by the Tribunal, after issue of date listing stencils to both parties, for completion and return, for the proposed listing period February/March 2021.
12. The Final Hearing was to be conducted remotely as a CVP Final Hearing, as mutually agreed by both parties, on the basis of parties previously preparing  
25 and mutually exchanging written witness statements and an agreed Joint Bundle for use at the Final Hearing, as per Orders of the Tribunal, made at that Preliminary Hearing, and set forth in Judge McPherson's written PH Note & Orders dated 23 October 2020, and issued to parties on 18 November 2020.
13. Thereafter, on 11 November 2020, amended grounds of resistance were  
30 lodged on behalf of the respondent, stating that the respondent had not directly discriminated against the claimant because of her sex as alleged or

at all, and further that the respondent had not indirectly discriminated against the claimant because of her sex as alleged or at all.

14. By Notice of Final Hearing issued by the Tribunal on 19 April 2021, the case was listed for a Final Hearing by CVP over 7 days commencing 5 July 2021.
- 5 15. In the event, that Final Hearing did not proceed. It was postponed by Judge Shona Simon, then President of the Employment Tribunal (Scotland), on 29 June 2021, on the claimant's unopposed application, on the grounds that she was seeking new legal representation.
- 10 16. The claimant had had legal advice and support throughout her Tribunal claim until 21 June 2021. On that date, she dismissed her legal advisers, at Slater & Gordon, and she has subsequently represented herself in these Tribunal proceedings.
- 15 17. The case then called before Employment Judge Ian McFtridge on 5 July 2021 for a Preliminary Hearing held via CVP. It should have been the first day of the postponed Final Hearing. The claimant represented herself, and the respondent was represented by Mr Neil Maclean, solicitor.
- 20 18. Judge McFtridge issued a written Note and Orders dated 13 July 2021, issued to parties on 14 July 2021. Thereafter, on 19 July 2021, the claimant (then acting on her own behalf) applied to the Tribunal for permission to particularise her existing claim and to amend her claim, if and where amendment might be necessary.
- 25 19. The claimant's application to amend was opposed by the respondent, and it proceeded to a Preliminary Hearing held via CVP on 18 August 2021 before Employment Judge Alan Strain. The claimant represented herself, and the respondent was represented by Mr Neil Maclean, solicitor.
- 30 20. Judge Strain issued a written Judgment, with Reasons, dated 15 September 2021, and sent to parties on 20 September 2021, where he allowed the claimant's application to amend, under exception of the part of the amendment which sought to include a new claim of victimisation in terms of **Section 27 of the Equality Act 2010**, and which he rejected. He ordered that

the case needed further case management in respect of the amendment process.

21. On 29 November 2021, the respondent provided a full and detailed response to the claimant's amendment / further and better particulars.
- 5 22. Thereafter, on 11 January 2022, the case called before Employment Judge Alan Strain for a Case Management Preliminary Hearing via telephone conference call. The claimant represented herself, and the respondent was represented by Ms Gillian Moore, solicitor.
- 10 23. Judge Strain issued a written Note and Orders, dated 11 January 2022, and sent to parties on 14 January 2022, where he set the case down for a 15-day Final Hearing to be held in person, on dates to be confirmed and issued to parties, and he made case management orders about exchanging documents, preparation of a Joint Bundle, and production of an agreed List of Issues for determination, a Statement of Agreed Facts and an Agreed  
15 Timeline.
24. He also noted that the Tribunal did not consider that witness statements were necessary. Having heard both parties on whether the attendance of Professors Muscatelli and Mason were necessary, so that, if so, they should attend and give evidence, Judge Strain considered that both were necessary  
20 witnesses.
25. Notwithstanding Judge Strain's Orders, when the casefile was returned to Employment Judge Ian McPherson, as the allocated Judge, his case management orders issued to both parties on 15 March 2022 reinstated the use of witness statements, as previously ordered by him on 22 October 2020.  
25 Detailed case management orders for the conduct of this Final Hearing were issued by the Judge on 15 March 2022.
26. It was of considerable assistance to the Tribunal at this Final Hearing, and in our private deliberations in chambers, that both parties had provided witness statements, duly cross-referenced to productions in the Joint Bundle, and

agreed a Statement of Agreed Facts, and the Tribunal takes this opportunity to thank both parties for their assistance and co-operation in that regard.

### **Final hearing before this Tribunal**

27. At this Final Hearing, the claimant appeared as an unrepresented, party  
5 litigant. She was accompanied by her sister, Professor Patricia Findlay, an  
academic from the University of Strathclyde, Glasgow, and a non-legal  
member of the Employment Tribunals (Scotland), for moral support, and to  
take notes, but not acting as a representative, and not to be led as a witness  
for the claimant.
- 10 28. The terms of her sister's attendance were set by Judge Susan Walker,  
President of the Employment Tribunal (Scotland), as outlined to both parties  
in the Tribunal's email of 12 August 2022. It was there provided that:
- “(5) *Following referral to the ET President, Judge Susan Walker, this  
15 morning, the President notes that Ms Findlay will be attending as a  
notetaker and in a support capacity and will not be acting as an adviser  
or representative. Consent was given by the previous President Judge  
Simon to this, at the time of the CVP PH before Judge McFatridge in  
July 2021. Judge Walker is confident that Ms Findlay will not go  
20 beyond the role as outlined. However, as this hearing is in person  
(unlike previous hearings in this case), it is particularly important that  
Ms Findlay avoids any impression that she is giving advice to the  
claimant. So, for example, it would be preferable if she sat at a  
distance from the claimant and did not speak to her during the  
hearing.*”
- 25 29. The respondent was represented by Mr Neil Maclean, solicitor with Shepherd  
and Wedderburn LLP. The respondent had no objection to the claimant's  
sister attending on such a basis. At the start of this Final Hearing, it was  
clarified that none of the members of this Tribunal had sat on an ET panel  
with the claimant's sister. While Mr Maclean had indicated in correspondence  
30 an intention to be accompanied by Lesley Cummings, the respondent's  
Director of Performance & Reward, and a witness for the respondent, as

instructing client, after discussion with both parties, and reflection by Mr Maclean, Ms Cummings did not attend as instructing client until after she had given her own evidence to the Tribunal.

- 5 30. The Final Hearing was a public hearing, conducted in part, by the use of electronic communications, as permitted by **Rule 46 of the Employment Tribunals Rules of Procedure 2013**. In the course of this Final Hearing, members of the Press and public attended, in person, and/or remotely via CVP. It was advertised as such on the CourtServe website, and, at parts, the Hearing became a hybrid Hearing, with some witnesses attending remotely
- 10 by video conferencing using the Tribunal's CVP (Cloud Video Platform) facility.
- 15 31. Observers, including journalists, attended, in person, and by CVP, throughout the course of the Final Hearing. Persons attending to observe on CVP were advised that these were legal proceedings, that no recording was allowed, and that they should have their microphone and camera off, unless requested to do otherwise. Such technical issues as arose with the use of CVP were managed, and the Final Hearing proceeded without difficulty, and any connectivity/visibility/audio issues were resolved with perseverance. There were no requests, during the course of the Final Hearing, in terms of **Rule 44**
- 20 **of the Employment Tribunals Rules of Procedure 2013**, for inspection of witness statements, and / or documents in the Joint Bundle.
- 25 32. In terms of the case management orders previously made by the Tribunal on 15 March 2022, and further directions given by the Judge, on Friday, 12 August 2022, in light of further pre-Hearing email correspondence with both parties, the Tribunal was in receipt of an updated folder, delivered on 11 August 2022, with 6 claimant's witness statements, and a further 9 respondent's witness statements, altogether comprising 132 pages; and two further folders, comprising the updated Joint Bundle of Documents prepared by parties for use at this Final Hearing, and altogether comprising 694 pages.
- 30 33. In the course of the Final Hearing, the Tribunal allowed additional documents to be added to the Joint Bundle, as pages 695-697, being the respondent's



reply to the claimant's additional data request, showing a breakdown of staff by sex and grade, in each of the four Colleges of the University; and a Supplementary Bundle, added on 23 August 2022, comprising the following documents:

- 5 a. The Respondent's PDR Process Flow for 2018-2019;
- b. The Respondent's Performance Development Review Process & Guiding Principles 2018-2019;
- c. The Respondent's PDR – 2018/2019 – Reviewer Guide;
- d. The Respondent's PDR – 2018/2019 – Reviewee Guide;
- 10 e. The Respondent's 2018 Staff Survey results; and
- f. The Respondent's Colleague Engagement Extended Pulse Survey – August 2021.

34. We had also received, as part of the Joint Bundle, an Agreed Timeline; Agreed Facts; claimant's and respondent's proposed Lists of Issues; claimant's Schedule of Loss, and respondent's Counter Schedule; and an agreed Witness Timetable as at 10 August 2022, and including cast lists of the parties' various witnesses.

35. The Tribunal agreed, having regard to the parties' witness timetable, to adopt it as a formal timetable in terms of **Rule 45 of the Employment Tribunals Rules of Procedure 2013**. In the event, even after its updating on 17 August 2022, the evidence led from parties concluded earlier than timetabled, when the claimant's cross-examination of the respondent's witnesses did not, in weeks 2 and 3, require the full time that she had identified.

36. We take this opportunity to note and record here that we did allow the claimant, on good cause shown, on Wednesday, 17 August 2022, 5 extra minutes for her re-examination; on Monday, 22 August 2022, 5 minutes extra time for her cross examination of Lesley Cummings; and again, on Thursday, 24 August 2022, when we allowed the claimant's request for an extra ½ hour cross-examination of Professor Finch.

37. Throughout the Final Hearing, we were aware of, and alert to, the claimant's position as an unrepresented, party litigant. We made various reasonable adjustments for the claimant during the course of this Final Hearing.
38. The Judge explained to her, in terms of the Tribunal's overriding objective, in terms of **Rule 2 of the Employment Tribunals Rules of Procedure 2013**, the need to ensure the case was dealt with fairly and justly, including ensuring, so far as practicable, that parties are on an equal footing, and that parties were under a duty to assist the Tribunal to further the overriding objective, and to co-operate generally with each other and with the Tribunal.
39. Because the claimant represented herself, without any apparent access to legal advice or representation, and with limited experience of the Employment Tribunal from her own past experience in the present case, at earlier stages, the Tribunal tried to assist her, as best we could, during the Final Hearing, but without entering the arena to run her case, to put her, as best we could, on a level playing field with the respondent's solicitor, Mr Maclean, an experienced employment lawyer and professional Tribunal advocate.
40. We are pleased to note and record that Mr Maclean in representing the respondent acted professionally, and with due regard to the fact that the claimant is an unrepresented, party litigant. He did not seek to take any undue advantage from the inequality of arms, between her and him, and indeed he co-operated willingly and flexibly in managing the timetable, and accommodating witnesses out of turn, having regard to their availability.
41. Further, we also note and record that Mr Maclean provided the claimant, on the evening of Monday, 29 August 2022, with advance copy of not only his own hyperlinked list of 39 case law authorities for the respondent, but also a detailed, accompanying 20-page note on the law, relating to the List of Issues, designed to assist the claimant in pre-reading, and in preparation of her own closing submissions, and her reply to his submissions on the respondent's behalf.
42. In particular, we further note and record that we allowed the claimant, in terms of the **Equal Treatment Bench Book (ETBB)** guidance on party litigants, to

take her own notes, while she was being cross-examined, so that she could, if she felt it appropriate, deal with any points arising when it came to her re-examination. When she stated that she was not experienced in asking cross-examination questions, the Judge gave her directions, and referred her to the *ETBB* on the internet.

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43. On day 5, Friday 19 August 2022, just before we heard evidence from the University's Principal, Professor Muscatelli, the claimant, having stated that she had read the *ETBB* guidance, asked the Judge to look at her questions in advance of her asking them, essentially as a pre-screening process. The Judge declined her invitation, saying that the Tribunal would proceed in the usual way, and if any objections were raised to her questions, then they would be dealt with at the time, after having heard both parties.

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44. We also made allowances for the claimant's hearing impairment, including for a friend, Joseph McElholm, to sit beside her, as a silent "*listening ear*", and for comfort breaks, as and when required, and for changes in the physical layout of the Tribunal room, to allow for a table for her sister. We also allowed for the claimant and Mr Maclean, as appropriate, to move from their own table, to the witness table, in the centre of the hearing room, as and when required, when witnesses were attending remotely by CVP, so that they could both see and hear them without any difficulty, given the video screen was placed on the wall immediately behind the claimant's table.

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45. On Wednesday, 24 August 2022, the claimant had difficulty hearing Professor Finch's evidence, and he had difficulty speaking, and he showed us an injury to his mouth, and asked for understanding and patience as he replied to questions asked of him. The claimant asked for permission, which we granted, to put on her hearing aid, and we adjourned to allow her to test her hearing aid batteries, before proceeding with further evidence. When Mr McElholm was not able to attend, on day 10, Friday, 26 August 2022, we allowed the claimant's sister to sit beside her, as that listening ear, and to take notes, there being no objection raised by the respondent's solicitor.

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46. Further, while making it clear that it was for each party to obtain their own advice and representation, from wherever they could, and that the Tribunal, as an independent and objective fact finding judicial body was not acting as advocate or representative for either party, the Judge signposted the claimant on several occasions to where she might be able to obtain freely available guidance and advice, including the University of Strathclyde Law Clinic, the Equality & Human Rights Commission, ACAS, and the ET websites.
47. Unfortunately, due to the need to consider a number of matters raised by the parties, and by the Judge, on behalf of the Tribunal, that day 1 (Monday, 15 August 2022) proceeded as a Case Management Preliminary Hearing held in private, chaired by the Judge, but with both lay/non-legal members of the panel in attendance, as discussed and agreed with both the claimant and the respondent's solicitor.
48. We made various interlocutory rulings, on 15 and 16 August 2022, delivered orally to parties at the time by the Judge, and confirmed in an 8-page written Note and Orders by the Tribunal, dated 17 August 2022, and issued to both parties on that date under cover of a letter from the Tribunal. It is not proportionate to repeat its full terms here, given it has already been issued to both parties, and a full copy is available to us on the Tribunal's casefile, but suffice it to say, for present purposes, and to give context, that we then held as follows:
- “(1) Having considered parties’ written and oral representations, made on 10 and 15 August 2022, on the matter of the need for evidence in person from two identified witnesses, Professor Katie Mason, and Professor Anton Muscatelli, the Tribunal decided that both witnesses should be heard by the Tribunal, as relevant and necessary witnesses, and the Tribunal accordingly refused the respondents’ application to exclude them as being irrelevant and/or unnecessary, and allowed the claimant to call them as witnesses on her behalf. We reserved our reasons for that ruling given orally by the Judge, on behalf of the Tribunal, on 16 August 2022, and we now give our reasons as set forth in writing in the following Note, at paragraph [6] below.*

(2) *Further, the Tribunal, having considered parties' differing versions of the List of Issues for determination by this Tribunal, decided that the finalised List shall be the respondents' proposed version, but incorporating the claimant's changes at 8.3, 8.5 and 8.7, but her other suggested revisals are not agreed at 7 and 15. The finalised version was circulated to both parties by the Tribunal clerk, on 17 August 2022, and included in the Bundle , superceding the two different versions from the respondents and the claimant at pages 677 to 680 of the Bundle."*

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10 49. Those reserved reasons were provided in that written Note, at paragraph [6] thereof, running to some 20 sub-paragraphs. The terms of the finalised List of Issues are set forth later in these Reasons, at paragraph **62** below. Further, the Statement of Agreed Facts, agreed between the parties on 9 August 2022, was updated and expanded on 25 August 2022, when we received the final  
15 version, inserting new paragraphs 43 to 46, addressing matters arising from the Supplementary Bundle of Documents added to the productions on 23 August 2022.

20 50. The Witness Timetable was updated on 17 August 2022, and by co-operation between parties and the Tribunal, we concluded the evidence on day 12 (30 August 2022), vacated the Hearing on 31 August 2022, after both parties had concluded their evidence to the Tribunal the previous afternoon, and to allow both parties to complete their written closing submissions, with a Hearing on Submissions before the Tribunal on 1 September 2022.

25 51. The Judge's oral directions to both parties, given at the close of evidence, on Tuesday, 30 August 2022, in respect of timetable for, and procedure at the hearing of closing submissions, were confirmed in a letter from the Tribunal emailed to both parties on 31 August 2022. The claimant was specifically informed that closing submissions is not an opportunity to lead further evidence before the Tribunal.

30 52. Finally, we had an initial Members' Meeting in person on Friday, 2 September 2022. Following private deliberation in chambers, on that date, we did not

conclude our deliberations, but arranged a further date for Monday, 3 October 2022, the earliest mutually convenient date for the full panel, having regard to holiday arrangements for all members of the Tribunal over the following weeks.

5 53. Parties were updated by letter from the Tribunal emailed to them on 5 September 2022, and again on 5 October 2022, with a further update, by letter of 3 November 2022.

10 54. On account of annual leave and other judicial commitments, the Judge had not, by that latter date, completed the draft Judgment to discuss with the non-legal members of the panel at a further and final Members' Meeting. Parties were advised that they would be updated when that further Members' Meeting was arranged, hopefully within a few weeks, subject to availability of the non-legal members of the panel.

15 55. However, due to one of the non-legal members being out of the country, on an extended holiday abroad, from 6 November to 18 December 2022, it was not possible to arrange that final Members' Meeting until recently. We met again as a panel, remotely on Microsoft Teams, on Wednesday, 21 December 2022, when we concluded our private deliberations, and unanimously agreed upon the terms of this our Judgment and Reasons.

20 56. This unanimous Judgment represents the final product from our private deliberations, and reflects our unanimous views as the specialist judicial panel brought together as an industrial jury from our disparate experiences.

#### **Evidence led before this Tribunal**

25 57. The Tribunal heard from a pomposity of Professors, both from within and furth of Glasgow University. Evidence in chief was given by way of written witness statements, taken as read in terms of **Rule 43 of the Employment Tribunal Rules of Procedure 2013**.

30 58. After being sworn or affirmed, as the case may be, and confirming the terms of their signed witness statement, with or without amendments, as required, all witnesses were then cross-examined by the other party, asked questions

by the Tribunal panel, when required, and in many, but not all cases, re-examined.

59. We deal separately, later in these Reasons, when assessing the evidence led at this Final Hearing, with each of the 15 witnesses from whom we heard. We refer in this regard to paragraph 69 below.

60. The claimant led evidence in her own right, and also led evidence from Professors Oughton, Dukes, and Fischbacher-Smith, Dr Paloni, and Professor Michie, as well as cross-examining Professors Muscatelli & Mason led, at her request, by the respondent. The other witnesses heard by the Tribunal were all led on the respondent's behalf.

61. In particular, we heard evidence, duly sworn or affirmed, as the case may be, from the following witnesses, on the following days:

Tuesday 16 August 2022 & Wednesday 17 August 2022:

Claimant – Professor Jeanette Findlay

Thursday 18 August 2022:

Professor Christine Oughton, SOAS, University of London (remotely by CVP)

Professor Ruth Dukes (remotely by CVP)

Professor Denis Fischbacher-Smith (remotely by CVP)

Friday 19 August 2022:

Professor Sir Anton Muscatelli, Principal & Vice-Chancellor

Dr Alberto Paloni, Senior Lecturer

Monday 22 August 2022:

Ms Lesley Cummings, Director of Performance & Reward

Tuesday 23 August 2022:

Ms Christine Barr, Executive Director of People & Organisational Development (HR Director)

Wednesday 24 August 2022 & Thursday 25 August 2022:

Professor John Finch, Head of Adam Smith Business School

5 Thursday 25 August 2022:

Professor Frank Coton, Senior Vice Principal & Deputy Vice-Chancellor

Friday 26 August 2022:

Professor Carl Goodyear, Senior Senate Assessor

Professor Katy Mason, Lancaster University (remotely by CVP)

10 Monday 29 August 2022:

Professor Sara Carter, Vice Principal & Head of College of Social Sciences

Tuesday 30 August 2022:

Professor James Conroy, Vice Principal of Internationalism

Professor Jonathan Michie, Pro-Vice Chancellor, Oxford University

15 **Agreed list of issues**

62. As detailed earlier in these Reasons, at paragraph 49 above, the Tribunal had to finally set the List of Issues, which it did, on day 2, Tuesday, 16 August 2022, having considered both parties' suggested drafts, and which we did set in the following terms:

20 ***Finalised LIST OF ISSUES – at 16 August 2022***

***Section 13 of the Equality Act 2010 - Direct Sex Discrimination***

1. *The Claimant's comparator is Luis Angeles (the "Comparator").*
2. *Is the Comparator an appropriate comparator (i.e. a member of the opposite sex whose circumstances are not materially different to the Claimant's circumstances) or are there material*

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*differences in their circumstances such that the Comparator is not an appropriate comparator, in particular: were the Claimant's application for promotion and the Comparator's application for promotion materially different?*

- 5           3. *If the Comparator is an appropriate Comparator, did the Respondent treat the Claimant less favourably than it treated the Comparator by not promoting the Claimant when she applied for promotion in January 2020?*
- 10           4. *If so, was that less favourable treatment because of the Claimant's sex?*
5. *To the extent the Claimant also seeks to rely on a hypothetical comparator, did the Respondent treat the Claimant less favourably than it treats or would treat other, male employees (whose circumstances are not materially different) by not promoting her when she applied for promotion in January 2020?.*
- 15           6. *If so, was that less favourable treatment because of the Claimant's sex?*
7. *In the 2020 promotion round, the Respondent promoted to Professor Celine Azemar, a female economist, does this defeat the Claimant's claim for direct discrimination because of sex?*
- 20

**Section 19 of the Equality Act 2010 - Indirect Sex Discrimination**

- 25           8. *The Claimant claims that the Respondent operates the following provisions, criteria or practices (PCPs) and applied these to employees seeking promotion to Professor, including the Claimant:*
1. *the Esteem criteria;*
  2. *the guidance which accompanies the Esteem criteria set out in the Academic Promotion Criteria Section E Esteem;*

- 5
3. *the shadow requirement to be published at a requisite minimum level and/or have a long track record of publications given the nature of exemplars of Esteem published by the Respondent, which relate to a track record of publication;*
- 10
4. *the Academic Promotion criterion applicable to the Grade 10 Professor posts at large;*
5. *the practice of existing Grade 10 Professors being asked for their view of promotion to Grade 10 applications without transparency in the process and without any accountability for such views;*
- 15
6. *mentoring support and career development opportunities being offered informally, and not on an open and transparent basis (“the Mentoring PCP”); and*
- 20
7. *the Respondent not explicitly inviting applicants for promotion to provide information about their care commitments nor taking into account the University’s own Care Registration process (“the Care Commitments PCP”); each a ‘PCP’ and, together, the ‘PCPs’.*
- 25
9. *The Respondent accepts that the PCPs listed at 8.1, 8.2, 8.4, and 8.5 above exist. Do the other PCPs (listed at 8.3, 8.6 and 8.7) exist?*
10. *If admitted, or found to, exist, in each case, does the PCP apply equally to female and male applicants?*

11. *If admitted, or found to, exist, in each case, what is the scope of the pool for comparison when considering the question of particular disadvantage?*

12. *If admitted, or found to, exist, in each case, did the PCP put women in the pool at a particular disadvantage when compared with men?*

1. *If so, what is that disadvantage?*

13. *If admitted, or found to, exist, in each case, did the PCP put the Claimant at that disadvantage?*

14. *If admitted, or found to, exist, in each case, has the Respondent justified the PCP by showing it to be a proportionate means of achieving a legitimate aim?*

15. *In the case of the Mentoring PCP and the Care Commitments PCP, additionally has the Claimant established that these practices were an ongoing state of affairs on 19 July 2021 (when the Claimant amended her claim)?*

1. *If not, are the Claimant's claims insofar as they relate to the Mentoring PCP and/or the Care Commitments PCP out of time?*

2. *If the Claimant's claims as they relate to the Mentoring PCP and/or the Care Commitments PCP is/are out of time, is it just and equitable for the Tribunal to exercise its discretion to allow (i) the Mentoring PCP and/or (ii) the Care Commitments PCP to be considered by the Tribunal?*

### **Remedy**

16. *If it is found that the Respondent unlawfully discriminated against the Claimant directly or indirectly as alleged:*

1. *Has the Claimant suffered any financial loss as a consequence of any proven unlawful discrimination?*
- 5 2. *If so, what amount of compensation, if any, should be awarded on a just and equitable basis?*
- 10 3. *If the unlawful discrimination found is indirect and unintentional, whether an award of compensation is appropriate having first considered making a declaration or recommendation?*
- 15 4. *Has the Claimant suffered injury to feelings in relation to any proven unlawful discrimination?*
5. *If so, what amount of compensation, if any, should be awarded on a just and equitable basis?*
6. *What, if any, interest is payable on the compensation awarded?*
- 20 7. *What, if any, recommendations should the Tribunal make?*

### **Agreed statement of facts**

63. As detailed earlier in these Reasons, at paragraph **26** above, the Tribunal was presented by both parties with an agreed Statement of Facts, running to 46 separate numbered paragraphs, extending over 6 typewritten pages.
- 25 64. Those agreed facts, as agreed between the parties on 9 August 2022 and then expanded on 25 August 2022, are not set out here, but we have inserted them in our own findings in fact, at paragraph **68** of these Reasons, where they are identified by the suffix **ASF (x)**, at the end of the agreed statement, where “**x**” is the paragraph number used in the Agreed Statement of Facts.

**Findings in fact**

65. We have not sought to set out every detail of evidence which we heard nor to resolve every difference between the parties, but only those which appear to us to be material. Our material findings, relevant to the issues before us for  
5 judicial determination, based on the balance of probability, are as set out below, in a way that it is proportionate to the complexity and importance of the relevant issues before the Tribunal. Where we detail the claimant's caring responsibilities, we have done so briefly, respecting the privacy and confidentiality owed to the claimant, and her mother. We note that we did not  
10 consider that there was any need to make any **Rule 50** privacy order, and neither party made any such application to us.
66. Certain limited facts were agreed between the parties, as per the Agreed Statement of Facts, to which we refer. We have had regard to them, and incorporated them into our findings in fact, but, given the extent of the  
15 evidence led by both parties, and the disputed facts in this case, we do not consider ourselves restricted by only the agreed facts, and our own findings in fact are accordingly more extensive in scope and extent, and often more detailed, than in parties' jointly Agreed Statement of Facts.
67. Mr Maclean, in his written closing submissions for the respondent, presented  
20 us with his suggested findings in fact, at his section 3, with 70 proposed additional findings in fact. We have had regard to what he has proposed for our consideration, but we have not considered ourselves bound by it. We consider that many of his proposed findings in fact are not sufficiently detailed and, in any event, they were, in certain respects, his subjective opinion of  
25 certain matters. It is not appropriate, in those circumstances, that we adopt all of his proposed findings as our findings, but we have adopted some, where we feel it appropriate to do so, and sometimes slightly reworded from his suggested draft.
68. In these circumstances, and as is our primary, fact-finding role, we have made  
30 the following findings in fact, on the basis of the evidence heard from the various witnesses led before us over the course of this Final Hearing, and the

various documents in the Bundles of Documents provided to us, so far as spoken to in evidence, or referred to in the Agreed Statement of Facts, and the Tribunal has found the following essential facts established:

### **Background**

- 5 (1) The Claimant, aged 62 as at the date of this Final Hearing, is a continuing employee of the Respondent.
- (2) The Respondent is ranked as one of the world's top 100 universities and is a member of the Russell Group of leading research universities. It was founded in 1451. It is one of the oldest universities in the English-speaking world. **ASF**  
10 **(1).**
- (3) As of January 2020, there had never been a woman promoted to a Chair in Economics at Glasgow University in the entire history of the University from its foundation in 1451.
- (4) The Russell Group is an association of 24 leading UK universities with a  
15 shared focus on world-leading research and education.
- (5) The Respondent University has four Colleges in total: College of Arts, College of Medical, Veterinary & Life Sciences, College of Science & Engineering, and College of Social Sciences.
- (6) At the time of the incidents giving rise to this claim, the Claimant was  
20 employed by the Respondent as a Senior Lecturer (Grade 9) in the Adam Smith Business School, College of Social Sciences. The Head of School is Professor John Finch. **ASF (2).**
- (7) Professor Finch, who reports to Professor Sara Carter, as Head of the College of Social Sciences, is the claimant's ultimate line manager.
- 25 (8) The claimant works in the Economics area of the Adam Smith Business School, where Professor John Tsoukalas, as Head of Subject, is her direct line manager.

- (9) The Adam Smith Business School is the largest of five Schools within the College of Social Sciences. The College has approximately 1,500 staff members, and 13,000 students. It was formed around 2010, bringing together the subjects of Accounting & Finance, Economics, and Management.
- 5 (10) The Claimant's employment commenced on 1 October 1987 and is continuing. **ASF (3)**.
- (11) She was appointed to her Senior Lecturer post (Grade 9) on 1 October 2004, according to her 2020 promotion application (copy produced to the Tribunal at pages 217 to 239 of the Bundle).
- 10 (12) The Claimant's application for promotion to Professor in the 2020 promotion round was unsuccessful.
- (13) On the evidence available to this Tribunal, the reason Professor Findlay was not promoted by the Respondent in 2020 was because she did not meet sufficient promotion criteria to be promoted and that explanation is  
15 unconnected to her sex.
- (14) The Claimant's application for promotion in the 2022 promotion round was successful. The Claimant was appointed a Professor of Economics with effect from 1 August 2022. **ASF (4)**.
- (15) The Claimant's gross salary, at the time of this Final Hearing, was agreed  
20 between the parties in the Claimant's Schedule of Loss (as at 10 August 2022), and the respondent's Counter Schedule, as produced to the Tribunal at pages 681 and 684 respectively in the Bundle, as being £75,574 pa (inclusive of a £10,000 market supplement).
- (16) The Claimant is a member of the University and College Union (UCU). This is  
25 the main academic Trade Union in Higher Education.
- (17) The Claimant was the most senior UCU Representative at the University from 2017 and she has been an active Trade Union representative at the University for many years. She is a very experienced Union representative.

- 5 (18) From November 2017, the claimant has been given facility time by the Respondent for her trades union duties (as branch President of UCU and senior caseworker, with around 1,800 UCU members in that branch) at the rate of 0.2 FTE, rising to 0.3FTE between July 2020 and July 2021, leaving 0.8 (0.7) FTE over that period for her normal academic duties.
- (19) The Claimant is currently Vice-President UCU Scotland, an elected position. UCU are not supporting the Claimant's claim to the Employment Tribunal, in the sense that they withdrew their financial support for the Claimant to have legal representation in the Summer of 2021.
- 10 (20) In her Trade Union capacity, the Claimant had regular discussions with Christine Barr (Director of HR) and Lesley Cummings (Director of Performance and Reward) amongst others in the Respondent University's senior management.
- 15 (21) Prior to submitting her promotion application in 2020, the Claimant never spoke to any of her Head of School, Head of College, Professor Frank Coton (Senior Vice Principal), Christine Barr or Lesley Cummings about her interest in being promoted.
- 20 (22) Nor did the Claimant raise any concern with any of these individuals that she had asked about promotion in her Personal Development Reviews (PDRs) and she had received no response (other than being sent a link to the University's promotion material on its website).
- 25 (23) The Claimant emailed Lesley Cummings on 10 February 2020 raising a number of concerns raised with her the previous month about the Respondent's promotion process, specifically the "*promotions criteria currently used for Grade 9-10 promotions.*" Her email was copied to Craig Daly, UCU.
- 30 (24) This email, which is written by the claimant as Senior Lecturer in Economics, rather than in her Trade Union capacity, and copy produced to the Tribunal at pages 307/308 of the Bundle, does not contain any reference to the Respondent's approach to inviting and/or considering an applicant's



additional personal circumstances. Nor does the Claimant raise any concerns about mentoring.

### **Respondent's Carer's Register and claimant's caring commitments**

- 5 (25) The Respondent operate a Carers' Register, a matter agreed with the Trade Unions. It was not put in place for the purpose of informing promotion decisions. The Respondent's position is that the obligation to bring forward information relevant to a promotion application is on the applicant.
- 10 (26) The Respondent uses a standardised promotion application form for their Professor promotion process. This is a narrative style of application, which allows applicants to explain their achievements, and with an opportunity to provide any additional information which the applicant considers relevant to their promotion application.
- 15 (27) There were differences in form between the 2020 and 2022 promotion application forms used by the Respondent, but no change in substance. Both forms provided applicants with the opportunity to provide any additional information they considered relevant.
- 20 (28) Neither form restricted the information that could be provided. The application form used by the Claimant in 2020 (copy provided to the Tribunal at page 217 of the Bundle) stated: "***When reviewing the promotion criteria, please consider whether there are additional circumstances that might have had an impact on your ability to achieve the relevant criteria in one or more areas on which your application will be assessed. If such a consideration applies to you, please provide details in the box below:***"
- 25 (29) There was no word limit, and the form was not prescriptive as to what information might be relevant, although some examples were given, namely "***parental leave; disability; long-term absence due to ill health; time off to care for dependants.***" Neither the 2020 nor 2022 application form made specific reference to caring responsibilities. In her 2020 application, the Claimant provided details of her Trade Union activities and her workload. She
- 30 did not mention caring responsibilities.

- 5 (30) As per the copy minutes of the College of Social Science Promotion Committee, held on 3 March 2020 (copy produced to the Tribunal at pages 310 / 312 of the Bundle), other applications for promotion to Professor in 2020 did detail personal circumstances, including other applicants who, like the claimant, had caring responsibilities for elderly dependants, or childcare responsibilities.
- 10 (31) In those other cases, additional circumstances were considered by the Respondent when assessing promotion applications in the round. The Respondent used this information provided by applicants to adjust quantitatively the number of achievements required to attain promotion but not the quality.
- (32) The Claimant's burden of caring commitments intensified in the period between 2020 and 2022 because of the impact of Covid and the increasing age and vulnerability of her mother in her 90's.
- 15 (33) While the Tribunal received no detailed evidence on this matter, the circumstances were briefly outlined by the claimant, in the "**additional circumstances**" section of her 2022 promotion application, copy produced to the Tribunal at pages 605 to 618 of the Bundle, where (at page 606) the claimant explained that: "***I am responsible, with my sister, for all her care, every day, and have been for almost 8 years. During Covid, this intensified, as the limited support we had from carers became problematic due to the risk to my mother.***" At page 605, when narrating the impact of COVID, the claimant's 2022 application form stated that: "***That has been my life now for the past two years while carrying out all of my other work-related duties.***"
- 20
- 25

### Claimant's Personal Development Reviews

- (34) The Respondent operated a system for Personal Development Reviews ("PDRs").
- 30 (35) The Claimant recorded in her 2015-2016 PDR that she "***hoped that her policy-relevant research activity will be recognised and valued by the***

*University and that appropriate promotion opportunities will be presented to me.”* (page 144 of the Bundle)

- (36) The Claimant’s 2016-2017 PDR records that she “*will be picking up a new administrative role this academic session which relates to the provision of key skills to UG students with the aim of improving NSS scores.*” (page 154 of the Bundle).
- (37) The Claimant’s 2016-2017 PDR records her commenting that “*[she] would like to be promoted to Reader and would like guidance on how that could be achieved.*” (page 159 of the Bundle).
- (38) In the Claimant’s 2017-2018 PDR the Claimant records she “*mentioned last year that I would like to be promoted to Reader and would like guidance on how that could be achieved. I have not received any guidance as of yet.*” (page 168 of the Bundle).
- (39) The Respondent provided the Claimant a link to the promotion criteria/guidance for Reader on their website. The position of Reader at the Respondent is research focused role.
- (40) Other than providing the Claimant with a link to the publicly available guidance, there was no follow up from the Respondent in relation to the Claimant’s comments in her PDR.
- 20 **The respondent’s promotion process**
- (41) The Respondent has an Academic Appointment & Promotion Policy. There are five academic career tracks for academic employees to pursue: Research & Teaching; Research; Research Scientists; Learning, Teaching and Scholarship; and Academic Clinicians. **ASF (5).**
- 25 (42) The Claimant was on the Respondent’s Research and Teaching Track.
- (43) Applications for Academic Promotion are invited by the Respondent on an annual basis. **ASF (6).**

- (44) Each application must include a statement from the Head of School confirming whether they support the application for promotion or not, and an explanation for their decision. **ASF (7).**
- 5 (45) When an application is received by the Head of School for comment, he/she will seek peer feedback on the application from other Grade 10 Professors within the College, on a confidential basis. The other professors are asked to confirm whether they support or do not support the application. **ASF (8).**
- 10 (46) On the evidence available to the Tribunal, at this Final Hearing, while the Respondent operated a practice of asking existing Grade 10 Professors for their view of any applicant's promotion to Grade 10, the process was inconsistent and variable across Schools within the University, and the extent to which Professorial comments were done, and, if done, how they were reflected in Head of School statements, was varied, as the practice appeared to be inconsistently applied across the University.
- 15 (47) Applications are submitted to the Respondent's Performance, Pay and Reward Team. They are then passed to the relevant College (i.e. the College to which the applicant belongs). Each College appoints a College Promotions Committee to consider the promotion applications received. The College Promotions Committee in respect of applications on the Research & Teaching track is comprised of the Vice Principal & Head of College, the Vice Principal Learning & Teaching, the Director of Professional Services, All Heads of Schools, all College Deans, two external Senate Assessors, the College Head of Human Resources and the Executive Director of Human Resources or their nominee. **ASF (9).**
- 20 (48) Applications are assessed by a College Promotions Committee against the Academic Promotion Criteria relevant to the applicant's chosen career track. They are assessed on the basis of information submitted in the written application form, and supporting documentation submitted by the applicant including their grant calculation spreadsheet, PGR calculation spreadsheet, their curriculum vitae and outputs report. The College Promotions Committee decides if the applicant meets the criteria for promotion or not. **ASF (10).**
- 30

- 5 (49) 11 members of the Respondent's College of Social Sciences Promotion Committee assessed the Claimant's application in 2020. Each member pre-scored the application and submitted their scores separately to HR. HR collated the pre-scores into a spreadsheet (copy produced to the Tribunal at page 309 of the Bundle).
- 10 (50) On the evidence available to the Tribunal, at this Final Hearing, those assessing promotion applications did so by comparing the applications against the promotion criteria and forming their own judgment on the application against each criteria. Professorial consultation comments appear to have had little, if any, weight on those assessing promotion applications.
- 15 (51) At the meeting of the College Promotion Committee, the applications are discussed and a consensus sought. Of the 11 scoring members in 2020, 10 were women. Of this 10, 8 are female Professors. The remaining two are HR specialists, who are both Grade 10s. A Professor is a Grade 10 appointment. Both HR specialists in 2020 were women.
- 20 (52) In evidence led at this Final Hearing, the Tribunal was informed by several witnesses that those involved in the Claimant's 2020 promotion application had undergone unconscious bias and other equality training. No documentary productions were lodged with the Tribunal, by either party, to be spoken to by witnesses, to detail the content and extent of this type of training.
- (53) The second stage of the Respondent's Academic Promotion process involves the Board of Review. The Board of Review is comprised of members of the Senior Management Group, an HR representative and the Senior Senate Assessor. **ASF (11)**.
- 25 (54) The Respondent's Board of Review had 14 members in 2020. Seven of these were women.
- 30 (55) In 2020, where an application was deemed successful by the Board of Review (i.e. a 'prima facie' case for promotion has been made) references were invited before a final decision was reached. For Grade 10 Professorial applications, five external references were sought for all applicants, two of

these being nominated by the applicant and the remaining three being nominated by the relevant College. Three positive references must be received for an application to be successful, two of these must be from College-nominated referees. **ASF (12).**

5 **Promotion criteria – Professor (Research & Teaching)**

(56) Applications for promotion to Professor (Research & Teaching) are assessed against seven performance criteria: Section A1: Research & Scholarship - Outputs Section A2: Research & Scholarship – Award Generation Section A3: Research & Scholarship - Supervision Section B: Impact Section C: Learning  
10 & Teaching Practice Section D: Leadership, Management & Engagement Section E: Esteem. **ASF (13).**

(57) In each category, applicants are required to demonstrate excellence and collegiality. To assist in preparing their application, applicants have access to an Academic Promotion Criteria guidance document. The Academic  
15 Appointment & Promotion Policy for 2019-2020 is contained in the Bundle starting at page 110. The academic promotion criteria starts on page 123. This sets out a non-exhaustive list of examples of the types of experience and achievements that may be relied upon by an applicant to show that they meet a particular criterion. **ASF (14).**

20 (58) The Promotion Policy (as reproduced to the Tribunal, at page 112 of the Bundle) defined its “purpose”, as follows:-

**“PURPOSE**

*The University of Glasgow is committed to enhancing its reputation as an international research led University and maintaining a level of academic  
25 discipline and achievement that is respected worldwide.*

*The University of Glasgow’s Academic Appointment and Promotion Policy sets out the principles that underpin a fair and transparent appointment and promotion process for all eligible academic staff. The promotion process is designed to recognise and reward excellent performance that supports the  
30 delivery of University objectives. These are measured by an individual’s*

*ability to demonstrate excellence over a sustained period and evidenced by the significance of their contribution and impact across the full range of academic activities.*

*The Performance, Development and Review (PDR) process affords an opportunity for career goals to be identified allowing strategies to be put in place to achieve the standard necessary for promotion. Partnered with the PDR process this policy offers a career pathway for academic staff to build their expertise and standing, within their chosen discipline, whilst at the University of Glasgow. There are five academic career tracks: Research & Teaching; Research; Research Scientists, Learning, Teaching and Scholarship; and Academic Clinicians.”*

- (59) Further, the Promotion Policy (as reproduced at pages 112 and 113 of the Bundle) also addressed “*additional circumstances*” and “*principles*”, as follows:-

**“ADDITIONAL CIRCUMSTANCES**

*All applicants are required to meet consistent quality standards at each grade for appointment and promotion. However, the promotion committees may take account of a reduced quantity of output/activity due to certain personal circumstances, though quality must always be maintained. Evidence of a candidate's work trajectory is important. The evaluation of performance will give due consideration to the circumstances presented within the application and the evidence provided to support this.*

*Applications will be assessed solely against the criteria necessary for appointment or promotion to a particular post irrespective of employment or contractual status. Additional circumstances can be included for periods of absence from work (or where the effect has been equivalent to absence) for a range of equality-related circumstances, including family-related leave and career breaks. The Committee will take into account circumstances that are clearly outlined in an application and the impact of those particular factors against overall output.*

**PRINCIPLES**

*The University makes every effort to ensure that all applicants are treated fairly and that the criteria based on individual merit are applied consistently.*

*Each application will be considered and judged on its merits in accordance with the criteria applicable to the grade of application. The promotion committee will give due consideration to any circumstances that may have had an effect on productivity, while ensuring that the quality and impact of achievements is demonstrated to the required standard.”*

- (60) The Promotion Policy (as reproduced at pages 113 and 114 of the Bundle) also addressed “*promotion – eligibility & reapplication*”, as follows:

**“PROMOTION – ELIGIBILITY & RE-APPLICATION**

*Irrespective of employment type or funding source, all staff will be eligible to apply for promotion in accordance with this policy.*

*Normally, employees will be eligible to apply for promotion after twelve months in post however, this requirement may be waived in exceptional circumstances by the Vice Principal and Head of College, particularly where there are live retention considerations.*

*It may take a number of years to develop a track record which demonstrates that the criteria have been met. Therefore, it is important to plan and diligently prepare the necessary documentation to ensure excellence can be evidenced against the criteria on which an application will be judged.*

*Applicants are strongly encouraged to seek advice/guidance from their Head of School / Director of Research Institute before submitting an application form.*

*The decision to apply is that of the applicant, whether supported or not by their line manager. Applicants should be mindful that an unsuccessful outcome will normally prevent a further application being made the following year without the support of their Vice Principal & Head of College.*



*An applicant may withdraw their application at any time prior to the meeting of the College Promotion Committee taking place.”*

5 (61) The Respondent has a zone-based pay and reward structure for Professors. There are four Professorial zones, with Zone 1 being the usual entry level to the Professoriate. The Academic Promotion Criteria guidance document is also used for progression through the Professorial zones. Candidates applying for promotion to Professor from Grade 9 are expected to meet the criteria for Zone 1. **ASF (15).**

10 (62) According to the Promotion Policy (copy provided to the Tribunal at page 123 of the Bundle), when giving “*Professorial Zone Descriptors*”, it is stated as follows for Zone 1:

15 “*ZONE 1: The normal entry level for those appointed to the Professoriate. Working at this level indicates an international reputation, reflected by a range and balance of the activities listed below, as appropriate to the opportunities and expectations of the discipline.*”

20 (63) Applicants for promotion to Professor Grade 10 must meet at least four of the seven performance criteria to be successful. Applicants must meet the criteria for either Section A1(Outputs) or Section B (Impact). In addition, applicants on the Research & Teaching track must meet the criteria at Section C (Learning & Teaching Practice) at Grade 9 level or above. The Esteem criteria is not essential for promotion to Professor. **ASF (16).**

### **The Claimant’s application for promotion**

25 (64) In January 2020, the Claimant applied to be promoted to Professor (Grade 10), Research & Teaching track. The Claimant discussed her intention to apply with Professor John Finch, Head of School. **ASF (17).**

(65) A copy of the Claimant’s application form starts at page 217 of the Bundle. **ASF (18).**

- (66) The Claimant believed that she met four of the seven criteria: (1) Impact; (2) Learning & Teaching Practice; (3) Leadership, Management & Engagement; and (4) Esteem. **ASF (19)**.
- 5 (67) The Claimant's application was not supported by the Head of School, who considered that the Claimant could only satisfy three out of the seven performance criteria: (1) Impact; (2) Learning & Teaching Practice; and (3) Leadership, Management & Engagement. **ASF (20)**.
- 10 (68) The Head of School's statement, which did not support the claimant's application for promotion, was produced to the Tribunal at page 227 of the Bundle. He agreed with the first 3 identified by the Claimant, but he did not agree with her on Esteem, and therefore he did not support her application, although he stated that he was "*happy that her application comes to the committee for consideration.*"
- 15 (69) In that statement, signed off by him on 9 January 2020, Professor Finch wrote as follows:-

**STATEMENT FROM HEAD OF SCHOOL / DIRECTOR OF RESEARCH INSTITUTE**

*Do you support this application for promotion? Yes  No*

20 *Please provide a statement that supports your decision specifically addressing the merits of the case for promotion when assessed against the relevant promotion criteria.*

25 *I do not support Dr Findlay's application for promotion to professor, but I am happy that her application comes to the committee for consideration. Working with the professorial promotion criteria and preponderance, Jeanette sets out her impact in detail, which has been evaluated through the College and University Impact Review processes.*

*I consider that impact meets the professorial impact criterion and is contribution that Jeanette has sustained over her career as indicated across here application.*

*In addition, Jeanette has a sustained contribution at Glasgow as programme convenor and as a reviewer and external examiner in peer-group schools in learning and teaching practice, so meets this criterion. Jeanette also meets the criterion for leadership and management, including in her work as President of the University of Glasgow UCU. She makes clear that with reference to the circumstances noted at the start of this application, her leadership work does not fall within the 20% of time allocated to her union work (which includes training and case work). In terms of leadership, Jeanette has contributed in a sustained way to policy development and implementation across a wide range of university activity.*

*Following the professorial promotion criteria and its exemplars of esteem, I evaluate Jeanette's application as it refers to esteem as contributing more to leadership and in support of impact, and does not meet the criterion for esteem. Jeanette does not meet the criteria for PGR supervision and for outputs. Finally, Jeanette shows sustained activity in research funding, notably with the Scottish Government. Following the grants spreadsheet, this does not meet the RG median for economics and econometrics. This point is pivotal in my overall assessment. I understand that Jeanette is awaiting a delayed response to a tender exercise for a significant externally funded project and that this could be announced in the next week.*

*In addition, I emphasise that Jeanette has offered in a sustained way impressive citizenship and collegiality with all colleagues, academic and professional services, throughout her career.*

*Please provide your suggested provisional zone profile.*

A1	A2	A3	B	C	D	E
0	0	0	1	1	1	0

(70) The claimant had raised with Professor Finch, and in a follow up email sent to him, on 7 January 2020 (copy produced to the Tribunal at page 216 of the Bundle) several issues which she wanted him to consider in relation to her promotion application.

- (71) These related her career trajectory (which she argued was very typical for female academics allocated high levels of teaching and administration), receiving no mentoring, the fact that she had spent a considerable number of years at the top of the Grade 9 scale with no discussion by any line manager/PDR reviewer about her plans, and that she had repeatedly asked for career/promotions guidance for the last 3 years, with no guidance being offered, leaving her feeling very unsupported.
- (72) The claimant's email to the Head of School stated that they also discussed the structural issue of *"unnamed members of the professoriate being consulted within the process – this introduces an undocumented and unaccountable element to a process whose outcomes overall (pre and post application) exhibit inequality between men and women and, in fact, between other demographic groups."*
- (73) The Claimant's application was considered by the College of Social Science's College Promotions Committee. The Committee concluded that the Claimant satisfied three out of the seven performance criteria: Section B (Impact), Section C (Learning & Teaching Practice) and Section D (Leadership, Management & Engagement). They concluded she had not satisfied any of the remaining four criteria. The College Promotion Committee's recommendation did not support the Claimant's application for promotion. **ASF (21).**
- (74) A copy of the College of Social Science's Promotion Committee's minutes of the meeting held on 3 March 2020 were produced to the Tribunal at pages 310 to 312 of the Bundle, along with a redacted outcomes spreadsheet (at pages 313 and 314)
- (75) The Board of Review decided the Claimant's application was unsuccessful. This outcome was confirmed to the Claimant in writing on 30 April 2020 [see page 320 of Bundle]. The Claimant believes she also met the Esteem criteria and should have been promoted. **ASF (22).**

(76) All applications from the College stage are included in the papers available for the Board of Review, but only cases flagged for discussion in advance of the meeting or raised by a member at the Board of Review, are discussed.

(77) The Claimant's 2020 application was not discussed at the Board of Review. A copy of the redacted minutes of the Board of Review Academic Promotions (1st Round), held on 7 April 2020, were produced to the Tribunal at pages 315 to 319 of the Bundle. The claimant's case was not minuted as having been specifically discussed by the Board of Review.

(78) Lesley Cummings, the respondent's Director of Performance and Reward, wrote to the claimant on 30 April 2020 about the outcome of her application for promotion in the annual promotion round 2020. In that letter, copy produced to the Tribunal at page 320 of the Bundle, it was stated that:-

*"The annual promotion round is the mechanism by which the University supports and rewards academic excellence through the clear articulation and assessment against those routes which allow career progression and the attainment of individual aspirations. The University highly values its staff and each of their individual contributions to the achievement of University strategic aims and goals.*

*I regret to advise you however that your application for promotion to Professor - Grade 10, which was considered carefully by the College Promotions Committee, has been unsuccessful on this occasion as the Committee did not consider that it met the criteria required to progress beyond the prima facie stage.*

*I realise that this decision will be disappointing for you but would recommend that you discuss your application further with your Head of School who will be able to provide guidance on the mentoring support which is available within the College and provide more detailed advice on career progression and preparing for future promotion rounds."*

(79) The Claimant appealed the outcome of her promotion application on grounds of procedural irregularity [see page 321 of Bundle for email of appeal]. The

appeal was considered by the Executive Director of Human Resources, Christine Barr, in consultation with the Vice Principal of Academic Planning & Technological Innovation, Frank Coton. **ASF (23)**.

5 (80) By email of 21 May 2020 to Christine Barr, copied to Sara Carter (Head of College) and Craig Daly (her UCU trade union representative), the claimant wrote to Ms Barr to notify her that she wished to appeal the recent rejection of her promotion application in the 2019-20 round. A copy of her appeal on grounds of procedural irregularity was produced to the Tribunal at pages 321 and 322 of the Bundle.

10 (81) In particular, within that appeal, the claimant took the opportunity to flag up certain matters for the University to note, namely:

- 15 • *The practice of inviting existing Professors in an area to comment on applications in an unattributed and unaccountable way both lacks transparency and leaves a pathway open for discrimination. In one sense this is not a breach of procedure as it is part of the written procedures, but arguably, it should not be as it is potentially unlawful and sits in contradiction to the Equal Opportunities statement which is also part of the procedure.*
- 20 • *I am not able to say, because of the secret nature of the process, that I was specifically affected by the comments made by the existing Professors but in light of the following facts it is my view that I have a prima facie case to believe that this was the case:*
- 25 • *I have taken three separate actions against the University on grounds of either Sex Discrimination or Equal Pay and have had each either specifically upheld or resolved in terms of an offer from the University. So each and every progression or promotion in my career has had to be achieved by my taking action under the Equalities Act 2010 or its predecessors.*

- *In 18 years as a Senior Lecturer, I have never once been mentored or advised about career progression by my line manager or any senior colleague*
- 5     • *For the past 2 years (possibly 3), I have asked specifically in my P&DR for advice and guidance to achieve progression and I did not receive it from anyone – it was either unacknowledged or I was sent a link to the policy.*
- 10    • *This University has not, to my knowledge, ever promoted a woman to a Chair in Economics, certainly not in the last 33 years. The existing female Chairs, were recruited as chairs and they are a tiny minority and of relatively recent origin.*
- *Every woman who has sought promotion to Chair, in my knowledge over my 33 year career, has been rejected and left to go to other institutions where they were promoted to Chair within a short period.*
- 15    • *It is likely that the views of existing Chairs would have weighted heavily on my Head of School as he is not an economist and it would, undoubtedly, weigh heavily on the Committee who are not precluded from supporting applications which are not supported by the relevant line manager but who rarely do.*

20    (82) A letter dated 2 June 2020, was issued by the Respondent to the Claimant confirming that her appeal would not proceed any further as the Respondent found no evidence of procedural irregularity [see page 323 of Bundle]. **ASF (24).**

25    (83) In that letter of 2 June 2020, from Christine Barr, Director of HR, the claimant was advised as follows:

30    *“I have taken time to consider the substance of your appeal, which is based on your contention that your Head of School, the College Promotion Committee and the Board of Review did not appropriately assess the indicators of Esteem detailed in your promotion application. You further assert that the HR function, as custodians of the Academic Appointment & Promotion*

*Policy, failed 'to provide a revised set of guidelines which would have included examples of esteem arising from impact' which adversely affected the overall success of your application.*

5 *I have reviewed your appeal submission, the commentary surrounding the decision of the College Promotion Committee and its subsequent consideration and endorsement by the Board of Review, in consultation with Professor Frank Coton, Vice Principal - Academic Planning & Technological Innovation. We have concluded that due process has been followed and have not found any evidence to support your statement that your application has*  
10 *been subject to any form of procedural irregularity.*

*I would take this opportunity to confirm that the University's academic promotion criteria are subject to regular review and include a non-exhaustive list of illustrative examples under each theme as an indicative guide for applicants. These exemplars are intended to provide an outline of the kind of*  
15 *credentials that might be relied upon in support of an application for promotion. Further, the process enables applicants to highlight any aspect of their portfolio or credentials to evidence a track record of delivery across each of the criteria through which there is considerable latitude for individuals to demonstrate relevant information in support of their application.*  
20 *Correspondingly, with a particular focus on demonstrable measures of Esteem, there is sufficient scope for applicants to exemplify those distinctive elements of their portfolio by way of external recognition which may be pertinent to their discipline and/or have contributed to raising their individual profile, assuming these have not been relied upon elsewhere in any promotion*  
25 *application.*

*I am therefore satisfied that there has not been any procedural irregularity in the academic promotion process or in the assessment of your application that would justify your appeal proceeding.*

30 *I understand you will be disappointed by the outcomes of both your promotion application and your subsequent appeal, however I would wish to assure you that there are robust processes and mechanisms in place which govern our*



*academic promotion policies and practices in the interests of fairness, transparency and consistency whilst ensuring equality of opportunity for all.”*

5 (84) That letter of 2 June 2020, from Christine Barr, Director of HR, also stated (at page 324 of the Bundle) that she (or Lesley Cummings, Director of Performance & Reward) and Professor Frank Coton, Vice-Principal, would be pleased to meet with the claimant at her earliest convenience with a view to discussing the ways in which the claimant might wish to develop indicators of Esteem for the future.

10 (85) On 18 June 2020, the Claimant met with Christine Barr and Frank Coton to discuss how the Respondent may be able to support her to achieve the criteria for future applications. **ASF (25)**. [The Tribunal notes that although this is an agreed fact, Ms Barr’s email of 21 June 2020 to the claimant, at page 336 of the Bundle, refers to a meeting with her, the claimant and Professor Coton, on 12 June 2020, “*at which we provided further feedback on those areas of*  
15 *your portfolio that you might further develop.*” The claimant’s witness statement, at paragraph 23, refers to the meeting taking place on 18 June 2020, when it was agreed that Professors Dukes and Heald would look at her (unsuccessful) 2020 application, and give her advice for future applications.]

### **The Mason Report**

20 (86) Between 21 June and 2 October 2020, there was an email exchange between the Claimant, Christine Barr and Lesley Cummings about a development plan and an external reference / assessment of the Claimant’s 2020 promotion application. Copy email correspondence was produced to the Tribunal at pages 333 to 337 of the Bundle.

25 (87) By email on 21 June 2020, Christine Barr (at pages 336 / 337 of the Bundle) had suggested to the claimant that: “*Finally, we considered whether or not you might wish the University to seek an independent review of the University’s recent judgement with regards to your recent promotion application utilising our promotion criteria via an appropriate external*  
30 *assessor/ referee to effectively test and benchmark our institutional process.*”

- (88) Thereafter, in the claimant's email of 3 July 2020 to Lesley Cummings (page 335 of the Bundle), the claimant had then stated that: "*I think it is a good idea for the University to have its internal processes checked from time to time so I am pleased you are doing this. I am happy to give permission for my personal data to be used in the way outlined in your email.*"
- (89) At this Final Hearing, and as per paragraph 25 of her witness statement, the claimant stated that: "*I need to make clear at this point that my agreement was in relation to the University testing its procedures, a relevant matter to me as a Branch officer of UCU who had been discussing promotion policy with HR prior to April 2020). It could not, within our policy, affect my own application which was already rejected by that time... I contend that all the evidence points to me giving my permission for the University to use my data for the purposes of them testing their own procedures and not revisiting my application.*"
- (90) There was also produced to the Tribunal, at pages 338 to 341 of the Bundle, copy of the email exchange between the Respondent's Ellie Roberts, on behalf of the University Principal, Professor Muscatelli, and Professor Katy Mason at Lancaster University, between 5 August and 23 September 2020.
- (91) This email traffic from the Respondent was issued from the HR team [promotions@glasgow.ac.uk](mailto:promotions@glasgow.ac.uk), rather than from Professor Muscatelli's own email address. There was no direct contact at any time between Professor Muscatelli, and Professor Mason. Professor Muscatelli was not involved in the selection of Professor Mason or the commissioning of a report from her. At this Final Hearing, he was aware that the Mason report had been instructed, and he confirmed that he did not commission it.
- (92) The 6 July 2020 invite from the Respondent to Professor Mason, seeking her response by 17 July 2020, (copy produced at pages 340 and 341 of the Bundle) stated that: "*Jeanette Findlay in the Adam Smith Business School applied earlier this year for promotion to Professor. Mrs Findlay was unsuccessful in her application however she has consented to the University seeking an external assessment of her application and as such, I would be*

*very much obliged if you would agree to act as an independent referee for this purpose.”*

- 5 (93) Professor Mason was provided, along with her remit from the Respondent, with a copy of the Claimant’s application for promotion, her CV, and a copy of the Respondent’s Academic Promotion Policy.
- (94) With an apology for her delay in doing so, explaining that she was over capacity, going on annual leave, and she had other significant deadlines, Professor Mason agreed to do so with an extension of time after 3 September 2020.
- 10 (95) She thereafter provided the Respondent with an external assessment of the claimant’s 2020 application for promotion, at the request of Glasgow University, on 23 September 2020, a copy of which report was provided to the Tribunal at pages 342 to 346 of the Bundle
- 15 (96) In her report, Professor Mason concluded that the claimant’s 2020 application did not meet the criteria for promotion at Glasgow University and, further, she concluded that the claimant would not have met the criteria for promotion to Professor at Lancaster University either.
- 20 (97) In so reporting, Professor Mason’s covering email to the Respondent, on 23 September 2020 (page 338 of the Bundle) had stated that: *“My only concern would be with this candidate that she presents herself as an applied economist. That is not my area of expertise as you will know and should you require further evidence to back up your position, it might be worthwhile seeking the advice of such a person.”* She recommended a named individual (her colleague, Ian Walker, described by her as an *“excellent applied economist”*) for that purpose.
- 25 (98) In her report, at page 1 of 5, at page 342 of the Bundle, Professor Mason had stated: *“An applied economics specialist from the Economics panel might take a different view to the one I present here but I could not say.”* The respondent did not thereafter ask for any further view from any applied economist.

- (99) Christine Barr provided the Claimant with a copy of Professor Mason's external assessment report by email to the Claimant on 15 October 2020, a copy of which email was produced to the Tribunal at page 347 of the Bundle, in advance of a telephone call with the Claimant in relation to her case.
- 5 (100) In her evidence to the Tribunal, and as stated by her at paragraph 27 of her own witness statement, the Claimant stated that : "*It's purpose, as far as I can see, is to belittle my professional standing in the eyes of this Tribunal*", and she further stated that, as far as she is concerned, "*it is inappropriate for it to be used given that it was acquired improperly and it came six months after*  
10 *the decision in question was made.*"
- (101) In her evidence, and as per paragraph 27 of her witness statement, the claimant stated that: "*I raised the issue of the Mason document (page 342 of the bundle) on a number of occasions with my then legal adviser in the context of these proceeding.*"
- 15 (102) In her closing submissions, at her paragraph 17, the claimant gave further information: "*I was initially given legal support by my trade union. This was withdrawn when the Mason report was shared with the union. In this way and others, the Mason report has been enormously damaging to me.*"
- (103) From the claimant's statement, the Tribunal infers that it was the claimant  
20 who shared the Mason report with her then legal advisers. While, at this Final Hearing, she took objection to the respondents' witnesses having seen it, it was a document in a Joint Bundle provided by both parties to the Tribunal.
- (104) Further, at paragraph 455 of her closing submission, the claimant advised the  
25 Tribunal that: "*In relation to the Mason Report (I) put it to several witnesses (AM, LC, CB) to comment on my view that the document was used to humiliate me in the public domain and possibly deter me from proceeding with the Tribunal.*"
- (105) The respondents state that there were legitimate reasons for the University including the Mason report in the papers for this Tribunal, and that the report

was not included to humiliate the Claimant, per paragraph 3.1.41 of the respondent's written closing skeleton submission.

5 (106) From the fact that this case proceeded to and concluded at this Final Hearing, the claimant was clearly not deterred from proceeding with her case, even if, as per her belief, that was the respondent's intention.

10 (107) While external referee reports on an application for promotion would be requested by the Respondent, if an applicant passed the internal promotion process as prima facie suitable for appointment, the commissioning of an external assessment of a candidate who had not been recommended for promotion was not part of the Respondent's promotion policy.

15 (108) As per paragraph 22 of the respondent's amended grounds of resistance dated 11 November 2020 ( copy produced at page 75 of the Bundle), it was stated that : *"With the Claimant's agreement, outside of the Promotions policy and for guidance only, the Respondent asked an independent female external referee to review the Claimant's promotion application against the Respondent's academic promotions criteria. The referee concluded that she did not consider the claimant was suitable for promotion to professor."*

### Grievance

20 (109) The Claimant subsequently raised a grievance in respect of the promotion decision on the grounds that she had been discriminated against on grounds of sex [see pages 350-355 of the Bundle reference]. **ASF (26)**.

(110) A copy of her email of 3 July 2020 to Christine Barr was produced to the Tribunal at page 350 of the Bundle, where the Claimant stated that:

25 *"As discussed with you, I am now formally submitting a grievance against the University on the grounds that they have subjected me to detriment on grounds of my sex in breach of the Equality Act 2010. I also attach a list of questions which I would like the University to answer.*

*Please not that, to avoid any embarrassment, given his current role, I have not relied on the issue which I discussed with you on 29/5/2020, when I informed you that a grievance outcome from some years ago, precluding Professor Muscatelli from playing any role in any promotion application I may make was still in force.”*

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(111) As a matter of fact, the Tribunal notes and records that, as vouched by the copy documentation produced to it by parties at pages 458 to 460 of the Bundle, there was a confidential COT3 agreement between the parties dated 25 March 2004, settling, as a result of ACAS conciliation, a 2001 claim brought by the Claimant against the Respondent, in relation to her then seeking promotion to Senior Lecturer.

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(112) The restriction on Professor Muscatelli (then Dean of the then Faculty of Social Sciences) was expressly stated in that agreement only to relate to the 2004/05 academic session, and thereafter the Respondent's usual promotion procedures in place at the time of any future promotion application would apply in all respects.

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(113) In her 3 July 2020 statement of grievance, as subsequently amended by the claimant, and as shown at pages 352 / 353 of the Bundle, the claimant there stated that:

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*“I contend that I have been subjected to discrimination on grounds of sex in terms of:*

1. *The failure of my employer to provide career guidance and support on the same terms as that offered to men over the entire length of my career and especially since 2004/5 and that this has had a material effect on my rate of career progression and my current position and salary.*

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*“I contend that I have been subjected to discrimination on grounds of age, in that the University, having recognised that women are not promoted in the same proportions as men have sought to address this mainly in terms of providing support and assistance to younger cohorts*

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of women and have failed to address this for older cohorts, including myself. The very recent promotion of a younger female colleague whose profile is weaker in a number of respects than my own is a specific example of age discrimination. I do not particularly wish to frame my objection in terms of that colleague as I am happy to see some extremely limited progress in this area, however, my broader point stands.”

(114) Further, and as shown at page 355 of the Bundle, the claimant’s grievance then detailed the effect on her of the discrimination that she alleged she had suffered, and detailed what she then sought by way of resolution, as follows:

**“Effect on me of the discrimination I have suffered**

I contend that I have suffered financial loss with respect to the grade and associated salary which I have been able to reach after 33 years of employment compared to what I might reasonably have achieved in the absence of discrimination.

Moreover, and of considerable importance to me, the failure of my employer to acknowledge my expertise and professional standing by conferring on me the title of Professor leaves me in an exposed and embarrassing position in my dealings with external bodies. Given that my professional life has been, and remains, largely external-facing this has been the source of considerable distress to me.

Finally, I must stress that I am taking this action, not solely on the basis of objecting to discrimination against myself, which I am entitled to do, but also as a point of principle. I am an officer of my Trade Union branch and I have a long history of challenging inequality both as a trade unionist and as an academic. I spend a great deal of my time representing my colleagues in challenging inequality in the workplace, and also a great deal of time working with the other campus trades unions and my HR colleagues in developing policies to promote equality. It is a source of enormous frustration and personal distress that, despite this, my employer continues to discriminate on grounds of sex and it is simply untenable for me in light of my personal,

*political and academic background not to be seen to challenge it. I cannot represent my members in their quest for equality and be seen to accept anything less for myself.*

***Resolution sought***

5 *I would like the University to cease to discriminate against me on grounds of sex and, in particular, to re-assess my 2019-20 promotion application in a non-discriminatory way and taking into account the discrimination I have faced in the allocation of duties and lack of support throughout the period of my employment with them. I expect that to result in my promotion to Grade 10*  
10 *(Professor)."*

(115) Professor Jim Conroy was appointed to consider the Claimant's grievance. The Claimant attended a grievance meeting with Professor Conroy on 23 July 2020 held via Zoom, accompanied by David Wharrie, her UCU representative. Minutes of that meeting were taken and can be found in the Bundle from page  
15 356. **ASF (27).**

(116) Between 27 July and 15 September 2020, Professor Jim Conroy held separate grievance investigation meetings with the following eight witnesses:

- a. The Claimant
- b. Christian Ewald
- 20 c. Miles Padgett
- d. Neal Juster
- e. Lesley Cummings
- f. John Finch
- g. Sara Carter
- 25 h. Charles Nolan
- i. John Tsoukalas



Minutes were taken at each of the witness meetings. Copies of these minutes were provided to the Claimant with the grievance outcome. The grievance outcome is in the Bundle from pages 385-393. The notes of the witness interviews (other than the Claimant's) are at pages 363-384 of the Bundle.

5 **ASF (28).**

(117) The minutes of the claimant's grievance investigation meeting with Professor Conroy, held on 23 July 2020, were produced to the Tribunal at pages 356 to 362 of the Bundle. They were signed by the claimant on 7 September 2020. In addition to the claimant, Professor Conroy and Mr Wharrie being in attendance, the minutes record Ms Gillian Shaw (HR manager) and Mrs Mary Ramsay as also being in attendance, the latter as note-taker.

(118) The copy grievance investigation minutes, as provided to the claimant, and produced to the Tribunal at pages 363 to 384 of the Bundle, show Professor Conroy in attendance at each meeting as grievance investigation manager, together with the relevant witness, along with Ms Gillian Shaw (HR manager) and Mrs Mary Ramsay as also being in attendance, the latter as note-taker.

(119) Professor Conroy held grievance investigation meetings as follows:

- Professor Sara Carter, Head of College, on 27 July 2020, with notes signed off by her on 26 August 2020
- Ms Lesley Cummings, Director of Performance & Reward, on 28 July 2020, with notes signed off by her (undated)
- Professor John Finch, Head of School, on 17 August 2020, with notes signed off by him (undated)
- Professor Miles Padgett, Kelvin Chair of Natural Philosophy, and Vice Principal (Research) on 19 August 2020, with notes signed off by him (undated)
- Professor Neal Juster, Senior Vice-Principal, on 19 August 2020, with notes signed off by him (undated)

- Professor Christian Ewald, Professor in Financial Economics, on 1 September 2020, with notes signed off by him (undated)
- Professor John Tsoukalas, Head of Subject, on 2 September 2020, with notes signed off by him (undated)
- 5       • Professor Charles Nolan, Bonar MacFie Chair in Economics, on 15 September 2020, with notes signed off by him (undated)

(120) Professor Conroy issued the grievance outcome in a letter to the Claimant dated 7 October 2020 [pages 385--393]. The Claimant's grievance was not upheld. Professor Conroy made recommendations relating to ensuring consistency of process in the gathering of opinions from the professoriate on promotion applications across the various Colleges, and possible improvements regarding promotion conversations and other requests for support. **ASF (29)**.

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(121) In his grievance outcome letter to the claimant, dated 7 October 2020 (copy produced to the Tribunal at page 385 to 392 of the Bundle), Professor Conroy stated that, since his meeting with the claimant and her trade union representative, Mr David Wharrie, on 23 July 2020, he had, supported by Gillian Shaw, Head of HR, College of Arts) reviewed the relevant paperwork and contacted all relevant witnesses, and their statements were provided to the claimant in the attached appendices.

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(122) Professor Conroy's conclusion, as produced to the Tribunal at pages 391/392 of the Bundle, being the end of his letter of 7 October 2020 to the claimant, was as follows:

*"In conclusion it is my decision that the University has not failed in its obligations and duties with respect to the Equalities legislation and/or discrimination on grounds of gender or age. And that, in consequence, the grievance is not upheld, nor am I able to agree to your requested resolution that your promotion application be reassessed and you be promoted to Professor. A separate report should, however, be made to HR and the College with respect to ensuring that fuller appropriate and documented feedback and*

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advice is offered to all PDR reviewers and that requests for support with respect to promotion and other developmental support are documented, tracked and audited. This is in addition to the previously mentioned recommendation that consideration be given to a more stipulative guidance being offered to Schools and Colleges with a view to ensuring broad congruence of approach across the University.

In accordance with section 9 of the Grievance Procedure you have the right of appeal against my decision. This should be sent, in writing, clearly setting out the grounds for the appeal to Mr Jim McHarg, Head of Human Resources, College of Social Science. Any appeal should be lodged within 5 working days of receipt of the outcome of the stage 1 grievance with the full grounds of appeal being submitted within 10 days of the outcome of stage 1 if not included in the initial appeal letter.”

(123) On 22 October 2020, the Claimant appealed against the grievance outcome [see pages 394-397 of Bundle.] **ASF (30)**.

(124) In her letter of 22 October 2020, appealing against the grievance outcome, delivered by Professor Conroy on 7 October 2020, the claimant stated as follows (as reproduced at page 394 of the Bundle):

“I, here, provide further detail on the basis of my appeal against the grievance outcome delivered by Professor James Conroy (the GM) on 7 October 2020.

I can say at the outset that my view was that Professor Conroy did not approach this investigation with an open mind. He was argumentative and defensive throughout the grievance meeting, and by this I do not mean that he was questioning me closely as he was entitled to do, but that he was presenting a defence of the University for each of the points I raised as I was raising them, that is, without reflection and without having considered the testimony of other witnesses. I have considerable experience of the conduct of grievance cases as a trade union representative and I base my assessment of his conduct on that experience. Moreover, Professor Conroy at various points responded to my evidence with comments like, ‘that is not what we do in my area’ or ‘that is not my experience of this’. Clearly, he had no real

*concept of how inappropriate, irrelevant and indicative of potential bias such comments were. It was almost as though his lack of direct experience of sex discrimination (either as the victim or as an observer), somehow meant that it could not have happened to me.”*

5 (125) The claimant’s appeal letter then addressed Professor Conroy’s findings, and provided her comments, stating that, in her view, “*This was a failure to properly test the evidence and to document his findings.*”

(126) Professor Alice Jenkins, Head of School Critical Studies was appointed to consider the Claimant’s appeal. **ASF (31).**

10 (127) On 3 November 2020, a grievance appeal meeting was held via Zoom between the Grievance Appeal Manager, Alice Jenkins, and the Claimant accompanied by David Wharrie, her UCU Representative. Minutes were taken at that meeting [see pages 442-452]. **ASF (32).**

15 (128) The copy grievance appeal minutes, as provided to the claimant, and produced to the Tribunal at pages 442 to 452 of the Bundle, show Professor Jenkins in attendance, as appeal hearing manager, together with the claimant and her trade union representative, Mr David Wharrie from UCU HQ, a full-time union official, along with Mrs Elise Gallagher (HR representative) and Miss Jenni Macintosh as also being in attendance, the latter as note-taker.

20 (129) The copy grievance appeal minutes produced to the Tribunal were unsigned by the claimant as confirming, whilst not verbatim, those notes were an accurate record of the discussion.

25 (130) On 18 December 2020, Alice Jenkins issued the grievance appeal outcome letter to the Claimant. The Claimant’s grievance was not upheld. [Bundle reference – pages 398(cover email), 399-408 (outcome letter), 409-452 (appendices, including note of appeal meeting with Claimant)]. **ASF (33).**

30 (131) Professor Jenkin’s grievance appeal outcome letter dated 16 December 2020 was emailed by her to the claimant, on 18 December 2020 (copy email produced to the Tribunal at page 398 of the Bundle) along with 6 appendices, being (1) an email from Gillian Shaw on 14 December 2020, (2) HESA Russell

Group comparisons, (3) the claimant's promotion application form, (4) an email from the claimant, on 6 November 2020, following her meeting with Professor Jenkins on 3 November 2020, (5) a signed note of an investigation meeting between Professor Jenkins and Professor Conroy (held on Zoom, on 11 November 2020, and notes signed off by him on 17 December 2020), and (6) an unsigned note of the meeting between Professor Jenkins and the claimant (on 3 November 2020).

(132) In her grievance outcome letter to the claimant, Professor Jenkins addressed each of the 8 appeal grounds raised by the claimant – (1) Attitude of the Grievance Manager (Professor Conroy); (2) consultation with Professors ; (3) Grant capture ; (4) Impact / Esteem criteria ; (5) Failure to conduct Equality Impact Assessments; (6) Equality Duty ; (7) Failure to provide Careers Guidance ; and (8) Age Discrimination.

(133) On “*Age Discrimination*”, Professor Jenkins stated (as reproduced at pages 407 / 408 of the Bundle) as follows:

**“Age Discrimination**

*The appeal claims that the GM's outcome letter does not address the grievance's points about age discrimination.*

*The appeal refers in this section to a “problem of sex discrimination which the university acknowledges it has”. It is worth noting here that the University does not acknowledge that it has such a problem but has had a plan in place since 2010 to address underrepresentation of women across subject disciplines and at senior levels in the organisation.*

*The appeal emphasises that the University has sought to address gender equality in the promotions process by putting in place additional support for ‘younger cohorts’ but not for older ones. I take this to be a reference to the University's Early Career Development Programme (ECDP), which is targeted at academic colleagues below Grade 9. Colleagues are appointed to Grades 7 and 8, and hence take part in the ECDP, without regard to their age.*

*The outcome letter makes reference to the ECDP, as well as to other evidence of the University taking action to increase the number of promotion applications by women including by improving the representation of women at senior levels (eg. 50% of Senior Management Group, 73% of the Senior Management Team in the College of Social Sciences) and at more local level through the Adam Smith Business School's successful Athena-SWAN Bronze Award application."*

(134) Professor Jenkins' grievance appeal outcome letter of 16 December 2020 concluded as follows (as reproduced at page 408 of the Bundle:

*"I do not find that the evidence supports the claim that the GM behaved in a closed-minded way in his meeting with you. I do not agree that in general he failed to seek evidence that could have supported your view, though I agree that he could have investigated the proportion of female Research and Teaching staff within subject areas whose average is lower than the Russell Group median. I do not agree that he failed to seek evidence about how your case in particular was dealt with: although evidence such as detailed minutes of discussion at the promotion panel do not exist, he did seek evidence where appropriate from Professor Finch and Professor Carter who participated in the promotion panel.*

*Overall I do not agree that the GM presented a finding out of line with the evidence available or presented to him. I appreciate that you may be disappointed by this outcome and should you find it helpful, I would be willing to meet with you to discuss my findings. However, please note that this now exhausts the University's Grievance Procedure and there is no further right of appeal."*

### **Comparator**

(135) Luis Angeles is the comparator identified by the Claimant ("the Comparator"). The Comparator is a male colleague of the Claimant within economics at the Adam Smith Business School. The Comparator also applied for promotion to Professor in January 2020. The Comparator's application for promotion was

successful. The Comparator's promotion application form is in the Bundle between pages 240-257. **ASF (34)**.

(136) His application for promotion to Professor was supported by Professor Finch, the Head of School. The Head of School's statement in support was produced to the Tribunal at pages 249 / 250 of the Bundle.

(137) In that statement, signed off by him on 8 January 2020, Professor Finch wrote as follows:

**STATEMENT FROM HEAD OF SCHOOL / DIRECTOR OF RESEARCH INSTITUTE**

*Do you support this application for promotion? Yes  No*

***Please provide a statement that supports your decision specifically addressing the merits of the case for promotion when assessed against the relevant promotion criteria.***

*I support [REDACTED] application for promotion based on preponderance. I think he meets the criteria for outputs, PhD supervision, learning and teaching, leadership and management, and esteem. I also highlight that [REDACTED] shows clear collegiality and citizenship, both in taking on formal roles in the school and in supporting other colleagues – for instance with a junior colleague being awarded a major early career fellowship. I have consulted with professorial colleagues in the school from the economics subject area. Eleven colleagues responded, and of these four were in favour and seven not in favour. I should be pointed out that [REDACTED] is a specialist in Economic History. Two of those colleagues who are not in favour made a distinction between Economics, and Economic History, indicating a more favourable response in terms of Economic History.*

*Outputs - meets criteria: [REDACTED] has published four outputs over the relevant period. Two of those outputs, published in the Economic History Review and Journal of Development Economics, have a high likelihood to be rated 4\* in REF terms.*

*Income - does not meet criteria, ■■■ has been instrumental in supporting an early career researcher to apply and be awarded a prestigious British Academy fellowship.*

5 *PGR supervision – meets criteria: ' ■■■ PGR average supervision sits comfortably above the RG upper quartile for the discipline.*

*Impact – does not meet criteria: ■■■ has been supporting colleagues in the school in developing impact case studies for REF 2021 – as outlined below under leadership.*

10 *L&T – meets criteria: ■■■ has made sustained contributions in developing the Economics and Finance PGT portfolio, strategically important to the school, with streamlining and improving programmes to enable and support a growth in income streams, with a deep focus on student experience. He has shared best practice across several early career academics so enhancing the student experience in the economics PGT programmes as reflected in PTES returns*  
15 *and in the growth in admissions.*

*Leadership – ■■■ meets criteria: has contributed to the School in several roles. Director of PGT, Impact Champion and in the last year and a half Deputy Head of the Economics Subject. His work on REF preparation and impact development and support has been exceptional. His work has been*  
20 *impressive, and his drive, enthusiasm, and support meant that many colleagues from Economics put forward credible ICSs for development and review.*

*This is an important accomplishment for the School and the culture has been changing with significant improvement in staff engagement compared to REF*  
25 *2014. ■■■ has played a vital role in shaping the culture.*

*Esteem – meets criteria: ■■■ is considered an expert in Economic History beyond the UK and he has been recognised as such by world-leading experts, sits on various bodies, and edits a development journal.*

*Please provide your suggested provisional zone profile.*



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- (138) Mr Angeles was successful against five of the Respondent's promotion criteria, whereas in 2020 the Claimant was only successful against three.
- 5 (139) Celine Azemar was a colleague of the Claimant within economics at the Adam Smith Business School in January 2020. Celine Azemar is female. Ms Azemar applied for promotion to Professor in January 2020. Ms Azemar's application for promotion was successful. Ms Azemar's promotion application form is in the Bundle between pages 258-306. **ASF (35)**.
- 10 (140) Her application for promotion to Professor was supported by Professor Finch, the Head of School. The Head of School's statement in support was produced to the Tribunal at pages 276/277 of the Bundle.
- (141) Ms Azemar was successful against four of the Respondent's promotion criteria, whereas in 2020 the Claimant was only successful against three.
- 15 (142) Ms Azemar is no longer a Professor at Glasgow University, having left, and returned to a post in France sometime shortly after her promotion in 2020.
- (143) In that statement, signed off by him on 8 January 2020, Professor Finch wrote as follows:

**STATEMENT FROM HEAD OF SCHOOL/DIRECTOR OF RESEARCH  
INSTITUTE**

Do you support this application for promotion? Yes  No

**Please provide a statement that supports your decision specifically addressing the merits of the case for promotion when assessed against the relevant promotion criteria.**

- 25 *I am supportive of Dr Azemar's application based on preponderance. In my view, Celine meets the criteria in terms of impact, learning and teaching, leadership and management, and esteem. I note Celine's statement of personal circumstances in her application, indicating that this has affected the*

*number and not quality of publications in the normal six-year period of review for promotion applications. I have consulted with professorial colleagues in economics in the school. Eleven responded: six colleagues were supportive and five were not supportive.*

5       *Outputs – does not meet criteria: Celine has published four outputs over the relevant period. One of those outputs published in the Journal of Public Economics is likely to be reviewed in REF terms as of 4\*. Another, in the Canadian Journal of Economics is likely to be assessed as a strong 3\* contribution. The findings across these papers contain important results that*  
10       *challenge conventional wisdom on tax policy and FDI. The policy implications and recommendations are significant outside of academia and findings from the latter have been influential in legislating U.S. corporate tax rates – as included in an impact case (see below).*

15       *Income – does not meet criteria: While no UKRI or EU funds have been awarded, Celine has been effective in generating external contributions for various activities in the School, including the prestigious IIPF congress held at the University in August 2019.*

20       *PGR supervision – meets criteria: Celine sits comfortably above the RG upper quartile for the discipline and she is among the highest in the Economics subject area.*

25       *Impact – meets criteria: Celine has a fully developed ICS on track for submission to REF 2021. The impact is quite impressive. Briefly, the research findings from her Canadian Journal of Economics paper have been used by the U.S. administration to pass and enact legislation to lower the U.S. corporation tax rate. She is also developing an additional ICS for the next REF.*

30       *Learning and teaching – meets criteria: Celine has made contributions in developing the PGT portfolio with programmes that attract a good number of students from various backgrounds that enhance income streams and student diversity, initiated several successful interventions to improve students experience and employability skills. She is, in sum, a driving force in the PGT*

*arena both for Economics and the School. She is moreover constantly helping many early career colleagues to develop as influential teachers for our students.*

5 *Leadership – meets criteria: Celine has held important roles and has been influential in shaping the Learning and Teaching strategy of the School, developed new partnerships with other Universities and was the sole academic organiser for a large and prestigious conference, IIPF, in Glasgow in the summer of 2019.*

10 *Esteem – does not meet criteria: Celine enjoys professional recognition as an emerging leader in her field both in academia but more importantly by key policy institutions such as the World Bank and the IMF. While probably falling a little short of professorial criteria, this is on an upward trajectory.*

*Please provide your suggested provisional zone profile.*

	A1	A2	A3	B	C	D	E
15	0	0	1	1	1	1	0

### **2021 Application for promotion to Professor**

(144) The Respondent's Academic Appointment & Promotion Policy 2019-2020 states (at the top of page 114 of the Bundle) when considering whether to apply for promotion, "*applicants should be mindful that an unsuccessful outcome will normally prevent a further application being made the following year without the support of their Vice Principal & Head of College*". The same policy applied in 2020-2021. **ASF (36).**

20

(145) On 20 January 2021, the Claimant sought the permission of her Vice Principal & Head of College, Professor Sara Carter, to allow her to apply for promotion to Professor in the 2021 promotion round (see page 589 of Bundle). **ASF (37).**

25

(146) On 28 January 2021, Professor Sara Carter emailed the Claimant to confirm she did not support a reapplication for promotion in 2021 (see page 588 of Bundle). **ASF (38).**

(147) Specifically, in that email, Professor Carter advised the claimant, as follows:

*“Dear Jeanette,*

*Please forgive the delay in responding to your email.*

*I am afraid that I do not support a reapplication for promotion this year as I do not see any grounds which would constitute exceptional circumstances. I understand that you have been offered mentoring to support your career progression and hope that this is going well.*

*Best wishes,*

*Sara”*

10 (148) Thereafter, the claimant emailed Professor Carter, on 29 January 2022, stating (as per page 588 of the Bundle) that:

*Dear Sara*

*Thank you for your reply. Thank you for that. I am surprised at your refusal to allow an application from me to proceed in this round - not least because of the fact that you have not asked if there were any exceptional circumstances but have simply assumed there were not.*

*If you had asked I would have pointed out that I have been an employee of this University for over 33 years, I was deemed by the Promotions Committee and the Board of Review to have met three out of the four criteria in the last round, I have acted on the advice given to me by, among others, the Vice Principal for Academic Planning and Educational Innovation with the aim of meeting a fourth criteria (namely Esteem) and, last but not least, I have a protected characteristic which this University knows is underrepresented at Grade 10 across the institution but most particularly in economics. I think that constitutes exceptional circumstances and merits a close, second consideration of my application.*

*However, I note your response.*

*Best wishes*

*Jeanette*

## **2022 Application for Promotion to Professor**

(149) The Claimant applied for promotion to Professor in 2022. The Claimant's application form is included at pages 605-618 of the Bundle. The Claimant's Head of School, Professor John Finch, supported the Claimant's application. Professor Finch's statement is included within the Claimant's promotion application at pages 617-618 of the Bundle. **ASF (39)**.

(150) Professor Finch, as Head of School, supported the claimant's 2022 promotion application, in the following terms, as per the extract from her application form, produced to the Tribunal, at page 618 of the Bundle, where in his comments he stated as follows:

### ***“Additional Comments***

*I support Jeanette's application for promotion to professor on the basis of a preponderance of four criteria: Impact, Learning and Teaching Practice, Leadership, and Esteem. Jeanette contributes significantly to the University and School, showing collegiality and citizenship that extends beyond commentaries to the promotion criteria, supporting colleagues and students in all roles. As an engaged researcher, policy impact is vital to Jeanette's work, and is a consistent theme across all areas of her work, as evidenced by her current impact cases. I also note that Jeanette's contributions are sustained across her career, with clear continuity into her planned projects in the coming years that will as they develop further enhance her profile.*

### **Zone profile**

*A1 0 A2 0 A3 0 B 2 C 1 D 2 E 1”*

(151) There were no material changes to the Respondent's Promotions Criteria between the 2020 and 2022 promotion rounds. In particular, there were no changes to the Esteem criteria between 2020 and 2022.

(152) The Claimant's application for promotion in 2022 was successful. The Board of Review concluded the Claimant met four of seven criteria – Section B

Impact; Section C: Learning & Teaching Practice; Section D Leadership, Management & Engagement; and Section E Esteem. The Claimant was also assessed as likely to meet a fifth criteria, Section A Research & Scholarship – A3 Supervision – within a short period of time. **ASF (40)**.

5 (153) The Claimant was informed of the Board of Review's decision on 28 June 2022. **ASF (41)**.

(154) The Claimant became a Professor of Economics on 1 August 2022. **ASF (42)**.

(155) She was notified of that promotion by letter of 28 June 2022 from the Respondent, a copy of which was not produced to the Tribunal.

#### 10 **Supplementary Bundle of Documents**

(156) A supplementary bundle of documents was added to the Productions on 23 August 2022 (during the Employment Tribunal Final Hearing) and contained the following documents:

- a. The Respondent's PDR Process Flow for 2018-2019;
- 15 b. The Respondent's Performance Development Review Process & Guiding Principles 2018-2019;
- c. The Respondent's PDR – 2018/2019 – Reviewer Guide;
- d. The Respondent's PDR – 2018/2019 – Reviewee Guide;
- e. The Respondent's 2018 Staff Survey results; and
- 20 f. The Respondent's Colleague Engagement Extended Pulse Survey – August 2021. **ASF (43)**.

(157) The PDR documents referred to at 43 a, b, c and d above were the documents in place for the 2018/2019 PDR process. **ASF (44)**.

25 (158) The Respondent's Performance Development Review Process & Guiding Principles 2018-2019 provided, at section 6, at page 8 of that document, that: "*The University's Athena Swan Action Plan encourages staff to discuss a development plan with their Head of School/Director of Research Institute or*

*Head of Service to facilitate their future potential for promotion/career development. Women typically spend longer at the same grade before being promoted than men: this is particularly pronounced at the Grade 9/10 promotion point. In the case of staff performing strongly at Grade 9 who have been at this grade for more than seven years, reviewers are encouraged to explore with them in the context of their development objectives for the forthcoming year any actions, support or interventions that might initiate or further prepare an effective case for promotion in the future.”*

- 5
- 10 (159) In the claimant’s case, no such development plan for her promotion in the future was developed by her, her PDR reviewers, her Head of Subject, or her Head of School.
- 15 (160) The document referred to at 43 e above details the Respondent’s 2018 Staff Survey results. As recorded on page 1, overall there were 4384 responses out of 6430 employees. Accordingly, the response rate was 68%. The employee engagement score is given on page1 and was 65%. The 2018 Staff Survey includes results relevant to the Respondent’s PDR process. Question 19 on page 6, Questions 19a, 19b, 20, 22, 23 and 24 on page 7 and Question 21 on page 8 are relevant to Performance and Career Development. **ASF (45).**
- 20 (161) **49%** felt their PDR was useful to them, while **55%** felt that, during their last PDR, their reviewer had helped them to focus on their performance, but only **39%** reported being optimistic about their future opportunities for career development. In answer to question 31, on page 9, **74%** believed the University is committed to equality for all of its staff.
- 25 (162) The document referred to at 43f above details the Respondent’s Colleague Engagement Extended Pulse Survey carried out in August 2021. The overall response rate was 46% (3334 out of 7265 employees) shown on page 4. The Employee Engagement score is 65% and is shown on page 7. The 2021 Survey includes a trend comparison with the 2018 survey. The results of this
- 30 comparison are shown at pages 19 and 20. The sections of this comparison

relevant to the PD&R process are recorded under the Theme of Line Management on page 20. **ASF (46)**.

(163) Whereas in 2018, when staff were asked whether, as part of their PDR discussions, they agreed a personal development plan (PDP), **61%** responded positively, in 2021, in answer to a reworded question, whether they had discussed their development aspirations and personal development plans with their manager, **64%** responded positively.

### **Female Success Rates/Mentoring and Career Development Opportunities**

(164) The Tribunal heard some evidence that the under-representation of women in senior roles is a long-standing problem in the Higher Education Sector, as it is in many sectors, and that the University of Glasgow is not immune from this fact.

(165) Further, the Tribunal heard evidence that, in 2015/16, the Respondent set a strategic target of 33% female representation at Grade 10 (Professor) by 2020, and that that target was achieved. The Respondent's current target is for 50-50 gender representation at Grade 10 by 2030.

(166) As per the Academic Promotion Criteria Analysis 2020 prepared by the Respondent, and copy produced to the Tribunal at pages 559 to 565 of the Bundle, in the 2020 Professor promotion round, women had an 83% success rate against Esteem; men had a 95% success rate against Esteem. However, overall, women did better than men in 4 out of the 7 criteria.

(167) The claimant referred us to an article on Mentoring, produced in the Bundle at pages 620 to 622, from the American Economic Review (May 2010) – entitled *Can Mentoring help female assistant Professors? Interim results from a randomized trial* – as also other publications regarding sex discrimination, in particular, at pages 623 to 632 of the Bundle, being an April 2016 updated article from the Royal Economic Society Women's Committee entitled *On Gender, Research Discipline and being an Economics Journal Editor in the U<sup>o</sup>*, and *Gender Balance of Academic Economics in the UK*, executive summaries from 2012, 2014, and 2016.



- (168) These documents were of little assistance to the Tribunal as they were significantly out of date, compared to the academic year 2019/2020, when the claimant made her unsuccessful 2020 application for promotion to Professor, and they were based on information from across UK universities, and not related to the University of Glasgow.
- (169) In the course of this Final Hearing, the claimant made frequent reference to a data reply that she had received from the respondent (from Gillian Shaw, Head of HR, College of Arts, on 17 July 2020) providing a breakdown by sex and grade of the numbers of Research & Teaching (R&T) and Learning & Teaching (L&T) staff in each of the four colleges of the University, and a breakdown by sex and grade of staff in Economics at the University.
- (170) That information was provided to the Tribunal at pages 695 and 696 of the Bundle, as follows:

***Additional Data Request***

1. *I would like a breakdown by sex and grade of the numbers of R&T and L&T staff in each of the four Colleges of the University.*

*Table 1a: R&T (by College)*

	ARTS		MVLS		SENG		SOCS	
Grade	Female	Male	Female	Male	Female	Male	Female	Male
GRADE7	13	12	<5	<5	13	27	14	24
GRADE8	35	27	7	14	17	87	46	39
GRADE9	43	50	38	53	20	82	47	57
Professor	36	47	36	90	20	104	49	89

*Table 2a: LTS (by College)*

	ARTS		MVLS		SENG		SOCS		UNIS	
Grade	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male
GRADE4					7	6				
GRADE5			86	36	145	225				
GRADE6	153	83	43	20	73	85	100	102	162	69
GRADE7	48	36	55	16	19	9	26	21	<5	<5
GRADE8	6	6	46	21	13	16	161	73	5	<5
GRADE9	<5	<5	30	16	6	20	20	14		<5
Professor			6	17	<5	<5	6	5		

2. *I would like a breakdown by sex and grade of staff in Economics at the University.*

<b>Economics</b>		
Grade	Female	Male
GRADE6	10	25
GRADE7	<5	6
GRADE8	5	10
GRADE9	5	8
Professor	<5	16

5 *In the University's response where there are less than five, the information has been structured in the manner '<5' as the base information could be used to identify individual members of staff and so is considered personal data as defined in Data Protection legislation. The release of the information would be in breach of the data protection principles.*

10 *Therefore, the exemption from release of the information applies as specified under sections 38(1)(b) and 38(2) of the Freedom of Information (Scotland) Act 2002. This exemption is an absolute exemption under the Freedom of Information (Scotland) Act 2002.*

15 (171) The claimant added an addendum to that document "Additional Data Request", on 13 August 2022, which was included in what was then labelled as page 697 of the Bundle. In order to assist the Tribunal, she had made certain calculations from the University's data, as follows:

**ADDENDUM ADDED BY THE CLAIMANT ON 13/8/2022**

*In order to assist the Tribunal I have calculated from this data the following:*

Number of academics employed by the University in 2020	3112 (1483 women (48%) and 1629 men (52%))
Breakdown of academic workforce R&T/L&T	40/60
Women academics in the University as a proportion of all Research and Teaching posts in 2020:	35%
Women academics in the University as a proportion of all Learning and Teaching posts in 2020:	56%
Proportion of women academics who are L&T track in the University in 2020	71%
Proportion of male academics who are L&T track in the University in 2020	51%

Percentage of women at Grade 10 R&T as a proportion of all Grade 10s in the University in 2020	30%
Proportion of women at Grade 10 in the College of Social Science in 2020:	36% (Arts, MVLS, SENG are 43%, 28% and 16%)
Proportion of women employed in the Economics subject area in 2020	30%
Proportion of women at Grade 10 in Economics in 2022	11%

- 5 (172) The respondent's solicitor objected to the inclusion of the claimant's addendum table, on day 1 of the Final Hearing (Monday, 15 August 2022) as it had not been provided by the University, and, having heard both Mr Maclean, and the claimant, the claimant agreed that she was happy for her addendum to be removed from the Bundle.
- (173) Nonetheless, in cross-examining witnesses, the claimant made regular reference to her tabulated calculations, as per her addendum, and she put these figures / percentages to witnesses from the respondent, who accepted them at face value, and answered her questions on that basis.
- 10 (174) The Tribunal also heard some evidence, from witnesses at this Final Hearing, about how some mentoring and career development opportunities may have been offered to some employees on an informal basis, but of the more formal mentoring and career development through Early Careers Development Programme (ECDP), Athena Swan, and Aurora, ECPD was only open to early career academics, and it appeared that there were few open and transparent opportunities for more long-serving academics, such as the Claimant.
- 15 (175) Specifically highlighted in the evidence that we heard was that, on 20 February 2021, as per copy emails produced to the Tribunal at pages 591 / 592 of the Bundle, Professor John Tsoukalas, Head of Economics, emailed 3 staff (including Alberto Paloni, and 2 others (Arjunan Subramanian and John Levy) offering them the opportunity to meet with Danny Blanchflower, who was appointed part-time Professor in Economics, to support Economics in a mentorship role and to offer advice on career progression and aspirations, but that opportunity was not afforded to the Claimant.
- 20 (176) At no point from the date that the claimant's 2020 promotion application was rejected (on 30 April 2020) until her PDR Reviewer, Professor Charles Nolan,
- 25

wrote to the Head of School, Professor John Finch, around 6 October 2021, as a result of the PDR discussion for that year, asking for mentoring to be provided, did the Head of School do anything about providing subject-specific mentoring. The Head of Subject, Professor John Tsoukalas had never  
5 spoken to the claimant about this or offered any careers guidance, support or mentoring to her.

(177) As per the copy email from Professor Finch to the claimant, sent on 13 October 2021 (copy produced to the Tribunal at page 595 of the Bundle) , the Head of School noted from her PDR discussion with Professor Nolan that the  
10 claimant had requested a subject-specialist mentor, with a view to her making a promotion application.

(178) On 18 October 2021, Professor Finch advised the claimant, by email (copy produced at page 595) that Professor Sayantan Ghosal (a Professor in Economics) was happy to be her mentor, and the following day, the claimant  
15 confirmed that that was fine, and she would contact him.

(179) On the evidence available to the Tribunal, the claimant was connected to Professor Sayantan Ghosal in October / November 2021, by which time she had made the improvements in her Esteem profile, which was the missing 4th category for her.

(180) As per the claimant's 2022 promotion application, copy produced to the Tribunal at pages 605 to 618 of the Bundle, in October 2020, she was appointed a Fellow of the Royal Society of Arts; in March 2021, she was elected from among 4 candidates across Scotland, to be Vice President of UCU Scotland ; in April 2021, she was elected, from among 5 candidates  
20 across Scotland, to the General Council of the Scottish Economic Society; and, in October 2020, she was a member of the team which won Best Use of UK Data Service data award.

(181) In his Head of School comments on her 2022 application, Professor Finch stated (as per copy produced at page 618 of the Bundle) that:

5 *“Jeanette meets the criteria for esteem through her election to the Royal Society of Arts, to the Council of the Scottish Economics Society, as Vice President of UCU Scotland, and through the UK Data Service Award regarding covid. Through these prominent indications of esteem, Jeanette has undertaken further work, for example with teaching economics in schools through the Scottish Economic Society, and in supporting economic and social recovering post-covid. In addition to showing esteem, these are also collaborative roles and endeavours, also showing considerable citizenship and collegiality within and beyond the university.”*

10 (182) Further, and again on the evidence available to the Tribunal, other support was provided to the claimant, post her unsuccessful 2020 promotion application, including making available to her Professor Ruth Dukes (Professor of Law) and Professor David Heald (Professor of Management), by way of informal mentoring – in the sense it was not part of any organised  
15 process.

(183) Professor Dukes was asked by Professor Finch, Head of School, on 24 June 2020, if she would be able to help a colleague (not then identified) as a person seeking some advice or mentoring about a promotion application. When Professor Dukes agreed, she and the claimant were put in touch with one  
20 another, but it was about advice and suggestions for what to put in any application. The claimant met separately with each of them thereafter.

(184) Finally, on the evidence available to the Tribunal, after her unsuccessful grievances were concluded in terms of the University’s processes, there was also discussion between Professor Frank Coton and the Claimant. He met  
25 with her virtually, on 16 July 2020, to give her guidance as to how she could strengthen her case going forward to enable promotion in the future.

(185) They spoke though each of the 7 promotion pillars and noted the College Promotion Committee’s panel assessment of her 2020 application, the gap between where she was then and the required level, and what she could do  
30 to make progress. Professor Coton highlighted the area of Esteem which was accessible to the claimant, and although she did contest the unsuccessful

outcome of her promotion application, he provided her with insight and support.

(186) He suggested a number of things the claimant might do, such as becoming a Fellow of one of the Royal Societies or joining an editorial board, and the claimant in October 2020 became a Fellow of the Royal Society of Arts, a matter which she founded upon when making her 2022, successful application for Professorship.

### **Tribunal's Assessment of the Evidence led at the Final Hearing**

69. In considering the evidence led before the Tribunal, we have had to carefully assess the whole evidence heard from the various witnesses led before us, and to consider the many documents produced to the Tribunal in the Bundles and additional documents lodged and used at this Final Hearing, so far as spoken to in evidence, which evidence and our assessment we now set out in the following sub-paragraphs:

#### **(1) Claimant – Professor Jeanette Findlay**

- a. The claimant was the first witness to be heard by the Tribunal, and we heard her evidence over 2 days, being days 2 and 3, Tuesday and Wednesday, 16 and 17 August 2022.
- b. Aged 62, she is a now Professor in the economics department within the Adam Smith Business School at Glasgow University. She has been employed on the academic staff there for some 35 years.
- c. Her principal witness statement, dated and signed by her on 28 June 2022, ran to 41 numbered paragraphs, extending across 15 typewritten pages.
- d. On day 1 of the Final Hearing, Monday, 15 August 2022, she amended her amended particulars of claim, dated 21 October 2020, as reproduced at pages 42 to 45 of the Bundle, and signed off her handwritten amendments to paragraph 29 (to add at (f) and (g) the Mentoring PCP and Care Commitments PCP, inserted at pages 44

and 44A), and amendment of paragraph 36 (remedy), on page 45, to delete the last sentence seeking a recommendation that she be promoted to Professor, given her appointment on 1 August 2022, notified to her on 28 June 2022.

5 e. By an addendum, signed by her and dated as 18 August 2022, but actually signed by her on 13 August 2022, and emailed to the Tribunal on that earlier date, with copy to Mr Maclean for the respondent, she added a new paragraph 42 to her witness statement, about the remedy she sought in the event of success with her claim.

10 f. She sought:

i. a declaration that the Respondent discriminated against me

15 ii. appropriate recommendations to be made to ensure other female academics are not subjected to similar discriminatory treatment, namely that the Respondents institute practices, including appropriate and subject-specific mentoring, which address the known disparity in rates and speed of promotion between men and women at all grades across the University.

20 iii. an order that the Respondent pay me compensation and interest to cover the financial loss caused by their failure to promote me in 2020, and compensation and interest in relation to the injury to feelings cause (sic) by its discriminatory treatment of me including the failure to promote me in 2020 (see Schedule of Loss in Bundle at page 681).

25 g. Her witness statement was also supplemented by a 4-page further document entitled "*Additional verbal points to be made re written statement*", which she tendered, and we allowed in, to be added to the witness statement Bundle, on day 1, Monday, 15 August 2022.

30 h. When her evidence started, on day 2, Tuesday 16 August 2022, the claimant affirmed. She confirmed that there were no corrections required to her witness statement, or addenda.

- 5 i. As with all witnesses heard by the Tribunal, her witness statement was taken as read, and the claimant was thereafter cross-examined by the respondent's solicitor, asked questions of clarification by the Tribunal panel, and given the opportunity to conclude by way of a further oral statement by way of her reply to points arising from her cross-examination, as her re-examination.
- 10 j. In giving her evidence to the Tribunal, the claimant did so under reference to the various documents contained within the Joint Bundle, and, later, additional documents added to it, by both parties.
- 15 k. When the claimant came to be cross-examined by Mr Maclean, the respondent's solicitor, her answers to his questions in cross-examination were often difficult to comprehend, and it appeared to the Tribunal that, from time to time, the claimant was evasive, sometimes ambiguous, and, at other times, seeking to embellish her pled case before the Tribunal. In her questioning style, she sometimes had a tendency to replace, or rephrase, evidence given by a witness, or the gist of what a document stated.
- 20 l. In advance of her cross-examination of the respondent's witnesses, the claimant, as an unrepresented party litigant, was given some standard guidance by the Employment Judge (consistent with his duty to further the Tribunal's overriding objective under **Rule 2**, and ensure parties are on an equal footing) as to how to cross-examine witnesses being led on behalf of the respondent, putting her case to them, and of the importance of not making statements, while asking questions, but asking bite sized questions of witnesses to allow the witness time to answer that question, before going on to the next question.
- 25
- 30 m. While not previously experienced in asking cross-examination questions of witnesses in a formal, legal setting, such as this Final Hearing, it was clear to the Tribunal that, with practice, over several days, the claimant's confidence in doing so increased, and the claimant's ability to cross-examine witnesses from the respondent



improved, and she was asking them questions pre-prepared, and noted in her notebook that we noticed she referred to when questioning witnesses led by the respondent. However, she did not always put to them points from her own case. She often had what we might best describe as a trade union negotiating stance to how she conducted her cross-examination.

5

n. Further, despite the Judge's clear, and often repeated, guidance to the claimant, as an unrepresented party litigant, that she needed to cross-examine the respondent's witnesses on the terms of their evidence in chief, as per their witness statements, and raise with them matters that she disputed, and put to them points in her pled case, the claimant frequently disregarded the judicial guidance offered to her, as an aid to trying to put her on an equal footing with the respondent's solicitor, and assist her as an unrepresented, party litigant.

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o. We also note and record here that the claimant often ignored the oft repeated guidance from the Judge for her to ask bite size questions of the respondent's witnesses, not give her own evidence, or make statements, and to refer the witness to the relevant document, and the relevant page number, in the Bundle, if she was asking them a specific question, and to clarify with the witness whether they had, in fact, seen the document in question before giving evidence to the Tribunal.

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p. Where her questions of witnesses were irrelevant to the issues before the Tribunal, the Employment Judge had occasion, from time to time, to advise her to ask relevant questions only, and to recall the guidance about cross-examination previously given to her for her assistance.

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q. Further, we also note and record that when, on day 8, Wednesday, 24 August 2022, Professor John Finch was being cross-examined by the claimant, the Judge had to adjourn proceedings because of an issue raised by the claimant, when there was a suggestion raised with the Tribunal (raised by the claimant, on information from her sister, but not seen by the Tribunal, Mr Maclean or the claimant) that Ms Lesley

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Cummings, the respondent's instructing agent, was alleged to have nodded to Professor Finch about how to answer a question asked of him by the claimant during cross-examination.

- 5 r. After hearing her and Mr Maclean, for the respondent, in the absence of the witness, and Ms Cummings (the respondent's instructing agent) who were both excluded from the public hearing room, while the Tribunal addressed the objection taken by the claimant, the Judge gave judicial guidance to Professor Finch and Ms Cummings about how to behave when in a Tribunal hearing room.
- 10 s. Generally, as regards the claimant's evidence, we had an issue with the credibility and reliability of her evidence, where it was not supported by other contemporary evidence or documents. Her evidence was often an unrealistic view of what she believed had happened to her, and she did not understand why others could not see
- 15 matters as she saw them. It appeared to us, across the course of this multi-day Final Hearing, that the claimant appeared to have no sense of ownership of her own career, and that she relied on others for her promotion and advancement.
- 20 t. In our considered view, the claimant had a skewed perception of events, and she felt so wronged by the respondent's actions that she did not seem to understand why the respondent was resisting her claim to this Tribunal. On day 3, Wednesday, 17 August 2022, during her cross-examination, she stated: *"I got here against all the odds."*
- 25 u. Overall, we found the claimant to be an enigma. She was a confused, and confusing witness, who despite having a deep passion for her cause, and an absolute and resolute self-belief that she has been the victim of unlawful discrimination by the respondent, lacked objectivity, and this impacted on the credibility and reliability of her evidence given to the Tribunal. She came across as a person with strong views on
- 30 many matters, and who was not at ease with any person who did not see things the same way as she saw them.

- v. Having listened to the claimant`s own evidence over several days, and that given by her own witnesses, and her cross-examination of the respondent`s witnesses, over several more days before the Tribunal, we were satisfied that the claimant genuinely believed what she was saying, and that her evidence reflected her perception of events as they had occurred in the course of her continuing employment with the respondent.
- w. However, it was equally clear to us that, when the claimant`s perception of events was challenged by Mr Maclean, as the respondent`s solicitor, in his detailed and focused cross-examination of the claimant, her evidence then often became more confused and confusing, she did not always answer the question asked of her, and she often went off on tangents, and this cast a real and substantial doubt in our minds over her overall credibility and reliability as a witness.
- x. The claimant gave the impression of trying to construct her case, as the evidence emerged, as best she thought would assist her prospects of success before this Tribunal. That said, she was generally consistent on the basic facts of her case as she had pled them, and on the basis of her stated complaints against the respondent.
- y. From her evidence, and her questions of witnesses, it was apparent to the Tribunal that there were ongoing relationship issues with her Head of School (Professor Finch), and her Head of Subject (Professor Tsoukalas), and she came across as having little or no respect for them, and she was quite robust, if not combative at times, in her cross-examination of witnesses for the respondent, in particular Professors Finch and Conroy.
- z. In short, we considered that the claimant`s evidence was sometimes all over the place, and she was generally haphazard and scattergun in her approach to giving and testing evidence. While she referred to a hearing impairment, and we took that into account by way of

reasonable adjustments made for her, the claimant appeared to play to the public gallery, at certain points, particularly when giving her closing submission to the Tribunal.

5 aa. In her written closing submission to the Tribunal, at her paragraph 18, the claimant stated that: *“Mr McLean (sic) chooses to deride me as some kind of deluded individual.”*

10 bb. Having heard Mr Maclean’s oral submissions for the respondent, the claimant specifically challenged him on his use of language relating to her in his written submission, where he had described her as *“baffling”*, criticised her cross-examination style, and then stated (at his paragraph 2.2.12) that: *“I don’t want to say Professor Findlay was lying. I don’t actually believe in her own head she was. I think she believes her own truth. However, she is prepared to say things in support of an argument and was casual about the factual accuracy of what she was saying. But this is not a Union-Management negotiating table: this is a court of law.”*

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cc. It was often difficult for us to follow her train of thought, and generally she lacked focus, despite the Judge’s oft-repeated guidance to her, and the Tribunal’s earlier case management and signposting for her by the Judge as to where she might get advice, if not representation, such as the Law Clinic at Strathclyde University.

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dd. The claimant is clearly an educated and intelligent person, yet some of her behaviours before this Tribunal did not support that learning, where it appeared to us that she had a blinkered approach, and if she did not like the answer she received to her question in cross-examination, she would often ask it again, as if that would somehow produce a different answer.

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ee. In closing, we note and record that we felt that the claimant over-egged her position as an unrepresented, party litigant. She is not the average unrepresented party litigant whom the Tribunals come across daily – dismissed from employment, with no new job, and no regular income,

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bar State benefits. She has academic qualifications, a professional position in an academic institution, and she is in a continuing employment relationship with the respondent, and a substantial salary compared to the average employee's weekly wages.

5           **(2)    Professor Christine Oughton, SOAS, University of London**

- 10           a. The claimant's first witness in support of her claim was Professor Oughton. We heard her evidence on day 4, Thursday, 18 August 2022. Aged 63, she is Professor of Management Economics and Fellow of the Academy of Social Sciences, School of Finance and Management, School of Oriental and African Studies, University of London.
- 15           b. Her witness statement, dated and signed by her on 28 June 2022, ran to 20 numbered paragraphs, extending across 8 typewritten pages. When her evidence started, she affirmed, and confirmed that there were no corrections required to her witness statement, but there were a couple of things she would like to add to it, which she did not then explain.
- 20           c. Professor Oughton's witness statement was taken as read, and she was thereafter cross-examined by the respondent's solicitor, asked questions of clarification by the Tribunal panel, and re-examined by the claimant.
- 25           d. In giving her evidence to the Tribunal, Professor Oughton gave evidence on her own experience as an academic head of department, and her direct experience and knowledge of discrimination and the role of mentoring (or lack of it) as a barrier to academic promotion.
- 30           e. She had agreed to be a referee for the claimant in her 2020 promotion application at Glasgow University. As per the copy of the claimant's 2020 application produced to the Tribunal (at page 228 of the Bundle), the claimant nominated her as one of her two applicant nominated referees, describing her relationship with the referee as "*She was a colleague here at Glasgow till the mid-90s. She was an External*

*Examiner in the Department of Economics approximately 10 years ago.” As the claimant’s application was not supported by the respondent, Professor Oughton was not called upon to give Glasgow University a referee’s report on the claimant.*

- 5 f. Overall, we found Professor Oughton to be a witness speaking to the best of her knowledge and belief about the treatment of women academics at Glasgow University, but her evidence was of limited assistance to us in determining the issues before this full Tribunal.
- 10 g. Her evidence was generally vague and lacking in specification, and, more importantly, she was not directly involved in the decision-making processes adopted by the respondent at the time of the claimant’s unsuccessful 2020 promotion application.
- 15 h. While she tried her best to support the claimant, her friend, Professor Oughton did provide some answers, in cross-examination, that did not support the claimant’s case. She agreed that certain things were a matter of judgment, and, in re-examination, she stated that it might take an academic unsuccessful in promotion 2 years to try again successfully.
- 20 i. Further, while she made some sweeping statements, and generalisations, about women in academia, agreeing with the claimant, what came across to the Tribunal was that her own career appears not to have suffered, as she had nonetheless managed to become a Professor.

**(3) Professor Ruth Dukes**

- 25 a. The claimant’s next witness in support of her claim was Professor Dukes. We heard her evidence, remotely on CVP, on day 4, Thursday, 18 August 2022. Aged 45, she is Professor of Labour Law, School of Law, Glasgow University.
- 30 b. Her witness statement, dated and signed by her on 27 June 2022, ran to 7 typewritten pages, but in bullet point style, rather than numbered

paragraphs. The claimant provided by email, on 17 August 2022, and Professor Dukes adopted for her use at this Final Hearing, a reformatted version, extending to 20 numbered paragraphs, the content being as before.

- 5 c. When her evidence started, Professor Dukes affirmed. She confirmed that there were no amendments required to her witness statement.
- d. Professor Duke's witness statement was taken as read, and she was thereafter cross-examined by the respondent's solicitor, asked questions of clarification by the Tribunal panel, and re-examined by  
10 the claimant.
- e. In giving her evidence to the Tribunal, Professor Dukes gave evidence on her role following the claimant's unsuccessful promotion application in 2020 after which she was asked to provide her with non-subject specific mentoring.
- 15 f. Overall, we found Professor Dukes to be a witness speaking to the best of her knowledge and belief about the treatment of women academics at Glasgow University, but her evidence was of limited assistance to us in determining the issues before this full Tribunal.
- g. She had a very limited role in the claimant's case, and she confirmed  
20 that her role, after the claimant's unsuccessful 2020 application, was to help the claimant with her next promotion application, where she was clear that the quality of an application counts.
- h. Generally, her evidence was vague and lacking in specification, and primarily focused on the Law School, given her acknowledged fairly  
25 limited knowledge of other Colleges within the University. She often gave generalisations as her answers, and she came across as really not too sure why she was there as a witness called by the claimant.
- i. Professor Dukes appeared aloof, and demonstrated in her answers that she wanted to remain in her research tower, rather than be a  
30 teacher, or administrator.

- j. More importantly, Professor Dukes was not directly involved in the decision-making processes adopted by the respondent at the time of the claimant's unsuccessful 2020 promotion application.

**(4) Professor Denis Fischbacher-Smith**

- 5 a. The claimant's third witness in support of her claim was Professor Fischbacher-Smith. We heard his evidence, remotely on CVP, on day 4, Thursday, 18 August 2022. Aged 65, he is the Research Chair in Risk and Resilience at the Adam Smith Business School, Glasgow University.
- 10 b. His witness statement, dated and signed by him on 30 June 2022, ran to 26 paragraphs, extending over 9 typewritten pages. When his evidence started, Professor Fischbacher-Smith affirmed. He confirmed that there were no amendments required to his witness statement.
- 15 c. Professor Fischbacher-Smith's witness statement was taken as read, and he was thereafter cross-examined by the respondent's solicitor, with no questions of clarification by the Tribunal panel, and re-examined by the claimant.
- 20 d. In giving his evidence to the Tribunal, Professor Fischbacher-Smith gave evidence on his knowledge and experience of the Adam Smith Business School (where he had previously been Deputy Director), its processes and informal practices including mentorship and how leadership roles were allocated, as also his awareness, as a senior member of staff, of the outcomes of recent promotion processes.
- 25 e. Overall, we found Professor Fischbacher-Smith to be a witness speaking to the best of his knowledge and belief about the treatment of women academics at Glasgow University, but his evidence was of limited assistance to us in determining the issues before this full Tribunal.



- f. He came across as relaxed and laid back, and confident in what he was saying in evidence. He appeared slightly eccentric, he stated that he did not use the title of Professor, and that he was not sure why he was here as a witness at this Tribunal.
- 5 g. His evidence was generally vague, and primarily focused on roles at School level, and his subject level experience in Management, and with no knowledge or experience of Economics.
- h. More importantly, he was not directly involved in the decision-making processes adopted by the respondent at the time of the claimant's  
10 unsuccessful 2020 promotion application.
- i. Indeed, in his own witness statement, Professor Fischbacher-Smith himself recognised that fact (at his paragraph 18) when stating that he was *“reasonably familiar with the promotion procedure in the University but largely from a wider perspective rather than someone  
15 who has been directly involved in the process”*.

**(5) Professor Sir Anton Muscatelli, Principal & Vice-Chancellor**

- a. The respondent's first witness, interposed by agreement of both parties, was Professor Muscatelli. We heard his evidence, in person, on the morning of day 5, Friday 19 August 2022. Aged 60, he is  
20 Principal and Vice-Chancellor of the University of Glasgow, a role he has held since October 2009.
- b. His witness statement, dated and signed by him on 8 August 2022, ran to 13 numbered paragraphs, extending across 2 typewritten pages. When his evidence started, he took the oath, and he confirmed that  
25 there were no corrections required to his witness statement, taken by the respondent's solicitor, other than to correct a minor error in the last sentence of paragraph 3, where he had referred to *“External Reviewer”*, which should have stated *“External Assessor”*, and to clarify, as regards paragraph 10, and Professor Mason's report, that  
30 he was aware of it, but he did not commission it.

- c. Professor Muscatelli's witness statement was taken as read, and he was thereafter cross-examined by the claimant, no questions of clarification were asked by the Tribunal panel, and he was briefly re-examined by the respondent's solicitor.
- 5 d. In giving his evidence to the Tribunal, Professor Muscatelli, who was attending at the claimant's request, gave evidence that he had chaired the University's Board of Review at which the final decision on the claimant's unsuccessful 2020 promotion application was made, and he confirmed that the claimant's application was not discussed at the
- 10 Board of Review. He also gave evidence that he had no involvement in the University commissioning a report from the external assessor, Professor Mason.
- e. In giving his evidence to the Tribunal, the Principal answered all questions asked of him, and he did so in a straightforward way, and
- 15 there were no issues for the Tribunal as regards his credibility or reliability as a witness. When he could not answer, he referred the Tribunal to the evidence of others yet to come, e.g., Christine Barr. He was co-operative in answering questions put to him in cross-examination by the claimant, and generally his answers were clear and
- 20 direct.
- f. Overall, we found Professor Muscatelli to be a credible and reliable witness, and his evidence was of assistance to the Tribunal in directly addressing the claimant's evidence that she believed that her promotion application was discussed at the Board of Review in 2020,
- 25 and that he was involved in instructing the Mason report. On the evidence led before us, we are satisfied that neither situation was the case, and we find that the claimant's belief to the contrary is mistaken.
- g. Professor Muscatelli's evidence in these respects, in particular, was crystal clear, and it was important for the Tribunal to hear from him
- 30 direct given that he was involved in the decision-making processes

adopted by the respondent at the time of the claimant's unsuccessful 2020 promotion application.

- 5 h. As the first witness from the University, his evidence also assisted the Tribunal in better understanding the governance arrangements within the University, and its promotion procedure and criteria in place in 2020.
- 10 i. He was clear in his evidence to us that the University is a very devolved structure, and that so things which are University policy are often done differently in and within Schools. That insight was reflected in much of the evidence we heard from other witnesses led before this Tribunal.
- 15 j. It was of note that, during his cross-examination by the claimant, when she asked the Principal, one of the UK's leading economists, if he agreed it was "*shameful*" that in 2020 women make up 30% of staff in economics but only 11% are professors, he agreed but said it was a "*very typical picture in academia*". Commenting on her quoted percentages, which he stated he was sure had been properly calculated, the Principal added that he would like to compare the claimant's stated figures with those from other economics departments/schools.
- 20 k. He clarified that a Professor is a Professor, whether externally appointed, or promoted from within, and that the University uses the same standards and criteria for both, and when the claimant continued to put to him her figures, he stated that she was making "*sweeping statements*", and an "*invalid generalisation*."
- 25 l. The Principal clarified that as a sector, they were in an inherited position, and that they had adapted to try and improve matters, to recruit, retain and promote, and that, if anything, in the last two years, women were performing better than men.
- 30 m. In a very telling reply, Professor Muscatelli stated: "*I can't wave a magic wand and change the sector*." He did indicate that the University

will always look at ways to improve, and look at data, and review its promotion policy every 2 or 3 years.

- n. Further, it was of note that when Professor Findlay claimed she applied “almost every year” for mentoring to help her achieve promotion but “didn’t get a single response”, apart from being sent a link to a website with further information, the Principal acknowledged her statement, and replied to her saying this would be “concerning”.

**(6) Dr Alberto Paloni, Senior Lecturer**

- a. The claimant’s next witness in support of her claim was Dr Paloni. We heard his evidence on the afternoon of day 5, Friday, 19 August 2022. Aged 63, he is a Senior Lecturer (Grade 9) in Economics at Glasgow University, where he has been employed since October 1991. He had previously been Head of the Economics Department some 5 to 6 years ago.

- b. His witness statement, dated and signed by him on 4 July 2022, ran to 22 numbered paragraphs, extending across 5 typewritten pages. When his evidence started, he affirmed, and he confirmed that there was no need to revise, or amend, anything in his witness statement.

- c. Dr Paloni’s witness statement was taken as read, and he was thereafter cross-examined by the respondent’s solicitor, no questions of clarification were asked by the Tribunal panel, and he was re-examined by the claimant.

- d. In giving his evidence to the Tribunal, Dr Paloni gave evidence on his own experience as an academic in Glasgow University, the promotion process within the University, and his own experience of line management and the culture and informal practices which existed within the economics subject area. He also gave evidence of his direct experience of Professor Muscatelli and the Principal’s role in the appointment of Professors of Economics at the University of Glasgow.

- e. Overall, we found Dr Paloni to be a very poor, and unimpressive witness. His evidence was full of assumptions, often over-dramatic, and he was a very excited witness. His evidence was of little assistance to the Tribunal.
- 5 f. The tenor of his evidence to the Tribunal was also indicative of the fact that he appeared to have issues with how his own career had been managed within the University, where he had not sought promotion since 2009, and his own views about the Principal.
- 10 g. He did not come across as an objective witness. Under cross-examination, Dr Paloni conceded that parts of his witness statement were vague, uncertain and speculative. In re-examination, he explained that his speculation comes from his impression gleaned by observation.
- 15 h. Further, in his witness statement, Dr Paloni expressed his own views about how he felt Professor John Tsoukalas, current Head of Subject in Economics and Deputy Head of the Adam Smith Business School, should have supported the claimant when she applied unsuccessfully for promotion.
- 20 i. Against this background, and generally what he wrote in his witness statement, we had real doubts about this witness and the objectivity of his testimony, although he did give some answers which, from her response in re-examination, the claimant clearly did not like.
- 25 j. His evidence was of limited assistance to us in determining the issues before this full Tribunal. It was generally vague and lacking in specification, and, more importantly, he was not directly involved in the decision-making processes adopted by the respondent at the time of the claimant's unsuccessful 2020 promotion application.
- 30 k. Indeed, it was clear to us from Dr Paloni's evidence that he has his own grouses with the respondent, and, while the claimant made much, in her closing submission, about English being his second language,

we note and record that he has worked at Glasgow University for many, many years. Indeed, given that he is a grade 9 male who has not been promoted, his case somewhat undermined the claimant's case that she was not promoted from grade 9 due to her sex.

5           **(7)    *Ms Lesley Cummings, Director of Performance & Reward***

10           a. The respondent's next witness in support of their defence to the claimant's claim was Ms Cummings. We heard her evidence on day 6, Monday 22 August 2022. Aged 56, she is Director of Performance & Reward at Glasgow University, and she reports to Christine Barr, the HR Director.

15           b. Ms Cummings' witness statement, dated and signed by her on 6 August 2022, ran to 57 numbered paragraphs, extending across 14 typewritten pages. When her evidence started, she took the oath, and confirmed that there was no need to amend for accuracy, or typographical errors, and so no corrections were required to her witness statement.

20           c. Ms Cummings' witness statement was taken as read, and she was thereafter cross-examined by the claimant, asked questions of clarification by the Tribunal panel, and re-examined by the respondent's solicitor.

25           d. In giving her evidence to the Tribunal, Ms Cummings gave evidence concerning her remit for academic promotions, amongst other things, including equality, diversity and inclusion across all HR policies managed within her remit. She also gave evidence on the operation of the respondent's promotion processes in 2020 and 2022, and how she attended the Board of Review meeting which made the final decision on the claimant's unsuccessful 2020 promotion application, and also the 2022 Board of Review which decided that the claimant had met the promotion criteria, and so approved her appointment as a Professor.

- 5 e. Overall, we found Ms Cummings to be a professional, HR witness speaking to the best of her knowledge and belief about the claimant's 2020 and 2022 applications, as also about the treatment of women academics at Glasgow University, and her evidence was of assistance to us in determining the issues before this full Tribunal. Ms Cummings answered questions asked of her, and from her answers, it was clear she had detailed knowledge, and a good manner in answering questions asked of her.
- 10 f. Ms Cummings gave her evidence to the Tribunal as an HR specialist, on the respondent's promotion policy and procedures, although, in assessing her evidence against that given by other witnesses, it seemed to us that she did not appear to know, or accept, where practice and procedure were at odds with the respondent's written policy and procedure documents, and an apparent disconnect
- 15 between central HR, and College HR.

**(8) *Ms Christine Barr, Executive Director of People & Organisational Development (HR Director)***

- 20 a. The respondent's next witness in support of their defence to the claimant's claim was Ms Barr. We heard her evidence on day 7, Tuesday, 23 August 2022. Aged 57, she is the University's Executive Director of People & Organisational Development, generally referred to as the HR Director.
- 25 b. Her witness statement, dated and signed by her on 8 August 2022, ran to 50 numbered paragraphs, extending across 13 typewritten pages. When her evidence started, she took the oath, and she confirmed that there were no amendments required to her witness statement.
- 30 c. Ms Barr's witness statement was taken as read, and she was thereafter cross-examined by the claimant, asked questions of clarification by the Tribunal panel, and re-examined by the respondent's solicitor.

- 5 d. In giving her evidence to the Tribunal, Ms Barr gave evidence on her sitting on the College Promotions Committee, which considered the claimant's 2020 application for promotion, and her also participating in the 2020 Board of Review which made the final decision on the claimant's unsuccessful 2020 application.
- 10 e. Further, Ms Barr gave evidence on her rejection of the claimant's appeal against the 2020 decision not to promote her, and how she engaged with the claimant following that unsuccessful 2020 application to try and support the claimant with regards to future promotion applications.
- 15 f. Overall, we found Ms Barr to be a professional, HR witness speaking to the best of her knowledge and belief about the claimant's 2020 and 2022 applications, as also about the treatment of women academics at Glasgow University, and her evidence was of some assistance to us in determining the issues before this full Tribunal. However, we found her to be a poor witness.
- 20 g. In providing her answers to questions asked of her, Ms Barr provided little additional detail, she tended to us the word "*arguably*" a lot, and she also tended to refer to asking Lesley Cummings for an answer, who had, of course, already been and gone as a witness for the respondent. As such, she appeared to be evasive. Further, Ms Barr explained to us how she undertook scoring of applications, but it was not at all clear to us how she had used the exemplars in the academic promotion criteria.
- 25 h. Ms Barr did not appear to have the grasp of matters that the Tribunal expected an Executive Director should have, and we gleaned the distinct impression that there was maybe a divide between her, in her senior management team role at Glasgow University, and how she interacted with Lesley Cummings and her central HR team, and with
- 30 the devolved College HR teams.



- 5 i. In his closing submission for the respondent, Mr Maclean referred to Ms Barr being, in effect, *“brow beaten”* by the claimant. At his paragraph 2.2.18, Mr Maclean had stated: *“I recall Christine Barr at one stage saying to Professor Findlay “if you say so, Jeanette”, clearly evidencing having been beaten down by the questioning she faced.”*
- 10 j. The Tribunal does not recognise that description, and what is of note to us is that the witness did not object to the claimant’s line of questioning, nor did Mr Maclean as the respondent’s solicitor, nor did the Tribunal feel it necessary to intervene because of wholly inappropriate questioning, or style of questioning, by the claimant.
- 15 k. We consider there is however substance to Mr Maclean’s earlier observation, in that same paragraph 2.2.18 of his closing submission, that : *“She was also quite a difficult and robust questioner. While many of the Respondent’s witnesses were on first name terms with the Claimant and so had experience of her style, they had not been in a witness chair in an Employment Tribunal being questioned by her before. Some did better than others in that environment. And by that I mean, some concessions were made, which perhaps on reflection, the University’s personnel will think they should have pushed back on a*
- 20 *little.”*
- 25 l. There were two issues where there was a direct conflict between the claimant’s evidence, and remarks attributed by her to Ms Barr. The first issue, raised by the claimant, at paragraphs 390 and 391 of her written closing submission, was that Ms Barr was “disingenuous if not dishonest in evidence”, in saying that she did not recall saying to the claimant that her 2020 application went to the Board of Review *“because it was close.”* The claimant invited us to prefer her evidence in this regard.
- 30 m. In reviewing the evidence, we noted from the claimant’s witness statement, at her paragraph 13, that she had stated there that: *“I was informed by him (and later by Christine Barr) that despite not having*

*been successful at the College stage, my application was so close that they sent it to the University-level Board of Review.” We pause to note that the “him” referred to is Professor John Finch.*

- 5 n. That paragraph 13 of the claimant’s witness statement does not appear to have been put directly by the claimant to Professor Finch when he was cross-examined by her, but she did put it to Ms Barr when she gave her evidence to the Tribunal, and Ms Barr stated in reply that she had no recollection of that happening, she was clear that the claimant’s case was not discussed at the Board of Review, and
- 10 she had no idea why Professor Finch might have fed back to the claimant in the terms that she alleged he had done.
- o. Ms Barr further stated that the 2020 Board of Review minutes (starting at page 315 of the Bundle) were clear, and the claimant’s name was not minuted there as a case having been discussed.
- 15 p. In all these circumstances, having had the benefit of hearing from both the claimant and Ms Barr, and having considered the whole evidence available to us at this Final Hearing, we prefer Ms Barr’s evidence, on this point, as it is consistent with her own witness statement, at her paragraph 35, and also with other evidence we have heard and
- 20 accepted from many other witnesses for the University that the claimant’s case was not discussed at the Board of Review, and indeed we have made a finding in fact to that effect.
- q. The second disputed issue between Ms Barr and the claimant related to the claimant’s assertion, in a part of paragraph 33 of her witness
- 25 statement, that: *“Professor Carter refused me permission to apply and made me, at the age of almost 61, wait another year. She told me that she could find ‘no exceptional circumstances’ to justify letting me apply (see page 588 of the bundle). She was aware that in the view of the College Panel, I was very close in 2020, in her own view ‘there was a problem in Economics’ and she was aware that I had more than three*
- 30 *decades of service and that there was an ongoing dispute over my*

5                   *treatment. The Head of College had complete discretion about whether to allow me to apply in 2021 and she could have taken these things into account. However, I was told by Christine Barr that she had informed her that she didn't allow me 'because she didn't allow anyone else.'* I don't believe that Sara Carter doesn't know the difference between treating people the same and treating people equally and I want to state how hurt and distressed I was, yet again, by my treatment at the hands of my employer in what seemed like a petty, unnecessary and wholly deliberate choice not to resolve this issue via a second application at the earliest opportunity.”

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r. In her evidence to the Tribunal, under cross-examination by the claimant, Ms Barr does not seem to have been asked about what Professor Carter was alleged to have said to Ms Barr, but when Professor Carter was asked about this by the claimant, when she came later on to give her own evidence to the Tribunal, Professor Carter stated, under reference to the promotion policy, at page 114 of the Bundle, that there was no automatic debar on applying the next year, and stated that the policy states: *“Applicants should be mindful that an unsuccessful outcome will normally prevent a further application being made the following year without the support of their Vice Principal & Head of College.”*

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s. Further, Professor Carter stated that being relatively new in post, this was the first time she had had to make such a decision, and while she recalled speaking to other Heads of College about it, she was clear that those discussions were about the process, and not in relation to the claimant. She described it as being *“so rare, it has to be exceptional circumstances.”*

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t. Professor Carter further stated that any applications to go forward the next year, after being unsuccessful, were a *“high risk”* decision for the individual, as it they apply prematurely, and they do not meet the preponderance of at least 4 out of 7 of the criteria, then they can only apply the next year if she gives her permission. If rejected, they would

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generally have a “*fallow year*” the next year before reapplying. She added that each application to go forward the next year, after an unsuccessful application, would be considered on its own merits.

- 5 u. In respect of the claimant’s case, Professor Carter stated that she recalled discussing it with Christine Barr, and that she had informed Ms Barr that the reason for not allowing the claimant to re-apply in 2021 was “*quite simple*”, namely that she did not believe that the claimant had made a material change, and that it would be almost impossible to do that within a year.
- 10 v. Having had the benefit of hearing from both the claimant and Ms Barr, and having considered the whole evidence available to us at this Final Hearing, including that from Professor Carter, the Tribunal has decided that we cannot accept, as established on the evidence before us, that the claimant was told by Christine Barr that Professor Carter had informed her that she didn’t allow the claimant to go forward again
- 15 in 2021 ‘*because she didn’t allow anyone else.*’

**(9) Professor John Finch, Head of Adam Smith Business School**

- 20 a. The respondent’s next witness in support of their defence to the claimant’s claim was Professor Finch. We heard his evidence on day 8, Wednesday, 24 August 2022, continued on to the morning of the following day. Aged 54, he is Head of the University’s Adam Smith Business School in which the claimant is employed.
- 25 b. His witness statement, dated and signed by him on 9 August 2022, ran to 39 numbered paragraphs, extending across 10 typewritten pages. When his evidence started, he affirmed, and he confirmed that there were no corrections required to his witness statement, other than to amend paragraph 1 to say he has been Head of School for 6 years, not 5, and to clarify that the unnamed female colleague, referred to in paragraph 39, and promoted to Professor in 2020, is Celine Azemar.

- 5 c. Professor Finch's witness statement was taken as read, and he was thereafter cross-examined by the claimant, asked questions of clarification by the Tribunal panel, and re-examined by the respondent's solicitor. When he asked permission to take notes, this was refused by the Judge, as not being normal practice, and the witness accepted that ruling, explaining that he had no specific need to take notes, it was just habit, and it would just be doodles.
- 10 d. In giving his evidence to the Tribunal, Professor Finch gave evidence on his involvement in discussions with the claimant about her 2020 promotion application before and after that application was submitted, and how, as Head of School, he had sought the input of other Professors within the School on applicants for that promotion round.
- 15 e. He had provided a Head of School assessment of the claimant's 2020 promotion application, which he did not support. He also provided Head of School assessments for other applicants, including the claimant's comparator, Luis Angeles, and another colleague, Celine Azemar, both of whom were promoted Professor in 2020.
- 20 f. Overall, we found Professor Finch to be a witness speaking to the best of his knowledge and recollection about his role in the lead up to, and after, the claimant's unsuccessful 2020 promotion application.
- g. He gave his evidence stoically, despite obvious discomfort arising from his mouth injury. He appeared uncomfortable in giving evidence, not just on account of his injury, but he had an insecurity about being in the witness box, and he tended to look around the hearing room.
- 25 h. As mentioned earlier, this led to an objection about whether he was looking to Ms Cumming to assist him in answering a question asked by the claimant. We refer to our comments, at paragraph 69(1)(q) and (r) above, when discussing our observations on the claimant's evidence at this Final Hearing.

- i. Professor Finch's evidence was suggestive of him being a head of department who was perhaps too soft, as he adjusted his Head of School statement after discussion with the claimant, and before it was finally submitted, although he still did not support her application.
- 5 j. Further, his difficulty in answering some questions asked of him at this Tribunal was often occasioned by the claimant's failure to ask him bite sized questions, and that, allied to his difficulty in speaking, on account of his mouth injury, was not an ideal situation, but the claimant got her opportunity to ask him questions, and he got his opportunity to reply to her.
- 10 k. In doing so, Professor Finch agreed with her, openly and honestly, that the PDR process had not worked well for the claimant, and that it could have been done better by the respondent. He conceded that the claimant had not been treated fairly in that respect.
- 15 l. While Professor Finch sometimes took time to answer questions asked of him, we did not form the view that he was being evasive, but he came across to us as a reflector, who liked to think things through, before answering a question. We were satisfied that he answered questions as best he could, and believed he was doing his best to tell the truth, bearing in mind that we were revisiting what had happened
- 20 in 2020, and earlier years.

**(10) Professor Frank Coton, Senior Vice Principal & Deputy Vice-Chancellor**

- a. The respondent's next witness in support of their defence to the claimant's claim was Professor Coton. We heard his evidence on day
- 25 9, Thursday, 25 August 2022. Aged 59, he is Senior Vice Principal and Deputy Vice Chancellor (Academic) at the University of Glasgow.
- b. His witness statement, dated and signed by him on 5 August 2022, ran to 42 numbered paragraphs, extending across 13 typewritten pages.
- 30 When his evidence started, he affirmed, and he confirmed that there

were no corrections required to his witness statement, for errors or omissions. He stated that he had a difficulty with reading, on account of eye surgery, so the Tribunal took that into account in allowing him time to read any document to which he was referred.

5 c. Professor Coton's witness statement was taken as read, and he was thereafter cross-examined by the claimant, no questions of clarification were asked by the Tribunal panel, and he was re-examined by the respondent's solicitor.

10 d. In giving his evidence to the Tribunal, Professor Coton gave evidence on his role working with Human Resources in terms of support for academic careers, including oversight of promotions processes, and promotions criteria, and how he participated in the 2020 Board of Review which made the final decision that the claimant did not meet the University's promotion criteria in 2020.

15 e. He also gave evidence on how he became engaged with the claimant, following her 2020 unsuccessful promotion application, to assist her with future promotion applications, and how he participated in the 2022 Board of Review which decided that the claimant had met the promotion criteria for appointment as Professor.

20 f. His evidence was of considerable assistance to the full Tribunal, as he was a senior academic, No.2 only to the University Principal, so he spoke with authority and gravitas about matters to do with corporate governance at University and School level, as well as his own direct involvement in the decision-making processes adopted by the  
25 respondent at the time of the claimant's unsuccessful 2020 promotion application, and her recent, successful, 2022, application.

30 g. Professor Coton was a very good witness, who gave his evidence in a straight forward way, showing the breadth and depth of his knowledge and understanding of the promotions process within the respondent University. He stuck to his opinions, despite robust

questioning by the claimant, and he was clear in his recollection of meetings.

- 5 h. Overall, we found Professor Coton to be an impressive witness, who spoke to us in clear and unequivocal terms about his involvement in the claimant's 2020 and 2022 promotion applications, and generally about the treatment of women academics at Glasgow University.

**(11) Professor Carl Goodyear, Senior Senate Assessor**

- 10 a. The respondent's next witness in support of their defence to the claimant's claim was Professor Goodyear. We heard his evidence on the morning of day 10, Friday, 26 August 2022. Aged 48, he is Professor of Translational Immunology in the University's College of Medical, Veterinary & Life Sciences.

- 15 b. He recently retired (July 2022) from his additional role after about 8 years sitting on the University Court as a Senior Senate Assessor. He sat on the College of Social Science's College Promotions Committee, as also the University's Board of Review, and he described his role as being to ensure fair play was adopted across the whole University.

- 20 c. His witness statement, dated and signed by him on 5 August 2022, ran to 36 numbered paragraphs, extending across 9 typewritten pages. When his evidence started, he took the oath, and he confirmed that there were no amendments required to his witness statement, other than to correct a very minor typographical error, in paragraph 31, where the word "*then*" should have read "*than*."

- 25 d. Professor Goodyear's witness statement was taken as read, and he was thereafter cross-examined by the claimant, asked questions of clarification by the Tribunal panel, and re-examined by the respondent's solicitor.

- 30 e. In giving his evidence to the Tribunal, Professor Goodyear gave evidence on sitting on the College Promotions Committee which considered the claimant's unsuccessful application for promotion in



2020, and how he also participated in the University's Board of Review, which made the final decision on her 2020 application.

- 5
- f. Professor Goodyear came across to the Tribunal as a knowledgeable senior academic, who was happy and content in his role, and who brought objectivity to a consideration of the claimant's case. Coming from outwith the School, and being a Senior Senate Assessor, hearing from him added another aspect to the evidence heard by the Tribunal. He did not know the claimant, and he had not worked with her, and his role in her case brought a fresh pair of eyes looking at her case in context of what was happening across the whole University.
- 10
- g. Under cross-examination by the claimant, on paragraph 29 of his witness statement, where he has stated that "*I firmly disagree that the claimant has been directly discriminated against because she is a woman*", Professor Goodyear accepted the claimant's position that he was a witness, and not an expert witness.
- 15
- h. Further, Professor Goodyear explained that he was talking about the College Promotions Committee aspects, and he accepted, with hindsight, that his witness statement might have been better phrased, and that judgment on the claimant's discrimination case against the University was absolutely for the Tribunal, and not him.
- 20
- i. Overall, we found Professor Goodyear to be a witness speaking to the best of his knowledge and belief about the treatment of women academics at Glasgow University, and his evidence was of assistance to us in determining the issues before this full Tribunal, as he was directly involved in the decision-making processes adopted by the respondent at the time of the claimant's unsuccessful 2020 promotion application.
- 25
- j. Further, as a former Senior Senate Assessor, Professor Goodyear spoke with authority about practices and procedures, and internal corporate governance, across the University, and not just the College of Social Sciences. His wider field of vision was helpful to us in better
- 30

understanding how University policies are applied day to day, across different Schools and subject areas. So too was his evidence, at paragraph 9 of his witness statement, that: *“Every applicant has their own unique profile and a different way of meeting the criteria.”*

5 k. After the close of Professor Goodyear’s evidence, when discussing housekeeping matters for the next day, the claimant raised an issue with the Tribunal that she was unclear why the witness had been given access to the entire Bundle, including Professor Mason’s report on the claimant. She stated that that seemed *“intrusive, and a breach of my*  
10 *privacy”*.

l. The Judge explained that witness statements were, as from 1 October 2022, to be subject to new **ET Presidential Guidance and Direction** by Judge Susan Walker, ET President (Scotland) issued on 3 August 2022, but, for this case, the use of witness statements and preparation  
15 of the Bundle had been dealt with in the Tribunal’s case management orders issued in March 2022.

m. **Rules 43 and 44 of the ET Rules of Procedure 2013** refer, and **Rule 44** allows for inspection of witness statements. The Tribunal’s case management orders of March 2022 had provided, as is standard  
20 practice, that witness statements should cross-refer to relevant documents in the Joint Bundle. The claimant stated that she had only given her witnesses documents that she was asking them to comment upon, in their witness statement, and not everything in the productions’ Bundle.

25 n. Having heard the claimant, the Judge stated that if the claimant had an issue with Professor Goodyear’s access to documents in the Bundle, then she should take that up with the University, but it was not a matter for this Tribunal to get involved in, likewise her observation (that she had not put to any of the respondent’s witnesses in cross-  
30 examination) that she felt there was a *“remarkable similarity”* in comments within their witness statements.

- 5 o. Mr Maclean, the respondent's solicitor, stated in reply that he felt there was an "*implicit accusation of impropriety*" being made by the claimant, and that a witness can be asked anything relevant to the case, and so it is entirely appropriate that the Bundle is available to any witness. He further stated that none of the respondent's witnesses had their witness statements shared with other witnesses, but they had been referred to the Bundle.
- 10 p. While the claimant may have been surprised by that, and she commented that she is an unrepresented party, the Tribunal did not have any concern about the respondent's witness statements, and any similarity of wording between one witness and another is not, of itself, suggestive of any improper practice or any collusion between witnesses.
- 15 q. Indeed, for the record, we note and record here that the claimant did not make that allegation at any time, either in day-to-day interactions with the Tribunal, as the respondent's various witnesses were being heard, nor in her final closing submissions to the Tribunal.
- 20 r. We also note and record, from our own judicial knowledge and experience, that it is not unusual for respondent witness statements to contain similar wording on the same point from various witnesses, and that statements tend to be taken by the same solicitor acting for a respondent employer, who then writes up the witness statement before checking with the witness, getting them to date and sign it, and, when approved, lodging it with the Tribunal as their evidence in chief.

25 **(12) Professor Katy Mason, Lancaster University**

- 30 a. The respondent's next witness, called at the request of the claimant, was Professor Mason. We heard her evidence (remotely on CVP) on day 10, Friday, 25 August 2022. Aged 51, she is Professor of Markets and Management Practice, and Associate Dean for Research at the University of Lancaster. She is also the current Chair of the British Academy of Management.

- b. Her witness statement, dated and signed by her on 6 August 2022, ran to 8 numbered paragraphs, extending across 2 typewritten pages. When her evidence started, she affirmed, and she confirmed that there were no corrections required to her witness statement.
- 5 c. Professor Mason's witness statement was taken as read, and she was thereafter cross-examined by the claimant, no questions of clarification were asked by the Tribunal panel, and she was re-examined by the respondent's solicitor.
- 10 d. In giving her evidence to the Tribunal, Professor Mason gave evidence on how she provided an external assessment of the claimant's 2020 application for promotion, at the request of Glasgow University, where she had concluded that the claimant's 2020 application did not meet the criteria for promotion at Glasgow University and, further, she concluded that the claimant would not have met the criteria for promotion to Professor at Lancaster University either.
- 15 e. Overall, we found Professor Mason to be a witness speaking to her after the event, external assessment of the claimant's 2020 promotion application to Glasgow University, but her evidence was of limited assistance to us, in determining the issues before this full Tribunal, as she was not directly involved in the decision-making processes adopted by the respondent at the time of the claimant's unsuccessful 2020 promotion application.
- 20 f. We found Professor Mason's evidence to be vague at certain times, and she appeared distant in giving her evidence, perhaps due to the fact it was being given remotely by videoconferencing.
- 25 g. Her focus, in fulfilling the remit given to her by the respondent was, she advised us, to give the claimant pointers to a future, successful application for Professorship. We accepted, as genuine, her evidence that she believed she had a duty to do her report, when asked to do so by Glasgow University. She was clear, on the matter of quality, that
- 30

she would not have appointed the claimant as a Professor at Glasgow University, nor Lancaster University, in 2020.

- 5 h. In cross-examining Professor Mason, the claimant made it clear that she was not in agreement with Professor Mason's findings, or methodology, but Professor Mason's evidence did establish for us that she had not met Professor Muscatelli, nor had she had any dealings with him when preparing her report for Glasgow University, and she did not know Professor Finch well.
- 10 i. When the claimant put it to her, directly, that she was there at this Tribunal as a witness "*backing up Glasgow University*", Professor Mason was clear in rejecting that allegation, asking what did she have to gain by doing that? It appeared to her that the claimant's main issue with her report was that she (Professor Mason) was not an applied economist, and the claimant did not like that fact.
- 15 j. It is clear to the Tribunal, from the whole evidence led at this Final Hearing, that Professor Mason's report was not a determining factor in the claimant's unsuccessful 2020 promotion application – her report was prepared after the event, where she looked at it separately from those involved at the respondent, and she applied her academic judgment to the claimant's application, and reported to the respondent
- 20 on that basis.

**(13) Professor Sara Carter, Vice Principal & Head of College of Social Sciences**

- 25 a. The respondent's penultimate witness in support of their defence to the claimant's claim was Professor Carter. We heard her evidence on day 11, Monday, 29 August 2022. Aged 61, she is Vice-Principal, and Head of the College of Social Sciences at Glasgow University. As of 1 August 2022, she advised us, during her cross-examination, that she has taken on the role of Gender Champion for the University of
- 30 Glasgow.

- 5 b. Her witness statement, dated and signed by her on 8 August 2022, ran to 40 numbered paragraphs, extending across 9 typewritten pages. When her evidence started, she affirmed, and confirmed that there were some corrections required to her witness statement, namely, at paragraph 4, that the claimant was formerly a Senior Lecturer, not a Lecturer, and now a Professor; at paragraph 12, there were 11 scorers, as the HR note-taker does not score; and, at paragraph 15, the “equal say” is for each scoring member of the College Promotion Committee.
- 10 c. Professor Carter’s witness statement was taken as read, and she was thereafter cross-examined by the claimant, asked questions of clarification by the Tribunal panel, and re-examined by the respondent’s solicitor.
- 15 d. In giving her evidence to the Tribunal, Professor Carter gave evidence on her own involvement in the claimant’s case, as chair of the College Promotions Committee which considered the claimant’s 2020 application for promotion and made a recommendation that the claimant did not meet the promotion criteria.
- 20 e. She attended the respondent’s Board of Review, which made the final decision on the claimant’s 2020 promotion application, and she gave permission for the claimant to appeal the 2020 promotion decision. Further, she refused the claimant’s request for permission to re-apply for promotion in 2021.
- 25 f. In the claimant’s witness statement, at paragraph 14, it was asserted by the claimant that: *“The process requires someone who is lodging an appeal to get support from the Head of College. I spoke to Professor Carter by telephone on 20 May 2020 at 11am. She gave me permission to progress my appeal and during that conversation in which we discussed issues around the promotion of women she told me that ‘she knew there was a problem in economics’.”*
- 30

- 5 g. When Professor Carter was cross-examined by the claimant, she did not recall any such comment having been made by her to the claimant. In the claimant's closing submissions, at paragraphs 395 to 396, she submitted that there were only two parties to that conversation, and that she (the claimant) had been clear about what Sara Carter said for over 2 years, that she had said the professorial consultation was wide open to discrimination, and the claimant had referred to that in her grievance statement some two months later. While Professor Carter denied saying those words, the claimant has invited the Tribunal to prefer her evidence on this point.
- 10
- 15 h. Having considered the claimant's grievance statement, from her meeting with Professor Conroy, on 23 July 2020 (at page 361 of the Bundle), the Tribunal notes that it records: "*JF also noted that the Head of College, Sara Carter, had supported her appeal on procedural grounds. She had been shocked at some of the aspects of the promotion process including the consultation with existing Chairs which was wide open to discrimination.*"
- 20
- 25 i. In these circumstances, the claimant's account is preferred by the Tribunal, on this particular matter, as it is noted in the respondent's minute of that grievance meeting with the claimant. In preferring the claimant's evidence, on this matter, the Tribunal does so on the basis that the balance of probability, supported by this nearly contemporary note, bolsters the claimant's recollection of what Professor Carter is alleged to have said in May 2020, even if, now, Professor Carter has no recollection of saying that, or anything like that.
- 30
- j. As the claimant's grievance investigation statement from 23 July 2020 was only signed by her, on 7 September 2020 (page 362 of the Bundle), and Professor Carter was interviewed on 27 July 2020, it is not clear from the grievance investigation minutes of her meeting with Professor Conroy, at pages 363 to 365 of the Bundle, whether the specifics of what the claimant had said to him were relayed to Professor Carter for her comment.

- k. Professor Carter also gave evidence of her own experience as an academic head of department, and her direct experience and knowledge of discrimination and the role of mentoring (or lack of it) as a barrier to academic promotion.
- 5 l. Overall, we found Professor Carter to be a witness speaking to the best of her knowledge and belief about the treatment of women academics at Glasgow University, and her evidence was of assistance to us in determining the issues before this full Tribunal, as she spoke clearly and confidently about her role in the lead up to, and after, the
- 10 claimant's unsuccessful 2020 promotion application.
- m. Professor Carter came across as a plain-speaking individual, who was knowledgeable in her role and responsibilities, and who was clearly quality focused. She stood her ground well with the claimant, despite robust cross-examination, and she did a lot to answer the alleged
- 15 female bias points raised by the claimant. She answered all questions asked of her, and came across as a neutral, rather than one-sided partisan.
- n. In particular, Professor Carter was clear that she regarded Professional feedback as a "historical artefact", with almost no status in decision making, and she was equally clear that she did not agree
- 20 with the claimant that she was not promoted because she was a woman.
- o. In her view, the claimant was not promoted in 2020 because she did not meet 4 of the 7 criteria. She did not believe that the respondent's
- 25 promotion process or criteria used caused disadvantage to female applicants for Professorship. Further, she was clear that she did not agree with the claimant that women are denied opportunities, and she made the point, in her evidence, and based on her experience, that *"academics create their own opportunities"*.
- 30 p. Finally, Professor Carter stated that she did not see the claimant being disadvantaged by not being allowed to make a second promotion



application the next year, after her unsuccessful 2020 application, and she described the importance of there being a “*fallow year*” in between applications.

- 5 q. With reference to the claimant’s evidence that Christine Barr had told her that Sara Carter did not allow though in 2021 anybody else, as the reason for not allowing the claimant to reapply that year, we refer to our earlier comments above, at paragraph 69 (8) of these Reasons, when discussing Ms Barr’s evidence.

**(14) Professor James Conroy, Vice Principal of Internationalism**

- 10 a. The respondent’s final witness in support of their defence to the claimant’s claim was Professor Conroy. We heard his evidence on day 12, Tuesday, 30 August 2022. Aged 67, he is Professor of Religious and Philosophical Education at Glasgow University, and Director of the European Centre for Advanced Studies. He is the University’s  
15 emeritus Vice Principal of Internationalism.
- b. His witness statement, dated and signed by him on 8 August 2022, ran to 25 numbered paragraphs, extending across 7 typewritten pages. When his evidence started, he took the oath, and he confirmed that there was only one minor typographical error that required amendment  
20 to his witness statement, at paragraph 6, to replace “120” with “129”, where he had cross-referenced to pages in the Bundle.
- c. Professor Conroy’s witness statement was taken as read, and he was thereafter cross-examined by the claimant, asked questions of clarification by the Tribunal panel, and re-examined by the  
25 respondent’s solicitor.
- d. In giving his evidence to the Tribunal, Professor Conroy gave evidence on how he chaired the hearing of the claimant’s grievance relating to her unsuccessful 2020 application for promotion to Professor, and how he was interviewed as part of the subsequent grievance appeal  
30 process. He was not directly involved in the decision-making

processes adopted by the respondent at the time of the claimant's unsuccessful 2020 promotion application.

- 5 e. What was clear to us, from the claimant's cross-examination of Professor Conroy's evidence, is that she had a real and substantial issue as to why he had been led as a witness for the University, describing his evidence as irrelevant, and she questioned him robustly about his role in her case, and whether he had prepared his witness statement independently.
- 10 f. He explained that he had prepared his witness statement independently, and that he had been the grievance manager, that the claimant had submitted a grievance about her unsuccessful 2020 promotion application, it had been processed, and she had appealed against the grievance outcome, and that appeal had been determined by another senior academic, Professor Alice Jenkins, as grievance
- 15 appeals manager.
- g. Professor Conroy confirmed that he was not involved in the College of Social Science's College Promotion Committee, or the University's Board of Review, in 2020, and that he had no role in to management of the Adam Smith Business School, but he had a great deal of insight
- 20 to many academics and the allocation of roles across a great many Schools and Colleges across the University.
- h. When the claimant stated that he had behaved inappropriately, at her grievance hearing, and that he had been prejudiced from the outset, and that he had constantly interjected, Professor Conroy stated that
- 25 the notes of the grievance hearing were a précis, and not a complete record of everything that was said, and his interjections were modest and appropriate. He denied the suggestion that he had already made up his mind before hearing from the claimant.
- i. When the claimant put it to Professor Conroy that his witness
- 30 statement appeared to be a defence of Glasgow University, the witness was directed by the Judge to leave the hearing room, while

the Tribunal addressed an objection made by Mr Maclean, the respondent's solicitor, about the claimant's line of questioning of this witness.

5 j. Having heard Mr Maclean and the claimant, the Tribunal adjourned into chambers, for private deliberation, and thereafter returned to the public hearing room, and the Judge read verbatim from an interlocutory ruling agreed by the full Tribunal and written by the Judge in chambers, noting the respondent's objection, but repelling that objection.

10 k. The Tribunal agreed with the claimant that she was entitled to cross-examine Professor Conroy on the terms of his witness statement, and that that was an appropriate thing for her to do, but we stated that the way in which the claimant was asking questions might benefit from the claimant putting questions to him in a more neutral manner and, where  
15 appropriate, referring him to documents in the Bundle, and to explain why his evidence in person was more fulsome in detail than what he had put in his written grievance outcome letter to the claimant.

20 l. Further in its oral ruling, the Tribunal also stated that while the grievance appeal and its outcome, per Professor Jenkins, was an agreed fact, in the joint statement of facts provided to the Tribunal by both parties, Professor Jenkins was not (for whatever reason) being led as a witness. Professor Conroy had mentioned the grievance appeal, at his paragraph 24, and paragraph 16 of his witness statement refers to him describing the claimant as dismissive of the  
25 claimant obtaining a Professorship via the Learning & Teaching track, to which the claimant challenged him as to his oral evidence being more detailed than his outcome letter. She was entitled to do that, and to seek his explanation.

30 m. Finally, the Tribunal's oral ruling stated that the relevance of Professor Conroy's evidence was ultimately a matter for the Tribunal and both parties could address us on that, and on credibility and reliability, when

it came to them delivering their closing submissions to us later that week.

- 5 n. Overall, we found Professor Conroy to be a witness speaking to the best of his recollection about the claimant's grievance, post her unsuccessful 2020 promotion application, but his evidence was otherwise of limited assistance to us in determining the issues before this full Tribunal, as he was not directly involved in the decision-making processes adopted by the respondent at the time of the claimant's unsuccessful 2020 promotion application.
- 10 o. What we did note was his statement, in cross-examination by the claimant, that "*Glasgow University is not a perfect institution*", but that it has been very careful to try and ensure equity pertains in every instance, and that it has made extraordinary efforts to erase protected characteristics being considered in its promotion processes.
- 15 p. In re-examination, Professor Conroy stated that he had been accompanied at grievance meetings with the claimant, and others interviewed, by Ms. Gillian Shaw, the College's Head of HR, and that this was the first formal grievance he had dealt with at the University. Ms Shaw, who he stated was there to support and advise him, was not
- 20 led before us a witness for the respondent, although, throughout evidence led before us, there was frequent reference to College HR, as also University HR.
- 25 q. While, in his evidence to us, Professor Conroy stated that he was a neutral, it was clear to us that he had a vested interest in this case, as the claimant's appeal against his grievance outcome was really, in substance, about him, and how he had conducted the grievance meeting with the claimant.
- 30 r. After the Tribunal had given its interlocutory ruling, the witness became defensive, due in part to the claimant's type of questioning and, at points, it seemed like a fencing duel between them. The Tribunal was

not taken directly to documents in the Bundle about the grievance appeal by Professor Jenkins, other than it being an agreed fact.

**(15) Professor Jonathan Michie, Pro-Vice Chancellor, Oxford University**

- 5 a. The claimant's final witness in support of her claim was Professor Michie, interposed by agreement of both parties. He was the last witness heard by the Tribunal at this Final Hearing. We heard his evidence remotely, via CVP, on day 12, Tuesday, 30 August 2022.
- 10 b. Aged 65, he is Professor of Innovation and Knowledge Exchange, Pro-Vice-Chancellor of the University of Oxford and President of Kellogg College, University of Oxford, and Fellow of the Academy of Social Sciences.
- 15 c. His witness statement, dated and signed by him on 26 June 2022, ran to 22 numbered paragraphs, extending across 6 typewritten pages. When his evidence started, he affirmed. He confirmed that there were two minor typing corrections required to his witness statement, at paragraph 12, to insert "able", after "often" and before "to", and paragraph 21, where "or" should be "of", but nothing substantive to change.
- 20 d. Professor Michie's witness statement was taken as read, and he was thereafter cross-examined by the respondent's solicitor, asked questions of clarification by the Tribunal panel, and re-examined by the claimant.
- 25 e. In giving his evidence to the Tribunal, Professor Michie gave evidence on his own experience as an academic head of department, and academic evidence regarding discrimination against women in economics.
- 30 f. Professor Michie had agreed to be a referee for the claimant in her 2020 promotion application at Glasgow University. As per the copy of the claimant's 2020 application produced to the Tribunal (at page 228

of the Bundle), the claimant nominated him as one of her two applicant nominated referees, describing her relationship with the referee as “*I wrote a chapter for a book he co-edited 20 years ago.*” As the claimant’s application was not supported by the respondent, Professor Michie was not called upon to give Glasgow University a referee’s report on the claimant.

g. Overall, we found Professor Michie to be a witness speaking to the best of his knowledge and belief about the treatment of women academics at Glasgow University, but his evidence was of limited assistance to us in determining the issues before this full Tribunal.

h. His evidence was generally vague and lacking in specification, and, more importantly, Professor Michie was not directly involved in the decision-making processes adopted by the respondent at the time of the claimant’s unsuccessful 2020 promotion application. He described the Glasgow University promotions system as being “old-fashioned”.

i. We found Professor Michie a somewhat bizarre witness. We did not find any assistance in his sweeping statements about women in academia historically, the role of white men, where he advised us that “*only white men turn down academic duties that don’t lead to promotion*”, and he came across as having a supercilious sense of humour. He was also at odds with many other witnesses we heard from in describing the respondent’s academic promotion criteria as “*narrow and restrictive*”.

**(16) Persons not led in evidence before this Tribunal / Documents not produced to this Tribunal**

a. The absence of some witnesses for the respondent was telling, and not fully explained. We did not hear evidence from Professor John Tsoukalas, the Head of Subject for Economics, the respondent not having called him, for whatever reason, perhaps because they felt Professor John Finch, as Head of School, would be sufficient for their purposes.

- b. As the claimant's line manager, it would have been helpful to us, as the fact-finding Tribunal, in getting the full picture, to have heard from Professor Tsoukalas directly, particularly in circumstances where the claimant's evidence was critical of him.
- 5 c. Likewise, we did not hear from Professor Alice Jenkins, the Head of the School of Critical Studies, within the College of Arts, who acted as the Grievance Appeal Hearing Manager, and who signed the 10-page grievance appeal outcome letter issued to the claimant on 16 December 2020 (copy produced to us at pages 399 to 408 of the
- 10 Bundle).
- d. Instead, we heard from Professor James Conroy who acted as the Grievance Investigation Manager. As the claimant confirmed, in her cross-examination of him, that she had no issues about the grievance appeal outcome, and as that outcome was an agreed fact, Professor
- 15 Jenkins' absence as a witness posed no real issues for the Tribunal in assessing what had happened throughout the claimant's internal grievance process. We have made our findings in fact in that regard based on the written productions included in the Bundle.
- e. We heard from 2 HR witnesses for the respondent, Christine Barr, and
- 20 Lesley Cummings, but various witnesses, including them, spoke of the College Head of HR, but we did not hear from anybody who held that role, e.g., Ms Lyn Goodenough, who attended the College Promotion Committee on 3 March 2020, and what role and responsibility (if any) that post-holder had played in the claimant's case. Such a witness
- 25 would have, we felt, have given us a better and more holistic view of the HR function across the whole University.
- f. Professor David Heald was not led as a witness for the claimant, as, on day 3 of this Final Hearing, the claimant advised the Tribunal that she was not calling him as a witness, because, she advised us, he had
- 30 declined her invitation for him to give evidence, "*for his own reasons*",

which she did not elaborate upon to us, nor did we consider it appropriate to explore further.

- 5 g. The claimant did not make any case management application for Professor Heald, or indeed anybody else, to be led as a witness for the claimant, by way of a Witness Order application for the Tribunal to consider granting. The Tribunal did not consider it appropriate, acting on its own initiative, to issue any Witness Orders, and we were content to hear from the witness identified by, and led by, the parties themselves.
- 10 h. As regards documents not produced to the Tribunal, a number of the witness statements provided referred to Glasgow University strategic policies but these were not provided to us, and witness evidence was accordingly superficial and vague as to “*our Mission and our strategic ambitions*”, as referred to by the Principal, in paragraph 13 of his
- 15 witness statement. Similarly, we heard in evidence about “*Strategy to 2030*”, but no copy was provided for us within the Bundle, nor arising from ongoing witness evidence mentioning it.
- 20 i. On a related point, several witnesses, including Professor Ruth Dukes, spoke in their witness statements of the University’s **Early Career Development Programme**, and **Athena Swan**, but their evidence was very general and non-specific, and we were not provided with any detailed evidence about its content, and / or review.
- 25 j. The Bundle did include (at pages 467 to 537) a copy of the **Adam Smith Business School Athena Swan application** written in 2019. Running to 71 pages, where we were referred only to a few pages, at pages 500 and 501, on academic and research staff data, from 2013/14 to 2017/18, we do wonder why such a large document was included in the Bundle, when a relevant extract might have been more appropriate.
- 30 k. Several witnesses, including Professor John Finch, and Professor Carl Goodyear, spoke of having undertaken the respondent’s equality and



diversity training, and unconscious bias training, but their evidence in that regard was very general and non-specific, and we were not provided with any detailed evidence about the content, and / or review, of such training.

- 5 I. Further, several witnesses, including the claimant, Professor Fischbacher-Smith, and Dr Alberto Paloni, referred to the University's **Workload Model** ("WLM"), but again such evidence as we had was very general and non-specific, and we were not provided with any detailed evidence about its content, and / or review.
- 10 m. Finally, at point 3.1.55 of Mr Maclean's closing submissions for the respondent, when dealing with **Professional Consultation**, he stated that: *"This process is transparent in the sense that the Head of School who invites the Professorial comments, knows who has provided which comment. The information shared with the ET was redacted but*
- 15 *it was still clear the original showed that comments were attributed to particular individuals."*
- n. We pause to note and record that pages 211 to 215 of the Bundle were heavily redacted by the respondent. While it was, by careful scrutiny, possible to see that specific comments about 3 applicants (including
- 20 the claimant, her comparator Mr Luis Angeles, and the other applicant, Ms Celine Azemar) had been provided by some of the Economics Professoriate, we feel that the respondent could, in the interests of transparency and openness, have redacted much less than they did, and perhaps have redacted only the names of the consulted
- 25 Professors, leaving the comments made there in full.

### **Closing Submissions from Parties**

70. Procedure for closing submissions from both parties had been set out by the Judge in the case management orders issued by the Tribunal on 15 March 2022, as subsequently confirmed by him, orally, on day 7, Tuesday, 23 August
- 30 2022, when addressing housekeeping matters about conduct of these Tribunal proceedings.

71. With reference to the revised timetable provided by parties, dated 17 August 2022, showing closing submissions on Friday, 2 September 2022, the Judge confirmed that 09:30am remained the deadline for the respondent's written skeleton argument being delivered to Glasgow ET and copied to the claimant, with the Hearing on Submissions starting at 11:00am, and the respondent's oral submissions from 11:00 to 12:30, with the claimant likewise for 1.5 hours, from 13:30 to 15:00, and not 2 hours to 15:30 as shown incorrectly on the revised timetable.
72. At that stage, the claimant indicated that she would prefer to write something by way of her closing submissions to the Tribunal, and the Judge reminded her that she had not been ordered to do so, but she could reply orally, or in writing, as she felt best, and the Judge signposted her to the online resources on the University of Strathclyde Law Clinic website, with its user-friendly resources on the relevant law available to unrepresented party litigants.
73. Subsequently, on day 10, Friday 26 August 2022, the Judge varied those earlier case management orders about closing submissions, by noting that Mr Maclean, the respondent's solicitor, had agreed to the Judge's suggestion that he should provide the claimant with his list of authorities for the respondent on Monday, 29 August 2022, the beginning of week 3 of the Final Hearing. He did so, on the evening of 29 August 2022.
74. At the close of evidence on day 12 of the Final Hearing (Tuesday, 30 August 2022), at about 12:50pm, after we had heard and concluded evidence from the last witness, Professor Michie, the Judge had discussion, in open Tribunal, with the claimant and Mr Maclean, the respondent's solicitor, about the way forward towards closing submissions for the Tribunal.
75. Having heard both parties, and after adjournment for private deliberation by the Tribunal in chambers, the Judge stated, on resuming the public hearing, that the Tribunal had decided to vacate the next day (Wednesday, 31 August 2022) as a sitting day, as evidence from both parties had closed. On the Tribunal's behalf, he ordered the respondent's closing submissions by no later than 4:00pm on Wednesday, 31 August 2022, and the claimant's by no later

than midnight that evening, as the Tribunal was concerned that it did not want the claimant to be *“burning the midnight oil”*, given oral submissions starting the following morning

5 76. The Judge also suggested to the claimant that she should use the List of Issues before the Tribunal as her framework, for writing up her own closing submissions, and that she should address the action recommendations for the respondent that she would be seeking from the Tribunal, in the event of success with her claim, under **Section 124 of the Equality Act 2010**, and that she should be clear about the *“specified steps”* and *“specified periods”*  
10 that she would be looking for the Tribunal to order.

77. As we had finished the day’s evidence in the morning session, only taking up a 1/2 day sitting, the Judge noted that the claimant accordingly had extra time now to finalise her closing submissions, compared to the timetable previously in place.

15 78. Further, by letter from the Tribunal, to both parties, circulated by email on 31 August 2022, a specific timetable, and directions for closing submissions, on Thursday, 1 September 2022, was given by the Tribunal, confirming the oral directions given by the Judge at the close of evidence the preceding day.

20 79. In those further directions, the claimant was specifically informed that *“closing submissions is not an opportunity to lead further evidence before the Tribunal.”*

80. In particular, it was there stated by the Tribunal, in the letter dated 31 August 2022, that:

25 *“By no later than 4pm today, Wednesday, 31st August, the respondents’ representative, Mr Maclean, shall submit to the Tribunal, by email, with copy sent at the same time to the claimant, his written closing skeleton argument for the respondents. Please submit in Word, not PDF.*

30 *In re-reading the casefile this morning, Judge McPherson has indicated that he wishes the respondents to clarify their position about a previously reserved decision on seeking expenses.*

When, in July 2021, the then listed Final Hearing was postponed, by Judge Simon, then ET President, the respondents reserved their position about seeking expenses from the claimant in respect of the postponement. At the subsequent CVP PH before EJ McFtridge, on 5 July 2021, his written Note dated 13, and issued 14, July 2021, notes the respondents still reserved their position. It is recorded, in that Note, at para 23, that Mr Maclean stated : “It was their position if the claim proceeded then they may wish to make a claim for the expenses incurred during all or part of the process and would be making this application at the end of the case.”

There is no issue regarding expenses in the finalised List of Issues. As such, Judge McPherson directs that the respondents should clarify their position, as a matter of urgency, in their written skeleton, whether or not they are seeking any award of expenses against the claimant in regard to that 2021 postponement. If so, then they should detail their proposals as to how such an application should be determined by this Tribunal, and when. In that event, the Tribunal will seek the claimant’s comments, before directing any further procedure on that matter.

By no later than 12 midnight, Wednesday, 31st August, the claimant shall submit to the Tribunal, by email, with copy sent at the same time to Mr Maclean, her written closing skeleton argument. Please submit in Word, not PDF.

If the claimant intends to rely upon any case law authorities, over and above those listed by Mr Maclean, in his respondents’ list intimated on Monday, 29th August, then it would be helpful if she can include a note of those further authorities, with a hyperlink to Bailli ( if possible), citing the legal principle involved, and identifying by judge / paragraph of the judgment, the part of the case law report being relied upon by her.

As an unrepresented, party litigant, the Tribunal does not expect the claimant to provide full detailed legal submissions, but the Judge again signposts her to the online guidance available via Strathclyde University Law Clinic, and the EHRC, should she wish to make any submissions on the relevant law. As

indicated to the claimant by the Judge, closing submissions is not an opportunity to lead further evidence before the Tribunal.

Having perused the respondents' list of authorities, Judge McPherson states that there are some further case law authorities that he had anticipated would be referred to. So that both parties can consider their position thereon, in advance of tomorrow (Thursday's) Hearing on Submissions, the Judge has asked me to provide the following hyperlinks:

Time-bar:

Rathakrishnan v Pizza Express UKEAT 0073/15 at paras 8-16  
[https://www.bailii.org/uk/cases/UKEAT/2015/0073\\_15\\_2310.html](https://www.bailii.org/uk/cases/UKEAT/2015/0073_15_2310.html)

Miller and Others v The Ministry of Justice and Others UKEAT/0003/15/LA at paras. 10-13

[https://www.bailii.org/uk/cases/UKEAT/2016/0003\\_15\\_1503.html](https://www.bailii.org/uk/cases/UKEAT/2016/0003_15_1503.html)

Wells Cathedral School Ltd v Souter EA[1]2020-000801-JOJ at para 32

[https://www.bailii.org/uk/cases/UKEAT/2021/2020\\_000801.html](https://www.bailii.org/uk/cases/UKEAT/2021/2020_000801.html)

Adedeji v University Hospitals Birmingham NHS Foundation [2021] EWCA Civ 23 at paras 31 & 32

<https://www.bailii.org/ew/cases/EWCA/Civ/2021/23.html>

Injury to Feelings:

Esporta Health Clubs & Anor v Roget [2013] UKEAT 0591/12, at paras 7 & 8

[https://www.bailii.org/uk/cases/UKEAT/2013/0591\\_12\\_2305.html](https://www.bailii.org/uk/cases/UKEAT/2013/0591_12_2305.html)

Komeng v Creative Support Limited [2019] UKEAT/0275/18, at paragraphs 14-16

[https://www.bailii.org/uk/cases/UKEAT/2019/0275\\_18\\_0504.html](https://www.bailii.org/uk/cases/UKEAT/2019/0275_18_0504.html)

Base Childrenswear Limited v Otshudi [2019] UKEAT/0267/18, at paragraphs 17-22

[https://www.bailii.org/uk/cases/UKCAT/2019/0267\\_18\\_2802.html](https://www.bailii.org/uk/cases/UKCAT/2019/0267_18_2802.html)

The Judge has also asked me to confirm his suggestion to the claimant to use the finalised List of Issues dated 16th August as her framework, and populate her answers to the issues raised there, and in answer to issue 16.7, to have regard to the terms of Section 124 of the Equality Act 2010, and specify the specific steps and periods that she suggests for whatever are her specific recommendations to be made by the Tribunal.

The hearing of closing submissions will be on Thursday 1st September, starting at 10am. Parties are each allocated 1.5 hours to address the Tribunal, and the Tribunal may have questions for either, or both, parties, dependent upon what they say in their own closing submissions, and reply to the other party's.

The full panel will meet, in chambers, on Friday 2nd September for private deliberation. Parties are not required to attend.

A full reserved written judgment & reasons will be issued in due course thereafter, and it will be published online on the ET decisions page of Gov.Uk.”

81. We deal with the written closing submissions received from each party, later in these Reasons, at paragraphs 97 to 121 below.

### **Relevant Law**

82. While the Tribunal received written closing submissions from Mr Maclean, the respondent's solicitor, with statutory provisions recited, and with some case law references, the Judge has required to give the Tribunal a self-direction on the relevant law to cover all aspects of the case before this Tribunal.

83. The claimant was invited to address us on the relevant law, but she chose not to do so, as was her right, a position we recognised and respected given her position as an unrepresented party litigant. In her written submission, she made some reference to Mr Maclean's narration of the law. The Judge explained to her that Mr Maclean had a professional duty as a solicitor to address us on the law, but we were not bound by his narration of the law. The

relevant law is a matter for the Tribunal, directed by the Judge, applying it to the facts established in evidence before this Tribunal.

84. The claimant's complaints proceed before this Tribunal under **Section 120 of the Equality Act 2010**, as complaints, under Part 5 (work), of direct and indirect discrimination on grounds of sex, contrary to **Sections 13 and 19** respectively.
85. Time limits for raising proceedings on a complaint under **Section 120** are dealt with at **Section 123**. Generally, proceedings may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates, or such other period as the Employment Tribunal thinks just and equitable.
86. If an Employment Tribunal finds that there has been a contravention of the Act, then remedies are dealt with at **Section 124**, as read with **Section 119**. The Tribunal may make a declaration, order the payment of compensation, and / or make an appropriate recommendation. Any recommendation has to be in respect of the claimant for the purpose of obviating or reducing the adverse effect on the claimant of any matter to which the Tribunal proceedings relate. Interest can be awarded as per the **Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996**.
87. Sex is a protected characteristic under **Section 4**, as read with **Section 11**, while **Section 13** defines "*direct discrimination*", and **Section 19** defines "*indirect discrimination*". Under **Section 23**, supplementary provision is made about comparison, by reference to circumstances.
88. **Section 13** provides that:
- "A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others".*
89. **Section 19** provides that:

“(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if

–  
(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.”

15 90. **Section 23** provides that:

“On a comparison of cases for the purposes of sections 13, .... and 19 there must be no material difference between the circumstances relating to each case....”

20 91. The specific contraventions of **Part 5** of the Act alleged by the claimant in the present case are of discrimination against the claimant as an employee of the respondent.

25 92. **Section 39(2)** provides that an employer (A) must not discriminate against an employee of A's (B) as to B's terms of employment, in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service, by dismissing B, or by subjecting B to any other detriment.

93. The burden of proof is dealt with at **Section 136**. So far as material for present purposes, it provides that, if there are facts from which the Tribunal could



decide, in the absence of any other explanation, that a person (A) contravened the provision of the Act concerned, the Tribunal must hold that the contravention occurred, unless A shows that A did not contravene the provision.

5 94. Finally, we note and record that the Tribunal also has to take into account, so far as relevant, of the **Equality and Human Rights Commission (EHRC) Code of Practice on Employment (2011)**, at chapters 2, 3 and 4, as also chapters 16, 17 and 18, dealing with protected characteristics, direct discrimination, and indirect discrimination; and avoiding discrimination in recruitment, avoiding discrimination during employment, and equality policies and practice in the workplace, respectively.

10 95. We look at these statutory provisions in more detail, later in these Reasons, under our section on **Discussion and Deliberation**. While we would normally try to set out all applicable legal principles in a single section of our Reasons, under **Relevant Law**, we consider that, in this case, with the above high level concise summary of the law, it would be better and clearer to weave the applicable legal principles into our reasoning when discussing and deliberating on the specific, identified issues before us.

15 96. In providing his hyperlinked list of case law authorities for the respondent, on 20 29 August 2022, the respondent's solicitor, Mr Maclean, intimated that his closing submissions would refer to / rely upon the following cited cases:

***Direct discrimination***

**A. Comparator**

*(Finalised List of Issues: 2)*

25 1. *Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337*

**B. Less Favourable Treatment**

*(Finalised List of Issues: 3 - 4)*

2. *Swiggs and Others v Nagarajan* [1999] ICR 877
3. *Amnesty International v Ahmed* [2009] ICR 1450
4. *James v Eastleigh Borough Council* [1990] ICR 554
5. *R (on the application of E) v Governing Body of the Jewish Free School and another* [2010] IRLR 136
6. *Glasgow City Council v Zafar* [1998] ICR 120

**C. Burden of Proof**

7. *Igen v Wong* [2005] ICR 931
8. *Madarassy v Nomura International Plc* [2007] ICR 867
10. 9. *Laing v Manchester City Council* [2006] ICR 1519
10. 10. *Royal Mail Group Ltd v Efofi* [2021] ICR 1263
11. *Network Rail Infrastructure v Griffiths-Henry* [2006] IRLR 865

**Indirect discrimination**

**A. Existence of Provision Criterion or Practice**

(Finalised List of Issues: 8)

12. *Ishola v Transport for London* [2020] ICR 1204

**B. Applies or Would Apply Equally**

(Finalised List of Issues: 10)

13. *Secretary of State for Trade and Industry v Rutherford* [2006] ICR 785
20. 14. *British Airways Plc v Stamer* [2005] IRLR 862
15. *Iteshi v General Council of the Bar* [2012] EqLR 553.

**C. Group Disadvantage**

(Finalised List of Issues: 11 & 12)

16. *Pendleton v Derbyshire County Council* [2016] IRLR 580
17. *Essop v Home Office (UK Border Agency): Naeem v Secretary of State for Justice* [2017] ICR 640
18. *Williams v Trustees of Swansea University Pension and Assurance Scheme* [2018] UKSC 65
19. *Allonby v Accrington and Rossendale College* [2001] ICR 1189
20. *Grundy v British Airways plc* [2008] IRLR 74
21. *University of Manchester v Jones* 1993 ICR 474
22. *Nelson v Carillion Services Ltd* [2003] ICR 1256
23. *Dziedziak v Future Electronics Ltd* [2012] UKEAT 0270/11/2802

**D. Personal Disadvantage**

**(Finalised List of Issues: 13)**

24. *Homer v Chief Constable of West Yorkshire Police and West Yorkshire Police Authority v Homer* [2012] ICR 704

**E. Objective Justification**

**(Finalised List of Issues: 14)**

25. *MacCulloch v ICI* [2008] ICR 1334
26. *Lockwood v DWP* [2014] ICR 1257
27. *Bilka-Kaufhaus GmbH v Weber Von Hartz (case 170/84)* [1984] IRLR 317
28. *Rainey v Greater Glasgow Health Board (HL)* [1987] ICR 129
29. *Hardy & Hansons plc v Lax* [2005] ICR 1565
30. *Seldon v Clarkson Wright and Jakes* [2012] ICR 716
31. *Enderby v Frenchay Health Authority and another* [1994] ICR 112

**Time-bar****(Finalised List of Issues: 15)****A. Continuing Act**32. *Barclays Bank plc v Kapur and ors* [1991] ICR 2085 33. *Parr v MSR Partners LLP (formerly Moore Stephens LLP)* [2022] ICR  
672**B. Extension of Time**34. *Robertson v Bexley Community Centre* [2003] IRLR 43435. *British Coal Corporation v Keeble and ors* [1997] IRLR 33610 36. *Department of Constitutional Affairs v Jones* [2008] IRLR 12837. *London Borough of Southwark v Afolabi* [2003] ICR 800**Remedy**

[Note by the Tribunal: the numbering used below (34 to 39) is that used by the respondents' representative]

15 **A. Unintentional Discrimination****(Finalised List of Issues: 16.1)**34. *Essop and ors v Home Office (UK Border Agency)* [2014] ICR 87135. *JH Walker Ltd v Hussain and ors* 1996 ICR 291**B. Injury to Feelings**20 **(Finalised List of Issues: 16.4 – 16.5)**36. *Prison Service and ors v Johnson* [1997] ICR 27537. *Vento v Chief Constable of West Yorkshire Police (No.2)* [2003] ICR  
31838. *De Souza v Vinci Construction (UK) Ltd* [2018] ICR 433

39. *Simmons v Castle [2012] 1 All ER 334*

### Respondent's Submissions

- 5 97. Mr Maclean, solicitor for the respondent, provided the Tribunal with a very detailed written submission dated 31 August 2022, running to some 37 numbered pages, within eight separate sections to his “*skeleton*”.
98. He sent his written submissions to the Glasgow ET, with copy to the claimant, by email sent on 31 August 2022 at 16:22, and he apologised that this document was being shared after 4pm and requested an extension of time to allow it to be accepted slightly late.
- 10 99. The Tribunal allowed it to be received, though received after 4pm on 31 August 2022, it being in the interests of justice to do so, and there being no objection stated by the claimant.
100. As a full copy is held on the Tribunal's casefile, and we had access to it during our private deliberations, it is not necessary to repeat here its full terms  
15 *verbatim*. That is neither appropriate, nor proportionate.
101. It will suffice, for present purposes, to note that it comprised the following constituent parts:
- (1) Introduction – paras 1.1 to 1.17
  - (2) Witnesses – paras 2.1 to 2.24
  - 20 (3) Findings in Fact – paras 3.1.1 to 3.1.70
  - (4) Relative provisions of the 2010 Act relative to Merits – paras 4.1 to 4.9
  - (5) Direct Sex Discrimination / Indirect Sex Discrimination / Time Limits – paras 5.1 to 5.92
  - (6) Remedy – paras 6.1 to 6.24
  - 25 (7) Expenses – para 7.1
  - (8) Conclusion – paras 8.1 to 8.4.

102. On account that para 7.1 stated *“The Respondent makes no application for expenses in relation to the 2021 postponement”*, that matter flew off, and it did not require our judicial determination. The other matters remained live.

103. In the following paragraphs 1.1.1 to 1.1.17 from the introduction section to his written submissions for the respondent, in what might be regarded as an executive summary, Mr Maclean stated as follows:

1. *The Claimant claims that the Respondent’s decision not to promote her to Professor in 2020 was both direct and indirect discrimination on grounds of sex under Sections 13 and 19 of the Equality Act 2010 (“the 2010 Act”).*
2. *The Respondent accepts that it did not promote the Claimant to Professor in 2020, but disputes that the failure to do so was either direct or indirect discrimination as alleged or at all.*
3. *The issues for the tribunal to determine are set out in the Finalised List of Issues.*
4. *There are lots of issues, lots of law and lots of facts. This case appears complex, daunting even. However, it’s actually quite simple.*
5. *Professor Findlay sought promotion to Professor in 2020 and was judged not to meet the University’s promotion criteria – she met three out of seven criteria, when four out of seven were necessary. Professor Findlay says the University’s judgment was unlawful discrimination. The University denies this.*
6. *Professor Findlay re-applied for promotion in 2022 and was successful. The criteria in 2020 and 2022 were essentially the same. In particular there were no changes made to the Esteem criteria. The application form looks different but is essentially the same. In particular there is still no specific invitation to Professor Findlay to provide details of her specific caring responsibilities. In 2022, the University’s Judgment was that Professor Findlay met four out of seven criteria, including the Esteem criteria, and was promoted.*

5 7. *In relation to Professor Findlay's complaint of direct discrimination, my submission is that even Professor Findlay doesn't believe she was denied promotion in 2020 because she was a woman. Another woman, Celine Azemar, who was an economist like Professor Findlay, was promoted to Professor in 2020. Professor Findlay put it to a number of the University witnesses that if she had met the Esteem criteria in 2020, she would have been promoted and received the consistent answer "yes". In my cross examination of Professor Findlay when I put it to her that she didn't believe she had been discriminated against because she was a woman, she said the reason was a whole bundle of things leading up to the 2020 decision. As I say, even Professor Findlay doesn't believe she was not promoted because she was a woman. The fact Professor Azemar was promoted in 2020 defeats the direct sex discrimination claim in any event. The Claimant has not proved facts from which the ET could reasonably conclude discrimination has occurred without an explanation from the Respondent. The burden of proof does not therefore shift to the Respondent. However, even if the panel disagree with this view, and conclude the Burden of Proof does shift to the Respondent, the Respondent has shown that the reason Professor Findlay was not promoted in 2020 was because she did not meet sufficient promotion criteria to be promoted and that explanation is unconnected to her sex.*

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30 8. *In relation to the indirect discrimination claim, the criteria and process the Claimant complains disadvantages women as a group and disadvantaged her, delivered her promotion in 2022. It also saw in 2020, women do better than men in four out of the seven criteria, which in 2021 rose to women doing better in 6 out of the seven criteria. There was nothing intrinsic to the promotion criteria or process that disadvantaged women in 2020 nor was the Claimant disadvantaged in 2020 because of her sex. She just didn't submit a strong enough application across the seven criteria in that year.*

9. *The Claimant might counter that what made the difference between 2020 and 2022 was mentoring. However, the Claimant is dismissive of the support the University provided to her in the aftermath of the 2020 rejection of her promotion application. Her position seems to be that only an economist could help her (that thinking fundamentally misunderstands the University's promotion process). Yet, the Claimant was not provided with the support of an economist until she was connected to Professor Sayantan Ghosal in October/November 2021. By which time, she had made the improvements in her Esteem profile, which was the missing 4th category for her.*

10. *The University's position is that the support provided, including making available to the Claimant Professor Dukes and Professor Heald and the discussion between Frank Coton and the Claimant, were valuable and supportive interventions. This was informal mentoring – in the sense it was not part of any organised process. The Claimant dismisses this as being just about “form filling” and “not relevant to her”.*

11. *The mentoring issue and how the University dealt with the Claimant's requests in her PDRs is probably the key issue in this case. The Claimant did mention an interest in being promoted in her 2015-2016 PDR and expressed an interest in being promoted to Reader in 2016-2017 and 2017-2018. The University sent a link to the guidance on the website but there was no other follow up. John Finch is beating himself up over that. There are certainly lessons to be learned but it doesn't mean discrimination occurred. Any organisation can have the best policies: it's how they are implemented on the ground that matters. The University is a large organisation and very devolved in its governance. Academics are coming late to the idea of being managed. So ensuring consistency of practice across such a varied institution is not always easy. As witnesses acknowledged – the University is not perfect.*

12. *However, nor is the Claimant in this case perfect. She was the most senior UCU representative at the University from 2017 and had been*



5 a UCU representative for over 20 years. As Professor Findlay so ably demonstrated during her cross-examinations, she is on first name terms with the Principal and Vice-Chancellor, the Senior Vice-Principal, the Executive Director of People and Organisational Development, the Director of Performance and Reward, her Head of College and her Head of School. She also gave evidence that she was in regular dialogue with Christine Barr and Lesley Cummings, including in relation to the promotions process from a Union perspective. Despite this familiarity and the many touch-points the Claimant enjoyed with these senior and experienced individuals, prior to 2020 she didn't once ask for guidance with promotion. Nor did Professor Findlay, prior to 2020, ever bring to any of these individuals' attentions that she had asked for guidance on promotion opportunities and been ignored (or only sent a link to guidance on the website). For someone who says they wanted to be promoted, that omission is extraordinary.

10 13. Professor Findlay will tell us men have better opportunities than women for informal mentoring. She didn't provide any evidence of that. Even if that was true, Professor Findlay is not just any female employee of the University. She has access to senior management colleagues, other colleagues couldn't even dream of. She is not disadvantaged by mentoring been done informally.

20 14. Professor Findlay may say but none of these individuals are applied economists so they couldn't help me. That's clearly flawed by what happened between 2020 and 2022. In any event, Professor Findlay's claims of not having access to mentoring from applied economists was an exaggeration. There was an applied economist research cluster in place from 2017.

30 15. Professor Findlay was able to source Professors Oughton and Michie as external referees. She contrasts their judgments with Professor Mason on the basis that Oughton and Michie are both economists. There is clearly an on-going relationship with Professor Oughton –

they are friends. There doesn't seem to be the same relationship with Professor Michie but he responded to the request to be an academic referee. The inference I draw is that Professors Michie and Oughton could have provided guidance to the Claimant on her career development.

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16. The Claimant seems surprisingly silent on her unrequited desire to be promoted to Professor prior to 2020.

17. The University made a judgment on the Claimant's application for promotion in 2020 and didn't feel the Claimant, at that time, had demonstrated she met the required standard. That was a judgment they were entitled to make, however upsetting it might be for the Claimant. There was no unlawful sex discrimination.

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104. As regards Mr Maclean's conclusion section, at his section 8, he submitted as follows:

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"8.1 For the reasons given above, both the direct and indirect discrimination claims should be dismissed.

8.2 In the event you are not with me in relation to my primary submission, then the economic loss is agreed between the parties and is £3,434.17 together with interest thereon. The method for calculating interest is also agreed.

20

8.3 In relation to a recommendation, there is no basis for a recommendation being made on the information currently available to me.

8.4 In relation to injury to feelings, if any award is made it should be in the bottom band of Vento and at the lower end of that band."

25

### **Claimant's Submissions**

105. Professor Findlay, the claimant, provided the Tribunal with her own, very detailed written submission on 1 September 2022, running to some 50 unnumbered pages, extending across some 483 numbered paragraphs.

106. She submitted it by email to the Glasgow ET, at 06:11am on the morning of 1 September 2022, copied to Mr Maclean, and stating that she apologised to the Tribunal *“for the delay in sending this document. It simply was not physically possible for me to complete this document before midnight on the 31st as ordered. It is only just completed.”* In her own written submission, at paragraph 27, the claimant stated that: *“I have the benefit of reading the respondent’s skeleton for which I am grateful.”*
107. The Tribunal allowed it to be received, though received after 12 midnight on 31 August 2022, it being in the interests of justice to do so, and there being no objection stated by the respondent’s solicitor.
108. The Tribunal was concerned about the fact that the claimant’s written closing submissions were submitted by her at that time in the morning, and whether she felt able to make her oral submissions. On the Tribunal’s behalf, the Judge raised this matter with her at the start of proceedings at 10:10am on the morning of 1 September 2022. The claimant stated that she was tired, but happy to proceed, and so we proceeded to hear both parties’ oral closing submissions.
109. While we had previously ordered 1.5 hours to each party for closing submissions, we varied that, with the agreement of both parties, to allow Mr Maclean to precis his closing submission within his first hour, and leaving him ½ hour to reply, after we had heard from the claimant for one hour with her precis of her written closing submissions.
110. We allowed Mr Maclean a 5-minute extension of time, and an extra 20 minutes to the claimant. Thereafter, we adjourned for lunch, before hearing from Mr Maclean for about ¼ hour, against the ½ hour allocated for his reply, then giving the claimant the final right of reply, for just over ½ hour. The hearing on submissions concluded at 3:05pm, with the Tribunal making **avizandum**, i.e., reserving its judgment.
111. As a full copy of the claimant’s written submissions is held on the Tribunal’s casefile, and we had access to it during our private deliberations, where we

read it fully and carefully over several occasions, it is not necessary to repeat here its full terms verbatim. That is neither appropriate, nor proportionate.

112. It will suffice, for present purposes, to note that it comprised the following constituent parts:

- 5           • Introduction – paras 1 to 19
- Direct Discrimination – paras 20 to 22
- Issue 2 – is the comparator an appropriate comparator ? – paras 23 to 33
- Issue 3 – less favourable treatment – paras 34 to 103
- 10          • Issue 4 – was less favourable treatment because of the Claimant’s sex – paras 111 to 134
- Issue 5 – Hypothetical comparator - paras 135 to 144
- Issue 6 – was less favourable treatment of a hypothetical comparator on grounds of sex – para 145
- 15          • Issue 7 – the Azemar promotion – paras 146 to 149
- Indirect Discrimination – paras 150 to 155
- Issue 8.1 – the Esteem PCP – paras 156 to 177
- Issue 8.2 – the Esteem Guidance PCP – paras 178 to 196
- Issue 8.3 – the Shadow Requirement PCP – paras 197 to 208
- 20          • Issue 8.4 – the Academic Promotions PCP – paras 209 to 270
- Issue 8.5 – the Professorial Consultation PCP – paras 271 to 278
- Issue 8.6 – the Mentoring PCP – paras 279 to 349
- Issue 8.7 – the Care Commitments PCP – paras 350 to 374
- Overall statement on UoG’s evidence – paras 375 to 389

- Credibility Issues etc re Respondent's witness evidence - paras 390 to 417
- Issue 15.1 – time bar and Mentoring and Care Commitments PCP – paras 418 to 424
- 5 • Remedy / Declaration / Recommendations – paras 425 to 477
- Not allowed to apply in 2021 - paras 478 to 483

113. While it does not include any executive summary, we feel that paragraph 10 of her introduction section perhaps captures her view, where the claimant states: *"I believe that I was treated differently on the grounds of my sex in the promotions process in 2020 and in parts of my career that led up to my promotion application, contrary to the Equality Act 2010."*

114. Further, at her paragraphs 20 to 21, we note the claimant's submissions about the direct discrimination aspect of her claim to the Tribunal, where she stated as follows:

15 "20. *An Employment Tribunal claim of Indirect Discrimination was lodged on my behalf on 24 August 2020. Around 11/12 September 2020 I became aware that a male colleague - Luis Angeles - had been promoted in the round in which I was unsuccessful. Having looked at all the public information relevant to him I formed the view that his application was no better than mine and an amended claim to include*

20 *Direct Sex Discrimination was lodged on 21 October 2020.*

21. *I understand that, in relation to s13 of the Equality Act 2010, as the Claimant I must establish that the University treated me less favourably than a comparator; that there is no material difference*

25 *between me and my comparator; and that the less favourable treatment was because of my sex.*

22. *It is my case that in not promoting me to Professor in 2020, in failing to consider my achievements in relation to the opportunities available to me; and in the decision by my Head of School and the College of*

*Social Sciences Promotion Committee (hereafter CPC) in relation to the Esteem criteria, the University treated me less favourably than Luis Angeles.”*

115. As regards the indirect discrimination part of her claim, we noted that the  
5 claimant set out her position, at her paragraphs 150 to 155, as follows:-

“150. *I need to show that a provision, criterion or practice is in operation; that there is a pool for comparison of people potentially affected by the PCP, and that I was disadvantaged by the PCP. I need to show (sic) show ‘prima facie evidence’ from which the tribunal could conclude, in  
10 the absence of any other explanation, that the University has committed an act of discrimination.*

151. *S.136 of the Equality Act goes on to provide that once I’ve shown that prima facie case, the tribunal is obliged to uphold my claim of discrimination unless the University can show that no discrimination  
15 occurred.*

152. *The Equality Act makes it unlawful to discriminate directly or indirectly in the arrangements made for the purposes of determining ... the way an employee was afforded access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services; by  
20 refusing or deliberately omitting to afford an employee access to those opportunities, benefits, facilities or services/*

153. *As noted by Baroness Hale in R (on the application of E) v Governing Body of JFS and the Admissions Appeal Panel of JFS and ors, ‘there are other cases in which the ostensible criterion is [not inherently discriminatory] — usually, in job applications, that elusive quality  
25 known as “merit”. But nevertheless the discriminator may consciously or unconsciously be making his selections on the basis of race or sex.’*

154. *I believe that my evidence, the evidence of my witnesses and indeed some of the respondent’s witnesses taken together is sufficient to meet*

*Stage one of s.136 in full and the onus is on the respondent to prove that the decision to decline the application was entirely free of bias.*

5 155. *I have shown less favourable treatment on the grounds of sex and findings of fact from which a tribunal COULD infer that the explanation is the difference of sex. I do not have to show that the Respondent intended to discriminate. I have drawn attention to under-representation of women in HE, at Glasgow University and in the Economics subject group. The existence of programmes to counter bias indicates that there is a concern over bias within the University. The limitations in reach of some of these programmes to counter bias is relevant (eg the ECDP). I have shown or will show that the systems designed to operate and support promotions (most notably the P&DR process) is not being implemented as it should and women are more negative about important aspects of it. I have shown that my comparator – irrespective of the promotion outcome – received opportunities that were not available to me, and that other male economists were offered development opportunities that were not available to me.”*

20 116. The claimant’s written submission did not include any summary / conclusion section, as such, although, at paragraph 430, she stated that: *“I wish the Tribunal to make a Declaration in terms that state that I have been the subject of unlawful direct/ indirect/direct and indirect discrimination (sic) by the University of Glasgow (as appropriate to their findings).”*

25 117. Further, at paragraph 425, the claimant stated, that as regards remedy, she sought: *“an order that the Respondent pay me compensation and interest to cover the financial loss caused by their failure to promote me in 2020, and compensation and interest in relation to the injury to feelings cause by its discriminatory treatment of me including the failure to promote me in 2020 (see Schedule of Loss in Bundle at page 681)”*

30 118. That Schedule of Loss (as at 10 August 2022), produced at pages 681 to 683 of the Bundle, seeking a total of **£61,883.77**) superceded an earlier version,

as at 21 April 2022, produced at pages 453 to 456 of the Bundle, then seeking a total of **£68,132.82**, but both versions were consistent in seeking **£49,300** for injury to feelings.

5 119. The claimant's written submissions then quantified her financial loss, at her paragraph 428, saying: *"My financial loss is outlined in the Schedule of Loss and the method of calculation of both my loss and the appropriate interest is agreed with the Respondent – this amounts to £3434.17 plus interest of £274.73."*

10 120. As regards recommendations, the claimant addressed what she sought at her paragraphs 43 to 436, as follows:

***"Recommendations***

- 15 431. *I wish the Tribunal to make a recommendation that the University of Glasgow carry out the following steps to ensure that women have an equal chance to meet all the promotion criteria by*
432. *Removing the Esteem criteria from the promotion process by the time of the 2023 promotion round if not sooner in line with the removal of Esteem from the REF process.*
- 20 433. *Update all promotion policy within one month to explain in clear and explicit terms what can be accounted for in terms of personal circumstances.*
434. *Introduce a tick box on all future promotion forms for applicants to indicate if they are on the Carers' Register and to give permission for further follow up to ensure that promotion committees are fully apprised of this important equalities information.*
- 25 435. *Produce clear guidance for College Committees on how to mitigate for special circumstances in promotion applications in time for the next promotion round.*



436. *Identify all women who have been at the top of Grade 9 for seven years, contact them and offer them a bespoke mentoring service which is suited to their discipline and their needs. This to be done by January 2023. Such mentoring to be introduced by June 2023 at the latest*”

5 121. In the course of her oral submissions, she amended those specific paragraphs, to delete paragraphs 434 and 436, and to rephrase paragraphs 432, 433, and 435, so that her amended text now reads as follows:- [for ease of reference, revised text is shown underlined]

*“Recommendations*

10 431. *I wish the Tribunal to make a recommendation that the University of Glasgow carry out the following steps to ensure that women have an equal chance to meet all the promotion criteria by*

15 432. *Removing the Esteem criteria from the promotion or rezoning process by the time of the 2023 promotion round if not sooner in line with the removal of Esteem from the REF process.*

433. *Update all promotion / rezoning policy within one month to explain in clear and explicit terms what can be accounted for in terms of personal circumstances.*

434. *[deleted]*

20 435. *Produce clear guidance for relevant decision makers on how to mitigate for special circumstances in promotion / rezoning applications in time for the next promotion round.*

436. *[deleted]*

**Issues before the Tribunal**

25 122. The case called before the full Tribunal for full disposal, including remedy if appropriate. The issues for determination was, as per the agreed List of Issues, as reproduced earlier in these Reasons at paragraph 62 above, and, in our discussion and deliberation, we have had regard to the paragraphs of

that agreed list, which we discuss later, taking account of the written and oral submissions from Mr Maclean for the respondent, and from Professor Findlay as the claimant.

### **Discussion and Deliberation**

5 123. In coming to our final decision in this case, the Tribunal has carefully reviewed and analysed the whole evidence led before it, both orally in sworn / affirmed evidence, and within the various documents spoken to in evidence at the Final Hearing, and produced to us in the Joint Bundle, and additional documents.

10 124. Both parties made detailed written submissions which the Tribunal found to be informative. The Tribunal has considered parties' written submissions and referred to the case law authorities cited by Mr Maclean. References are made to essential aspects of the submissions and the cited authorities with reference to the issues to be determined in this judgment, although the Tribunal considered the totality of the closing submissions from both parties,  
15 both written submissions, and oral too, whether or not expressly mentioned in these Reasons.

125. The claimant's written submissions were lengthy and detailed, and we note and record that we found them difficult to follow, and they required re-reading several times. They lacked the focus and structure evident in Mr Maclean's  
20 written submissions for the respondent, and we make that comment as an observation, rather than as a criticism of the claimant. The Tribunal fully appreciates that the claimant is an unrepresented, party litigant, and that Mr Maclean is a professional legal agent.

25 126. That said, it was particularly disappointing for the Tribunal as the claimant had not done what the Tribunal expected her to do, as per the Judge's directions, and earlier case management orders, and some matters were added into her written submissions, despite the Tribunal's clear indication that closing submissions are not an opportunity to lead further evidence before the Tribunal.

127. It is within the Tribunal's knowledge and wide experience that persons with little, if any, academic qualifications can and do write their own closing submissions, addressing their own individual case from a lay person's perspective, and making their points clearly, coherently and succinctly. The claimant's written submissions, by contrast, were lengthy, and difficult to follow.
128. As a published academic, and in a case where we heard much about the preparation and production of research papers in academia, the Tribunal was disappointed that the claimant's written submissions lacked proper focus and structure. There was no useful executive summary type conclusion, or "*abstract*" to adopt the academic phraseology.
129. Her oft repeated phrase "*I'm not a lawyer*", including in her closing submission, at paragraph 3, was recognised by the Tribunal, and we made many and varied reasonable adjustments in the course of conducting this Final Hearing, to address her specific needs, as previously noted earlier in these Reasons, at paragraphs 27 to 46 above.
130. We note and record that the claimant is not your average, unrepresented party litigant. She is an educated woman, and a senior and experienced trade union officer, and with that background, we are confident that she has many transferable skills, knowledge and understanding from her career and working history to date.
131. Further, we must challenge her assertion, at paragraph 4 of her written submission, that the claimant "*did not have sufficient time to write these submissions to a standard I would have been happy with*".
132. In our view, the task of preparing her own closing submissions was well within her skill set. The problem for her appears to have been her time management of the task.
133. While accepting that she may never have done this before, she is in no different position to many other unrepresented party litigants. Other unrepresented parties can and do submit written closing submissions, within

the time ordered by the Tribunal. The Tribunal does not expect the same standard of an unrepresented party as what we rightly expect of a solicitor as a professional representative familiar with the Tribunal, and its practices and procedures.

5 134. What we wish to note is that the need for closing submissions had been  
flagged up with the claimant in earlier case management orders from March  
2022, repeated in the early days of this Final Hearing, revisited along with the  
revised timetable, and at the close of evidence, on 30 August 2022, rather  
10 than 31 August 2022, she had, in effect extra time of one and a half days to  
finalise her closing submissions for delivery on 1 September 2022, having had  
the benefit of seeing Mr Maclean's finalised submissions emailed to her on  
the afternoon of 31 August 2022.

135. We note and record that, in his written closing submissions to the Tribunal,  
Mr Maclean made detailed observations on the evidence heard by the  
15 Tribunal. By oversight, he did not include a written observation about  
Professor Fischbacher-Smith, which omission he addressed orally.

136. When it came to factual matters, where the Tribunal would have to decide  
whose evidence it preferred, Mr Maclean invited us to prefer the respondent's  
evidence, rather than the claimant and her witnesses. In her written  
20 submissions, the claimant gave us her views on the credibility of the  
respondents' witnesses.

137. Some items noted, in the claimant's submissions, are as if they are a copy &  
paste from notes of evidence taken during the Final Hearing, by the claimant,  
and / or her sister, and as such are based on their note taking. We have relied  
25 upon our own handwritten notes of the evidence as taken by us all as  
members of the Tribunal.

138. We have carefully considered both parties' submissions, on credibility and  
reliability of the witnesses from whom we heard, and we have made our own  
observations on the evidence, earlier in these Reasons (at paragraphs 69(1)  
30 to (16) above) when giving our own Tribunal's assessment of the evidence  
led at this Final Hearing.

139. Mr Maclean spoke to the terms of his written submissions, so there is no need to rehearse his written points again here again. We have taken full note of them in our deliberations. Likewise, as regards the claimant's submissions. In the course of our private deliberations, we have read both parties' written submissions several times, and discussed amongst ourselves the issues arising for our judicial determination.
140. Accordingly, we move onwards now to look at each of the issues before us for judicial determination, looking, in turn, at each of them, as they were set forth in the finally Agreed List of Issues (reproduced in full, earlier in these Reasons, at paragraph 62 above) having regard to each party's position, and then our own determination on the issue.
141. Rather than deal with them in turn, we have decided to address the time-bar points arising from issue 15 first, as they are preliminary issues for our determination, before then addressing the substantive issues in the case requiring our careful consideration of the claim, and response, on their respective merits.

### **Time Limits / Continuing Act**

142. Issue 15 stated:
- 15. *In the case of the Mentoring PCP and the Care Commitments PCP, additionally has the Claimant established that these practices were an ongoing state of affairs on 19 July 2021 (when the Claimant amended her claim)?***
- 15.1 *If not, are the Claimant's claims insofar as they relate to the Mentoring PCP and/or the Care Commitments PCP out of time?***
- 15.2 *If the Claimant's claims as they relate to the Mentoring PCP and/or the Care Commitments PCP is/are out of time, is it just and equitable for the Tribunal to exercise its discretion to allow (i) the Mentoring PCP and/or (ii) the Care Commitments PCP to be considered by the Tribunal?***

143. The respondent's position was set forth in Mr Maclean's written submission as follows:

***Time Limits / Continuing Act***

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

5.80 *In the recent Court of Appeal case of Parr v MSR Partners LLP (formerly Moore Stephens LLP) 2022 ICR 672, it was held that the LLP's decision that a partner could continue beyond the contractual retirement age in the members' agreement as a salaried partner, but not as an equity partner, amounted to a one-off exercise of its contractual discretion and not the continuing application of a discriminatory rule.*

5.81 *In relation to Issue 8.7 the "Care Commitments PCP", whilst the University's practice in this regard has not changed between 2020 and 2022, so this practice is continuing, the Claimant's indirect sex discrimination claim was focussed on the Claimant's application for promotion in 2020. Accordingly, the decision in the 2020 process not to explicitly invite applicants to provide information about their care commitments was a one-off act – the application form in 2020 was a one-off event. There may have been continuing consequences for the Claimant between 2020 and 2022 but the time for a complaint about this PCP started to run from the date the Claimant knew the outcome of the 2020 process on 30 April 2020. The amendment to add this PCP was not made until 19 July 2021. By the time the amendment was made, it was around a year late.*

5.82 *In relation to Issue 8.6, the "Mentoring PCP" this again is part of a complaint about the University's decision not to promote the Claimant in 2020 and is tied*

back to that decision. There is no free standing complaint of a lack of Mentoring and career development. Similarly therefore this PCP should have been presented within three months of the decision not to promote the Claimant, which was communicated to her on 30 April 2020. It was not added to the Claim until the amendment was lodged on 19 July 2021. By which time, it was around a year late.

5.83 If your view is that the Care Commitments PCP is a free-standing legal complaint dissociated with the 2020 promotion decision, then the Respondent's practice is continuing and so the Care Commitments PCP was presented within the necessary time-limit.

5.84 If your view is that the Mentoring PCP is a free-standing legal complaint dissociated with the 2020 promotion decision, then the Claimant's argument needs to be unbundled because "mentoring and career development support" was provided to her in the aftermath of the 2020 outcome – see emails with Christine Barr of around 21 June 2020 at pages 333-337. In which case, the addition of the Mentoring PCP in July 2021 was still out of time.

5.85 The Claimant argues that she was not provided with "Mentoring and career development support" until October 2021 when Professor Sayantan Ghosal, an economist, was provided as her mentor. If this is the complaint, then the amendment added on 19 July 2021 was in time.

### **Extension of time**

5.86 Where a claim is submitted out of time, the burden of proof in showing that it is just and equitable to allow it to be received is on the claimant (*Robertson v Bexley Community Centre* [2003] IRLR 434).

5.87 In determining this issue the tribunal can also have regard to the checklist contained in section 33 of the Limitation Act 1980 (as modified by the EAT in *British Coal Corporation v Keeble and ors* 1997 IRLR 336, EAT). The relevant factors are:

5.87.1 the prejudice that each party would suffer as a result of the decision reached and to have regard to all the circumstances of the case;

5.87.2 *the length of, and reasons for, the delay;*

5.87.3 *the extent to which the cogency of the evidence is likely to be affected by the delay;*

5.87.4 *the extent to which the party sued has cooperated with any requests for information;*

5.87.5 *the promptness with which the claimant acted once she knew of the facts giving rise to the cause of action; and*

5.87.6 *the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action.*

10 5.88 *In Department of Constitutional Affairs v Jones 2008 IRLR 128, CA, the Court of Appeal emphasised that the relevance of these factors depends on the facts of the individual cases, and tribunals do not need to consider all the factors in each and every case. However, a tribunal will err if a significant factor is left out of account (London Borough of Southwark v Afolabi 2003 ICR 15 800 at paragraph 50).*

5.89 *The Claimant is a senior and experienced Trade Union representative. She was the most senior such representative at the University at the time these events took place. She has participated in Employment Tribunal proceedings previously. She would be well aware of the time-limits for presenting her application. When her ET1 was submitted, she had legal Counsel paid for by her Trade Union. When her ET1 was first amended in October 2020, she had legal advice, again paid for by her Trade Union. The Respondent's promotion application on which the Care Commitments PCP is founded was known to the Claimant at least by January 2020. This was not a new matter to her. 20 There is no reason why the Care Commitments PCP could not have been included in the original ET1 when the other indirect discrimination PCPs were advanced. 25*

5.90 *In relation to a failure to provide Mentoring and Career Development support, there is no reason why the Claimant could not have included the Mentoring*



*PCP in her original ET application in August 2020 when the other indirect sex discrimination PCPs were listed.*

5.91 *The Claimant argues her solicitor's did not follow her instructions but she does not part company with them for another year – until 19 July 2021.*

5 5.92 *The Claimant had legal advice from at least August 2020 to July 2021. There has been a considerable delay. She has not acted promptly at all. No credible explanation has been provided for why these two additional PCPs were not included in the original claim. We have concluded the evidence in this case and there was extensive evidence across both of these PCPs so there is not really an argument that the delay has affected the cogency of the evidence.*  
10 *The question for the Tribunal may therefore come down to the balance of prejudice between the parties and the fact this is a jurisdictional question to determine.*

144. The Tribunal notes, at Mr Maclean's paragraph 5.91, that he refers to the claimant not parting company with her solicitors until 19 July 2021. That date  
15 is stated in error. It is clear from the evidence before us, and as recorded in Employment Judge Strain's Judgment of 15 September 2021 (at page 89 of the Bundle), and his findings in fact, at his paragraph 9(10) to (12), that the claimant had legal advice and support throughout her Tribunal claim until 21  
20 June 2021; she dismissed her legal advisers on 21 June 2021 and subsequently represented herself; and she submitted the amendment application on 19 July 2021.

145. The claimant's position was set forth, at various parts of her written submissions, including :

25 "418. *I submit that in relation to mentoring and to care commitments both those issues were raised in my initial ET1 (although not explicitly as PCPs) at para 16 (c) and (d) and para 31 of the Amended Statement of Claim (Page 43 of the Bundle). The indirect discrimination claim was lodged in August 2020 and the amended claim to include Direct  
30 discrimination was lodged in October 2020 and therefore the time bar*

*is met. I submit that specification of the PCP is not an amendment, just particularisation of a valid pre-existing claim.*

5 419. *At no point from the date my application was rejected until my PDR Reviewer, Professor Charles Nolan wrote to the Head of School around 6 October 2021, as a result of the PDR discussion for that year, asking for mentoring to be provided, did the Head of School do anything about providing subject-specific mentoring. My then Head of Subject, Professor John Tsoukalas has never spoken to me about this or offered any careers guidance, support or mentoring.*

10 420. *Therefore by 19 July I had still not received any mentoring and so, if mentoring is a new PCP then it is not timebarred when I raised it in terms. The same applies to the Care Commitment PCP for the reason Judge Strain gives in para 46 of his Judgement on 18 August 2021 which is that “when read together with the assertion that lack of mentoring, guidance and support (which was asserted as a gendered practice) led to the failure to specify care commitments in her promotion application, it appeared to the Tribunal that this is also an alleged ongoing state of affairs given the Claimant’s assertion regarding an ongoing failure to provide mentoring and career development.” The Respondent’s witnesses and their representatives have implied at various points that I did have mentoring before October 2021 but, one meeting with Ruth Dukes (who has indicated that she did not think she was mentoring me), one meeting with David Heald (who also only talked about my form) and one meeting with Frank Coton who made a couple of suggestions of things I could do to boost esteem is not mentoring and could not produce the beneficial effects we see in formal intensive mentoring provided by the ECDP programme or the programme described in the American Economic Review article which is in the bundle.*

30 421. *In para 5.89 of the respondent’s submissions, there is talk of my role as a senior trades unionist, that does not make me a qualified solicitor and general knowledge of the concept of a time bar does not mean I*

5 have a detailed knowledge of the law. Moreover, while I, of course, had the form since at least January 2020, I was not aware that anyone provided details of caring commitments in their applications till documents were released as part of this process (see para 5 of Judge Strain's decision referred to earlier).

10 422. *If the Tribunal does not accept this then I submit that the arguments given by Judge Strain in para 67 of his judgement that to allow the amendment was in accordance with the overriding objective given that, "the Respondent had, to an extent, been put on notice of some of the assertions made in support of the new claims in the current pleadings. There had been no significant passage of time that could effect the cogency of the evidence. Whilst there would be further time and cost incurred in responding to the new claims by the Respondent this was outweighed by potential prejudice to the Claimant if the amendment was not allowed."*

15 423. *I submit that for any of the above reasons my claim relating to Mentoring and Care Commitments should be included.*

20 424. *I am able to establish that my mistreatment – and the failure of the University to ensure equal treatment for women and other underrepresented groups, continued even up till this year, and after my 2022 application. I refer to the failure of the University to properly assess the impact of their processes across different groups (see page 597 of the bundle) specifically in relation to access to valuable opportunities which contribute to the likelihood of promotion.*

25 146. The Tribunal has decided that the claimant's claim, insofar as it relates to the "Mentoring PCP", is not out of time, and the Tribunal allows that part of the claim to be considered on its merits. We have so decided and record that as per paragraph (1) of our reserved Judgment above.

30 147. We do so because, as Mr Maclean accepted, at his paragraph 5.85, the claimant argues that she was not provided with "Mentoring and career development support" until October 2021 when Professor Sayantan Ghosal,

an economist, was provided as her mentor. As that is the complaint, then the amendment added on 19 July 2021 was in time.

148. The claimant's claim, insofar as it relates to the "*Care Commitments PCP*", is, however, out of time, and the Tribunal refuses to exercise its just and equitable jurisdiction, in terms of **Section 123 of the Equality Act 2010**, to allow that part of the claim to be considered by the Tribunal. We have so decided and record that as per paragraph (2) of our reserved Judgment above.
149. We do so because, as we see things, there was no continuing act after the claimant's 2020 application was unsuccessful, as notified to her by the University on 30 April 2020. That is the date of the act complained of by her. She has shown no good reason why, with legal support, she could not have raised that matter far earlier than her amendment application of 19 July 2021.
150. We agree with Mr Maclean, at his paragraph 5.92, that there was extensive evidence across both of these PCPs so there is not really an argument that the delay has affected the cogency of the evidence. The question for the Tribunal has thus come down to the balance of prejudice between the parties and the fact this is a jurisdictional question to determine.
151. We find that there has been considerable delay in the claimant raising this matter, and no real explanation has been provided by her as to why this PCP was not included in the original ET1 claim form presented on 24 August 2020, where the 5 PCPs she relied upon in her then (only) indirect sex discrimination complaint were listed, or when her claim was amended on 21 October 2020 to add in a direct discrimination complaint. In these circumstances, we do not consider that it is just and equitable to grant the claimant an extension of time.
152. In any event, as we have, at Mr Maclean's request, looked at all the PCPs, in light of the whole evidence led before us, even if we had allowed this Care Commitments PCP to proceed, although late, the simple fact of the matter is that it would have made no difference whatsoever to the claimant's indirect sex discrimination complaint, as we have dismissed that as being not well-founded on the merits.

**Section 13 of the Equality Act 2010 - Direct Sex Discrimination**

153. We turn now to the substantive issues in the case.

154. Issue 2 stated: ***Is the Comparator an appropriate comparator (i.e. a member of the opposite sex whose circumstances are not materially different to the Claimant's circumstances) or are there material differences in their circumstances such that the Comparator is not an appropriate comparator, in particular: were the Claimant's application for promotion and the Comparator's application for promotion materially different?***

155. The respondent's position was set forth in Mr Maclean's written submission as follows:

**Comparator**

5.1 *The Claimant's stated comparator is Luis Angeles (the "Comparator") (Issue 1, Finalised List of Issues)*

5.2 *The Comparator requires to be a person who does not have the protected characteristic (in this case is not female) but otherwise there are no material differences between that person and the claimant.*

5.3 *It is the Respondent's position that the Comparator is not an appropriate comparator. Section 23(1) of the Equality Act 2010, provides that when conducting an appropriate comparison, "there must be no material difference between the circumstances relating to each case".*

5.4 *The circumstances of the Claimant and the Comparator need not be identical in every way. As stated in paragraph 3.23 of the Code of Practice: "what matters is that the circumstances which are relevant [to the Claimant's treatment] are the same or nearly the same for [the Claimant] and the comparator".*

5.5 *A tribunal must therefore compare like with like, except for the existence of the protected characteristic.*

5.6 *The key to identifying the correct comparator is in establishing the relevant circumstances which must not be materially different as between the Claimant and the comparator. The relevant circumstances are those circumstances that the Respondent actually took into account when making their allegedly discriminatory decision: Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 (paragraph 4). In Shamoon, a female chief inspector in the police complained of sex discrimination when she was prevented from carrying out appraisals, after complaints had been made against her. The House of Lords ruled that an appropriate comparator in this case was not simply a male chief inspector, but a male chief inspector whom had similarly had complaints made against him (paragraphs 54, 73, 83 and 146).*

5.7 *On that analysis, it is clear that an appropriate comparator in this case is not simply a male applicant for promotion to Professor. An appropriate comparator must be a male applicant for promotion to Professor who's [sic] application for promotion was not materially different.*

5.8 *The House of Lords in Shamoon recognised that Tribunals should not become too focused on the question of whether or not a Claimant has suffered less favourable treatment in comparison with an appropriate comparator, and the focus should instead really be on the primary question of why the Respondent treated the Claimant in the way that it did. To amount to direct discrimination, the less favourable treatment must be "because of" a protected characteristic (paragraphs 8, 11, 49 and 125). The test is not a "but for" test, but a "reason why" test: Nagarajan (below).*

5.9 *It is accepted that the Comparator and the Claimant both applied for promotion to the role of Professor in 2020 and that they are both economists. However, I contend their applications for promotion were materially different as the Comparator was assessed as having met*

*five of the criteria and the Claimant only three of the promotion criteria. I don't consider Luis Angeles an appropriate comparator.*

5.10 *If the Tribunal accepts Luis Angeles is not an appropriate comparator, then the Claimant's direct discrimination complaint will need to be judged against a hypothetical comparator – a man in not materially different circumstances to the Claimant. That would be a man who similarly only met three of the seven promotion criteria. Or it could be a male employee of the Respondent in the same role as the Claimant and with materially the same application for promotion to professor.*

5.11 *Surprisingly, there was little, if any, cross examination on either formulation of the hypothetical comparator. And I suggest that is because even the Claimant does not believe she was discriminated against because of her sex.*

5.12 *As noted in Shamoon, it can be unhelpful for Tribunals to become too bound up in the issue of a comparator. The focus instead should be on why the Respondent treated the Claimant the way it did. “*

156. The claimant's position was that:

***“Issue 2 – is the comparator an appropriate comparator?”***

23. *I believe that there is no material difference between me and my comparator, Luis Angeles. We were both Grade 9 Senior Lecturers in Economics. We were both supported by 3 professors in the Head of School's professorial consultation (although Luis Angeles appears to have an additional score – 11 rather than the 10 that I have – that has not been explained by any of the Respondent's witnesses).*

24. *Luis Angeles presumably had the support of external referees, at least some of whom are likely to have been nominated by him and known to him – this is not uncommon in academia. Two external academics (CO and JM) have assessed my promotion application against the University of Glasgow criteria and gave evidence that I met 5 of the 7 criteria. Two University of Glasgow professors (Ruth Dukes and DH)*

also conveyed to me that they believed that I met the criteria for promotion to Grade 10, although DH did not wish to give evidence to this Tribunal.

5 25. It is important to note that the requirement for comparison is that there is no material difference in the circumstances of the claimant and the comparator. It is my submission that there is an important distinction to draw between, on the one hand, the circumstances of the claimant and comparator, and on the other hand, and the manner in which those circumstances are treated by the respondent.

10 26. In helpful commentary on the Note of Legal issues, the respondent contends that Luis Angeles is not a valid comparator. The contention is that the success of his promotion application is a material difference in our circumstances. I disagree.

15 27. I have the benefit of reading the respondent's skeleton for which I am grateful. In it the respondent asserts that a comparator should be an applicant who also met three of the seven criteria. Again, I disagree. Although this respondent observation helps clarify the issue.

20 28. It would be illogical for me to compare myself with a man who met three criteria. That application would also fail. There would be no detriment arising from less favorable [sic] treatment.

25 29. Take a woman selected for redundancy, for example, in a situation where a man is not so selected, and the selection criteria are in dispute. Mr MacLean would have us use another redundant man as the comparator, because only a redundancy man shares identical circumstances with the claimant. Not a logical or productive approach.

30 30. I assert that the success of my comparator is properly categorised as an action of the respondent, not the circumstances in which the comparator sought promotion.

30 31. Luis Angeles is a valid comparator because his experience shines light on the direct discrimination test – similar circumstances, different



*outcomes. Was it because he was better, or because I was treated less favourably?*

5 32. *If, as Mr MacLean suggests, Luis Angeles simply had a good application, and the assessment of that application is free from sex bias, the employer succeeds. But the question must be put. Was I treated less favourably?*

33. *Luis Angeles is a valid comparator.”*

10 157. The Tribunal has decided that Luis Angeles is a valid comparator. As we see matters, both the claimant and Mr Angeles were on the same level or grade (Grade 9) and looking for promotion to Professor at Grade 10, they were both economists working in the same department (Economics) with the same School (Adam Smith Business School), and same College (Social Sciences), and they were both applying under the same promotion system, with a published Promotion Policy and academic criteria, using a standard pro-forma application form. Against that background, we fail to see how their  
15 circumstances are materially different.

20 158. We do not accept Mr Maclean’s submissions, at his paragraphs 5.7 and 5.9, that an appropriate comparator must be a male applicant for promotion to Professor whose application for promotion was not materially different, and his contention that their applications for promotion were materially different as the Comparator (Mr Angeles) was assessed as having met five of the criteria and the Claimant only three of the promotion criteria.

25 159. As the claimant rightly and logically argues, why would you compare yourself with somebody else who did not meet the set academic criteria, applicable to all applicants for promotion, namely to have shown a preponderance of at least 4 out of 7 criteria? For the claimant to have compared herself with a man who only met three criteria, it is plain as a pikestaff that that application would also have failed.

30 160. We do, however, agree with Mr Maclean’s point, at his paragraph 5.12, that it can be unhelpful for Tribunals to become too bound up in the issue of a

comparator, and that the focus instead should be on why the Respondent treated the Claimant the way it did. We return to answer that all important question, the reason why, later in our discussion and deliberation.

161. Next, we look at Issues 3 to 7 which stated:

- 5           **3.     If the Comparator is an appropriate Comparator, did the Respondent treat the Claimant less favourably than it treated the Comparator by not promoting the Claimant when she applied for promotion in January 2020?**
- 10           **4.     If so, was that less favourable treatment because of the Claimant's sex?**
- 15           **5.     To the extent the Claimant also seeks to rely on a hypothetical comparator, did the Respondent treat the Claimant less favourably than it treats or would treat other, male employees (whose circumstances are not materially different) by not promoting her when she applied for promotion in January 2020?**
- 6.     If so, was that less favourable treatment because of the Claimant's sex?**
- 20           **7.     In the 2020 promotion round, the Respondent promoted to Professor Celine Azemar, a female economist, does this defeat the Claimant's claim for direct discrimination because of sex?**

162. The respondent's position was set forth in Mr Maclean's written submission as follows:

***Less Favourable Treatment***

25           5.13   *The basic question in a direct discrimination case is: what are the grounds or reasons for the treatment complained of? In *Amnesty International v Ahmed* [2009] ICR 1450 (at paragraphs 32 – 34, 36, and 38) the EAT recognised two different approaches from two House of Lords authorities - (i) in *James v Eastleigh Borough Council* [1990] ICR 554 and (ii) in *Swiggs and Others v Nagarajan* [1999] ICR 877. In*

5 some cases, such as *James*, the grounds or reason for the treatment complained of is inherent in the act itself. In other cases, such as *Nagarajan*, the act complained of is not discriminatory but is rendered so by discriminatory motivation, being the mental processes (whether  
10 conscious or unconscious) which led the alleged discriminator to act in the way that he or she did. The intention is irrelevant once unlawful discrimination is made out. That approach was endorsed by the Supreme Court in *R (on the application of E) v Governing Body of the Jewish Free School and another* [2010] IRLR 136 (at paragraphs 64, 78, 113 – 116, and 145).

5.14 Further guidance was given in *Amnesty*, in which the then President of the EAT explained the test in the following way (paragraph 32):

15 “... The basic question in direct discrimination case is what is or are the “ground” or “grounds” for the treatment complained of. .... In some cases the ground, or the reason, for the treatment complained of is inherent in the act itself..... In other cases—of which *Nagarajan* is an example—the act complained of is not in itself discriminatory but is rendered so by a discriminatory motivation, i.e. by the “mental processes” (whether conscious or unconscious) which led the putative  
20 discriminator to do the act. Establishing what those processes were is not always an easy inquiry, but tribunals are trusted to be able to draw appropriate inferences from the conduct of the putative discriminator and the surrounding circumstances (with the assistance where necessary of the burden of proof provisions). Even in such a case,  
25 however, it is important to bear in mind that the subject of the inquiry is the ground of, or reason for, the putative discriminator's action, not his motive: just as much as in the kind of case considered in *James v Eastleigh*, a benign motive is irrelevant ... The distinctions involved may seem subtle, but they are real ... There is thus, we think, no real  
30 difficulty in reconciling *James v Eastleigh* and *Nagarajan*. In the analyses adopted in both cases, the ultimate question is—necessarily—what was the ground of the treatment complained of

*(or—if you prefer—the reason why it occurred). The difference between them simply reflects the different ways in which conduct may be discriminatory."*

5.15 *In Glasgow City Council (or Strathclyde Regional Council) v Zafar [1998] ICR 120, a House of Lords case, it was held that it is not enough for the claimant to point to unreasonable behaviour. She must show less favourable treatment, one of whose effective causes was the protected characteristic relied on (paragraphs 124A – C).*

### **Burden of Proof**

5.16 *It is also necessary to consider the rules on burden of proof in discrimination cases, to consider what evidence the Claimant must establish to satisfy the “reason why” test.*

5.17 *Section 136 of the Equality Act 2010 provides for a shifting burden of proof. There is normally a two-stage process in applying the burden of proof provisions in direct discrimination cases, as explained in the authorities of Igen v Wong [2005] ICR 931 (paragraphs 28,29,32, 35, 37 and 76), and Madarassy v Nomura International Plc [2007] ICR 867(paragraphs 52–54, 56, 60, and 84), both from the Court of Appeal. The Claimant must first establish a first base or prima facie case by reference to the facts made out. If she does so, the burden of proof shifts to the Respondent at the second stage. If the second stage is reached and the Respondent’s explanation is held to be inadequate, it is necessary for the tribunal to conclude that the claimant’s allegation in this regard is to be upheld. If the explanation is adequate, that conclusion is not reached. It may not always be necessary to follow that two stage process as explained in Laing v Manchester City Council [2006] ICR 1519 (paragraph 74).*

5.18 *That it is for the Claimant to establish primary facts from which the inference of discrimination could properly be drawn was confirmed in Royal Mail Group Ltd v Efofi 2021 ICR 1263 (paragraphs 26–27, and 30).*

5.19 *In Igen the Court said the following in relation to the requirement on the respondent to discharge the burden of proof if a prima facie case was established (at paragraph 76 (Annex 11)):*

5 “To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since “no discrimination whatsoever” is compatible with the Burden of Proof Directive.”

5.20 *The Claimant must show more than a difference in protected characteristics (in this case, sex) and a difference in treatment. In Madarassy (paragraph 57), it was held that a prima facie case requires that “a reasonable tribunal could properly conclude from all the evidence” that there has been discrimination. In doing so, it is accepted that the Tribunal may look at circumstantial evidence and consider matters occurring before the alleged instance of discrimination.*

5.21 *In Network Rail Infrastructure v Griffiths-Henry [2006] IRLR 865 a black female employee was made redundant when she was one of nine in a pool for selection. The other employees were white men. Mr Justice Elias stated at paragraph 15:*

20 “It is submitted that the mere fact that she is a black woman and the others are white men and that she was not appointed could not constitute sufficient facts to justify an inference of discrimination. We would accept that those mere facts would not do so”.

5.22 *The Claimant therefore has to establish something more than the simple fact that she is female, and that her comparator is male in order to succeed in establishing a prima facie case of sex discrimination. The Claimant has failed to do this.*

5.23 *The Claimant has failed to point to more than a difference in protected characteristics and a difference in treatment. She has failed to put forward any evidence to support a contention that a male employee of the Respondent in the same circumstances as her, either was or would*

5 *have been treated differently to her. She has therefore failed to establish primary facts which reverse the burden of proof. The Claimant has not demonstrated that she was treated differently because of her sex. Therefore the direct discrimination claim fails at this point and should be dismissed.*

10 5.24 *If the Tribunal are persuaded that the Claimant has succeeded in establishing a prima facie case of sex discrimination, the Tribunal must consider whether there is sufficient evidence on the Respondent's side to discharge the burden of proving there has been no discrimination. The Respondent must show on the balance of probabilities that sex was not a reason for the treatment in question, and that it had a non-discriminatory reason for the treatment.*

**Substantial, not the only or main, reason**

15 5.25 *In earlier case law it was held that the protected characteristic would suffice for the claim if it was a "substantial reason" for the decision and that the protected characteristic needed to be a cause of the decision, but did not need to be the only or a main cause. In Igen v Wong [2005] ICR 931 the test was refined further such that part of the reasoning that was more than a trivial part of it could suffice in this context: it referred to the following quotation from Nagarajan (at paragraph 35):*

20 *"Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds even though it is not the sole ground for the decision. A variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires that racial grounds were a cause, the*

25 *activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others, although in the application of this legislation legalistic phrases, as well as subtle distinctions, are better avoided so far as possible. If racial grounds or protected acts had a significant influence*

30 *on the outcome, discrimination is made out."*

5.26 *The Court considered arguments as to whether an alternative wording of no discrimination whatsoever was more appropriate, and the wording of EU Directives. It concluded as follows (at paragraph 37):*

5 *“In any event we doubt if Lord Nicholls' wording is in substance different from the 'no discrimination whatsoever' formula. A 'significant' influence is an influence which is more than trivial.”*

***Reason why / Non-discriminatory reason for Claimant's treatment***

5.27 *In this case, the reason why the Claimant was not promoted is that she only met three out of the seven promotion criteria – four were needed for promotion. The comparator met 5 of the 7 and so was promoted. The reason why was nothing whatsoever to do with the Claimant's sex.*

5.28 *Additionally, I point out that Celine Azemar, a female economist in the ASBS, was promoted to Professor in the 2020 promotion round. She met four of the criteria and was promoted. I believe that fact defeats the Claimant's sex discrimination claim. The reason the Claimant was not promoted was clearly not because of her sex.*

5.29 *The Claimant has not shifted the burden of proof on the direct discrimination claim. However, even if the Tribunal's conclusion is that the burden of proof has shifted, the Respondent has shown a non-discriminatory reason for the Claimant not being promoted in 2020.*

163. The claimant's position was set out across various parts of her written submissions, including the following:

***Issue 3 - Less Favourable treatment***

34. *I need to re-state my contention that the circumstances and attributes of the comparator are an issue to be dealt with above. This section focuses on the actions of the respondent.*

35. *I contend that the University provided my comparator with preferential access to career enhancing roles and informal mentoring and support*

*that he received within the Economics group, notably by the Head of Subject Professor John Tsoukalas.*

5 36. *The benefits of this informal mentoring and career enhancing opportunities was thereafter reflected in the assessment of his contribution by Professor John Finch.*

37. *My exclusion from such opportunities was to my detriment, and Luis Angeles' inclusion in mentoring and access to opportunity worked to his advantage. This is less favourable treatment of me.*

10 49. *I contend that John Tsoukalas has mentored Luis Angeles in his career and offered him opportunities for promotion-enhancing roles that were not offered to me.*

15 50. *Less favourable treatment in the promotion process also arises because of how our Head of School John Finch assessed and wrote his statements that are an integral part of the promotion process. To re-iterate my previous point, the actions of John Finch in this example are not the "circumstances" of my comparator. They are actions by the respondent which result in creating different outcomes for my comparator.*

20 51. *Luis Angeles had the support of the Head of Subject whose statement was written in an entirely different way to the statement he wrote on me. Although I have tended to describe these actions as mentoring, or informal mentoring, I invite the tribunal to also consider that there is a degree of advocacy or agency that successful candidates receive once they have been identified as a mentee.*

25 58. *There are clear and acknowledged difference between the Head of School statement for me and my comparator. This was acknowledged in evidence by John Finch.*

81. *I was subject to less favourable treatment in relation to how the Esteem criteria was assessed by Professor Finch and by the CPC who*



were unusually unanimous that I did not meet it. I contend that this reflected the CPC's acceptance of the Head of School's assessment.

5 99. As I have said above, I contend that I have been less favourably treated on the grounds of sex in not being promoted and in the processes and experiences leading up to the promotions round in 2020 which failed to consider my achievements in relation to my opportunities and subjected me to an unfavourable assessment by John Finch and the CPC in relation to the Esteem criteria.

10 100. In relation to my comparator, the law appears to suggest there is no need to obsess about the detail – the key question is whether there are any material difference.

101. I was not in competition with my comparator, Luis Angeles. The merit or demerit of his application is not in issue. It was possible that we would both be appointed to professor of economics.

15 102. The grounds of my complaint are that I was not promoted and my comparator was. The issue for the tribunal to consider is how I was treated by the Respondent, in my career and at assessment, as compared to a successful candidate.

20 103. The fact that the comparator's application is different is not material to the issue to be examined. As the University has argued strongly in evidence, academic careers take many different form and success can look different in different academic's profiles.

**Issue 3 – Did the Respondent treat the claimant less favourably**

104. I was less favourably treated.

25 105. My less favourable treatment can be seen in contrast to the treatment of my comparator. Not by reference to his "circumstances" or indeed to the content of his application, but in the way the respondent prepared him for promotion and nursed his application through the

*process. With the benefit of the employer's treatment, my comparator was promoted, and I was not.*

106. *My comparator was mentored, I was not.*

107. *My comparator received opportunities tailored to his development. I did not.*

5

108. *The quality of the comparator's application was finessed or enhanced in the assessment process. Different reporting standards were used. I received no such benefit*

109. *At the end of the day, the individual instances of less favourable treatment culminated in the rejection of my application. I contend that my relative disadvantage would have arisen as readily when compared with a hypothetical man as they did with my preferred comparator.*

10

110. *The final, formal treatment that I view as less favourable is the decision to decline my application. And, for the formal process, that was to my detriment. Financially and in terms of the psychological impact of the process and the decision.*

15

**Issue 4 – Was less favourable treatment because of the Claimant's sex?**

111. *Mr Maclean has helpfully shared information on the approach in Wong v IGEN and I will invite the tribunal to answer the "why?" by applying the s.136 test against the criteria set on in IGEN.*

20

112. *I accept that there is more to stage 1 in the burden of proof than less favourable treatment, detriment, and role of an appropriate comparator.*

113. *I offer to provide facts and circumstances from which the tribunal can make a finding, or draw the inference, that the grounds for my mistreatment are sex, or sufficiently tainted by sex bias as to be unlawful.*

25

114. *Those surrounding facts and circumstances are as follows:*

115. *I work in an education sector and an academic discipline that allocates roles in a way that shows distinct gender bias. That is not determinative on its own, but it is helpfully acknowledged by respondent witnesses and is relevant.*

116. *The same comment applies to senior roles at Glasgow University and the Principal helpfully conceded that, as an employer, they could and should do more.*

117. *Narrowing the field of inquiry to the grade 9/grade 10 boundary at my employer, Christine Barr helpfully acknowledged the existence of a “bottleneck” of women at Grade 9. That evidence came during an examination of the process by which my comparator acquired additional departmental responsibilities, and no one was clear of the process by which that development opportunity had been allocated.*

118. *Every woman I have worked with who wished to be promoted beyond Grade 9 (Senior Lecturer or Reader) has had to leave the University of Glasgow to achieve promotion elsewhere. Internal promotion is particularly relevant to women as they are less likely on average than men, because of their domestic circumstances, to be able to move to other cities/countries/institutions to apply for promoted posts (see page 623 of the Bundle).*

119. *Between 2011 and 2013, two women Professors were appointed after external application. As of January 2020, there had never been a woman promoted to a Chair in Economics in the entire history of the University which was founded in 1451.*

120. *During all this time I have directly witnessed the differential treatment of female and male academics in the University of Glasgow, and within the Adam Smith Business School and Economics in particular. The culture remains one which devalues the contribution of women with economists being particularly at the forefront of this. Attempts by the*

University, more broadly, to address these known issues are treated with disdain and as an particularly stark example of this I refer you to page 593 of the bundle which contains an email discussion between the Head of School and myself regarding comments made, solely by economists, at a School Council meeting in April of 2021 where trying to increase the number of women seminar speakers (one of the School's Athena Swan action points) was likened to inviting a cat to speak – this disgraceful analogy was then extended in the chat to other domestic animals.

5

10 121. Mr Maclean has referenced standard rules and procedures for appointment and promotion, but I suggest to the tribunal that the evidence marks universities out as having quite particular ways of evaluating senior staff.

15

122. It isn't necessarily inappropriate for the sector or unlawful under the 2010 Act, but the process of gathering and evaluating evidence and testimony for professorial candidates is intricate, collegiate, and open to influence – conscious or unconscious.

20

123. I invite the tribunal to attach weight to mentoring. The intricate process of candidate assessment is clearly influenced by referees, colleagues, and wider academic peers. Having a mentor in your corner can be a significant asset. The majority of senior economists are men and I invite the tribunal to find that the community of referees and mentors who influence career development and assessment processes are also men.

25

124. Structured arrangements for mentoring women are established policy across universities and at Glasgow. Mentoring women is recognised as one effective way to address the under representation of women in senior roles. The corollary of that observation is that exclusion from mentoring increases the risk of exclusion from senior posts and, given what the tribunal has heard about mentoring, that exclusion can be tainted by sex.

30

- 5 125. *That is the context I invite the tribunal to review my experience of mentoring. I asked to be included, I was not. My comparator was included and received opportunities in areas where he had no prior experience. The process by which some of those opportunities were allocated was opaque.*
- 10 126. *Promotion process focusses on meeting the criteria. How can University be confident that different candidates have the same opportunities to meet that criterion? I submit that the evidence heard by the tribunal is that development opportunities are not evenly distributed. Mentoring is not consistently offered. Given the gender profile of those who allocate opportunities and mentor candidates, I invite the tribunal to find that career development is tainted by sex bias.*
- 15 127. *There is a similar dynamic at play on the question of “esteem”. The respondent applied a gendered academic stereotype when assessing the claimants Esteem and failed to take into account the potential for bias in the definition and application of the Esteem criterion.*
- 20 128. *The tribunal heard criticism of this criteria as dated and prone to bias. I invite the tribunal to make that finding and infer that use of esteem in this way, resulted in assessments that were tainted by sex bias.*
- 25 129. *Male third parties linked to the comparator’s application (head of economics) acted to bolster his application through the provision of roles that were promotion enhancing.*
- 30 130. *As a result of these actions, or as a stand-alone action, the respondent treated me less favourably than the comparator, or than they would have treated the hypothetical comparator.*
131. *There are strong grounds on which the tribunal is compelled to infer that the only explanation for the employer’s actions and omissions is discrimination on grounds of sex.*
132. *No equal treatment employer would have a “history” of underrepresentation and inequality as stark as heard by the tribunal*

133. *No equal treatment employer would retain such a gendered and subjective assessment criteria such as “esteem*

134. *No equal treatment employer would allow for such inconsistency in as important a part of the promotions process as the Head of School’s statement, which does not appear to be monitored at all.*

5

**Issue 5 – Hypothetical comparator**

135. *I also say that I was less favourably treated than a man would have been in hypothetical terms.*

136. *I stand by my selection of Luis Angeles as a formal comparator. But if the tribunal is not with me on that submission, I assert that the evidence in relation to his treatment by the University is to still available to me as evidence of how the University operates, and how that varies as between women and men.*

10

137. *I assert that the typical man would not have been overlooked without mentoring and development the way it has been admitted that I was overlooked.*

15

138. *Having been included in formal or informal mentoring, a typical or hypothetical man would have been prepped for the promotion procedures with relevant opportunities. I was not.*

139. *I also assert that the hypothetical man would have accessed opportunities in the way Luis did – informally, without competition, without transparency and with little regard to past performance in the activity. For example, preparing Impact materials for the REF assessment.*

20

140. *In addition to being prepped, I assert that a hypothetical man would have benefited from the unseen interventions in the assessment process – such as the added detail and rigour of the Head of Schools report. That’s what happens when you get picked for mentoring and, sadly, men are more likely to be mentored.*

25

141. *It is clear that men are significantly overrepresented at Grade 10 at the University of Glasgow. It is within judicial knowledge that men are less likely to spend time on caring responsibilities that impact on work and the tribunal has heard robust research evidence that men are more able to undertake many of the networking and external engagement activities that lead to Esteem.*

142. *The ASBS's own survey shows that women are less likely than men to report confidence in the P&DR process in supporting their careers. In signing up to schemes such as Athena Swan and its commitment to formal mentoring for women, the Respondent acknowledges that informal mentoring and career development are not working for women, and that without intervention, men are better supported in their career development than women.*

143. *Constructing a hypothetical comparator just draws on the evidence heard about men in the university and particularly in economics, where there is evidence that men are offered career enhancing opportunities that women are not, and I was not offered.*

144. *A hypothetical male comparator would have been more likely to have been mentored and developed, offered career enhancing roles and able to take part in external esteem building activities that would have meant that he was unlikely to have spent (at the time of the 2019-20 promotion round) 16 years at the top of Grade 9.*

**Issue 6 – was less favourable treatment of a hypothetical comparator on grounds of sex?**

145. *The facts and circumstances enabling the tribunal to infer mistreatment on grounds of sex are the same as for Issue 4*

**Issue 7 – the Azemar promotion**

146. *There is no onus on me to prove discrimination on grounds of sex, only to prove such facts as to enable the tribunal to infer such a finding in*

*my individual case, and thereby require the respondent to prove the absence of discrimination.*

5 147. *It is certainly not for me to meet a higher standard of proof namely to prove that the discrimination in the university is so powerful that no female candidate can ever succeed.*

148. *The success of one candidate suggests some women are capable of overcoming such discrimination as exists at the University. There are any number of plausible explanations why some women might triumph within a biased system, whereas others do not.*

10 149. *As Christine Barr conceded, the success of one woman does not indicate that a long history of discrimination has come to an end.*

15 164. We agree with Mr Maclean, at his paragraph 5.29, that the Claimant has not shifted the burden of proof on the direct discrimination claim. The Claimant has failed to point to more than a difference in protected characteristics and a difference in treatment. She has failed to put forward any evidence to support a contention that a male employee of the Respondent in the same circumstances as her, either was or would have been treated differently to her. She has therefore failed to establish primary facts which reverse the burden of proof.

20 165. However, even if we had decided that the burden of proof had shifted, the Respondent has shown a non-discriminatory reason for the Claimant not being promoted in 2020.

25 166. The Tribunal has decided that the reason why the Claimant was not promoted in 2020 is that she only met three out of the seven promotion criteria – four were needed for promotion. The comparator (Mr Angeles) met 5 of the 7 and so he was promoted. The reason why was nothing whatsoever to do with the Claimant's sex.

30 167. Similarly, it is established on the evidence before us that Celine Azemar, a female economist in the Adam Smith Business School, was promoted to Professor in the 2020 promotion round. She met four of the criteria and was



promoted. The reason the Claimant was not promoted was clearly not because of her sex.

### **Section 19 of the Equality Act 2010 - Indirect Sex Discrimination**

168. Issues 8 and 9 stated:

- 5           **8.     *The Claimant claims that the Respondent operates the following provisions, criteria or practices (PCPs) and applied these to employees seeking promotion to Professor, including the Claimant:***
- 8.1     *the Esteem criteria;***
- 10           **8.2     *the guidance which accompanies the Esteem criteria set out in the Academic Promotion Criteria Section E Esteem;***
- 8.3     *the shadow requirement to be published at a requisite minimum level and/or have a long track record of publications given the nature of exemplars of Esteem published by the Respondent, which relate to a track record of publication;***
- 15           **8.4     *the Academic Promotion criterion applicable to the Grade 10 Professor posts at large;***
- 8.5     *the practice of existing Grade 10 Professors being asked for their view of promotion to Grade 10 applications without transparency in the process and without any accountability for such views;***
- 20           **8.6     *mentoring support and career development opportunities being offered informally, and not on an open and transparent basis (“the Mentoring PCP”); and***
- 25           **8.7     *the Respondent not explicitly inviting applicants for promotion to provide information about their care***

**commitments nor taking into account the University's own Care Registration process ("the Care Commitments PCP");**

**each a 'PCP' and, together, the 'PCPs'.**

5 **9. The Respondent accepts that the PCPs listed at 8.1, 8.2, 8.4, and 8.5 above exist. Do the other PCPs (listed at 8.3, 8.6 and 8.7) exist?**

169. The respondent's position was set forth in Mr Maclean's written submission as follows:

**Provision Criterion or Practice ("PCP") – Section 19(1)**

10 5.31 *There is no definition of 'provision, criterion or practice' found in the legislation, and it is for the tribunal to determine if the conduct fits this description. In Ishola v Transport for London [2020] ICR 1204 the Court of Appeal again emphasised that the words 'provision, criterion or practice' are not terms of art, but are ordinary English words and that they are broad and overlapping, and not to be narrowly construed or unjustifiably limited in their application (paragraph 35). However, in*

15 *this case Simler LJ gave this important warning (paragraph 37):*

20 *"In my judgment, however widely and purposively the concept of a PCP is to be interpreted, it does not apply to every act of unfair treatment of a particular employee. That is not the mischief which the concept of indirect discrimination and the duty to make reasonable adjustments are intended to address. If an employer unfairly treats an employee by an act or decision and neither direct discrimination nor disability related discrimination is made out because the act or*

25 *decision was not done/made by reason of disability or other relevant ground, it is artificial and wrong to seek to convert them by a process of abstraction into the application of a discriminatory PCP."*

**PCP 8.3: Publications**

5.32 *There was no evidence this PCP existed. While research outputs may be part of how Esteem can be achieved, it is not the only way or indeed a necessary way. The Claimant did not meet the Outputs criteria in either 2020 or 2022 (she does not have a long track record of publications). However, the Claimant was judged to meet the Esteem criteria in 2022. The Claimant's lived experience defeats this PCP.*

**PCP 8.6: the Mentoring PCP**

5.33 *This is put on the basis that mentoring and career development opportunities are offered informally and not on an open and transparent basis. There was evidence the Respondent has a number of formal mentoring programmes – ECDP, Athena Swan and Aurora were three that were referenced. There would have been other opportunities no doubt that may have arisen informally just like in any organisation. The Claimant will link her arguments on this PCP to the fact she mentioned an interest in promotion in her PDRs and was only sent a link to the Guidance on the website but that is not evidence of the existence of this PCP.*

5.34 *Even if it is decided the Mentoring PCP exists, no group or individual disadvantage arises from this, as discussed below.*

**PCP 8.7: the Care Commitments PCP**

*The Respondent did invite applicants for promotion to provide information about any additional circumstances and the examples given in the box include examples of caring commitments – e.g. parental leave / time-off to care for dependants. So the first part of this PCP does not exist. Admittedly, the University did not specifically ask for details of the Claimant's specific caring responsibilities but that is not the PCP contended for. In any event I think it was obvious such details could have been provided by the Claimant.*

*In relation to the second part of the Care Commitments PCP "nor taking into account the University's own Care Registration process",*

5            *this aspect is not included in the ET1 – even the one that was amended on the first day of the Hearing. It is admitted the Respondent does not take into account its Carers Register for the purposes of the promotion process. However, this does not disadvantage women as a group or the Claimant as an individual and in any event is objectively justified as discussed below.*

170. The claimant's position was set out at various parts of her written submission, including the following:

***Issue 8.1 - the Esteem PCP***

10            156. *Respondent agrees that esteem is a criteria in the promotions process.*

157. *The Tribunal heard several witnesses discuss what the Esteem criteria is and what it purports to capture and there is no dispute that Esteem relates to external recognition of one's expertise.*

15            158. *Women seeking promotion find it more difficult to meet the Esteem criteria – on the university's own data. This is likely to be because achieving esteem requires external networking, requires time and mobility that women are less likely to have; and because esteem relies on what other people think of you (and in academia and especially in economics, it relies on what men think of you), not what your employer thinks of you. The Esteem Guidance appears to be interpreted restrictively, and so misses esteem that women seeking promotion are more likely to have.*

20

***Issue 8.2 - The Esteem Guidance PCP***

25            178. *Respondent accepts this is a PCP – see promotions procedure in the productions at page 123.*

179. *It is my submission that little or no account is taken of women's different opportunities to meet the Esteem criterion and that a narrow reading of the Exemplars given in the guidance has a further negative impact on women. This is important because evidence was also given*

*that women are more likely to meet the impact criterion and less likely to meet the outputs criterion. As a result, women are more likely to be relying on the Impact criterion for promotion and therefore more likely to provide examples of Esteem arising from Impact.*

- 5           180. *The Esteem guidance focuses heavily on research-related esteem, and therefore risks, in the way that the panel interprets it, becoming a shadow criterion for research – which is problematic for women because it means that research gets double counted, despite the known differences in women in getting work published and in grant capture. The Esteem guidance underplays the role of impact related esteem, notwithstanding the increasing importance of research impact. In terms of the academic promotion process overall, the Head of School and the panel failed to consider the way in which different criteria are more difficult for women to show success in; fail to consider*
- 10 *the allocation of lower status duties and how this negatively impacts on women’s ability to show they meet other promotion criteria; the process doesn’t test what people say about themselves (eg how they rate their own publications) and hence are likely to ignore well known differences in the way in which men and women assess their*
- 15 *achievements (since none of these publications are read by the Head of School or the promotions panel).*
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### **Issue 8.3 The Shadow Requirement PCP**

- 25           197. *The shadow requirement to be published at a requisite minimum level and/or have a long track record of publications given the nature of exemplars of Esteem published by the Respondent, which relate to a track record of publication.*
198. *The Respondent do not accept this is a PCP.*
199. *Impactful research has also been more of a feature of female academic activity than publishing (see pages 385 and 623 of the Bundle). Promotion panels are very familiar with the types of evidence*
- 30 *they need to see about esteem arising from Research publication*

records. Therefore, the failure of the University to properly guide promotion panels to understand how esteem arising from impact might be identified is likely to have more of an effect on those who are relying on this criteria to achieve promotion ie more likely to be women.

- 5 206. I believe that the Esteem criteria did not capture sufficiently esteem arising from impact rather than publications. The University of Glasgow promotions procedure requires candidates to meet research outputs or research impact. If esteem largely reflects research outputs, where there is a known gap between men and women (to  
10 women's disadvantage), then the esteem criteria is a shadow criteria that doubly disadvantages me and women like me who are more likely to rely on impact activity for promotion.

#### **Issue 8.4 The Academic Promotions PCP**

- 15 209. University accepts that Academics Promotions Policy is a procedure that applies.
210. I believe that how the APP operates is problematic for women and was for me in terms of the assessment of research output, how panels make assessments overall, and how the promotions takes (or doesn't take) into account applicant's opportunities to achieve.
- 20 217. This means that there is heavy reliance on the Head of School's assessment of publications in their statement and on the applicant's self assessment of their outputs.

#### **Issue 8.5 The Professorial Consultation PCP**

- 25 271. Respondent and Claimant agree that this is a PCP – part of the promotions process.
272. I raised the issue of unnamed members of the professoriate being consulted within the process - this introduces an undocumented and unaccountable element to a process whose outcomes overall (pre and post application) exhibit inequality between men and women and, in

*fact, between other demographic groups. This is known by the University to be problematic but nothing has been done to change it.*

5 273. *I note that my Head of School is not an economist and I presume would have relied heavily on the assessment of existing (mainly male) economics Professors whose role in the process within the ASBS was neither transparent or held to account at any stage despite it being policy that it should be.*

10 278. *I believe that no equal treatment employer would canvass the opinion of an overwhelmingly male group on a woman's application; ask for the information by return; accept views on which there is no evidence that the promotional criteria has been seriously assessed; and feed those views into a promotions process; with some applicants (LA) having more scores than others (me).*

#### **Issue 8.6 - The Mentoring PCP**

15 279. *Mentoring support and career development opportunities being offered informally, and not on an open and transparent basis ("the Mentoring PCP")*

20 280. *The University doesn't acknowledge this as a PCP. But University witnesses have given evidence that there is a range of mentoring opportunities in the university, have acknowledged that informal mentoring takes place and have given extensive evidence on the benefits of mentoring, especially for women.*

25 281. *By its nature, it is difficult to collect data on the practice of informal mentoring and the Respondent does not do so. This is not evidence that is available to the Claimant and other witnesses other than their own observation.*

284. *In answer to a question from Judge MacPherson, JF accepted that there is a gap in provision for some staff and that this group includes me.*

286. *Career development and mentoring can take place in a variety of ways beyond formal programmes like the ECDP. This might include getting access to roles that help with promotion, and avoiding those roles that don't bring much status. It might include accessing mentoring that helps with the achievements needed to be promoted, and support with the promotions process itself.*

296. *But there are examples of good practice in the university. RD points out the practice in the Law School - an email comes round when any role comes up, saying would anyone like to be considered for this and inviting expressions of interest. This is done with gender equality in mind.*

303. *The University of Glasgow does not consistently provide mentoring for staff and much of what is described is left to chance. In particular, the Adam Smith Business School Athena Swan application deals with mentoring for those who are not in the ECDP scheme by saying that is provided by the Research Clusters. I genuinely do not know what that means in practice. Ironically, even Professor Mason makes a strong point about the importance which her institution places on mentoring (see bundle at page 342). The university is aware that formal mentoring can help address the under-representation of women. It knows that the ECDP appears to work well. Yet it has developed no support for people – and women in particular – at Grade 9 and beyond.*

313. *I contend that the ECDP makes mentoring compulsory is an acknowledgement that when it operates informally it happens in a very variable way. Moreover, it is clear from the Athena Swan documentation that the Athena Swan process focuses on mentoring because women don't have the same opportunity to access mentoring and career support informally.*

314. *Mentoring is particularly important to women who may not be able to access informal mentoring to the same extent as men. One of the*



challenges however is the availability of women mentors who may have better understanding the lived experience of women academics. RD notes how important it was to have a senior women colleague help her with her Grade 10 application. She notes however that this is more challenging in subject areas with few women.

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321. Between 2004 and the date of my 2020 application (January 2020) I was given no encouragement, support, mentoring or career development advice by any person. I was only given subject-specific mentoring (beyond help with filling in an application form) in November 2021. I wasn't mentored in my career or in relation to writing a strong application, and neither my Head of School or Head of Subject offer me any advice whatsoever.

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322. I specifically indicated, during the time frame which is relevant to my 2020 promotion application, my desire to seek promotion (2016) (see page 136 of the Bundle) and requested support, mentoring and career guidance (2017, 2018, 2021) (see pages 152,162,171,181 of the Bundle).

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323. My concern is not just that I didn't get any mentoring, even when I asked for it. It is that men were mentored informally, including my comparator, who was given roles without transparency that helped him in his promotion application. Male members of my Department and then School (following reorganisation) have been given encouragement, support, mentoring and career development advice, including mentoring opportunities with a world leading economist (see page 591 of the Bundle).

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325. At no point from the date my application was rejected until my PDR Reviewer, Professor Charles Nolan wrote to the Head of School around 6 October 2021, as a result of the PDR discussion for that year, asking for mentoring to be provided, did the Head of School do anything about providing subject-specific mentoring. My then Head of

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*Subject, Professor John Tsoukalas has never spoken to me about this or offered any careers guidance, support or mentoring.*

5 349. *The evidence that I had no career support is so overwhelming; the evidence that my requests for career support in P&DR were simply ignored; the evidence that my line manager doesn't seem to have ever read my review is responded to by the university by saying it was all my own responsibility – though apparently it isn't for the ECDP cohort, or for men who are informally mentored and allocated promotion enhancing roles by other senior men.*

10 **Issue 8.7 The Care Commitments PCP**

350. *The Respondent not explicitly inviting applicants for promotion to provide information about their care commitments nor taking into account the University's own Care Registration process ("the Care Commitments PCP");*

15 351. *University doesn't agree that this is a PCP – but doesn't suggest that they do explicitly invite wider caring information. I contend that if the University's position is – as they have claimed it is – that they invite this information by interpreting the additional circumstances broadly, they cannot then deny that they don't invite the provision of this information explicitly.*

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358. *It is well within judicial knowledge – and the knowledge available to the University of Glasgow - that caregiving is overwhelmingly provided by women in the UK and in the rest of the world. This impacts on women, on women academics seeking promotion, and on me.*

25 360. *The Respondent claims they make adjustment for additional circumstances like caring, in terms of reducing the number of research outputs expected or the level of grant capture expected.*

361. *Had I been asked for my caring responsibilities or understood that these could be provided, and had these been taken into account, for*

*example, by reducing some of the quantifiable criteria, they may have assessed me as meeting other criteria in 2020.*

171. The Tribunal has noted that the Respondent accepts that the PCPs listed at 8.1, 8.2, 8.4, and 8.5 above exist, and the question for the Tribunal is whether  
5 or not the other PCPs (listed at 8.3, 8.6 and 8.7) exist?

172. Having carefully considered this matter, we agree with Mr Maclean's submissions that the shadow requirement (8.3), Mentoring (8.6) and Care Commitments (8.7) are not PCPs that the Respondent operated as applying to employees seeking promotion to Professor.

10 173. That said, and as we narrate later in these Reasons, under our Closing Remarks, there are many issues brought to light from the evidence heard in this case that suggest that the University may wish to reflect on how it conducts its business as regards career development, mentoring, and access to promoted posts.

15 174. Issue 10 stated: ***If admitted, or found to, exist, in each case, does the PCP apply equally to female and male applicants?***

175. The respondent's position was set forth in Mr Maclean's written submission as follows:

**Applies or Would Apply Equally – Section 19(2)(a)**

20 5.35 *The PCP being complained of must be one which 'applies or would apply equally' to persons who do not have the protected characteristic in question. As Baroness Hale stated in Secretary of State for Trade and Industry v Rutherford [2006] ICR 785:*

25 *"It is of the nature of such apparently neutral criteria or rules that they apply to everyone, both the advantaged and disadvantaged groups."*

5.36 *As was made clear in British Airways Plc v Stamer [2005] IRLR 862, EAT, it is not necessary that the PCP was actually applied to others, so long as consideration is given to what its affect would have been if*

*it had been applied. However, the PCP must actually be applied to the Claimant: Iteshi v General Council of the Bar [2012] EqLR 553.*

5.37 *The same promotion criteria and guidance apply to all applicants on the Research and Teaching track and that includes the criteria and guidance for Esteem. The Professorial consultation applies to all applicants.*

5.38 *I don't believe the Mentoring or Care Commitments PCP apply at all but if the Tribunal's judgment is they do apply, then I accept they apply equally to female and male applicants.*

10 176. The claimant's position was set forth as narrated above at paragraph 170 of these Reasons, to which we refer back for ease of reference. She did not address, in terms, the specific provisions of each of the constituent parts of **Section 19 of the Equality Act 2010**, as Mr Maclean did, on the Respondents' behalf, in his written submissions.

15 177. We make that comment as an observation, and not as a criticism of the claimant, as indirect discrimination is a complex area of discrimination law, as the claimant herself acknowledged at paragraph 3, of the introduction to her written submissions, where she stated: *"I'm not a lawyer – so not a specialist in the legal issues and cases. I have tried to follow the tests and use them to frame the evidence I and the other witnesses have given. I am confident that the tribunal will bring the relevant legal understanding to bear."*

20 178. The Tribunal has decided that, on the evidence available to us at this Final Hearing, the same promotion criteria and guidance applied to all applicants seeking promotion to Professor, and they were all drafted to apply equally to female and male applicants.

25 179. The process and procedure to be adopted was set forth in black and white lettering in the Promotion Policy etc, and what the evidence in this case has shown is that there may be areas of grey, where matters are open to differing interpretations, by different readers, but that does not of itself make the policy or criteria discriminatory, although it may well suggest there is good cause to

revisit the documentation, given the evidence that we heard that academics have different profiles, and so possibly different career projections.

180. Issues 11 and 12 stated:

5 **11. If admitted, or found to, exist, in each case, what is the scope of the pool for comparison when considering the question of particular disadvantage?**

**12. If admitted, or found to, exist, in each case, did the PCP put women in the pool at a particular disadvantage when compared with men?**

10 **12.1 If so, what is that disadvantage?**

181. The respondent's position was set forth in Mr Maclean's written submission as follows:

**Group Disadvantage – Section 19(2)(b)**

15 5.39 *In the case of Pendleton v Derbyshire County Council [2016] IRLR 580 the EAT explained at paragraph 38:*

20 *“Determining the question of comparative collective disadvantage is not simply answered by identifying that the PCP applies to persons both within and without the group sharing the relevant characteristic; that is simply the neutral application of the PCP. In my judgment, it is, moreover, not answered by identifying that others falling outside that group will also consider themselves disadvantaged in some way by the application of the PCP; that again may simply be the product of the neutral application of the PCP....*

25 *the comparative exercise that the ET had to carry out had to be based upon groups that were – absent the particular protected characteristic – in circumstances that were the same or not materially different (s 23 EqA). That meant the comparison of both groups (those sharing the Claimant's protected characteristic [a Christian believing in the sanctity of marriage] as compared to those who did not share that characteristic*

but to whom the PCP would also be applied) would involve persons who were in long-term loving relationships. [In] the very difficult personal circumstances as arose here, both groups would undoubtedly face a very real disadvantage if put to the election of choosing between their partner and their career....

Comparing the two groups, both comprising individuals in long-term, loving and committed relationships, facing the same difficult circumstances as arose in this case and given the choice between remaining with their husband/partner or their career, but with one group also holding a religious belief in the sanctity of their marriage vows ... the latter had an additional burden; a particular disadvantage.”

5.40 It is not necessary, in order for there to be particular disadvantage to those sharing a protected characteristic, for every member of the group to suffer the disadvantage. This was spelled out by Lady Hale in *Essop v Home Office; Naeem v Secretary of State for Justice* [2017] ICR 640 (at paragraph 27).

5.41 In *Williams v Trustees of Swansea University Pension and Assurance Scheme* 2019 ICR 230, the Supreme Court held that the words "disadvantage", "detriment" and "unfavourably" in the 2010 Act are similar in effect and the test is not purely objective: regard should be had to what is reasonably seen as unfavourable by the person affected (paragraphs 27 – 28).

5.42 Where group disadvantage is established, the Supreme Court has confirmed that there is no need to prove the reason why the PCP in question puts or would put the affected group at a disadvantage (*Essop v Home Office (UK Border Agency); Naeem v Secretary of State for Justice* [2017] ICR 640 at paragraphs 32 - 33).

### **Choice of Pool**

5.43 The choice of pool must be logically defensible: *Allonby v Accrington and Rossendale College* [2001] ICR 1189.

5.44 *The 'pool' of individuals upon whom the effect of the provision, criterion or practice is evaluated must be a pool of persons whose circumstances are the same, or not materially different from the claimant. This is set out in section 23(1) of the 2010 Act. In relation to indirect discrimination this means that the comparison must be with those who – apart from the particular protected characteristic – are in circumstances that are the same or not materially different: Pendleton v Derbyshire County Council [2016] IRLR 580 at paragraph 40, EAT (paragraph 40).*

5.45 *The leading authority on this issue is the Supreme Court Case of Naeem v Secretary of State for Justice [2017] ICR 640. This case concerned a Muslim prison chaplain who had been employed since 2004. He complained of indirect discrimination arising from a length of service incremental pay scale in circumstances where, until 2002, the Ministry of Justice had only employed Christian chaplains. The majority of those at the top of the pay scale were Christians, and the majority of Muslims were at the bottom of the scale. It was also agreed that Mr Naeem had been treated in the same way as Christians appointed in 2004. The Supreme Court agreed with the ET that all prison chaplains should be within the pool for comparison. Lady Hale (at paragraphs 40 – 45) stated:*

*“Should it be all chaplains, as the employment tribunal held, or only those who were employed since 2002? In the equal pay case of Grundy v British Airways plc [2008] IRLR 74, at paragraph 27, Sedley LJ said that the pool chosen should be that which suitably tests the particular discrimination complained of. In relation to the indirect discrimination claim in Allonby v Accrington and Rossendale College [2001] IRLR 364, at paragraph 18, he observed that identifying the pool was not a matter of discretion or of fact-finding but of logic. Giving permission to appeal to the Court of Appeal in this case, he observed that “There is no formula for identifying indirect discrimination pools, but there are some guiding principles. Amongst these is the principle*

*that the pool should not be so drawn as to incorporate the disputed condition.”*

Consistently with these observations, the Statutory Code of Practice (2011), prepared by the Equality and Human Rights Commission under s.14 of the Equality Act 2006, at para. 4.18, advises that:

*“In general, the pool should consist of the group which the provision, criterion or practice affects (or would affect) either positively and negatively, while excluding workers who are not affected by it, either positively or negatively.”*

*In other words, all the workers affected by the PCP in question should be considered. Then the comparison can be made between the impact of the PCP on the group with the relevant protected characteristic and its impact upon the group without it. This makes sense. It also matches the language of s.19(2)(b) which requires that “it” – i.e. the PCP in question – puts or would put persons with whom B shares the characteristic at a particular disadvantage compared with persons with whom B does not share it. There is no warrant for including only some of the persons affected by the PCP for comparison purposes. In general, therefore, identifying the PCP will also identify the pool for comparison.*

*In this case, the PCP identified was the incremental pay structure which affected all the chaplains employed by the Prison Service. This did put the Muslim chaplains at a particular disadvantage compared with the Christians. The appellant suffered this disadvantage and so s.19(2)(b) and (c) were satisfied.”*

5.46 *In Grundy v British Airways [2008] IRLR 74, referred to by Lady Hale in Naaem, Sedley LJ said (at paragraph 27)*

*“The correct principle ... is that the pool must be one which suitably tests the particular discrimination complained of ...” and went on to observe that a tribunal ‘will be concerned to make a comparison which*



*illuminates such ... questions as seem to them potentially critical ... and to find a pool which best helps them to do this. ... A pool so narrow that no comparison can be made at all is unlikely to serve this end; nor a pool so large that the comparison is no longer of like with like ..."*

5           5.47   *The pool will depend on the nature of the PCP being tested. If the claimant is challenging a recruitment criterion, for example, the pool will usually comprise those people who would be eligible for the job but for the criterion in question (University of Manchester v Jones [1993] ICR 474 (CA)).*

10          5.48   *The List of Issues at para 8 states: "The Claimant claims that the Respondent operates the following provisions, criteria or practices (PCPs) and applied these to employees seeking promotion to Professor, including the Claimant."*

15          5.49   *The "pool" in this case for Issues 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, and 8.7 most logically in my submission are all those who applied for promotion in 2020 – "those seeking promotion".*

20          5.50   *I anticipate the Claimant may seek to argue the pool must be all those at Grade 9 who could possibly seek promotion to Professor. That is not what the preamble to Issue 8 says though. And while we have some data as to the number of academics at Grade 9 as at 17 July 2020, we don't know whether they have any interest in promotion, or their rationale for not being interested if that is their position. There is no evidence to link the numbers coming forward for promotion with the criteria being off-putting in some way.*

25          5.51   *The Claimant might contend that the Respondent's own PDR Policy (at page 8) records that women don't come forward for promotion as quickly as men. The Respondent disputes that is accurate in relation to the 2020 position. However, in any event, the Claimant's own evidence and narrative throughout proceedings was that women don't come forward as quickly because men are more bullish as to their*

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*prospects than woman. There was nothing to tie these feelings of confidence or lack thereof to the promotion criteria.*

5.52 *My submission is that the most logical pool to test whether the Respondent's promotion criteria are discriminatory or not is the pool of applicants for promotion in 2020.*

**Evidence of Disadvantage – Burden of proof - Section 139**

5.53 *In Nelson v Carillion Services Ltd [2003] ICR 1256, Simon Brown LJ reviewed the state of the law in the light of the predecessor to s 136 of the 2010 Act, and concluded (at paragraph 26):*

10 *'It seems to me tolerably clear that the effect of s 63A was to codify rather than alter the pre-existing position established by the case law. The burden of proving indirect discrimination under the 1975 Act was, as Mr Langstaff accepts, always on the complainant, and there pursuant to s 63A it remains, the complainant still having to prove facts from which the tribunal could conclude that he or she has been*  
15 *unlawfully discriminated against 'in the absence of an adequate explanation' from the employer. Unless and until the complainant establishes that the condition in question has had a disproportionate adverse impact upon his/her sex the tribunal could not in my judgment,*  
20 *even without explanation from the employer, conclude that he or she has been unlawfully discriminated against.*

*This to my mind accurately reflects the position laid down by the ECJ in Enderby and that, indeed, is hardly surprising. True it is, as Mr Langstaff points out, that the Burden of Proof Directive expressly*  
25 *provides that, "[T]his Directive shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs". It is difficult to see, however, why the UK should have wished to introduce a rule more favourable to claimants (a) than had earlier been established by the domestic authorities, or (b) than the ECJ thought*  
30 *appropriate for a claim directly brought under article 119."*

5.54 Claimants therefore remain under an obligation to bring to the tribunal some evidence in support of allegations of disproportionate impact, and this will usually involve both the use of statistics and the concept of a 'pool' of affected individuals, real or hypothetical, to test the consequences of the provision, criterion or practice which is being subjected to scrutiny.

5.55 Mr Justice Langstaff, then President of the EAT, in the EAT case of *Dziedziak v Future Electronics Ltd* EAT 0270/11/2802, stated (at paragraph 42):

10 'In this case the matters that would have to be established before there could be any reversal of the burden of proof would be, first, that there was a provision, criterion or practice, secondly, that it disadvantaged women generally, and thirdly, that what was a disadvantage to the general created a particular disadvantage to the individual who was claiming. Only then would the employer be required to justify the provision, criterion or practice, and in that sense the provision as to reversal of the burden of proof makes sense; that is, a burden is on the employer to provide both explanation and justification'.

5.56 On the basis of Langstaff P's comments, the burden lies with the claimant to establish the first, second and third elements of the statutory definition of indirect discrimination. Only then does it fall to the employer to justify the PCP as a proportionate means of achieving a legitimate aim.

5.57 In this case, I don't believe the Claimant has established the disputed PCPs but even if she has, and in relation to the admitted PCPs, I don't believe the Claimant has established disproportionate impact for woman generally, whichever of the two pools you consider appropriate, and thirdly, I don't believe the Claimant has established personal disadvantage.

5.58 Women did less well than men in 2020 in relation to the Esteem criteria (83% v 95% success rate). However, across the seven criteria, women

*did better than men on four out of the seven criteria in 2020 including one of the essential criteria, Impact. In relation to Impact the success of women was 58% compared to only 30% for men – a more significant gap than in relation to Esteem.*

5 182. The claimant's position in reply to Issues 11 and 12 was not set out in her written submission.

183. Issue 13 stated: ***“If admitted, or found to, exist, in each case, did the PCP put the Claimant at that disadvantage?”***

184. The respondent's position was set forth in Mr Maclean's written submission  
10 as follows:

***Personal Disadvantage – Section 19(2)(c)***

5.59 *It must be the PCP complained of, which is found to place those who share the protected characteristic in question, which creates the 'particular disadvantage'. This was considered in the age discrimination case of Homer v Chief Constable of West Yorkshire Police and West Yorkshire Police Authority [2012] ICR 704.*  
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5.60 *The University's promotion criteria were unchanged between 2020 and 2022. In particular there was no change to the Esteem criteria or guidance associated with it. The application form had a different presentation in 2022 but was essentially capturing the same data. There was no more explicit direction in relation to capturing caring commitments in 2022 than there had been in 2020. The Claimant's personal circumstances in terms of her caring responsibilities did not improve in the two years between 2020 and 2022 – indeed her caring burden increased. The Claimant's narrative is that she did not receive any mentoring (of the sort she says was lacking prior to 2020) in the period between her unsuccessful application in 2020 and October 2021 when she was connected to Professor Sayantan Ghosal an economist in the ASBS. The 2022 promotion process was initiated in December 2021 – a matter of weeks later. The Claimant's profile in*  
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*relation to Outputs did not meet the promotion in 2022 (just like in 2020). There was no evidence that the Claimant's caring commitments in 2022 turned a borderline application into a successful one.*

5.61 *In all of those circumstances, the Claimant achieves promotion in 2022, meeting 4 out of the 7 criteria and being assessed as being able to meet a fifth criteria, PGR Supervision, within a short period of time. The Claimant became a Professor of Economics at the University on 1 August 2022.*

5.62 *The PCPs being founded upon by the Claimant did not put the Claimant at a personal disadvantage. They were not the cause of the Claimant not being promoted in 2020.*

5.63 *The Claimant may counter that it was the lack of mentoring and career development opportunities that caused her lack of promotion in 2020. However, she is dismissive of the support provided by Professor Coton and by Professor Dukes and Professor Heald. She didn't see any value in Professor Mason's comments. On the one hand she dismisses those without experience in applied economics, despite them having experience of being Professors and what it takes to achieve the Professorial title. On the other hand she complains that she was not provided with subject specific mentoring until October/November 2021 with the inference that this was too little, too late. There is certainly no evidence before this Tribunal that the support provided by Professor Sayantan Ghosal made the difference between a lack of success in 2020 and achieving promotion in 2022. We also learned when the Claimant cross-examined Professor Finch that there has been a research cluster in applied economics since 2017 – and that is a grouping of peers in the ASBS that focus on applied economics, like the Claimant, and exactly the sort of subject specific support that the Claimant says was lacking. And this was available to her three years before her unsuccessful application in 2020.*

5.64 So, I contend it was not the promotion criteria and guidance, the Professorial consultation, or any lack of mentoring and access to career opportunities or the care commitments PCP that caused the Claimant's application in 2020 to be unsuccessful but the fact that her application at that time was not strong enough to pass the bar set by the University.

185. The claimant's position in reply to Issue 13 was not set out in her written submission.

186. Issue 14 stated: "***If admitted, or found to, exist, in each case, has the Respondent justified the PCP by showing it to be a proportionate means of achieving a legitimate aim?***"

187. The respondent's position was set forth in Mr Maclean's written submission as follows:

***Objective Justification – Section 19(2)(d)***

5.65 The Supreme Court in *Essop v Home Office (UK Border Agency) and Naeem v Secretary of State for Justice* [2017] ICR 640 emphasised that there can be no finding of indirect discrimination until 'all four elements of the definition are met' – i.e. including that the PCP is not justified. Lady Hale held (at paragraph 29):

"some reluctance to reach this point can be detected in the cases, yet there should not be....The requirement to justify a PCP should not be seen as placing an unreasonable burden upon respondents. Nor should it be seen as casting some sort of shadow or stigma upon them. There is no shame in it. There may well be very good reasons for the PCP in question – fitness levels in fire-fighters or policemen spring to mind'."

5.66 In *Homer v Chief Constable of West Yorkshire Police and West Yorkshire Police Authority* [2012] ICR 704, (at paragraph 22) Lady Hale summarised the position as follows:

*“To be proportionate, a measure has to be both an appropriate means of achieving the legitimate aim and (reasonably) necessary in order to do so.”*

5.67 *Elias J (as he then was) in MacCulloch v ICI [2008] ICR 1334, EAT, set out four legal principles with regard to justification, which have since been approved by the Court of Appeal in Lockwood v DWP, [2014] ICR 1257 (at paragraph 10):*

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*“(1) The burden of proof is on the respondent to establish justification: see Starmar v British Airways [2005] IRLR 862 at [31].*

*(2) The classic test was set out in Bilka-Kaufhaus GmbH v Weber Von Hartz (case 170/84) [1984] IRLR 317 in the context of indirect sex discrimination. The ECJ said that the court or tribunal must be satisfied that the measures must “correspond to a real need ... are appropriate with a view to achieving the objectives pursued and are necessary to that end” (paragraph 36). This involves the application of the proportionality principle, which is the language used in reg. 3 itself. It has subsequently been emphasised that the reference to “necessary” means “reasonably necessary”: see Rainey v Greater Glasgow Health Board (HL) [1987] IRLR 26 per Lord Keith of Kinkel at pp.30–31.*

*(3) The principle of proportionality requires an objective balance to be struck between the discriminatory effect of the measure and the needs of the undertaking. The more serious the disparate adverse impact, the more cogent must be the justification for it: Hardy & Hansons plc v Lax [2005] IRLR 726 per Pill LJ at paragraphs [19]–[34], Thomas LJ at [54]–[55] and Gage LJ at [60].*

*(4) It is for the employment tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the*

*employer's measure and to make its own assessment of whether the former outweigh the latter. There is no "range of reasonable responses" test in this context: Hardy & Hansons plc v Lax [2005] IRLR 726, CA."*

5           5.68 *The four elements which need to be examined in relation to justification:*

(a) *Whether there is a legitimate aim.*

10           (b) *Whether the PCP is appropriate to achieve the legitimate aim. That is to say, will it in fact achieve the desired objective? This is a matter of fact.*

(c) *Proportionality in the sense of the PCP being necessary, or reasonably necessary, to achieve the aim.*

(d) *Proportionality in the sense of the balance between the discriminatory effect of the measure and the legitimate aim.*

15           5.69 *The legitimate aim need not have been articulated – or even realised – at the time the decision was made to apply it: as confirmed by the Supreme Court in Seldon v Clarkson Wright and Jakes [2012] ICR 716; ex post facto rationalisation is permissible.*

20           5.70 *The burden is on the respondent to prove justification, and it is for the court or tribunal to undertake a "fair and detailed analysis of the working practices and business considerations involved" so as to reach its own decision as to whether the treatment was justified. Tribunals should not allow the respondent a "margin of discretion" or apply a "band of reasonable responses" test similar to that found in unfair dismissal cases (see Hardy & Hansons plc v Lax [2005] ICR 1565 (at paragraph 32))*

25           5.71 *The correct approach to objective justification is derived from retained EU law. In Bilka-Kaufhaus GmbH v Weber von Hartz [1986] IRLR 317*



*(an equal pay case), the ECJ held that the measures taken by the employer (paragraph 36):*

5.71.1 *Must correspond to a real need on the part of the employer.*

5 5.71.2 *Must be appropriate with a view to achieving the objectives pursued.*

5.71.3 *Must be necessary to that end.*

10 5.72 *"Necessary", in this context, is not judged in absolute terms, as national courts and tribunals must apply the principle of proportionality, a concept common in the jurisprudence of the ECJ (Enderby v Frenchay Health Authority and another [1994] ICR 112 at paragraph 4)).*

15 5.73 *The University of Glasgow is one of the leading University's in the World. It is a member of the elite group of research-intensive universities in the UK, the Russell Group. The University's promotion criteria are rightly robust to support its Mission and its strategic ambitions. Becoming a professor is the absolute pinnacle of an academic's career. In terms of the University's recognition as an elite University, it must have certain standards. If the University differs from*  
20 *the standards in the Sector then that could have reputational and financial implications. When considering appointment to Professor the University is looking for international leaders that are comparable to others at the same level across the World.*

25 5.74 *Professor Mason told the Tribunal that the standard of Professor must have a mark of quality. Universities must be able to trust each other that those individuals who achieve the rank of Professor are worthy of the position at their own University but also more generally across the Sector.*

30 5.75 *The University quite clearly has a legitimate aim in robust promotion criteria. The University contends that the PCPs that relate to the*

*promotion criteria (Issues 8.1., 8.2., 8.3., 8.4.) achieve the University's aims and are necessary to do so and a proportionate way of doing so (a preponderance across seven criteria etc.)*

5 5.76 *In relation to the Professorial Consultation (Issue 8.5), the University keeps this practice under annual review. It is still felt to be a necessary component of the procedure even though how it is implemented varies and even though the Head of School and the Head of College told the Tribunal that it had little weight in their decision making. Proportionality is achieved by the fact that it has such little weight in the overall*  
10 *process.*

5.77 *In relation to the Mentoring PCP (Issue 8.6) the University's position is that they have both formal and informal Mentoring opportunities available for staff, which is a proportionate way of a large organisation managing this sort of issue.*

15 5.78 *In relation to the Care Commitments PCP (Issue 8.7), the University considers applicants can provide whatever information they consider relevant to their promotion application. In 2020 given the purposes behind the creation of the Carers Register, it would be an unlawful breach of GDPR if the University had read-across information from the*  
20 *Carers Register to the promotion process. Avoiding a breach of the law is justifiable. The proportionality is achieved by the fact the application form allows applicants, in an unrestricted way, to provide details of any relevant information.*

188. The claimant's position in reply to Issue 14 was not set out in her written  
25 submission.

189. Looking at each of the Issues 9 to 14, the Tribunal has decided that whatever the appropriate pool should be, whether all applicants for promotion in 2020 (as suggested by Mr Maclean for the Respondent), or , as he hypothesised, the Claimant might suggest, all those at Grade 9 who could possibly seek  
30 promotion to Professor, the simple fact of the matter is that the Tribunal is not satisfied that parties placed before it all of the relevant evidence about

promotion applications in the 2020 promotion round, and all that we have is what was provided in the Bundle. The onus is clearly on the Claimant to provide evidence to support her claim of indirect discrimination, and to address all aspects of the statutory test in **Section 19 of the Equality Act 2010**.

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190. As Mr Maclean rightly commented in his written submission, at paragraph 5.50, while we have some data as to the number of Glasgow University academics at Grade 9 as at 17 July 2020, we don't know whether they have any interest in promotion, or their rationale for not being interested if that is their position. There is no evidence provided to us to link the numbers coming forward for promotion with the criteria being off-putting in some way.

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191. Further, and again as commented upon by Mr Maclean, in his written submissions, we agree with his assessment that the Claimant has failed to bring evidence in support of her belief that there is disproportionate impact and group disadvantage caused by the PCPs, and likewise she has failed to show personal disadvantage.

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192. We agree with Mr Maclean's assessment, at his paragraph 5.62, that the PCPs being relied upon by the Claimant were not the cause of her not being promoted in 2020. As he submits, at his paragraph 5.64, we are satisfied that her 2020 application was not successful at that time as her 2020 application was not strong enough to pass the bar set by the University.

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193. Indeed, as Mr Maclean commented, in his introductory paragraph 1.8: *"In relation to the indirect discrimination claim, the criteria and process the Claimant complains disadvantages women as a group and disadvantaged her, delivered her promotion in 2022. It also saw in 2020, women do better than men in four out of the seven criteria, which in 2021 rose to women doing better in 6 out of the seven criteria. There was nothing intrinsic to the promotion criteria or process that disadvantaged women in 2020 nor was the Claimant disadvantaged in 2020 because of her sex. She just didn't submit a strong enough application across the seven criteria in that year."*

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194. We noted, in the claimant's paragraph 349, her statement that: *"The evidence that I had no career support is so overwhelming"*. In response, the Tribunal observes that, while we understand the claimant is there commenting about on her own situation as an employee of the Respondent, there was evidence before us from her that she applied for and she was successful in securing posts within her trade union (UCU).
195. Further, from its wide and diverse experience of employment, the Tribunal observes that it is to be reasonably expected of any employee who seeks career advancement or development, whether by promotion, transfer, secondment, or whatever, that the employee needs to show an element of self-investment in their own future, and the claimant is no different in that regard to any other employee, in any other employment. As the claimant rightly comments, at paragraph 5 of the introduction to her written submissions: *"We've heard lots of stuff about complexity of universities. But they are workplaces like any other..."*
196. In the event that we might be wrong in our conclusion, that the claimant has failed to establish her complaint of indirect sex discrimination, we have proceeded to address the matters arising from the Respondent's arguments that they have, in terms of **Section 19(2) (d) of the Equality Act 2010**, justified their PCPs by showing them to be a proportionate means of achieving a legitimate aim.
197. Having carefully considered the evidence led before us at this Final Hearing, we can well understand and accept the fact that becoming a Professor is the absolute pinnacle of an academic's career, and that the University must have certain standards, and if the University differs from the standards in the Higher Education Sector, then that could have reputational and financial implications. When considering appointment to Professor, we can therefore accept that the University is looking for senior academics and leaders that are comparable to others at the same level across the Sector internationally.
198. Professor Mason told the Tribunal that the standard of Professor must have a mark of quality. We agree with Mr Maclean's submission that Universities

must be able to trust each other that those individuals who achieve the rank of Professor are worthy of the position at their own University but also more generally across the Sector.

199. In these circumstances, the Tribunal also agrees with Mr Maclean's submission, at his paragraph 5.75, that the University quite clearly has a legitimate aim in robust promotion criteria. The University contends that the PCPs that relate to the promotion criteria (Issues 8.1, 8.2, 8.3, 8.4.) achieve the University's aims and are necessary to do so and a proportionate way of doing so (a preponderance across seven criteria etc.)

## 10 Disposal

200. For the foregoing reasons, we have unanimously found that this whole claim is not well founded on its merits, it fails, and it must be dismissed, as we have decided per paragraphs (3) and (4) of our reserved Judgment above.

201. As the Tribunal has not found the claimant's complaints that she was unlawfully discriminated against by the respondent, on grounds of her sex, contrary to **Sections 13 and 19 of the Equality Act 2010**, well-founded, and so dismissed the claim in its entirety, we did not need to go on and consider remedy under **Section 124**, in light of the various issues at paragraphs 16.1 to 16.7 of the Agreed List of Issues, as set forth earlier in these Reasons at paragraph 62 above.

202. As we did however receive detailed closing submissions on remedy, from both parties, we do consider it appropriate that we say something by way of explaining our view on the quantum of compensation for injury to feelings had we found in favour of the claimant. Financial loss was agreed between the parties, had we found for the claimant, so we need say nothing further here on that matter.

## Injury to Feelings

203. In the claimant's revised Schedule of Loss, as at 10 August 2022, copy produced to the Tribunal at pages 682/683 of the Bundle, and in greater and different detail than provided by her on 21 April 2022 (in her earlier Schedule

of Loss, produced at page 455 of the Bundle), she quantified her injury to feelings at £49,300, asking the Tribunal to take certain listed factors into account.

204. Specifically, the claimant there stated her position as follows:-

5 ***Injury to Feelings***

*“The Respondent has discriminated against me for a number of years by failing to support my career in the ways that the careers of male economists have been supported.*

10 *The Respondents discriminatory treatment has caused me significant distress and anxiety for much of my career. This intensified after I asked for mentoring for career development from 2015/16 and was ignored and especially since I discussed my application for promotion on or around December 2019/January 2020.*

*The following factors should be taken into consideration:-*

- 15
- *The length of time I have worked for the Respondent;*
  - *My successful career to date;*
  - *The humiliation of dealing with people outside of the Respondent’ employ and not holding the correct title which I deserve. This includes:*
- 20
- o *Disparaging statements from former students encountered in a professional context*
  - o *Comments from reviewers of research funding applications which suggest I lacked seniority to lead a major research project*
- 25
- o *Being unable to include a title on external reports or at external events*

- *The humiliation and distress of requesting support with the application for promotion and this being ignored;*
- *The humiliation and distress of engaging positively with the P&DR process every year but finding the development aspect being ignored;*
- *The embarrassment of being advised that I have not reached the correct level to secure promotion when my peers were aware that I had applied;*
- *The distress of watching male colleagues being mentored and supported and, without any transparent process, being selected for leadership roles while I was ignored;*
- *The humiliation of a peer with less experience being promoted;*
- *The further hurt and distress of being refused permission to apply again in 2021 for no good reason despite having, by then, done everything I was asked to do to by my employers to satisfy them in relation to the Esteem criteria (which would have meant I met the preponderance of the criteria required for promotion);*
- *The hurt and distress caused by the egregious 2021 decision to make me wait another year to apply was compounded by the fact that I was at that stage, 61 years old – my age is known to my employer – with 34 years service;*
- *The humiliation caused by the insistence of my employer that a very negative and critical report by a non-economist from another institution be used in these proceedings. Given that this report was written six months after the decision in question was made (and can bear no relation to the promotion decision) and was at odds with the Respondent's own decisions, its only purpose was to further humiliate me in public;*

- *The distress caused by the uncertainty that the market supplement could be removed at any time resulting in a £10,000 pay reduction;*
- 5 • *The Respondent's failure to properly and reasonably address my grievances;*
- *Making me feel devalued and ashamed to be judged by colleagues;*
- *Making me feel disappointed, humiliated and angry at the lack of support offered by the Respondent;*
- 10 • *The impact this has had on my morale and confidence as well as the impact on my standing among other academic economists.*
- *In view of the above, I contend that only an award at the top of the upper Vento band is appropriate."*

15 205. In the respondent's Counter Schedule, as at 10 August 2022, copy produced to the Tribunal at pages 684 / 685 of the Bundle, Mr Maclean stated the respondent's position succinctly as follows:

20 *"The decision not to promote the Claimant was a one-off decision. The Respondent contends this was not discriminatory. In the event any unlawful discrimination is established, the Respondent believes this will be indirect and unintentional (see note on relevance of this below). Any award of compensation must be just and equitable. The Respondent contends the value of any injury to feelings award should therefore be low, if one is made at all."*

25 206. In his covering note, explaining that any award for injury to feelings should be between £0 and £5,000, it was stated in that Counter Schedule as follows:-

*NOTE ON COMPENSATORY AWARD*



*“The Respondent contends that no unlawful discrimination has taken place. However, in the event any unlawful discrimination has occurred, the Respondent believes this will be found to be indirect and unintentional. In such circumstances, the Equality Act 2010 states that the Tribunal must not make an order for compensation unless it has first considered making a declaration or recommendation.*

*Any award of compensation must be just and equitable. Depending on any finding of unlawful indirect discrimination made, the Respondent reserves the right to argue that no compensation should be awarded.”*

10 207. Suffice it to say here, we have considered the relevant case law (from the well-known and oft quoted judgment in **Vento v Chief Constable of West Yorkshire Police (No. 2) [2002] EWCA Civ 1871 / [2003] IRLR 102**, and the **ET Presidential Guidance** by Judge Shona Simon, then the Scottish ET President, when formulating Guidance published jointly with Judge Brian Doyle, then President of ET (England & Wales), originally first issued on 5 September 2017, and updated by annual addenda, most recently, for the purposes of the present case, by the third addendum issued on 27 March 2020.

20 208. In respect of claims presented on or after 6 April 2020, the Vento bands are as follows: a **lower band of £900 to £9,000** (less serious cases); a **middle band of £9,000 to £27,000** (cases that do not merit an award in the upper band); and an **upper band of £27,000 to £45,000** (the most serious cases), with the most exceptional cases capable of exceeding £45,000.

25 209. As per the EAT judgment in **Base Childrenswear Ltd v Miss N Lomana Otshudi**, a judgment by Her Honour Judge Eady QC, as she then was (now Mrs Justice Eady, a High Court judge, and the current President of the EAT), as reported at **[2019] UKEAT/0267/18**, we readily accept that our focus must be on the impact of the discriminatory acts on the claimant. Equally, as the EAT observed, it is not uncommon for a victim of unlawful discrimination to suffer stress and anxiety.

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210. At this Final Hearing, we heard in oral evidence from the claimant, but we have reminded ourselves of the unreported EAT judgment of His Honour Judge David Richardson, in **Esporta Health Clubs & Anor v Roget [2013] UKEAT 0591/12**, which makes it clear that a Tribunal has to have some material evidence on the question of injury to feelings.
211. Here, we had the claimant's own evidence, in her witness statement, but no medical report, from her GP or any other medical practitioner, nor any evidence from any other person with knowledge of the precise nature and extent of the claimant's injured feelings. There was no evidence before us to show that the claimant had ever been off work, in the last few years, for any reason related to her employment.
212. In discrimination cases, such as the present case, the Tribunal often hears evidence from a claimant's partner / spouse, or another relative. But not in this case, despite the claimant's husband, Edward Toner, regularly attending as an observer, as also her sister, Patricia Findlay, and either of whom could have been called as a witness on her behalf.
213. In her written closing submission, at paragraph 19, the claimant stated as follows: *"How I have been treated by the employer of over 34 years has caused me great distress. The process leading up to this Tribunal and the Tribunal itself has caused me great anxiety and distress. Having my career and contribution dissected by colleagues – sometimes very proximate colleagues – has been enormously unpleasant."*
214. It is within the Tribunal's knowledge that most people involved in any adversarial legal process are subject to some level of stress and anxiety, be they parties, representatives, witnesses, or the judicial body deciding upon a disputed claim.
215. As such, it has been difficult for us to differentiate between any stressors caused by the respondent, any other stressors, such as the stresses that can exist within any family, here, perhaps, on account of her mother's situation, particularly during the Covid-19 pandemic, and lockdowns, and the caring responsibilities undertaken by the claimant for her mother, and / or any

additional stressors caused by the claimant's decision to prosecute her claim before the Tribunal, a feature common to all litigants.

216. In all these circumstances, even if we had found for the claimant, and had we decided to make any award of compensation to her, as opposed to simply making a declaration, and making recommendations to the respondent, the Tribunal was likely to have assessed the claimant's injury to feelings in the lower **Vento** band, and at the bottom end of that range, probably somewhere around **£3,000, inclusive of interest**, and not anything like as high as the sum the claimant had sought in her Schedule of Loss, as at 21 April 2022, and maintained on 10 August 2022, where she had quantified it as **£49,300, plus interest**.

217. That amount claimed by Professor Findlay, of course, exceeded the top of the applicable **Vento** upper band, then only **£45,000** at the material time. The claimant appears to have used the uprated Vento bands as per the Joint ET Presidential Guidance fifth addendum issued on 28 March 2022, for all claims presented on or after 6 April 2022, where the top of the upper band is now **£49,300**.

218. The claimant's ET1 was presented on 24 August 2020, so it is the Vento bands in the third addendum (2020) that apply, not the most recent, fifth addendum (2022). We agree with Mr Maclean's submission to that effect at paragraph 6.17 of his written submissions for the respondent, although we note that his reference (at his paragraph 6.17.1) to the lower band starting at **£990** is a typographical error.

219. Furthermore, we agree with Mr Maclean's closing submissions, in particular at his paragraphs 6.21 to 6.24, and his comments on the claimant's quantification of her alleged injured feelings. In his closing submission, it was stated as follows:

*"6.21 Any evidence of injury to feelings must arise out of the unlawful discriminatory act. In this case that would be a failure to promote in 2020. So matters prior to this decision cannot found an injury to feelings award.*

5 6.22 *The only evidence I could find in the Claimant's witness statement about the impact of the alleged discrimination on her is in para 33 (page 21 of WS Folder) where the Claimant remarks that "she wants to state how hurt and distressed she was, yet again, by my treatment at the hands of my employer in what seemed like a petty. Unnecessary and wholly deliberate choice not to resolve this issue via a second application at the earliest opportunity." No evidence is given prior to this statement nor is the impact on the Claimant of the Respondent's decision not to promote her described later in her Witness Statement.*

10 6.23 *The Schedule of Loss lists a number of factors the Claimant wants taken into consideration. Most of these are not about the impact on the Claimant of the Respondent's decision in 2020 not to promote her.*

15 6.24 *On the basis of the evidence before this Tribunal there are no grounds whatsoever for an award in the top Vento band as claimed by Professor Findlay. If any award is made, the evidence can only support an award in the bottom Vento band and at the lower end of the bottom band for that matter."*

20 220. It is of note to the Tribunal that, having had the benefit of Mr Maclean's written submissions, before submitting her own the next morning, the claimant's written submissions, at her paragraphs 478 to 483, made submissions about "Not allowed to apply in 2021." That was not the subject matter of her complaint to this Tribunal, which was a complaint about her unsuccessful 2020 promotion application, but we heard evidence about it as background to her case, and her successful 2022 application.

25 **Closing Remarks**

221. We recognise that our Judgment will not be well received by the claimant, because, even during the course of the Final Hearing, it was clear to us that she still bears a deep sense of grievance and injustice at the way she perceives that she was treated unfairly by the respondent.

222. We appreciate that that is her perception, and so her reality, but, as the independent and objective fact-finding Tribunal, applying the relevant law to the facts of this case as we have found them to be, based on the evidence led before us from both parties, we hope that in reading our Judgment, and these Reasons, the claimant will come to understand our reasons for dismissing her claim against the respondent.
223. As regards the respondent, we have a few closing remarks for them too. While we have dismissed the claim in its entirety, there are several matters arising from the evidence led before us where we feel it is appropriate for us to make some closing remarks.
224. We were told in evidence that there was no limit on the number of Professors who could be appointed, a fact that we found interesting (as also that there are 18 Professors in Economics alone) as it appeared that there was no budgetary limit on the number of Professors appointed. Professor Finch's witness statement, at paragraph 24, was quite clear: "*There is no limit on the number of individuals who could be promoted to Professor – it is all about meeting the required criteria.*" That is a matter for Glasgow University, but the Tribunal found it difficult to believe that any large organisation operates on a basis where head count in the workforce is not influenced by the available budgetary provision.
225. Further, as regards the HR function within the University, it appeared to us that with both centralised and devolved HR teams, there appeared to be a lack of focus, and a hazy differentiation between the roles and responsibilities of the College HR teams, compared to the centralised function where Ms Barr and Ms Cummings operated.
226. From the evidence we heard from Professors Coton and Goodyear, in particular, we got a good oversight of how Glasgow University operates in practice, and how things vary across, and even within, different Colleges, Schools and departments.
227. We noted, in Mr Maclean's closing submission, at his paragraph 1.11, an acknowledgment on the respondent's behalf that: "*There are certainly lessons*

to be learned but it doesn't mean discrimination occurred. Any organisation can have the best policies: it's how they are implemented on the ground that matters. The University is a large organisation and very devolved in its governance. Academics are coming late to the idea of being managed. So ensuring consistency of practice across such a varied institution is not always easy. As witnesses acknowledged – the University is not perfect.”

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228. We hope that, through the University's governing bodies, there can be constructive dialogue as to how things might be reviewed and, if required, existing practices, procedures and processes in relation to mentoring, career development and academic promotion changed.

229. On the evidence before us, there was no written guidance available to College Promotion Committees at the time of the claimant's 2020 promotion application. We were advised in oral evidence that some guidance was provided in 2021, but it was not produced to us. The Bundle did, however, include a copy of the *Guidance for Committees – Academic Promotion 2022*, produced to us at pages 600 to 604 of the Bundle.

230. That document was undated, and it had no identified author on it. In terms of good corporate governance, and ensuring staff have regard to the relevant, up-to-date guidance, the Tribunal was surprised that the University does not seem to version control documents.

231. This issue was highlighted in other documents provided to us in the Bundle, e.g., the *Equality Impact Assessment re changes to Academic Promotion Criteria for Research and Teaching* (wrongly labelled “Research & Training”), at pages 551 to 553 of the Bundle, although showing authors, Lesley Cummings, and Mhairi Taylor, Equality & Diversity Unit, was undated.

232. Similarly, the *Academic Promotion Criteria Analysis 2020*, produced to us at pages 559 to 565 of the Bundle, was not dated, and no authorship was identified, although at page 559 the text indicated that it was an updated version of a paper issued prior to the June Board of Review meeting and details those applications confirmed as successful at 17 August 2020.

233. We were provided with a copy of the *Overview of Academic Promotion Slides to Assist Applicants 2021*, at pages 566 to 587 of the Bundle, used by the Head of School and HR in a presentation to staff in the Adam Smith Business School, and it listed some examples of “*additional circumstances*” (at page 570 of the Bundle) that an applicant might wish to highlight for consideration, e.g. part-time working, maternity / adoption / shared parental leave, long term illness absence, and reduced performance due to ill health or other significant reason.
234. In light of the circumstances of the claimant’s case, and her caring responsibilities, we suggest to the University that they may wish to revisit the promotion application form, and / or guidance offered to staff, and expressly include some guidance about additional circumstances related to caring responsibilities.
235. When Ms Cummings gave her evidence, on day 6, Monday 22 August 2022, and spoke of the Aurora project, the claimant stated that she had never heard of it. The Tribunal notes that it was not mentioned in any of the witness statements provided by the respondents, and it emerged in cross-examination. On the evidence available to us, the Athena Swan initiative was in place in some Schools / Colleges within the University, but not all, and even those who were involved were at different stages of the award process.
236. The respondent may wish to consider, if it has not already done so, since close of this Final Hearing on 1 September 2022, whether it needs to review how it brings to the attention of its significantly large workforce opportunities for personal training and development, including mentoring and coaching, both formal, and informal, and access to leadership / management roles and responsibilities, or shadowing, within their department, School or College, by open expressions of interest, or otherwise, for roles within a School executive governance and committee structures.
237. Likewise, while the claimant’s claim before the Tribunal proceeded solely on the basis of alleged discrimination, on grounds of sex, and not any age discrimination, it was clear to us from the evidence led at this Final Hearing

that there is, within the respondent's senior academic workforce, at grades 7 to 9, a group who may have fallen between two stalls, as they are long serving employees, not promoted to grade 10 Professorship, but they have not been subject to the Early Career Development Programme, and what it offers.

5 238. In that regard, and specifically for that group, the University may wish to consider how best to deliver on ways to use the Personal Development Review process to promote and encourage line managers / reviewers to discuss with their staff any aspirations and plans for career progression / promotion, and how best the organisation can support individuals.

10 239. An updated and comprehensive *Equality Impact Assessment* in relation to the operation of the Respondent's Promotion Policy might also be considered going forward.

15 240. The Tribunal has also noted, from the documentation provided to it, that in connection with the claimant's grievance, and grievance appeal, many of the investigation witness statements taken by Professors Connelly and Jenkins, and provided to the claimant, were signed by the witness, but not dated.

20 241. Also, the claimant does not appear to have been re-interviewed, in light of the additional information obtained by the grievance investigation officer (Professor Connolly), or grievance appeal manager (Professor Jenkins), before they issued their respective outcome letters to the claimant.

25 242. We were not provided with a copy of whatever is the respondent's internal Grievance Procedure, and so we cannot benchmark it against best practice, or even the *ACAS Code of Practice on Disciplinary and Grievance Procedures*, but it does seem to us, from our own knowledge of such matters, that the respondent's administration of paperwork, and due process in grievances, might be worth revisiting.

243. It is to be hoped that, arising from this case, lessons have been learned already by the respondent, about the importance of contemporary record / note taking by managers, properly dated, and preferably signed as agreed by



both employee, their representative (if any) and manager / supervisor, conducting a meeting with them.

244. Likewise, through the relevant Trade Unions, and the joint negotiating machinery at the University that we heard something about in the course of the evidence led before us at this Final Hearing, we trust that the respondent can look again at its promotion policy, and perhaps revisit its application form, to see how it might be revised to take account of an individual's personal circumstances, including any caring responsibilities, when applying for promotion.
245. Such a review might also consider the extent to which, if at all, applicants for promotion who are also on the University's Carer's Register can be guided as to how to apply, and the relevant decision makers at Head of Subject, Head of School, and Head of College, as well as College Promotion Committee, and University Board of Review, guided as to how to take such matters into account.
246. Finally, given the mixed views about the benefits (if any) of Professorial consultation as part of the promotion process, the respondent may also wish to consider that matter further, when next reviewing their promotion policy, and criteria.
247. We make no comment on the claimant's proposal, at her paragraph 432, that the respondent should remove the Esteem criteria from the promotion or rezoning process by the time of the 2023 promotion round if not sooner in line with the removal of Esteem from the REF process.
248. As we understand it, from the limited evidence we heard from various witnesses at this Final Hearing, *REF*, the academic acronym for *Research Excellence Framework*, is a UK wide process across higher education institutions, including the respondent, and not just Glasgow University.
249. In these circumstances, decisions on such matters are, we suggest, best left with senior academics who fully understand the processes in place, and who

can properly assess the implications of any change. That is not a matter within the experience of the Employment Tribunal.

Employment Judge: Ian McPherson

Date of Judgment: 17 January 2023

5 Entered in register: 18 January 2023  
and copied to parties