



EMPLOYMENT TRIBUNALS

Claimant: Mrs M Perrott

Respondents: (1) Imperial College of Science and Technology
(2) Ms A Kelly
(3) Ms M Langton
(4) Professor J Mestel
(5) Ms A Kehoe
(6) Ms N Hirjee
(7) Ms A Gourlay
(8) Professor A Gast
(9) Mr G Jones
(10) Mr T Lawrence
(11) Professor M Burgman
(12) Ms O Fenrandez
(13) Professor D Haskard
(14) Mr N Houghton
(15) Professor I Walmsley
(16) Mr T Ovenden
(18) Mr H Brar
(19) Farrer & Co LLP
(20) Ms A Kendle

RECORD OF A PRELIMINARY HEARING

Heard at: (in public; by Cloud Video Platform) **On:** 18, 19, 20 and 21 October 2022

Before: Employment Judge Joffe

Appearances

For the claimant: Mr Perrott, lay representative

For the respondents: Mr N Pourghazi, counsel

JUDGMENT

1. The respondents' responses are not struck out.

2. The claimant's claims in claims numbered 2200345/2022 and 2201863/2022 are struck out save for those set out in the list of issues below.
3. The following respondents are removed from the proceedings:
 - a. Ms A Kehoe
 - b. Ms N Hirjee
 - c. Ms A Gourlay
 - d. Professor M Burgman
 - e. Mr T Lawrence
 - f. Mr T Ovenden
 - g. Farrer & Co LLP
 - h. Ms A Kendle.

Note: For reasons of time, full reasons were not given at the hearing and are not included with this Judgment. Full written reasons will be provided separately.

CASE MANAGEMENT ORDERS

Further open preliminary hearing

1. There will be a further open preliminary hearing on **6 and 7 February 2023** before Employment Judge Joffe to:
 - 1.1 Consider any remaining strike out and deposit order applications;
 - 1.2 Consider which respondents should remain in the proceedings;
 - 1.3 Consider whether the claims should all be heard together;
 - 1.4 Case manage all claims, including the claimant's fourth and fifth claims, which the respondents have not yet responded to;
 - 1.5 Consider whether the current listing for the full merits hearing in May 2023 can be retained.

Amendment

2. The claimant application to amend her first claim was refused.
3. The respondents' application to substitute detailed grounds of resistance in claims 1 to 3 was allowed.

Applications

4. The claimant's application for deposit orders against the respondents was refused as was her application that other action be taken against the respondents under rule 6 of the Rules of Procedure.
5. The claimant withdrew her applications for specific disclosure and further information after we had a discussion about general disclosure and the purposes of further information.
6. I allowed the respondents' application to exclude three categories of evidence:
 - a. The claimant's grievance from 2005;
 - b. The claimant's allegation of unaddressed historic claims of bullying and aggression which she accepted in her second claim form were not connected to any person in the current proceedings;
 - c. Allegations of bullying and aggression by Mr M Sanderson and Professor Gast in relation to others (not the claimant), covered in a report by Jane McNeill KC.
7. After the claimant and her representative drafted the lists of her most important claims in claims 2 and 3, we worked through those claims carefully and discussed the wording recorded in the list of issues for claims 2 and 3 below, That wording reflects the claims which have not been struck out, and, save for the incorporation of the further information, the expectation is that those issues will not change. For the avoidance of doubt, the striking out of the remainder of the claim forms in claims 2 and 3 does not prevent the claimant from giving any evidence relevant to the issues which remain which is referred to in those claim forms.
8. These claims have already required an unusual amount of case management. It is intended that the hearing in February will be the last case management hearing and the parties should cooperate with one another to achieve that outcome. As we discussed at the hearing, it is in everyone's interests for these claims to be heard as quickly and efficiently as is practicable. Parties should take a sensible view as to what applications are proportionate and worthwhile.

Further information

9. The claimant must write to the Tribunal and the respondents by 4 pm on **11 November 2022** with the following information:
 - 7.1 What key statements made by the claimant Mr Jones is said to have left out of the minutes of meetings;
 - 7.2 What material inconsistencies between oral evidence and written statements the claimant says Mr Jones failed to cross reference;
 - 7.3 In what other ways the grievance outcome report of Mr Jones and Mr Houghton is said not to be balanced, fair and objective;
 - 7.4 Which material parts of the claimant's appeal were missed by Professor Mestel when he 'rewrote' her appeal;
 - 7.5 Which delays in the grievance and grievance appeal processes the claimant says were unreasonable;
 - 7.6 What protected disclosures the claimant says she made, setting out the dates of the communications and saying what type of wrongdoing she says her

disclosures tended to show, by reference to the categories set out in the list of issues below.¹

The further information is to be contained in no more than one typed sheet of A4 per item of further information, in a font size no less than 11 and with line spacing at least 1.5 lines.

Strike out applications

10. By 4 pm on **30 November 2022**, the claimant will send to the respondents and the Tribunal her response to the respondents' applications for strike out and deposit orders in claim 1. That document should be no more than 35 pages of A4 in a font no less than 11 and with a line spacing no less than 1.5 lines .
11. By 4 pm on **16 December 2022**, the respondents will send to the claimant and the Tribunal any reply to the claimant's document.
12. By 4 pm on **2 December 2022**, the respondents must send to the claimant and the Tribunal any applications to strike out on the basis of no reasonable prospects and/or deposit orders in respect of claims 2 and 3, the applications to be in the level of detail of a skeleton argument.
13. By 4 pm on **13 January 2023**, the claimant will send to the respondents and the Tribunal her reply to any strike out / deposit order applications in claims 2 and 3.
14. By 4 pm on **6 January 2023**, the respondents will write to the claimant and the Tribunal with any applications they wish to pursue to strike out claims 4 and 5 as being vexatious.
15. By 4 pm on **27 January 2023**, the claimant will write to the Tribunal and the respondent with any skeleton argument she wishes to rely on in respect of any strike out applications in claims 4 and 5.

Lists of claims in claims 4 and 5

16. By 4 pm on **30 November 2022**, the claimant will write to the respondents and the Tribunal setting out no more than ten claims for each of claims 4 and 5 which represent her most important claims in each claim form.
17. The parties are encouraged to seek to agree lists of issues in claims 4 and 5.

Extension of time for responses in claims 4 and 5

18. By consent the respondents are not required to submit detailed grounds of response in claims 4 and 5 until a date to be determined at the further open preliminary hearing.

¹ This further information was not discussed at the hearing but is clearly necessary to complete the list of issues.

Variation of dates

19. The parties may agree to vary a date in any order by up to 14 days without the Tribunal's permission, but not if this would affect the hearing date.

About these orders

20. These orders were made and explained to the parties at this preliminary hearing. They must be complied with even if this written record of the hearing arrives after the date given in an order for doing something.
21. If any of these orders is not complied with, the Tribunal may: (a) waive or vary the requirement; (b) strike out the claim or the response; (c) bar or restrict participation in the proceedings; and/or (d) award costs in accordance with the Employment Tribunal Rules.
22. Anyone affected by any of these orders may apply for it to be varied, suspended or set aside.

Writing to the Tribunal

23. Whenever they write to the Tribunal, the claimant and the respondent must copy their correspondence to each other.

Useful information

24. All judgments and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.
25. There is information about Employment Tribunal procedures, including case management and preparation, compensation for injury to feelings, and pension loss, here:
<https://www.judiciary.uk/publications/employment-rules-and-legislation-practice-directions/>
26. The Employment Tribunals Rules of Procedure are here:
<https://www.gov.uk/government/publications/employment-tribunal-procedure-rules>
27. You can appeal to the Employment Appeal Tribunal if you think a legal mistake was made in an Employment Tribunal decision. There is more information here:
<https://www.gov.uk/appeal-employment-appeal-tribunal>

CASE SUMMARY

28. The claimant is employed by the first respondent university. Her first claim is about the first respondent moving her from her existing role to another role and

related issues. Subsequent claims largely concern the grievances and grievance appeals which have arisen from those initial events.

The Issues

29. The issues the Tribunal will decide are set out below.

1. Disability

- 1.1 Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:
 - 1.1.1 Did she have a physical or mental impairment?
 - 1.1.2 Did it have a substantial adverse effect on her ability to carry out day-to-day activities?
 - 1.1.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
 - 1.1.4 Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?
 - 1.1.5 Were the effects of the impairment long-term? The Tribunal will decide:
 - 1.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?
 - 1.1.5.2 if not, were they likely to recur?

2. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

- 2.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?
- 2.2 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:
 - 2.2.1 Having a paralegal to takes notes in the grievance appeal hearing.
- 2.3 Did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that the presence of the paralegal exacerbated the claimant's anxiety?
- 2.4 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?
- 2.5 What steps could have been taken to avoid the disadvantage? The claimant suggests:
 - 2.5.1 Recording the hearing;

- 2.5.2 Providing someone else to take notes of the hearing.
- 2.6 Was it reasonable for the respondent to have to take those steps?
- 2.7 Did the respondent fail to take those steps?

3. Victimization (Equality Act 2010 section 27)

- 3.1 Did the claimant do a protected act as follows:
 - 3.1.1 Her written assertion to Mr H Brar on 8 January 2021 that she had been indirectly discriminated against due to her sex;
 - 3.1.2 Her claim in a letter to Mr Jones (IO) and Mr Houghton (HR Support) on 24 March 2021 that since she sent her letter to Mr Brar on 8 January 2021 she had been victimised;
 - 3.1.3 Lodging her claim form in her first claim on 29 January 2021.

- 3.2 Did the respondent do the following things:
 - 3.2.1 Mr Jones failing to conduct a full and proper grievance investigation between 1 March 2021 and 27 August 2021 in that:
 - 3.2.1.1 He asked which witnesses the claimant wanted but did not interview any of them and failed to explain in his report why not;
 - 3.2.1.2 He delayed providing the claimant with minutes of meetings;
 - 3.2.1.3 He left key statements by the claimant which would have assisted her case out of the minutes of meetings;
 - 3.2.1.4 He did not properly investigate allegations of bullying and gaslighting against Mr Ovenden;
 - 3.2.1.5 He did not give the claimant the opportunity to comment on what the respondents' witnesses said but the respondents' witnesses had the opportunity to comment on what the claimant said;
 - 3.2.1.6 He did not cross reference inconsistencies in the oral evidence of witnesses with their written statements, including evidence about whether the claimant's contract allowed her to be moved in a non voluntary way;
 - 3.2.1.7 He did not interview Ms Duda, investigate the contractual basis of her move or look at the documents which contained the offer of the move and showed the terms on which the move was offered in order to compare the claimant's forcible move with Ms Duda's voluntary move and obtain evidence as to whether Ms Duda's move was subject to review;
 - 3.2.1.8 He did not compare the job descriptions for the role the claimant had at the time as a part time role and the

- role she was being made to take up on a non-voluntary basis. The claimant says this should have been investigated in order to determine whether the new role was a like for like role as asserted by HR and whether it was truly on same grade as the claimant's role;
- 3.2.1.9 He did not request the Hays evaluation scoring for the role the claimant was offered.
- 3.2.2 Mr Jones and Mr Houghton failing to write a balanced, fair and objective grievance outcome report, in that:
- 3.2.2.1 They paid more heed to the respondents' witnesses evidence as shown by the relative number of quotes from the claimant as compared with quotes from the respondents' witnesses;
- 3.2.2.2 They used subjective language rather than making findings on the balance of probabilities.
- 3.2.3 Mr Jones initiating putting the claimant back under the management of Mr Ovenden temporarily on 13 April 2021, despite knowing that Mr Ovenden was the main focus of the claimant's grievance;
- 3.2.4 Mr Houghton and Mr Jones saying in the report that they had not investigated whether there was indirect sex discrimination because they said it was not properly articulated (which the claimant denies), but:
- 3.2.4.1 Failing to give the claimant the opportunity to further explain her indirect sex discrimination claim, and
- 3.2.4.2 Nonetheless finding that there was no indirect sex discrimination.
- 3.2.5 Mr Houghton and Mr Jones failing to investigate the acts alleged to be victimisation set out in the claimant's letter of 24 March 2021;
- 3.2.6 Mr Brar, HR Director, instructing the claimant to work on her appeal in her own not the college's paid time. The request to work on the grievance in paid time was made and refused on 7 October 2021;
- 3.2.7 Mr Brar giving the claimant a substantially shorter extension to work on her appeal than Mr Ovenden received when he worked on his grievance response. The claimant's request for an extension of time and the response to that request were dated 7 October 2021;
- 3.2.8 Professor Gast and Professor Walmsley not intervening in the claimant's case, despite the claimant advising them on numerous occasions that their senior management were breaching the Equality Act and the grievance and appeal procedures. A request to Professor Gast on 7 May 2021 was declined on 11 May 2021. Requests on 13 and 21 May to Professor Gast were declined on 21 May 2021. A request to Professor Gast on 10 August 2021 was declined on 11 August 2021. A request to Professor Walmsley on 12 December 2021 received no response;
- 3.2.9 Professor Walmsley failing to have the claimant's grievance against Professor Haskard and Ms Fernandez properly and

Case Numbers: 2201602/2021; 2200345/2022 and 2201863/2022

- independently investigated and letting them investigate themselves. The claimant made a request on 14 October 2021 which was refused on 21 October 2021. She asked again on 25 October 2021 and Professor Walmsley did not change his mind on that same date;
- 3.2.10 On 18 November 2021, in response to the claimant's appeal document, Professor Mestel saying that it would not be reasonable or proportionate to consider every comment in the document in detail and saying he would not do so;
- 3.2.11 Professor Mestel rewriting the claimant's complaints in a way which missed out parts of her appeal;
- 3.2.12 On 29 November 2021, Professor Mestel declining to take forward the claimant's grievances against Mr Jones (dated 21 November 2021) and Mr Houghton (dated 23 November 2021) as separate grievances;
- 3.2.13 Ms Langton requesting Farrer & Co (Ms Kendle) to provide a paralegal, Mr Evans, to act as a notetaker in the claimant's first grievance appeal meeting on 16 December 2021;
- 3.2.14 Professor Mestel's conduct to the claimant in the claimant's appeal hearing on 16 December 2021:
- 3.2.14.1 Not letting Mr Perrott read a statement;
 - 3.2.14.2 Repeatedly badgering the claimant by asking her who wrote the statement;
 - 3.2.14.3 Asking repeatedly and aggressively and belittlingly if her representative had input into this opening statement (the badgering lasting 5 – 6 minutes);
 - 3.2.14.4 Shouting at the claimant;
 - 3.2.14.5 Flailing his arms in the air;
 - 3.2.14.6 Not accepting the claimant's answers;
 - 3.2.14.7 When the claimant answered questions, saying that was not an answer;
 - 3.2.14.8 Badgering the claimant to answer his questions repeatedly even when she had already provided an answer;
 - 3.2.14.9 Ignoring what the claimant had said entirely at times;
 - 3.2.14.10 At times constantly interrupting the claimant when she was answering questions;
- 3.2.15 On 17 January 2022, Mr Brar refusing to take forward the claimant's grievance against Professor Mestel, Ms Langton and Ms Kelly (submitted on 5 January 2022);
- 3.2.16 Delays in the grievances and grievance appeals;
- 3.2.17 On 19 January 2022 the respondents declining to address all of the claimant's alleged protected disclosures, as set out in her letters of 21 November 2021 and 3 December 2021;
- 3.2.18 Ms Langton and Professor Mestel refusing to remove Mr Evans from the appeal hearing.
- 3.3 By doing so, did it subject the claimant to detriment?
- 3.4 If so, was it because the claimant did a protected act?

3.5 Was it because the respondents believed the claimant had done, or might do, a protected act?

4. Direct sex and/or race discrimination (Equality Act 2010 section 13)

4.1 Did the respondents do the following things:

4.1.1 The acts or omissions at 3.2.1, 3.2.2, 3.2.3, 3.2.4, 3.2.5, 3.2.6, 3.2.7, 3.2.10, 3.2.11, 3.2.12, 3.2.14?

4.2 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated.

The claimant says she was treated worse than:

For 3.2.1: Professor Gast

For 3.2.7: Mr Ovenden

For 3.2.14: Mr Jones

4.3 If so, was it because of race and/or sex?

4.4 Did the respondents' treatment amount to a detriment?

5. Direct disability discrimination (Equality Act 2010 section 13)

5.1 Did the respondent do the following things:

5.1.1 The acts or omissions at 3.2.13 and 3.2.18.

5.2 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated.

5.3 If so, was it because of disability?

5.4 Did the respondents' treatment amount to a detriment?

6. Harassment related to sex and/or race (Equality Act 2010 section 26)

- 6.1 Did the respondent do the following things:
 - 6.1.1 The acts at 3.2.14 and 3.2.18.
- 6.2 If so, was that unwanted conduct?
- 6.3 Did it relate to sex and/or race?
- 6.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
- 6.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

7. Remedy for discrimination or victimisation

- 7.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?
- 7.2 What financial losses has the discrimination caused the claimant?
- 7.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
- 7.4 If not, for what period of loss should the claimant be compensated?
- 7.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
- 7.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
- 7.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?
- 7.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 7.9 Did the respondent or the claimant unreasonably fail to comply with it by [specify breach]?
- 7.10 If so is it just and equitable to increase or decrease any award payable to the claimant?

7.11 By what proportion, up to 25%?

7.12 Should interest be awarded? How much?

8. Protected disclosure

8.1 Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

8.1.1 What did the claimant say or write? When? To whom? The claimant says she made disclosures on these occasions:
[Claimant to provide further information]

8.1.2 Did she disclose information?

8.1.3 Did she believe the disclosure of information was made in the public interest?

8.1.4 Was that belief reasonable?

8.1.5 Did she believe it tended to show that:
[Claimant to provide further information]

8.1.5.1 a criminal offence had been, was being or was likely to be committed;

8.1.5.2 a person had failed, was failing or was likely to fail to comply with any legal obligation;

8.1.5.3 a miscarriage of justice had occurred, was occurring or was likely to occur;

8.1.5.4 the health or safety of any individual had been, was being or was likely to be endangered;

8.1.5.5 the environment had been, was being or was likely to be damaged;

8.1.5.6 information tending to show any of these things had been, was being or was likely to be deliberately concealed.

8.1.6 Was that belief reasonable?

8.2 If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer.

9. Detriment (Employment Rights Act 1996 section 48)

9.1 Did the respondent do the following things:

9.1.1 The acts or omissions at 3.2.12, 3.2.13, 3.2.14, 3.2.15, 3.2.17, 3.2.18.

9.2 By doing so, did it subject the claimant to detriment?

9.3 If so, was it done on the ground that she made a protected disclosure?

10. Remedy for Protected Disclosure Detriment

- 10.1 What financial losses has the detrimental treatment caused the claimant?
- 10.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
- 10.3 If not, for what period of loss should the claimant be compensated?
- 10.4 What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that?
- 10.5 Has the detrimental treatment caused the claimant personal injury and how much compensation should be awarded for that?
- 10.6 Is it just and equitable to award the claimant other compensation?
- 10.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
- 10.8 Did the respondent or the claimant unreasonably fail to comply with it?
- 10.9 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
- 10.10 Did the claimant cause or contribute to the detrimental treatment by their own actions and if so would it be just and equitable to reduce the claimant's compensation? By what proportion?
- 10.11 Was the protected disclosure made in good faith?
- 10.12 If not, is it just and equitable to reduce the claimant's compensation? By what proportion, up to 25%?

Employment Judge Joffe
25/10/2022

Sent to the parties on:

25/10/2022

For the Tribunal Office:

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