



## EMPLOYMENT TRIBUNALS

**Claimant**

Professor N Savelyeva

v

**Respondent**

University of Southampton

### REDACTED Judgment and Reasons

**Heard at:** Southampton

**On:** 15, 16,17 and 18 August (in chambers) 2022

**Before:** Employment Judge Rayner  
Ms C Date  
Mr P English

**Appearances**

**For the Claimant:** Mr Franklin, Counsel

**For the Respondent:** Mr T Dracas, Counsel

1. Each of the Claimant's claims of detriment contrary to section 47B ERA 1996 set out in the ET1 and the List of issues that she was subject to detriment for making protected disclosures are dismissed.
2. The Claim is dismissed for the reasons set out below.

### Reasons

**Background and pleadings.**

1. The allegations made by Professor Savelyeva, the claimant in this case, arise against the background of the National and International Covid -19 pandemic of 2020.
2. At the time that the majority of the matters complained about took place, the claimant was a Principal Research Fellow in the Cancer Sciences School at the faculty of medicine at the University of Southampton. Professor Savelyeva's particular area of

research and expertise is cancer research. The claimant had worked at the Southampton University for about 21 years and in 2019/2020 had been working on the development of a cancer vaccine for a particular form of head and neck cancer. A key member of the project team was Dr Chuan Wang.

3. Prior to the Covid 19 pandemic and the national lockdown the claimant had been offered a professorial appointment at the University of Liverpool, which would have meant the move of the project being pursued at Southampton University to the University of Liverpool.
4. However, when the national lockdown was imposed the appointment was frozen in anticipation of financial difficulties. The claimant therefore remained at the University of Southampton and continued with research at that institution. Following the lifting of the national lockdown the claimant was offered a post at University of Liverpool as a Professor in the Department of molecular and clinical cancer medicine, commencing in July 2021, which she accepted and where she still works
5. It is understood that Dr Wang was also appointed to a position at Liverpool University, and that he too remains employed there.
6. Professor Savelyeva was a senior academic on the Southampton project. Dr Chuan Wang worked with her as a principal researcher and was named in the contract with funders. He had particular expertise in several aspects of project research, including a process called electroporation.
7. We were told, and we accept, that this was a key part of the project, a specialist area of expertise and one which nobody else involved in the project possessed.
8. Professor Savelyeva told us, and we accept, that the University of Southampton was one among a few in the United Kingdom, which held a status of Cancer Research UK Centre, or CRUK.
9. The status was given to leading research organisations which were focusing on translating scientific discovery into practical applications for the improvement of

prospects for cancer patients. The status, we are told, led to significant benefits for the institution, including technical staff and equipment for example.

10. The issues about which the claimant raises her concerns took place primarily between May and October 2020, and arose in respect of action taken by the University against both the claimant and her research assistant Dr Wang over allegations that they had broken Covid 19 restrictions by entering and working in one of the University laboratories, without prior permission and approval.
11. The claimant asserts that her treatment and the way that several concerns she raised were dealt with, was the result of protected disclosure which she says she made on 8 June 2022 to Prof Tim Underwood, and which she says she repeated both to Karen Nugent and others on two subsequent occasions
12. The claimant complains that as a result of her making a protected disclosure, decisions were taken by the respondent about her research assistant Dr Wang's continued involvement in the research project, and about disciplinary action against her, and about her continued relationship with the University after she had left. She says that the treatment was detrimental to her and was materially influenced by the disclosures which she says she made.
13. The claimant issued her proceedings against the respondent on 18 November 2020, alleging that she had been subjected to detriments for having made public interest disclosures.
14. The Respondent filed their initial response, on the 25 January 2021. In their response they denied that anything the claimant wrote in the emails, letters or complaints or relied upon amounted to a protected disclosure. They further denied that, if there had been a protected disclosure, any detriment that the ET might find to have occurred was caused or contributed to in any material sense by any such disclosure made by the claimant.
15. The issues to be determined in this case were set out in the Case Management Order of EJ Livesey of 10 August 2021. This list of issues was discussed with the

parties at the commencement of this hearing and the parties agree that the issues fairly reflected the claims being brought.

16. Respondent counsel drew my attention to a further amended response, which postdated the case management orders in which the respondent had provided further details of the response. This comprised firstly, a letter of 24 August 21, attaching further particulars of the respondents, but also a document header *further particulars of response*.

17. These further particulars provided a response to issues identified for the first time at the case management hearing on 10 August, as a result of the claimant having been given leave to amend her claim to add to further detriments, both of which post-dated the issuing of her claim form and concern her treatment post-employment.

18. The two additional detriments are set out below and concerned firstly, the process by which the claimant was granted visitors status and secondly an allegation that Prof Underwood insisted that the claimant make a case for funding for her to attend at SOU post-employment, to carry out certain roles and functions. The claimant alleged that it had been agreed previously with her that this was something which the university would fund, and that Professor Underwood had intervened to change the decision because of her protected disclosures.

**19. The Agreed issues are therefore as follows:**

**1. protected disclosure ('whistle blowing')**

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

1.1.1 What did the Claimant say or write? When? To whom? The Claimant says she made disclosures on these occasions:

- a. A disclosure in writing by email to Professor Underwood on 8 June 2020;
- b. A disclosure to Miss Nugent in writing by email on 14 June 2020;
- c. A disclosure to Professor Eccles in writing by email on 29 June 2020.

1.2 Were the disclosures of 'information'?

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

1.1.4 Was that belief reasonable?

1.1.5 Did she believe it tended to show that:

1.1.5.1 A person had failed, was failing or was likely to fail to comply with any legal obligation. In respect of all three disclosures, the Claimant alleges that the disclosures suggested that Dr Wang was being subjected to harassment under the Equality Act and that there might have been a failure to comply with the contractual duties in the funding arrangements;

1.1.5.2 The health or safety of any individual had been, was being or was likely to be endangered. The Claimant alleges that, in the disclosures referred to within paragraph 1.1.1.2 and 1.1.1.3 above, concerns were expressed about the additional workload that would fall upon her and the extent to which she would suffer stress and a deterioration in her health.

1.1.6 Was that belief reasonable?

1.2 If the Claimant made a qualifying disclosure, was a protected disclosure because it was made to the Claimant's employer? The Respondent accepts that that was the case.

## **2. Detriment (Employment Rights Act 1996 section 47B)**

2.1 Did the Respondent do the following things:

2.1.1 Commenced a disciplinary investigation into the Claimant's alleged conduct by letter dated 13 June 2020;

2.1.2 Professor Eccles' alleged unreasonable refusal of the Claimant's request to permit Dr Wang to return to the laboratory as a visitor to complete his experiments on 16 July 2020;

2.1.3 Mistakenly finding that she had been guilty of conduct in relation to building access (paragraphs 27-30 of the Claim Form)

2.1.4 Modifying the disciplinary allegation and then reaching a further conclusion on that modified allegation without process (paragraphs 34-35 of the Claim Form);

2.1.5 Ms Nugent failed to investigate the Claimant's complaint in relation to Professor Underwood's treatment of her, which was set out in her email to Professor Eccles on 29 June 2020;

2.1.6 Professor Eccles' alleged 'inflation' of the findings in the investigation report (paragraph 33 of the Claim Form);

2.1.7 Failure to refer her complaint to the Respondent's Chief Operational Officer following her request on 28 September 2020;

2.1.8 Following her appointment to the role of Professor, as detailed in her resignation letter of 12 May 2021, the Respondent refused or failed to bestow the title of 'Professor' to the Claimant's visitor status, instead electing that her visitor status should be that of 'Principal Research Fellow';

2.1.9 Professor Underwood intervening, on or about 17 June 2021, to insist the Claimant made a case for the funding for retaining a formal role after her resignation, despite one of the Respondent's other professors already having requested that she continue to collaborate on projects and the Faculty and the Dean having explored terms of that retention.

2.2 By doing so, did it subject the Claimant to detriment?

2.3 If so, was it done on the ground that she had made the protected disclosures set out above?

20. The respondent counsel provided a short, helpful opening statement setting out a summary of the respondent's position and a brief summary of the key legal principles.

21. The claimant's counsel provided helpful written closing submissions, setting out the key legal principles and a summary of the findings of facts he asserts we should make and why, and how the law would apply to such findings.

22. We are grateful to both counsel for their submissions which have assisted us in reaching our decisions.

### **The hearing**

23. We heard evidence from Professor Savelyeva on the first and second day of hearing on her own behalf. She called no other witnesses.

24. Over the second and third day of hearing we heard evidence on behalf of the respondent, from the following people:

24.1. Professor Underwood, Head of Cancer Sciences School, Faculty of medicine and the claimant's line manager.

24.2. Miss K Nugent, Clinical Senior Lecturer, cancer sciences school, faculty of medicine.

24.3. Professor Diane Eccles, Dean of medicine, University of Southampton.

25. We also heard the parties' closing submissions at the end of the third day of hearing.

26. The case has been listed for four days to deal with liability only, and following discussion with the parties, the panel determined that the appropriate way forward was to reserve our decision. The fourth day of the hearing was therefore in Chambers without the attendance of the parties.

27. At the end of submissions, during discussion, Mr Franklin, counsel for the claimant raised a concern about the detail contained in the list of issues and reminded the tribunal that the claimant's claims are set out in more detail within her claim form.

28. I reminded the parties that there had been a discussion about the list of issues at the start of this hearing and that both parties had agreed that the list of issues was a fair reflection of the issues between them. Nonetheless, we accepted that the claimant's pleaded case is more nuanced and slightly more detailed than is set out in the list of issues and accept that the respondent provided further particulars of claim following the agreement of the list of issues at case management hearing. For this reason, the panel has referred to the pleaded case of both the respondent and the claimant where necessary and in particular in respect of detriment numbered 2.1.1 above, concerning the decision to institute disciplinary action against the claimant.

29. This is because Mr Franklin asserts that in the pleaded case, it is stated that *Prof Underwood made the allegations without reasonable cause to believe them, having failed to conduct any form of investigation or discussed them with the claimant before sending the investigation letter*. This is at paragraph 21 of the particulars of claim.

30. Secondly, it is stated that by starting the disciplinary investigation against the claimant, Prof Underwood subjected to the claimant to a detriment.

31. The agreed issue in the list of issues is sufficiently broad to encompass both allegations, and we have treated it as such.

32. The parties also provided us with an agreed bundle of documents which have a section of pleadings at the beginning of the bundle which is separate to the documentation and which is numbered using Roman numerals. The panel observe that the use of this numbering system was unhelpful and often difficult to navigate.

33. Within that first section there is a document which the parties confirmed was an agreed chronology, although the parties also both asserted that some of the factual statements contained within it were not agreed.

34. We have therefore used the chronology as a tool to identify the sequence of events and dates of them, but have ignored any statements of the meaning or content of any particular letter or email conversation within it, and have relied on the evidence



from the witnesses, and from the documents themselves instead in making our findings of fact.

### **Findings of Facts**

35. In March/April 2020, following an alarming increase in the number and rate of infections in the UK population of covid-19, the government imposed a national lockdown. The effect of the lockdown was to impose significant restrictions on the rights of individuals to attend at a workplace or even to leave the home, other than for stated reasons. Individuals were required to work from home unless they were involved in stated industries such as healthcare or food manufacturing or delivery, for example, and were not permitted to leave their home, other than for the purposes of buying food or taking exercise, for example. People were required to socially distance and were not allowed to mix with people outside their home.

36. The reasons for these very stringent measures being put in place, not just in the United Kingdom, but in many countries worldwide, was because of concerns about the spread of a highly infectious and potentially lethal virus. In the summer of 2020, there was no vaccine and a considerable number of people died as a result of contracting the virus. There was significant pressure placed on the National Health Service as a result.

37. In addition, there were concerns about the source of the virus. The claimant is right that there were suggestions from some quarters that the virus had originated in a research laboratory in China.

38. Hearing this case in 2022, following the production and delivery of a successful vaccine program, which has enabled life to return to relative normality, it has been necessary to remind ourselves throughout this case of the levels of fear and concern that existed across the population in the spring and summer of 2020, and the general acceptance by the population, at the early stages at least, that the measures were necessary and should be strictly enforced.

39. The imposition of the national lockdown required institutions such as Southampton University to introduce immediate rules and restrictions upon their staff. The respondent did this by issuing clear directives to all staff about the restrictions imposed on attendance at the University and about working during lockdown.

40. Southampton University imposed restrictions on access to the workplace on all staff, with specific and detailed rules for those who had worked in the various laboratories. The default position was that access to the workplace, and to the laboratories was denied, and that staff were only allowed to enter the buildings at all for specific and defined purposes, for which prior permission had to be granted. There were further requirements imposed on staff if they did have permission to work in the laboratories, to do so only on dates specified and to sign in and out each time for example.

41. We find that the restrictions imposed by Southampton University were appropriate and necessary and were imposed for the purposes both of complying with the national legal requirements but also with the purpose of ensuring as far as possible, the protection of the health and safety of those employed by, and sometimes attending at their workplace in Southampton University.

42. We accept that there were several ongoing research projects which were severely impacted by the restrictions, and accept that these were all considered but despite the research projects, that the senior staff at SOL imposed the restrictions for good reasons and took them very seriously.

43. As Professor Savelyeva pointed out to us, there were concerns about how the virus had entered the population, and we accept that laboratories doing the sort of work her project was engaged with needed to ensure high levels of safety and security.

44. The claimant states in her witness statement that as she was not expecting to work in the buildings during the project, she did not pay attention to the minutiae of the rules and was not copied into much of it. We find that she was copied into the rules and restrictions relevant to her own area of work, and that as a senior researcher she ought to have ensured that she was fully aware of the rules in place. We consider that her prioritisation of her own project work, and her lack of interest in the detail of the rules and their seriousness, was one of the reasons why she took the stance she did over the following months.

45. In March 2020 as a result of communications between Southampton University and Hampshire Constabulary, staff were informed what to do regarding travel to and from work, and what to do if stopped by the police.

46. This was following on from an email of the 24 March 2020, regarding the circumstances in which in vivo working would be permitted. This was relevant to part of the Claimant's project.

47. That email was sent to Dr Wang, amongst others.

48. The email stated as follows:

*You are receiving this email to notify you that you will be granted a permit to allow you to continue and finish the ongoing in vivo experiment you have previously detailed to BRF level G or PUC staff.*

*Marcia Barnett will email you on behalf of the Dean with your permit for use at your respective facility. Please note that you must restrict all research activity on site to those associated DIRECTLY with the ongoing experiments.*

**YOU CAN NOT BEGIN ANY NEW EXPERIMENTS**

49. The email goes on to set out seven instructions to be followed when accessing facilities, including specific routes for moving around the South Academic Block; the requirement to use an after-hours sign in sheet when entering the building and an obligation to follow lone working procedures; strict adherence to all local rules of BRS PCU use; a requirement to consult with the PPL holder to consider and review the earliest possible endpoint for any ongoing experiments and to advise when experimentation is finished.

50. The email also states, *we must keep the number of personnel accessing the site to the bare and essential minimum at this time. These permissions will be under continual review and subject to change as necessary.*

51. On 27 April 2020, Mr Beers, who had responsibility for the laboratories contacted Prof Savelyeva to convey important information regarding new animal work. His email recognised it may be necessary to build in some laboratory time in order to

ensure that aspects of the research could be completed, taking account of the nature of the research being carried out.

52. A new timetable was suggested, and additional safeguarding measures which were considered necessary to ensure safe delivery of the highest animal welfare and staff safety were also set out. There were additional safeguarding measures, including the following.
53. Firstly, only designated users would be given access for the purposes of the approved experiments and activities directly associated with them.
54. Second, all experiments required a secondary permitted PIL user to be in place to take over in the event of the user becoming ill or needing to self-isolate.
55. Thirdly, access to the facilities, including the frequency of access, the time of access and the areas to be accessed, will be determined by the relevant BRF staff. This was to ensure social distancing could be maintained throughout the facilities. Facilities included door access; changing facilities; air showers; lobbies; holding rooms and procedure rooms.
56. Any requirement of the facilities outside of BRF or PCU needed careful consideration and would be considered once study plans were received.
57. Any invasive or high-risk procedure was to be carried out during BRF staff working hours and attendance, whilst non-invasive procedures might be scheduled to occur outside the BRF hours to maximize social distancing.
58. All new experiments required study plans as per the standard requirements but also required additional checks and a new form was provided. It was stated that any such study plan must be approved by the PPL holder under whose PPL the experiments were carried out. Dr Wang was carrying out experimentation under the supervision of Prof Savelyeva, who was the PPL in respect of the particular project.
59. We have set out the detail of the rules, because it underlines for us how seriously the University were taking the pandemic, and the careful and necessary steps being taken to facilitate ongoing project work. We were told by Miss Nugent, and we accept, that she was supervising and managing many research projects within the University at this time, many of which would in the ordinary course of events, have

access to the various labs in order to carry out research and experimentation. The research and experimentation being carried out by Prof Savelyeva and Dr Wang was one of several projects which needed to be balanced and managed to ensure the health and safety of all staff using the facilities as well of managing the risk of any contact between staff or with members of the public.

60. Following the email, the claimant and Dr Wang submitted a Covid 19 contingency BRS experimental study plan and included with it a study plan calendar, setting out the dates on which it was proposed Dr Wang would access the laboratories.

61. The study plan includes specific reference to access to the Somers building on most of the dates he proposed working.

62. On 7 May 2020, Mr Beers wrote back to Dr Wang and Prof Savelyeva , stating that the study plan with experimental identifier CW41 has been approved. The second line of the email stated, ***PLEASE NOTE ALL ACTIVITY MUST BE RESTRICTED TO CCI LABS AND PCU.***

63. The email then states, *you will need to collect any reagents materials you need from Somers and take to CCI. Matt Brimmell can help with coordinating collection from Somers and may need to provide an introduction to CCI level 3 lab (I'm not sure if you already have permissions). Steve Booth can then allocate you space for this work.*

*You must confirm the dates and times that you will carry out this with Lisa Dunning and Steve Booth before commencement.*

64. Prof Savelyeva responded saying that this was *great news*. It was confirmed in following correspondence that Dr Wang could not start in PCU until the following Tuesday.

65. One result of this correspondence was, we find that both Prof Savelyeva and Dr Wang were fully aware that they could not carry out any of the experimental work within the Somers building. The permission to access Somers at all was restricted to the collection of equipment only. This was to be done in conjunction and by

arrangement with staff. Both Professor Savelyeva and Dr Wang knew that all of the experimental work itself must be carried out in the CCI or PCU.

66. In late May 2020 it came to the attention of Prof Underwood that Dr Wang had apparently accessed the laboratories in breach of the covid restrictions.

67. On 1 June 2020 Prof Underwood wrote to Dr Wang, raising some questions about Dr Wang's access to the Somers building. He referred to the email that been sent on 7 May 2020, which we refer to in the paragraphs above.

68. He asked Dr Wang to provide an immediate answer the number of questions. He asked

68.1. how many times Dr Wang had accessed the Somers building and for what reason, and asked for dates and times.

68.2. Did he ask permission to enter Somers building on each of these occasions, and if so who from and could he provide evidence of the permission:

68.3. had Dr Wang been conducting any wet lab activity in the Somers building when explicitly told not to. This included working in the culture hoods.

69. Dr Wang responded the same afternoon, and there was then a telephone conversation between Prof Underwood and Dr Wang.

70. Following that telephone conversation, Prof Underwood wrote to Dr Wang thanking him for his prompt reply and stating that there appeared to be a number of inconsistencies between the response provided by him; the first-hand accounts of others, and the door monitoring systems in the CCI and Somers buildings. He stated that this gave him no option but to suspend Dr wang's access to the Somers building and CCI and to start a formal investigation into Dr Wang's conduct.

71. He suggested that Dr Wang speak to his supervisor to find a way for another member of the team to complete his experimentation as they did not want to see the PCU resource wasted.

72. This email was copied to Professor Savelyeva, who then responded the same evening, stating that she had looked at Dr Wang's experimental schedule and asking

Prof Underwood if it would be possible to enforce his decision from Wednesday and not the following day, which was the Tuesday.

73. She stated, *tomorrow Chuan (Dr Wang) needs to do electroporation on his mice. He is the only one who has been trained to use the device. If he does not boost these 53 mice tomorrow the experimental schedule will be severely disrupted (if possible, to complete et al sic) this one day will make all the difference to the success of the vaccine candidate selection and to my stress level. I am extremely worried.*

74. Professor Underwood replied to Professor Savelyeva and copied Mr Beers in, agreeing that it would be reasonable to delay the suspension of Dr Wang until end of play on the Tuesday. He stated that Dr Wang should only come to work for that specific part of the experiment.

75. Following this exchange of emails on the 1 June 2020 Dr Wang was suspended.

76. Prof Underwood contacted Prof Eccles, the Dean of the faculty, on 2 June 2020, to ask her to formally nominate him as the initiator of an investigation into the recent behaviour of Dr Wang. He set out in summary the nature of his concerns and stated that he wanted to move quickly to complete things to give Dr Wang resolution.

77. In fact, Prof Eccles was not available and therefore somebody called John Holloway nominated Prof Underwood in her absence.

78. The next step that Prof Underwood took was to contact Miss Nugent to ask her to investigate the matter. He copied in HR2, who was dealing with the matter from the human resources team.

79. He provided Miss Nugent with a list of relevant people to contact. Miss Nugent discussed the matter with HR2, and then set about investigating, by contacting the various named individuals and asking them to provide her with witness statements or a witness report.

80. One of the individuals that she contacted was Prof Savelyeva, who she wrote to on the 5 June 2020. She asked the Claimant to provide a response to a list of questions and stated that the document would form her witness statement. She also asked for any other information that Prof Savelyeva thought might be useful in explaining the process of accessing the different labs.

81. She explained that following the investigation, a report of her findings would be provided to Prof Eccles, who would then decide what course of action, if any, was appropriate.
82. The claimant says she became concerned about the impact of the suspension of Dr Wang on the project and therefore she wrote an email dated 8 June 2020 to Prof Underwood.
83. It is this email that the claimant says amounts to a first protected disclosure within the meaning of the Employment Rights Act 1996.
84. The email was written at 12:11pm and headlined confidential. It states as follows:

*Dear Tim*

*I felt it is my duty to summarise the current situation. You may have heard some of this before, but here is a more complete picture.*

*We have been working on the development of a therapeutic vaccine for HPV – negative head and neck cancer with colleagues in cancer research, Malaysia, which led to an IP jointly filed in October 2019. This IP is in the final stage of licensing to Touchlight Genetics (TGL), with the milestone payments to UoS with projections to bring overall 15-20 million pounds. To accelerate further development, together with TGL we have secured CRUK CDD funding for phase 1a and 1b clinical trials. Within this major development Chuan has undertaken a very demanding project on optimisation of the clinical vaccine candidate, funded by the licensor TGL. (FEC+10hPI time; 14.5k per month excluding consumables and BRF). This work is milestone driven and must be reported to CRUK on the milestone completion on the milestone completion/ timelines.*

*The vaccine candidate selection was expected to be completed this month and that's when funding was due to finish. Because of Covid this is a little behind schedule and TGL has agreed to extend the funding to enable Chuan to complete his work. Once that work is completed, TGL has also agreed to provide funding for the further work required to increase the scope of our IP coverage, which is usually funded by the University. This work is required to achieve the milestones; deadline for submitting of the new license to the patents office early September. If this does not happen the license can be returned to UoS.*



*In anticipation of his contract ending at the end of June, Chuan secured a position elsewhere, but kindly agreed to delay its start to enable us to complete the work required for both the trial and the patent.*

*Following his suspension on Monday, Chuan has now told me that he does not wish to stay beyond his current contractual term.*

*He believes he has been harassed over the past month at work, including receiving petty and unnecessary emails late at night from another member of University staff while trying to complete a complex and demanding task without any help because of social distancing.*

*To now face a suspension from attending the lab and an investigation which he believes is linked to the harassment is one thing too many for him. He is extremely upset, as a result of which he has now chosen to take accrued holiday leave, owing to him, for the rest of this month*

*In the absence of Chuan, my group will not have appropriately qualified personnel to complete the work. Finding a replacement won't be possible due to the exceptional skills and experience required to complete the project and the very short time remaining to do so.*

*As a result of this, I will now have to inform both TGL and CRUK that we cannot deliver on the project, which most likely will result in significant financial losses to university and risk the loss of the licensure. This will be both unfortunate for the project and damaging to university. Furthermore, we also have contractual obligations to Cancer Research Malaysia, (the joint IP owner) to complete the licensure.*

*I do hope you can intervene to prevent these consequences, so that I can persuade Chuan to complete the project as planned.*

*With kind regards*

*Natalia.*

85. The claimant told us in her evidence that she was concerned that, unless Dr Wang's suspension was lifted soon it would be difficult, if not impossible to complete project

experiments. She says this was the reason that she wrote her email on 8 June at 12.11 pm.

86. In her witness statement for the tribunal, she says that she was not expecting Prof Underwood to intervene in the investigation, but just to lift the suspension whilst the investigation was ongoing. She said that she was not aware of the allegations and therefore not aware of anything he had done to justify being suspended.

87. The claimant also states that the reason for reporting her concerns to Prof Underwood was not simply because of her desire to successfully complete the experiments and advance the project for her own sake, but was because she wanted to warn Prof Underwood that what he was doing would likely result in the project failing with all the consequences that entailed.

88. At paragraph 30 of her witness statement, she states that she usually works 50 to 60 hours a week including weekends and that she does so because of the wider public interest in curing or vaccinating against cancer and because of the enormous benefits the project could bring to the advancement of cancer cures. She also states that she considered it was important that the University should meet its obligations to the other three parties involved in the complex task of achieving vaccine development and commercial licensing.

89. In her evidence to us she also referred to an email that had been sent to Dr Wang which she had seen, and which was one of the reasons why she said she believed he had felt harassed.

90. That email, dated 28 May 2020, contained a question from Mr Booth to Dr Wang at 8:46 PM, asking which lab coat he was using, as the lab coat peg that Dr Wang had been allocated was not occupied. He also asked whether or not Dr Wang had been *signing in at the CCI register when you enter the building because you were not signed in today?*

91. This followed an earlier email from Mr Booth, providing Dr Wang and another person with information about pegs with names and bags ready for the lab coats and a

request that if a blue lab coat had not been allocated, a white one was used and kept in a bag on the relevant hook. We understand that there was a need to ensure that lab coats were kept apart and in a certain way to avoid any risk of cross contamination.

92. The response from Dr Wang was that he took his lab coat back because he wanted to change it to a clean one and that he forgot to sign in that day.

93. We find that in the context of the pandemic, and in any event, there is nothing hostile or aggressive within the email, and in particular, it does not appear to have anything to do with any protected characteristic under the Equality Act 2010.

94. We find that there was nothing in the email exchange that could lead anybody to reasonably believe that there had been a breach of the Equality Act, or any other legal obligations, as a result of it being sent to Dr Wang.

95. We further find from the evidence of Professor Savelyeva herself that when she wrote her email on 8 June 2020, she did not believe that anything she said in her email suggested that there had been any breach of the Equality Act in respect of Dr Wang, and further, and in any event that she herself did not in fact reasonably believe that there had been any such breach of those legal obligations. She did not reasonably believe, we find that there had been any unlawful harassment of Dr Wang under the Equality Act 2010.

96. We do however accept that the claimant was genuinely concerned about the completion of the project and the ability to meet certain milestones which were imminent, if Dr Wang remained on suspension, and prevented from accessing the labs, whilst he was being investigated. She says her emails were asking for assistance with lifting the suspension, whilst the investigation continued.

97. We accept that her intention in sending the email of 8 June was to ask Prof Underwood to assist her with what was a difficult situation as well as to warn him about possible consequences of not assisting. She did not, however, say what it was she wanted him to do but rather asked Prof Underwood to *intervene*.

98. Professor Underwood told us, and we accept that when he received the email, he read it and understood it in a different light. He considered that it was a totally inappropriate email. He received the email at 12:11 and forwarded it to two members of staff, who we refer to as HR1 and HR2, and who we understand to be members of the human resources team at 12:16.
99. He said, *to my mind this is totally inappropriate. She is asking me to intervene in an independent university investigation, I will not respond until we have discussed how to handle this. Unfortunately, we might need to get Diana involved.*
100. Prof Underwood told us, and we accept that he responded quickly, and wrote what he did, because this is how he genuinely felt when he read the email. He told us, and we accept, that what he felt was inappropriate was, as he has stated in his email, the request that he intervene. He read the email as the claimant asking him to intervene in the investigation.
101. In his email he makes no reference whatsoever to the other information within the email from Prof Savelyeva, and we find, as he has asserted, that it is only the request in the last line of the email that he is responding to and considering to be inappropriate.
102. He does not say that any other part of the email is inappropriate and indeed his earlier agreement to facilitate Dr Wang working an additional day indicated to us that he had a good understanding of the pressures under which all staff were working in attempts to complete important research, and was sympathetic to them, notwithstanding the restrictions placed on them by the pandemic.
103. The pressures on funding and the consequences for the project applied to a number of projects, and, as HR1 stated in her response, were something which had to be managed.
104. HR1, human resources, agreed that the approach was inappropriate.
105. We find that the response from Prof Underwood, on 8 June 2020, was an honest and genuine objection to what he saw as a request to intervene in an independent

investigation and not an objection to the claimant pointing out that the suspension of Dr Wang could have serious consequences for the project. We accept that his concern, and his objection was to her apparently saying, there will be consequences and *therefore* you should intervene in this investigation.

106. Having read the email several times, and having considered the explanation of Professor Savelyeva and the evidence given by Professor Underwood, we find that it was not wholly unreasonable for Professor Underwood to understand the email in that way, even though we find as fact that it was not the Claimant's intention and even though Miss Nugent subsequently considered, when she carried out her investigation, that this has not been the intention of Professor Savelyeva. We accept that he is telling the truth about what he thought at the time.
107. Going back to the investigation, the next thing that happened was that Professor Savelyeva provided a witness statement plus supporting documents to Miss Nugent on 11 June 2020 at 13.42. She questioned the validity of keeping matters confidential.
108. On 12 June 2020, Miss Nugent wrote to Dr Wang regarding the meeting that they would have later that day. She stated that she had belatedly realised that the person Dr Wang had asked to support him at his interview, was Professor Savelyeva, who had been asked to give a witness statement as part of the investigation. It was not, Miss Nugent considered, appropriate for Dr Wang to be accompanied by someone who would also be a witness.
109. Miss Nugent therefore contacted Dr Wang and informed him that as Professor Savelyeva was already a witness to the enquiry it was inappropriate for her to be present at the meeting between Dr Wang and Miss Nugent and asked him to find somebody else assist him who was not already part of the enquiry. She stated that, if necessary, she would be willing to cancel the meeting.
110. Miss Nugent and Professor Savelyeva then corresponded about the information that Professor Savelyeva would be able to provide within her witness statement and what was required.

111. Professor Savelyeva had expected to be able to assist Dr Wang at his interview by providing some additional information, and since this would not now be possible, she decided to provide further information to Miss Nugent with an updated witness statement instead, which she did on the 14 June 2020.
112. In her updated witness statement Professor Savelyeva attached the email that she had written to Professor Underwood on the 8 June 2020. This is the second protected disclosure she relies upon.
113. Miss Nugent met with Dr Wang on the 12 June 2020. This was after Prof Savelyeva had provided her first witness statement, but before she provided a second amended witness statement. At that point therefore, the second alleged protected disclosure had not been made to Miss Nugent.
114. The initial draft of the notes of that meeting has been provided to us. In that meeting, there was a discussion about the process by which Dr Wang had accessed and signed into the Somers building. In the course of the discussion Mr Wang is recorded as having stated that he had left his card in the office but borrowed Natalia's card ( Prof. Savelyeva) in order to access either CCI and or the Somers building.
115. He was asked about this by Miss Nugent, and said that he could not remember whether it had been 25 May or not because it had happened twice. He said he had collected her (the claimant's) card once from her at the hospital and another time from her house. He was asked what Professor Savelyeva said when he told her he had forgotten his card and he said, *nothing*.
116. During that interview, Dr Wang was asked whether he recalled what he had said to Prof Underwood when Prof Underwood had asked him whether he had been working in the Somers building. He said *I can't remember exactly. I didn't say I was working in the Somers, I didn't want to have any trouble, so I just didn't tell him the truth*. He was asked whether he was aware that he might have been breaching the policy at that point, and he said *yes, yes, I understand that*.
117. Dr Wang also explained that he had to do the work and that he had to use the Somers building for the FACs machine at the tissue culture room which is too small

in the CCI. He said on 14 May he had tried to use the machines in the CCI building and that it set up an error message, and therefore he decided to continue working in the Somers building. He was asked whether he had told his supervisor (the claimant) and he said yes, he had told Natalia ( the Claimant). When he was asked if he had informed anybody that it was impossible for him to work in CCI he said again that he had informed Natalia.

118. He was asked if he worked in Somers even though he knew it was against the policy and he said that yes, *I broke the policy. I think it is more important that I can get this project done in good quality rather than to keep my job safe. I want to finish my project, so decided to push the boundaries. I had my choice and need to face it.*

119. As a result of the answers that he gave, Miss Nugent was concerned about the extent to which Professor Savelyeva had known of or possibly authorised Dr Wang's working in the Somers building and therefore had herself breached the rules.

120. She therefore sent an email to Prof Underwood at 11.06 after the end of the interview. She accepted that she did not have the notes at that point, but wrote her email from her recollection of what was said to her at that meeting. She referred to *a useful 45 minutes interview with Dr Wang* and said *I felt I should let you know that I have concerns about a few things.* The email continues as follows

*He admitted that he worked in Somers throughout the time. He wanted to continue using the FACS machine in Somers and also felt that the tissue culture hood was too small in the CCI . He told us that he informed Natalia every time he made a decision to work in Somers. He agreed he broke the policy as there was a conflict as he wanted to finish his work so he pushed the boundaries. He admitted lying to you.*

*When questioned about the timestamps that didn't tally-he told me that on at least two occasions he used Natalia's card to enter the building- when I asked where Natalia was and whether she was in her office, he said no, she was at home one time, and in the hospital another time. For the lone working policy he tells me he informed Natalia on every occasion, which lab he was in. In summary, he was aware that he was breaking the policy and he chose to continue working in Somers to complete his lab work, he felt he was under pressure to get the results finished and*

*he tells me he informed Natalia throughout and used Natalia's card on at least two occasions to re-enter the labs with her knowledge.*

121. We accept the evidence from Miss Nugent and Mr Underwood that it was as a result of these comments made by Dr Wang that they became concerned that that Professor Savelyeva herself had also been breaching the covid lockdown restrictions.
122. On receipt of the email from Miss Nugent, Mr Underwood spoke to the Dean. It is not disputed that it is at this point that Prof Underwood considered that there was a need for some investigation into the matters concerning Professor Savelyeva, as well as Dr Wang .
123. He then emailed Miss Nugent back saying, *expect a letter asking you to investigate this also ...I owe you ....*
124. Mr Underwood was asked by the panel about the inclusion of the words *I owe you* at the end of this email, as the words suggest that Miss Nugent was doing him a favour.
125. He denies that this was the case, and said he used the words because he was aware that he was adding an additional task to Miss Nugent's already heavy workload. It was his way of acknowledging that she was taking on something extra and additional. We accept his explanation as a true and honest one.
126. Following the meeting between Miss Nugent and Dr Wang at which HR2 was a note taker, Miss Nugent asked for some further information from Professor Savelyeva about whether she had known that Dr Wang was working in Somers and whether or not she had authorised any such work.
127. Later, on the same day HR2 sent a draft letter headed *initiation of proceedings* that it was proposed would be sent to Professor Savelyeva. It was drafted on 12 June at 13.38 by HR2, and he asked Prof Underwood whether it was missing anything, or he wanted to change it.



128. Prof Underwood responded at 14.11 with a couple of comments, and HR2 sent back an amended letter at 14.32 .

129. Prof Underwood sent back a final version of the letter at 14.40 on 12 June, stating *I will send on Monday at 9.00am.*

130. The claimant alleges that the decision to send the letter was motivated by her alleged protected disclosure comprising the email sent on 8 June 2020. That letter, which was dated the 13 June 2020 is the first detriment alleged by the claimant.

131. The email states *I am writing to inform you that concerns come to my attention that I consider sufficiently serious to warrant an investigation. The allegations under investigation are that*

- *You have failed to follow reasonable management instructions by undertaking work in the Somers building during the period of covid 19 related restrictions*
- *By working in the Somers building you have breached the restrictions put in place as a result of the covid 19 pandemic, thereby putting the health and safety of you and your colleagues at risk*
- *you failed to prevent your line report Chuan Wang from working in the Somers building when you are fully aware that work was not to be carried out there*
- *on more than one occasion that you provided your personal access card to him to enable him to enter the Somers building. You have therefore given Dr Wang permission to work in the Somers building when you did not have authority to do so . By giving him access you have deceived him into believing that he was authorised to work in an area he was not*
- *you have acted in a manner contrary to the University's values and behaviours by sending an email to myself on 18 June which attempted to coerce me to bring about a halt to an independent investigation into concerns about another employees conduct .*

132. The letter goes on to explain that Karen Nugent had been appointed as the investigator and would be contacting her in due course and that the aim of the investigation was to gather information and facts in relation to the issue. The letter

states that following the investigation, Prof Underwood would receive a report of the findings and decide what course of action, if any was appropriate.

133. The letter, although dated 13 June was sent by email to the claimant as an attachment on 12 June 2020.
134. As stated above, the claimant sent her amended witness statement to Miss Nugent on 14 June 2020, after receiving this email. Miss Nugent cannot therefore have been influenced at all in her actions, at this point at least, by the alleged disclosure on 14 June 2020.
135. We find that the allegations made at that point, were drawn up with some speed. We accept that there was a perceived urgency, because of the risks of covid and concerns about rules having been broken. We also observe that the allegations are all objectively capable of flowing from the limited information which had been provided by Dr Wang.
136. On 18 June, HR2 sent an email to Dr Wang attaching the notes from the investigation meeting, and asking him to sign them if he agreed they were an accurate record or make minor changes by tracked changes
137. On 22 June HR2 contacted Miss Nugent asking her how she was getting on with the report and stating that he had not heard back from Dr Wang regarding the notes and asking Miss Nugent to therefore use the notes that they had. Miss Nugent confirmed that she had already used those notes.
138. She was advised by HR2 to finalise the report and send it to him. He also confirmed that Karen Nugent was to proceed with an investigation into the allegations against Professor Savelyeva, using the same process.
139. A further matter arose regarding the extension of Dr Wang's contract of employment.

140. On 24 June HR2 wrote to Dr Wang to confirm whether he had accepted an extension to his fixed term contract or if he was expecting to leave the university on 30 June 2020. In response, Dr Wang wrote back saying *thank you for the offer to extend my contract of employment. I am ready, willing and able to extend my employment provided I am allowed access to the CCI includes PCU and Somers where I undertake all my work . I am currently suspended from working in both. If the suspension is not lifted, I will be unable to perform my duties.*
141. At this point HR2 wrote to Professor Underwood asking for his thoughts. HR2 stated his thoughts were saying no, thereby getting him (Dr Wang) off the books.
142. HR2 then wrote back to Dr Wang on 27 June 2020, stating that Ms Nugent had completed her investigations and would be sending it to Prof Underwood for his consideration. He said, *as one of the allegations is that you put the health and safety of yourself and your colleagues at risk, it would be inappropriate to allow you access to the CCI and Somers building until such time that this matter is formally resolved. Therefore, please can you confirm the offer to extend your contract of employment is accepted or denied.*
143. Following this email, there was a further exchange between Dr Wang and HR2, but no acceptance from Dr Wang that he would extend his contract, and on 29 June 2020 HR2 wrote again to Mr Wang, stating that as he had not agreed to extend his fixed term contract, his contract of employment with the University would cease on 30 June 2020.
144. Also, on the 29 June 2020, Professor Savelyeva submitted a complaint about Professor Underwood to Diana Eccles, the Dean of the faculty.
145. This is the third alleged protected disclosure relied upon by the claimant.
146. The email which was sent at 11.12 on the 29 June 2020 is headed private and confidential urgent complaint and states as follows

*Dear Diana*

*I am writing to complain about Prof Tim Underwood. I attach my letter of complaint and the relevant correspondences between Prof Underwood, Karen Nugent, who was allocated as an independent investigator by Prof Underwood, private, and*

*myself in a chronological order for you to follow the events easily. The third attachment is an allegation letter sent to me by Prof Underwood.*

147. The claimant's letter of complaint is 3 ½ pages long and is not repeated in full here.
148. The letter is headed *complaint of victimisation and bullying and harassment by Prof Tim Underwood*. The claimant starts by stating that she understands Prof Eccles to be the person she should write to, to convey the serious concerns about Prof Underwood detrimental treatment of her.
149. The first paragraph states as follows *the detrimental treatment is the making of serious and unjustified allegations against me and commencing a disciplinary investigation after I informed him that the university was likely to fail to comply with its legal obligations to Cancer Research Malaysia (CRM) Cancer Research UK (CRUK) and Touchlight Genetics as a direct result of the suspension of my research fellow, Chuan Wang, on first of June 2020.*
150. She states that she informed Prof Underwood that
- 150.1. Chuan had told me he was no longer willing to assist the University to meet its obligations to those parties because he felt he had been bullied and harassed by other staff prior to the suspension; the loss of Chuans exceptional skills and experience, as a result of the suspension, was likely to have significant adverse financial consequences for the University;
- 150.2. I had health and safety concerns, in that the suspension was making me extremely worried and causing an adverse stress reaction.
151. The claimant states that she made the disclosures because *I felt it was my duty as the project leader and grant holder, to spell out the likely effect on an extremely important and time critical experiment that Chuan was undertaking for the project. I am also responsible for Chuan's well-being of his line manager.*

*In response to my disclosures, Prof Underwood has accused me of attempting to coerce him to halt the investigation into Chuan, when I was simply seeking to have the suspension lifted so I could try to persuade Chuan to complete the experiment. He made false allegations which I am happy to address in any fair investigation disciplinary process.*

152. The next part of the claimant's letter is, in effect, the respondent's answer to the various allegations and her explanation of why the allegations were incorrect.
153. Her next complaint is that Prof Underwood had nominated himself to determine what, if any, disciplinary action should be taken against her following the independent investigation into his allegations. She suggests that Prof Underwood has violated the university's values and chosen to punish the claimant for articulating views contrary to his own, characterising them as coercion instead of engaging in dialogue.
154. The claimant then sets out six concerns, including victimising her for making the disclosures; controlling and directing the current investigation, and having predetermined the allegation.
155. She continues that she feels bullied and victimised by Prof Underwood and states that she feels that her professional integrity has been violated, and then says *this matter has caused me enormous stress and anxiety, as well as seriously impacting upon my ability to that deftly deliver an extremely challenging and important projects University.*
156. She refers to the various policies the University has, including whistleblowing policy and equal opportunities policy and states that she would appreciate some guidance on the most appropriate one to use.
157. She then set out her objection to the continued participation of Prof Underwood in the disciplinary process on the grounds that he could not act objectively or be impartial in respect of at least two of the allegations. She also asked that somebody other than Karen Nugent should investigate the allegations. She stated she was more than happy to answer all the allegations in a legitimate and fair disciplinary

process, but stated *I would be most grateful for your assurance that professor Underwood will play no further part in the process he has initiated against me.* She then states that she would be willing to consider participating in any informal means of resolving the issues.

158. Lastly, she states, *I would be most grateful if you could let me know what resources can be made available help me avert the negative consequences for the project forecast in my disclosures, to enable me to deliver a successful project outcome for the university. This is very urgent as I will need to let Torchlight and CRUK know by the end of this week if it will not be possible to do so. Please also let me know what action will be taken to protect me from further victimisation, given the exceptionally distressing situation I find myself in. I expect trade union support to formally pursue my complaints but would be extremely grateful if you would let me know what well-being support the University is able to offer me in the meantime*

159. Attached to the email was the chronology of relevant correspondence, including the claimant's witness statement of 14 June, which itself included the email that the claimant had sent Prof Underwood on the 8 June 2020.

160. The section added on 14 June 2020 includes the further description of the chronology of events and the work that was being done by Dr Wang during the early part of June.

161. In her statement the claimant says as follows, *Chuan is suspended and is under investigation, the imposition of the suspension effectively amounts to a punishment 12 as it is likely to prevent him completing the experiment before his employment with the University. My understanding is that suspension is only appropriate when the allegations about gross misconduct or where there is a serious risk of evidence being interfered with, to the best of my knowledge, neither is applicable here. This punishment not only affects trial, it is a major and potentially catastrophic effect on successful completion of the experiment, with the resulting impact on the whole project and funding model . I have now been left to complete the experiment because of the suspension . This is putting me under huge strain on the week starting 15 June are likely to allocate 25 hours extra to light already very busy schedule. Further more Chuan is far better at the assays required to be conducted as I do not carry out*

*experiments any longer..... I believe Chaun feels that he has been unfairly harassed, possibly on racial grounds and would not be prepared to help University while this state of affairs exists by the claimant*

162. The claimant had then set out some information about Dr Wang of a personal nature and states at the end that *Chuan is both critical to the current experiment and to the ongoing functioning of my lab while funding is still available for him. The adverse effects of any delay in lifting the suspension will be compounded on a daily basis.*
163. Any disclosures of information in the first email were, as a matter of logic, also disclosed by its inclusion in the second email.
164. We find that these are in any event, independent disclosures of information about the internal process, and the complaints being made about the claimant, and her own complaints about the treatment she has received.
165. The claimant is complaining about a breach of legal procedures.
166. We accept that in a broad sense at that time, the Claimant believed on balance that her emails were in the public interest.
167. Because we have found that it was not reasonable for Professor Savelyeva to have believed that there had been a breach of the Equality Act when she wrote her first letter, we have considered whether anything else had happened, to make any belief of a breach of legal obligations about race discrimination reasonable at this point in the chronology.
168. We heard no evidence from Dr Wang about what he felt about any emails sent to him and we have made our observations about those emails above.
169. It was not until 14 June 2020 that Professor Savelyeva specifically stated that she thought there may have been discrimination on grounds of race.
170. Whilst this is an allegation of breach of a legal obligation, we have no evidence that anything said or done by anybody between the claimant's first email to Prof Underwood and her second email 14 June to Miss Nugent to suggest that there had

been any race discrimination. Whilst she may have thought this, we find that it was not reasonable for Professor Savelyeva to believe that the email itself was capable of amounting to harassment for a reason related to race.

171. We find it significant that the claimant's characterisation of the email of 8 June 2020, set out in her complaint of the 29 June 2022 to Diana Eccles includes some rephrasing of what she said on the 8 June 2020. The rephrasing is not, we find what was said, and it her extrapolation after the event.

172. Professor Savelyeva told us in evidence that the reason she believed that Prof Underwood had made allegations against her, must be because she had made protected disclosure, because there was no other explanation.

173. She said that she considered that he was either seeking to sabotage her project, and she did not believe that this was the case, or that the only other explanation was that he had taken offence at her raising concerns about the potential breaches of contract.

174. When it was put to her that a third alternative reason for starting a disciplinary investigation against her was that Prof Underwood believed that there was good reason to consider that she may have breached the universities covid 19 restrictions and therefore committed a disciplinary offence, the claimant responded that she did not consider that this was a possibility. She was not prepared, even after the event, to accept that on the face of it, there may have been grounds for concern about her behaviour.

175. The claimant asserts that the first two allegations in the list of five allegations were ones which Prof Underwood had no reasonable basis for making against her.

176. She asserts that they did not derive from anything said by Dr Wang in his interview with Miss Nugent, and nor were they the result of anything that Miss Nugent said in her email of summary concerns to Professor Underwood. Whilst this may be right, ( we consider this below) we do not understand that this was what she thought at the time, as she had not seen the notes, or been at the interview with Dr Wang.



177. Prof Underwood was cross-examined about his thinking when he drafted the list of allegations, and he accepted in cross examination that the first two allegations did not follow either from the interview notes recorded by HR2 of the interview with Dr Wang or from the email that Ms Nugent had sent him summarising her concerns.
178. He told us that he believed that he had had a subsequent discussion with Miss Nugent and HR2 from which he understood that the suggestion was that Prof Savelyeva herself had been undertaking work in the Somers building.
179. Ms Nugent confirmed in her evidence that she had not in fact had any further conversation with Prof Underwood, either with or without HR2. We have no evidence from HR2.
180. We find as fact that the only information Prof Underwood had when he drafted the allegations was the email he received from Miss Nugent and the subsequent discussion with HR2, who had been note taker at that meeting.
181. The claimant also stated that the fifth allegation, that the claimant had acted in a manner contrary to the universities values and behaviours, by sending an email on 8 June *which attempted to coerce me to bring about a halt to an independent investigation into concerns that the employees conduct*, indicated a conclusion that Prof Underwood did not believe. She said she had not attempted to coerce him to bring about a halt to an independent investigation and she asserted that he could not possibly have believed this to have been her intention and that therefore his motivation must have been the protected disclosures set out within her email.
182. We do not agree with Professor Savelyeva. We find that Professor Underwood did think that the email sent him was an attempt to coerce him.
183. We also accept his evidence that, at the time he wrote the allegations, he did consider that there were grounds for all of them, albeit that he is wrong about the conversations which he thought had taken place. He accepted before us that he was wrong about the meetings and conversations. We find that the discussions were

taking place in a heightened atmosphere of concern about health and safety, and remind ourselves that the country was in lock down and everyone was working remotely and communicating by email or by teams. It was understandable that some misunderstandings might arise. We also consider that, given what he had been told, the allegations drafted were not wholly unreasonable in any event. There were concerns about who had accessed the labs and when, and what role Professor Savelyeva had played in facilitating Dr Wang, and where she had been when he borrowed her card.

184. The question we have asked is whether on the evidence before us, we can draw a conclusion that his thinking was influenced at all, and if so to what extent, by any protected disclosures made by the Claimant. We address this below in our conclusions.

185. Returning to the Claimants letter. We find that the Claimant's letter to Diana Eccles of 29 June 2020 is a very clear letter of complaint about victimisation and bullying and harassment.

186. The claimant raises several complaints that clearly needed to be investigated, and to be investigated independently of any other matter.

187. We also find that the claimant identifies that she at least considered that she had made protected disclosures, and that she considered that she was being subjected to a detriment because of having made protected disclosures.

188. This is a disclosure of information and is a statement that the Claimant believed there had been a breach of a legal obligation, that is the obligation placed on organisations not to subject any person to a detriment for having made a public interest disclosure, and we find that the claimant believed that the motivation for the action was the information that she had included within her email of 8 June 2020.

189. We find that the letter of the 29 June 2020 also provides the claimant's response to the allegations being made about her and asks for assistance.

190. However, the first purpose of the letter is the request that Prof Underwood be removed from any further participation in the disciplinary process and we find that the second purpose of the letter is to respond to the disciplinary action being taken against the claimant. It is a letter complaining about and discussing a private contractual matter.
191. We find that there is no obvious public interest, but the question for us is whether or not the Claimant reasonably believed that the information disclosed was in the public interest. We accept that the allegation that an organisation is in breach of the public interest disclosure provisions might itself be in the public interest, and we have understood that this is what the claimant says about the allegations contained within an email of the 29 June 2020. She thought that this was matter of public interest at the point she made the allegations in this letter. We find that she believed that her work and the context in which she did it was a matter of public interest, and we consider that , at the time, given the work she was doing, it was a reasonable belief for her to hold.
192. Following the Claimant's complaint on the 29 June 2020, Diane Eccles forwarded the entire email to HR2 stating *it appears Natalia is complaining about being investigated. I am not sure how I should respond. Please could you advise me.*
193. The claimant asserts that this is a dismissive email. We disagree. There is nothing dismissive or unreasonable in Prof Eccles requesting advice, or in stating shortly what she understands the nature of the complaint being made by Prof Savalyeva is. We accept Prof Eccles evidence that she wanted advice because she was unclear about what she should do with the letter she had received and what action she should take in respect of it.
194. HR2 provided Prof Eccles with a speedy and sensible proposed response. He stated that he agreed that most of her (the Claimant's) complaints related to being investigated. He states, *I think it's worth pulling Tim [Prof Underwood] from the process and for yourself to take over. This should protect him from any further allegations and allow us to wrap things up. Are you happy to have conversation with him.*

195. We have no evidence to suggest that this was other than a reasonable HR response to the circumstances. HR2 effectively agrees to do what the claimant has asked for. Prof Eccles then spoke to Prof Underwood, who agreed to the report being sent to her and not him. This ended his involvement in the process.
196. Prof Eccles then wrote to the claimant, using the draft prepared by HR2.
197. She acknowledged the stress that the enquiries could place on Professor Savelyeva and provided information about the employee assistance process. She stated that the concerns raised should be raised with Karen Nugent as the investigator, she would remain the investigator and produce a comprehensive, independent investigation report. She says *while I appreciate that you have raised your concerns directly with me I believe that these concerns should be raised with Karen as the investigator it is my understanding that Karen is entirely impartial and is therefore best placed to investigate these matters*
198. She also informed the claimant that Prof Tim Underwood was happy for the investigation report to be sent to her, Diane Eccles, and that upon receipt of the report she, Professor Eccles, would then determine whether and if so what further action was required.
199. Her email ended, *once the current disciplinary process is concluded, if you feel that there are outstanding issues which have not been addressed, you should write to me again, detailing your concerns and why you think they have not been addressed.*
200. We find that at this point, on 29 June 2020, Prof Underwood ceased to have any involvement in the process, and Prof Eccles considered that this resolved part of the claimant's concerns.
201. We find that Prof Eccles considered that most of the information provided by the claimant in her email, directly concerned the investigation that Miss Nugent was in the process of carrying out, and that it was therefore reasonable for those matters,

that is the claimant's explanation and answers to the allegations made against her, to be dealt with by Miss Nugent.

202. On 13 June 2020, HR2, also informed Prof Eccles that Dr Wang had failed to confirm if he agreed to an extension to his fixed term contract, and that therefore his contract had terminated in line with the original fixed term contract dates that day.

203. Following her letter to the claimant, Diane Eccles asked HR2 whether she needed to correspond with Karen to tell her to report back to her, Diane Eccles, or whether HR2 would do this. He confirmed that he would communicate with Miss Nugent and we find that that is what happened

204. On 29 June 2020 following receipt of the response from Prof Eccles, Prof Savelyeva wrote to Miss Nugent. She attached a copy of the complaint which she had sent to Prof Eccles. She stated that she understood Prof Eccles would be investigating the allegations made by Prof Underwood in his letter of 13 June and stated that she herself raised some concerns about Prof Underwood conduct. She stated that Prof Eccles had informed her that Miss Nugent would investigate her concerns at the same time as doing the investigation into the allegations. She then said *I am concerned that this process may not be appropriate, as I understand the universities whistleblowing policy prescribes a different procedure for investing (sic) complaints of violations of that policy but, so as not to delay the investigation into the disciplinary allegations, I will withhold my objections to this process for the time being, whilst reserving the right to raise this issue again in the future. In raising my concerns. May I point out that xxxxxxxx failed to discuss any allegations with me informally prior to deciding to bring any allegations against me.*

205. We observe that a fair reading of this letter suggests that Prof Savelyeva understood that her whistleblowing claims would not be investigated at that point. Those complaints were intrinsically tied up with her complaints about Professor Underwood.

206. Miss Nugent replied to the claimant on the 1 July 2020 stating that she was happy to listen to any problems regarding the investigation. She also confirmed that she

had only four main questions to be answered. She said if there are any issues with regard to Prof Underwood, *I'm happy to record your concerns.*

207. In response to this, Professor Savelyeva asked for clarification whether *I will be answering the allegation as in the letter sent to me by Prof Underwood.* She also asked about who could accompany her to the meeting.

208. Her query about being accompanied to the meeting was made at the same time that the respondents' officers were trying to arrange a date to meet with the claimant.

209. The claimant was told that she could be accompanied by University colleague or trade union representative and HR2 advised Miss Nugent that a formal invitation would be sent out once they had arranged a date for hearing.

210. On 2 July 2020, Miss Nugent sent an email to HR2 stating *she wouldn't give me dates until I told her who she could invite!*

211. It is in respect of this email that HR2 replied to Miss Nugent, *I think she is going to be tricky* to which Miss Nugent replied, *very, did you see the complaint against TJU?*

212. The claimant alleges that this exchange suggested that HR2 and Miss Nugent had formed an adverse view of the claimant at this point.

213. We find that the exchange indicates a level of frustration over the arrangements for hearing allegations made against the claimant, but that no one had formed any adverse view about the claimant or considered whether the claimant had or had not done any of the things set out in the allegations.

214. Miss Nugent told us that she had planned sick leave approaching at the time, and that she had a great deal of work to complete before she started her sickness absence. She was unfamiliar with the process she was following and did not know Prof Savelyeva. She said, and we accept that she herself was concerned and apprehensive about conducting the process.

215. This was a difficult process for everybody involved and we remind ourselves that all of the matters were being dealt with at distance, primarily by email. The emails must be looked at in that context.
216. We find that this background and context was the reason for this exchange. We found Miss Nugent to be a compelling witness, and accept as truthful her evidence that she genuinely wanted to carry out the process as fairly as she could, but was unsure about the right way of dealing with the various matters she was being asked to address.
217. We have heard no evidence from HR2. He was the HR officer with responsibility for handling the concerns about Dr Wang, the allegations made against Professor Savelyeva and the cross complaints made against Professor Underwood.
218. We all agree that his advice and assistance, as far as it is evidenced in the emails, is at times unclear. Some of his emails are clumsily worded, and we all find that his emails suggest a level of support for Professor Underwood. We do not know what his experience of dealing with issues such as this one, in this context was. We do not find that the evidence we have suggests any prejudicial attitude by HR2 towards the claimant and find the dealing of the Respondent with her were, on balance fair.
219. We do not consider that Miss Nugent herself did prejudge any of the matters she was investigating. We find that she carried out a fair investigation into the allegations against the claimant. This is demonstrated by her proposed conclusions as set out in the report that she produced. She dismissed most of the allegations and accepted the explanations put forward by Prof Savelyeva.
220. The role of Miss Nugent was to investigate and make recommendations as to any future action. The decision over what if any disciplinary action should be taken rested with Prof Eccles .
221. However, the claimant had made a complaint about Prof Underwood, and relies in her claim before us upon the failure of Miss Nugent to deal with her complaint against Professor Underwood, as a detriment.

222. We find that by the end of June 2020 Prof Eccles assumed that Karen Nugent would deal with the matters set out in the claimant's complaint form, and that she did not really think about whether there was any need for a separate or additional investigation. We accept that the reason for this was that she relied very much on the advice of human resources to guide her as to how best to deal with what was clearly a tricky and difficult situation.

223. We find at this point that there was confusion and a lack of clarity as to how the serious complaints made by both Prof Savelyeva about Prof Underwood would be dealt with.

224. Miss Nugent told us, and we accept that she had not understood that there was an expectation that she carry out a separate investigation and we find that she did not therefore, conduct any separate or different investigation into any complaints made by Prof Savelyeva.

225. We find that Miss Nugent also relied on the advice and assistance of human resources, and from her correspondence at the time, and her evidence to us, we find that her understanding, at the start of the process was that she would listen to any concerns raised about Mr Underwood in the context of her investigation of the allegations against Professor Savelyeva but would not be determining those complaints. We find that this is what she was seeking to communicate to Professor Savelyeva.

226. We also accept that Prof Eccles wrongly considered that the whole of the claimant's complaint had either been dealt with by Prof Underwood having been removed from the investigation or that any other aspects of the complaints made would be dealt with by Miss Nugent carrying out an investigation into the allegations against Prof Savelyeva. We accept her evidence that the reason why she included the last line in her email telling the claimant that if there was anything outstanding at the end of the process she should come back to her, was to ensure that the claimant's complaints were all dealt with.



227. Miss Nugent proceeded with the process of investigating the allegations against the claimant.

228. During the course of correspondence with HR2 about the process Miss Nugent wrote to the claimant on 7 July, *Just to clarify, I have only been asked to look at the four items detailed in the letter sent to you by Prof Underwood. I have asked HR what to do about meeting up et cetera-I am self isolating at the moment but will wait to see what they can set up. I assume that your complaint will be reviewed by Prof Eccles, but you could ask her where and how this will be followed up.*

229. In response, HR2 wrote to Miss Nugent. *We will wrap it all into one investigation.* Miss Nugent therefore responded to the claimant, saying, *I have taken advice about your complaint and although my original remit is the questions submitted in the original letter - where you have raised issues I will investigate these concerns as well.*

230. This was sent to the claimant on 7 July 2020.

231. We find that there was a failure to set up a separate investigation into the Claimants complaints about Professor Underwood, that the Claimant knew this, and that the reason was a failure of any one to take proper control of the process . We find that all of the senior members of the Respondent staff and the HR support were trying to ensure that the issue was dealt with quickly and fairly, and that the fact that this did not happen, was because of the context of the investigation and the lack of co-ordination and not because of the nature of any complaints made or the fact of any protected disclosure and not because it was the Claimant making the complaints.

232. Initially, Miss Nugent had suggested that she had a discussion with the claimant over a zoom meeting, but the claimant was unwilling to do this because she had concerns about how she and her companion would be able to effectively communicate. She wanted a face-to-face meeting, but Miss Nugent was self-isolating - she had preplanned sick leave- and a face-to-face meeting was not possible.

233. It was agreed that Miss Nugent would send the claimant a list of questions and that the claimant would provide responses to them. The list of questions was sent on the 7 July 2020 and the claimant produced a witness statement dated 14 July 2020, with her responses.
234. Miss Nugent told us, and we agree that whilst this ensured that she gathered the information from the claimant, the process did not enable Miss Nugent to easily clarify certain things with the claimant, including clarifying which logbook and which signing in book she was required to consider, or whether all the matters that Professor Savelyeva wanted considered, had in fact been considered.
235. Prof Savelyeva told us that she believed that Miss Nugent was going to deal with all her concerns and complaints. Despite her emails, we accept that this was not Miss Nugent's understanding when she asked the questions and wrote her report. None of the questions she asked were about that complaint.
236. Miss Nugent obtained a witness statement from Prof Underwood, on 1 July 2020. In this statement he included the entire email chain between himself and the claimant, including his response to her initial request for intervention. In an email dated the 8 June 2020, he states as follows, *thank you for your email. I hope that you understand that this is subject to a confidential investigation and therefore I cannot make comment or intervene in any way in that process.*
237. Following the provision of the information by the claimant, Miss Nugent drafted her report and provided a copy of her draft to HR2, who then wrote to Prof Eccles.
238. In her report, at paragraph 2, Miss Nugent set out her understanding of the remit of her investigation. It itemises five points, which were all allegations about the claimant. We find that at the point of writing her report, Miss Nugent believed that these were the only matters which she was required to report back on. These were the only matters about which she had gathered evidence or made findings.
239. Miss Nugent provided a summary of the allegations and the evidence that she had before her, and set out her conclusions in respect of each allegation.

240. We remind ourselves that Miss Nugent's job was to investigate and provide a preliminary report. It was not her job to decide whether or not any further action should be taken, nor was it her job to definitively determine whether each or any of the allegations were or were not proven.
241. Allegation one, was that Prof Savelyeva may *have failed to follow reasonable management instruction by undertaking some work in the Somers building during the period of Covid 19 related restrictions.*
242. She found no evidence that Professor Savelyeva had worked in the building but. She found no evidence that Professor Savelyeva had signed in although Professor Savelyeva stated that she believed she had signed in. She states that she went to the building to undertake IT work and to find re-agents.
243. The second allegation was that by working in the Somers building Professor Savelyeva may have breached the rules in place as a result of the covid 19 pandemic, thereby putting the health and safety of her colleagues at the college at risk.
244. Ms Nugent concluded the digital logs of entry books suggested that Professor Savelyeva had entered the Somers Building on 6 occasions in May 2020 but had not signed in potentially breaking the rules on lone working.
245. The third allegation was that Professor Savelyeva may have failed to prevent a line report CW from working in the Somers building when she was fully aware that work was not to be carried out
246. Miss Nugent states that Dr Wang said that he informed Prof Savelyeva that he had moved to work in the Somers building due to issues with the FACS machine, Professor Savelyeva states she was unaware of the issue until 11 June. Miss Nugent states in the report, *This is difficult one to untangle as I was unable to interview Dr S on simple face-to-face. I can suggest that she was aware of the allegations against Dr W as early as 1 June, as shown in the emails. I am unable to ascertain whether she had been informed as suggested by Dr W that he was working in the Somers building.*

247. Allegation four concerned Professor Savelyeva providing her personal access card to Dr Wang to enable him to enter the summers building.
248. Miss Nugent said on two occasions Dr S did give Dr W a card to enter the building and summarises the explanation given by Professor Savelyeva .
249. Allegation five was that Professor Savelyeva may have acted in a manner contrary to the universities values and behaviours by sending the email of 8 June to Professor Underwood which attempted to coerce [me] to bring about a halt to an independent investigation into concerns about another employees on.
250. Miss Nugent stated Professor Underwood was clearly following policy when he decided to stop Dr W returning the labs. She says, *However I find no evidence that Professor Savelyeva tried to coerce Professor Underwood into halting the investigation. She requested that Dr W could continue the experiments and I find this a reasonable request but to deny access to someone under suspension was also reasonable. This was because it was suspected and proven that Dr W had lied directly to Professor Underwood when asked about entering the summers building.*
251. Miss Nugent made the following comments and recommendations (summarised here only)
- 251.1. *Dr S did not wish to be interviewed by zoom. I would have preferred to question her directly with regard to the issue about whether or not she was informed by Dr W that he was working in the Somers building. The issue of whether or not she was aware of the fact that he was continuing work when this was expressly forbidden not been answered by written statements*
- 251.2. *it appears that Dr S entered the Sommers building on six occasions over the time that access was restricted to essential personnel. University personnel need to decide whether this was appropriate or not*
- 251.3. *Dr S did allow Dr W to enter university buildings using her personal card*
- 251.4. *I think that although Dr S wished for Professor Underwood to allow Dr Wang to continue in his research, he did not try the investigation that simply*

*wished him to allow Dr W to continue working whilst he was under investigation she did not try to coerce him to stop the investigation.*

252. We find that these were reasonable and fair conclusion for her to reach based on the information which she had before her.

253. On 20 July 2020. HR2 contacted Miss Nugent about the draft report. He states that the report is missing a section which covers off *Natalia's issues in respect of her concerns that*

*253.1. Professor Underwood victimised her for making disclosures*

*253.2. was controlling and directing the investigation into the allegations*

*253.3. had predetermined the outcome of the allegation, in respect of which he has a material interest as the subject*

*253.4. is conflicted as a result,*

*253.5. has created an unacceptable risk that Dr S will be subject to disciplinary action and further victimised her, for making the disclosures and*

*253.6. has by his conduct violated the principles of justice and fairness on which universities disciplinary procedure is founded.*

254. We observe that the second; third; fourth and fifth allegations had arguably been dealt with by Professor Underwood being removed from involvement in the investigation. We find that this was the view of both Prof Eccles and Miss Nugent and HR2.

255. Further, we remind ourselves that Miss Nugent had in front of her a lengthy and comprehensive witness statement in which he had set out the chronology of events in respect of both the reason for allegations and suspension of Dr W, and his correspondence with the claimant over the matter, and correspondence in respect of the decision to make allegations against the claimant.

256. Miss Nugent had considered the allegation against the claimant that arose from her email to Professor Underwood, which the claimant relies upon as a protected disclosure .

257. HR2 has also made reference to Miss Nugent's medical operation in this email . We find that all the respondents officers wanted to ensure that all the matters raised by the claimant dealt with at once but were working in difficult circumstances with the additional pressure that Miss Nugent herself was due to take time off for what appears to be preplanned surgery and was therefore seeking to conclude a number of matters before her absence from work.

258. Later, on the 20 July 2020, HR2 sent Miss Nugent the report with his suggested amendments. He had included a section about the concerns raised by Dr Savelyeva about Prof Underwood and suggested that the matter was dealt with by way of short responses to each of the allegations as follows:

***victimising me for making disclosures***

*I have found no evidence to support this argument. I believe that Professor Underwood was following up concerns raised by Dr Wang during the enquiry into his access to the summers that during college lockdown. This was reasonable management behavior and not victimisation .*

***Is controlling and directing the current investigation into the allegations***

*Professor Underwood is no longer involved in this investigation and the report will be sent to Dean Eccles*

***has predetermined the outcome of the allegations in respect of which he has a material interest as the subject of these victimisation complaints***

*as above professor Underwood will play no further part in this investigation*

***has created an unacceptable risk that I will be subjected to unjust disciplinary action and further victimised for making the disclosures***

*I have found no evidence to support this claim*

***has by his conduct violated the principles of justice and fairness upon which the universities disciplinary procedure is found***

*this is a preliminary confidential enquiry to see whether there are any substantive questions that need to be answered more formally, no evidence has been found which supports this allegation.*

259. It is our view that whilst Miss Nugent had not investigated the matters with Prof Savelyeva, or considered them when she initially wrote her report, that all of the

conclusions suggested to her were ones which could flow from the information which had been provided to her by the claimant herself and by Prof Underwood.

260. HR2 stated in his comment on the report, *my suggested wording is below. Please change if your judgement is different.* Ms Nugent approved the report and accepted changes where she considered it appropriate.

261. This included accepting the section dealing with the claimants' concerns about Prof Underwood.

262. We remind ourselves that the claimant alleges that the failure by Miss Nugent to investigate the allegations about Prof Underwood were acts of detriment, on grounds of her having made protected disclosures.

263. We accept that there was a failure to investigate by a separate process, and questioning of Prof Savelyeva, and that this raises a question about the reasons for not following a usual and fairer process. This was not the way that that the investigation of the concerns raised by Professor Saveleyva, should have been dealt with. Fair process matters, and the lack of it was a detriment to her.

264. This is not an unfair dismissal claim, but a whistleblowing claim, and the question therefore is about why there was any unfairness or failure to follow a procedure.

265. We have not found any facts that suggest that any of the protected disclosures made by Prof Savelyeva were factors which influenced Miss Nugent or HR2. We have found facts that the circumstances brought about by the pandemic, and the lack of a face to face hearing, the lack of familiarity with the HR processes themselves combined with the confusion over what Miss Nugent's role was, and the imminence of her surgery and sickness absence, were all factors that lead to the report being produced and written as it was.

266. We find that whilst it was not good practice, there was nothing suspicious in Miss Nugent including this section within the report. We agree that there had not been a separate investigation dealing specifically with the questions, but we also accept that

in this case the factual matters that Miss Nugent was considering were inextricably tied up with the complaints being made by the claimant. We are all satisfied that Miss Nugent would not have included the sections, had she not considered them to be reasonable conclusions, on the basis of the information she had before her.

267. The report was sent to Prof Eccles. It was Prof Eccles who had to determine what action any should be taken. HR2 recommended that no further action be taken at this point, on the basis of the report.

268. Prof Eccles amended the report and did not agree with all the conclusions drawn by Miss Nugent.

269. Prof Eccles asked HR2 to draft a letter for her to send to Prof Savelyeva. In her email of 19 August. She stated,

*I had just a few questions to clarify it is a subtle point, but as far as I know all other staff who wanted to access to buildings to pick up things like computer screens, data, et cetera did so only with explicit permission provided by Adrian Reyes-Hughes in agreement with me as per the initial instructions to all staff so I would probably have upheld Allegation one, although the fact that it says "to do work" is presumably the subtlety that prevents it being upheld . This is covered in the response to allegation 2. Allegation 4 is not substantiated but probably would be if the allegation was about if the allegation was about sharing access cards with someone else against regulations.*

*And allegation. She also asked to speak to me without specifying why, in July once the investigation was launched and her complaint had been sent and asked me to allow Chuan ( DR Wang) back into the building on an honorary contract, then got the CEO of touch light genetics email me asking that he be allowed back. I spoke to him and explained our position about Chuan, and he was very understanding, but it was awkward.*

*I understand this has all been driven by a personal research agenda and her feeling of personal obligation to funders but she has been rather underhand at best over this. I don't therefore want to let her off without pointing this out very clearly.*



270. We find that this email sets out the true reasons why Prof Eccles took a different approach to the outcome than Miss Nugent . We accept that the email written on the 19 August 2020 sets out the real reasons for the letter that was subsequently written. Put simply, Prof Eccles believed that Prof Savelyeva, whilst acting from proper motives had not herself acted appropriately or properly and believed that she had breached the rules. Dean Eccles believed this because of the evidence she had before her. We accept her explanation as true.
271. We conclude that any protected disclosure made were not an effective cause of any of her treatment of the Claimant.
272. A letter was drafted headed disciplinary investigation outcome and was sent to the claimant dated 28 August 2020
273. The report was then sent to Professor Savelyeva.
274. The letter confirms that *no further action will be taken, but notes incidents of this nature must not be repeated. Therefore, I have set out some guidance for you to observe in the future.*
275. The letter also states *a copy of this letter will be placed on your file as a record and to note that you have been given this guidance to any further issues regarding the above occur.*
276. On 3 September 2020 the claimant asked for a copy of Karen Nugent's report. This was duly sent but without the appendices to it.
277. Following the report being sent the Claimant realised that there had been a misunderstanding or a mistake over the log books that had been looked at when considering the allegations that she had entered the building on particular days. She had information which showed her correctly signing in, and she provided this information.

278. The claimant raised an issue on the 11 September 2020 in respect of the finding in Karen Nugent's report that the claimant had failed to sign the CSU sign in sheets on the dates identified by her in the report.
279. The claimant subsequently produced photographs of the signing in book which she had signed on various dates.
280. The respondents then undertook a significant amount of research in order to identify whether or not there had been an error made and whether or not the wrong logbooks had been looked at. We all agree that this shows that the respondents took the whole matter seriously and were doing all they could to investigate fairly and thoroughly, even if they did not always achieve that objective.
281. On the 15 September 2020, Prof Eccles asked Mr Underwood to check that the people who signed in during the June lockdown did have specific permission to be in. She said a slight *problem has been uncovered. It seems that the logbook checked and referred to in Karen Nugent's recent investigation was the CCI lab and not Somers logbook. However, permission wasn't granted. So just to cover all bases. I'd be grateful if you could please crosscheck with Adrian W that people signed in during lockdown ( try 11 or 19 may) did have specific permission to be in...*
282. Prof Underwood did crosscheck and replied stating he had looked at a complete list of people given permission to access the Somers building and that the claimant was given access first on 3 June 2020, that any access prior to that was NOT authorised and that she signed in on 5 occasions.
283. From this investigation, it appeared to the respondents that the allegation that had been upheld in reference *failing to sign in* was wrong, as it appeared that the claimant demonstrated that she did sign in. The respondent's further investigation suggested that the claimant may have signed in, but that she had not had permission to be in the building. This, as was noted by a Mr HR2 on the 18 September 2020, was a different allegation.

284. On 8 September 2020, Prof Eccles wrote back claimant. She noted that it appeared that the logbooks used in the investigation had been CCI building not Somers building, which was the book that the claimant had signed. She attributed the failure to spot this as being possibly due to lack of face-to-face discussion. She then says, *however the allegation was really about entering the building without written permission. You clearly signed in during May and as far as I know your written permission was granted in June. I want all our staff to realise that we all have some personal responsibility for the health and well-being of our colleagues and the current incredibly difficult situation makes that responsibility even more important. With the Covid incidents rising again, this is not going to get easier.... So I am really grateful to everyone who is sticking to the guidance ..... We have a particular responsibility in the faculty of medicine, because we are working at the hospital site where they are very keen to maintain a Covid zero status so that patients can continue to receive essential treatment. Access to our buildings and labs should now be a bit easier for Everyone but we still need to respect the risk of infection spreading out of control when the viral load becomes more prevalent.. . .*

285. On the 27 September 2020 Prof Savelyeva sent a 4 ½ page letter to Mr HR2 raising concerns about the findings that had been made.

286. She alleged that Prof Eccles had made a finding that the claimant had been dishonest when she stated *your actions were not sufficiently open and honest*. She also said that she had been subjected to a written warning and the warning has been imposed without following and the process. She states that the inadequate and unfair investigation feels like further victimisation, for making protected disclosures. She sought the withdrawal and dismissal of all the disciplinary allegations and findings and asked for a full and fair investigation into her complaints against Prof Underwood.

287. On 25 October 2010 Mr HR2, contacted both the Chief Operating Officer and others about a whistleblowing complaint. He outlined that the complaint had been received; that protected disclosures were not adequately investigated. He set out in his email what the claimant was alleging the protected disclosures to Prof Underwood to have been.

288. He notes that the claimant is continuing to challenge the number of elements of the report, including an alleged failure appropriately investigate the protected disclosures and alleged victimisation . He suggested it would be appropriate to review the concerns in line with Universities whistleblowing policy to determine whether the faculty had taken the appropriate steps in dealing with the matter or whether further investigation might be required. He asked for an independent member of staff to be appointed to undertake a preliminary investigation.

289. Prof Eccles responded with a query in respect of made some amendments to that report following a discussion with HR2. One amendment made was to include several comments in the report. The Claimant points to these comments as further detrimental treatment of her.

290. The claimant asserts that Prof Eccles subjected her to a detriment because she modified the disciplinary allegations and then reached a further conclusion without process and that she inflated the findings in the investigation report.

291. We have therefore considered both the draft report produced by Prof Nugent and the amendments made to that report by Prof Eccles as well as the explanations given by Prof Eccles for making amendments to that report.

292. On the 8th July 2020 professor Eccles contacted professor Underwood and HR2 because she herself had been contacted by the claimant who had asked her whether or not Dr Wang might be allowed to return to the lab and the university to carry out some final work. it was apparent to professor Eccles that the work was necessary in order for the project to be completed and that Doctor Wang had some specific and particular expertise in the area of animal experimentation which of the claimant herself did not have.

293. However Professor Eccles also notes that Doctor Wang was no longer working at the university and that he had left the university before an investigation into him had been concluded. She was not clear what the best way to proceed was and therefore sought some further advice.

294. Professor Underwood was very clear that Dr Wang had declined to renew his contract and was no longer employed by the university. The view that he formed with Miss Nugent and HR2 was that his conduct , which had been the subject of the unfinished investigation, had been so serious that it would have resulted in dismissal for misconduct. We reminded ourselves that as far as the university was concerned, the Dr.Wang had admitted that he had accessed the labs in breach of the rules and lied about it .
295. Professor Eccles asked whether or not there might be another person who could assist the claimant in finalising the experimentation.
296. Professor Eccles received a further e-mail on the 15th of July in respect of this matter. The e-mail came from somebody called Jonny Olsson from Touchlight , one of the supporters and funders of the project. This was the email referred to earlier in the narrative. He wrote to explain the importance of the lab work which needed to be undertaken and expressed alarm that there was uncertainty about whether Dr Wang would be allowed to continue working on the project as his contract at the university had ended. he set out his views about the importance of doctor wang's unique experience and asked fat the potential risk to the project be take into account when making a decision.
297. Before sending a response to Mr Olson professor Eccles contacted Peter Johnson to ask for his advice. Peter Johnson had not, as far as we are aware being previously involved in any of the matters. the e-mail that Professor Eccles had drafted explained that Dr.Wang was no longer employed by the university and could not be allowed to continue working in laboratory environment without an employment contract the reason for this is that it would leave the university with no insurance cover and a potential health and safety liability and project licensing implications .she also explained that all lab work had ceased during the covered pandemic and that it was during that period of time that doctor wins contract had expired .
298. Mr Johnson's response to professor Eccles on the 16 July 2020 started by stating that he was not aware of the problem with doctor Wang and had never heard of him.

in the context his view was that there was little choice but to refuse to allow doctor Wang to return to the laboratory to complete the work .

299. The decision was therefore made Dr. Wang would not be allowed to return to the lab .

**Conclusion On Allegation**

300. The claimant alleges that this was an unreasonable refusal of the claimants request to permit Dr Wang to return to the laboratory as a visitor and was an act of detriment .

301. As at 8th of July 2020 when the request was made of Professor Eccles, the claimant had written her letter to Professor Underwood, which we find contained protected disclosures. Doctor Wang had been interviewed and a decision had been taken to start an investigation into the behaviour of the claimant herself. Professor Eccles was aware of these matters . Miss Nugent was in the process of carrying out the investigation but the report had not yet been provided to Professor Eccles .

302. We find that the way she handled the request was entirely fair and appropriate in the circumstances. When she asked for advice she set out the circumstances vary fairly and took into account comments made by Professor Underwood as well as the comments made by the claimant and her own thoughts . When contacted by the external agency she took further advice from another source, and a person who did not know the situation but who nonetheless confirmed that her proposed way forward was the right one and that she had little choice if Doctor Wang was no longer employed.

303. There is nothing about the correspondence or the decision itself to suggest that Professor Eccles did anything other than take the facts of the situation into account when determining what to do . She recognised the potential threat to the project and weighed that against the seriousness of the allegations made the fact that Doctor Wang no longer worked for the university and the fact that this meant there would be no insurance and potential health and safety risks . The only factor in support of the claimant's allegation is the fact that she had made a protected disclosure and the fact that this was arguably detrimental to the work that she was doing. In the

absence of any other evidence suggesting any other motive we conclude that the fact of the public interest disclosure having been made formed no part whatsoever in Professor Eccles' decision-making process.

304. On the 27 September 2020 the claimant wrote to Mr. HR3 the employee relations team manager and set out in a detailed 4 1/2 page letter a summary of her concerns about the way she had been treated in respect of the allegations made against her and the investigation carried out. She sent out a summary of her concerns. Her concerns included having been found to have breached rules regarding entry records breached rules about obtaining permission to enter buildings having findings made against her without having an opportunity to respond to them having a written warning placed on her file effectively without the opportunity to defend the allegations being accused and found guilty of dishonesty and having her complaint against professor underwood being ineffectively investigated and wrongly dismissed.

305. By this point the claimant had contacted Acas and stated in her letter that she was seeking the withdrawal and dismissal of all of the disciplinary allegations and findings against her and removal from her personal file of any references to them or to any lack of honesty or openness.

306. She then stated that she was seeking a full and fair investigation into her complaints against professor underwood in accordance with the universities whistle blowing policy .

307. Mr. HR3 contacted HR1 in HR making reference to the letter and stating *I haven't had a chance to read it in depth yet but I do feel that the report wasn't sufficient and so some of her concerns may be justified.* This was on 29 September.

308. On 14 October 2020 Mr. HR3 sent the claimant an e-mail providing a response to each of her concerns. He confirmed that informal management advice or guidance does not constitute a written warning and that it was kept on a local record rather than being stored on her HR record. He acknowledged that there had been shortcomings within the investigation and stated that he would ensure that feedback was given to the investigator in respect of the claimants six concern about whistle

blowing. He stated that in respect of the complaints about against Professor Tim Underwood *I would like to ensure that you feel your complaints against professor underwood have been fully considered therefore i have referred the matter to the chief operating officer to appoint an appropriate individual to review your concerns and if appropriate conduct a further investigation in accordance with universities whistle blowing policy. I will of course keep you informed and updated of any progress.*

309. The claimant responded to the e-mail on the 23 October with her responses and taking issue with a number of matters. She notes she is pleased that the whistle blowing complaint is being passed to the chief operating officer to investigate.

310. On 26 October Mr. HR3 wrote to the chief operating officer stating that a complaint had been received about the inadequacy of an investigation and providing some context. He states having sought legal advice it is felt that it would be appropriate to review these concerns in line with the universities whistle blowing policy to determine whether the faculty took appropriate steps in resolving these concerns and or whether further investigation is necessary in accordance with the policy.

311. We were told by the respondent witnesses that the chief operating officer did consider with the matter but having considered the policy, determined that there was no basis for any further investigation

312. We have no reason to doubt that this is what happened. Unfortunately it appears that this was not communicated to the claimant.

313. We note that the claimant has maintained before us that there was no referral despite the clear evidence in the various emails that we have seen including her own acknowledgement of the fact of that referral. The claimant may be aggrieved that the referral did not result in an investigation and she may be aggrieved without the outcome was not what she hoped for, but these are not detriments which she relies upon and we remind ourselves that there has been careful case management and



agreement of the issues in this case and that it is those issues which we must determine .

314. We find that the claimant was not subjected to detriment, because the complaint she made was referred to the respondents chief operational officer.

315. The final two allegations of detriment arose after the Claimant had left her post and moved to her new appointment at Liverpool university.

316. They are that firstly

317. *Following her appointment to the role of Professor, as detailed in her resignation letter of 12 May 2021, the Respondent refused or failed to bestow the title of 'Professor' to the Claimant's visitor status, instead electing that her visitor status should be that of 'Principal Research Fellow';*

318. *And secondly that Professor Underwood intervening, on or about 17 June 2021, to insist the Claimant made a case for the funding for retaining a formal role after her resignation, despite one of the Respondent's other professors already having requested that she continue to collaborate on projects and the Faculty and the Dean having explored terms of that retention.*

319. With respect to the first allegation , Professor Underwood states in his evidence to the tribunal that he had no objection to her being granted visitor status at the university and left the decision to Professor Eccles .

320. we have been referred to correspondence between Professor Eccles the claimant and Lindsey block in this respect, and in respect of the second allegation.

321. in respect of the second allegation , Professor Underwood asserts that he was not involved in any way in the consideration of the claimant's request that the respondent pay for 10% of her time whilst she was working for the University of Liverpool.

322. He told us and we accept that it would be an unusual thing for the university to agree to.

323. The claimant did make a request to the respondent in an e-mail on the 15th of June 2021 making reference to the new post in Liverpool that she would be taking up at the end of the month. she states that *Diana Professor Eccles had promised to pay 10% of my contract as a visitor .*
324. This was referred to Professor Eccles who responded stating that whilst she was happy for a visitors contract to be organised to allow her to continue working in southampton, she had not promised to pay for 10% of the contract. she stated to us in her evidence that all that happened is that she had said she would consider the possibility when given the information by natalie about grant income and the work that it was intended would be done in her capacity as a visitor. At the time of the request in June 2021 Professor Eccles had not received this information from the claimant . She explained in her e-mail that there were issues about the funding and we accept that the issues which she sets out in the context of them in her e-mail it is 16th June 2021 is an honest and true reflection circumstances at the time .
325. Professor Eccles then replied to the claimant on the 17 June 2021 . She referred to a discussion that she had had with the claimant where they had discussed the possibility of some sort of buy back . She then said the way forward if Liverpool wish for some buy out of your time is to identify PII time on existing or awarded grants given there is nothing currently in our budget for such an arrangement any commitment with faculty funding would require a compelling business case which would need to be discussed and agreed at the faculty board and if approval of the value of the faculty is agreed a request would then need to be scrutinised at with a strong supporting case .
326. We find that this e-mail sent after a discussion with the claimant was a fair and true reflection of professor eccles recollection of the discussion , and was as a matter of fact what she had said to the claimant when they met .
327. We have also been referred to an e-mail exchange with Professor Gareth Thomas who was also at the meeting and who the claimant has referred to in her correspondence , in an e-mail of the 16 July 2021 to Professor Eccles he states , *I thought you made it very clear at the meeting that this would need to be discussed at faculty finance level and weighed against other budget demands I'm not sure why Natalia has taken this stance and I would have appreciated her discussing it with me*

*first which would have given me an opportunity to dissuade her . following your decision I pointed out to her that this was consistent with similar requests from other leavers and her request would be difficult to support in the current financial situation where savings have to be made . I will go through this with her on Monday.*

328. We are all satisfied that the claimant was simply wrong about this . we also all consider that her attitude at this point is indicative of her belief that Professor Underwood was in some way manipulating or controlling anything which concerned her . she was simply wrong about this .

329. We find that there was no detriment to the claimant in this respect . She simply made a mistake

330. In respect of the title, we find that that was a simple error which was easily corrected . We found that this was an administrative mistake and nothing to do with professor underwood and nothing to do with any protected disclosure the claimant had made .

- We find that Professor Underwood had no influence whatsoever on Professor Eccles' own understanding of her discussion or the process which would be followed.

331. The claimant did not reply until the 15th of July 2021 . At that point she suggested that Professor Eccles had assured her that she would act on the suggestion of a 10% payment of the contract after discussing it with Professor Underwood .

332. We have seen the correspondence between Professor Eccles and the university human resources department, and we are satisfied that this demonstrates that Professor Eccles had not in fact altered her position and had good reason which was nothing to do with Professor Underwood for not granting the request to pay for 10% of the claimant's contract as a visitor. we accept her evidence that she had made no such promise to do so and that Professor Savelyeva herself had misunderstood and misrepresented the discussion .

333. We observe that the claimant was granted visitor status and we find from the evidence which we have heard and the documentation we've been referred to that it was standard for the claimant to be referred to as a Principal Research Fellow .

334. The claimant was granted visitor status on the 6th July 2021 under the e-mail sent to her states that she will be associated with the cancer sciences as a visiting fellow .

335. The claimant contacted the university suggesting there had been a mistake in calling her a *visiting fellow* not a *visiting professor* , and the response from Lindsey Block in human resources sent on the 13 July 2021 was to say that she could request the title change to visiting professor and that human resources had asked for written confirmation from the University of Liverpool of her substantive title. She says if you *could please send this to me and I can attach it to the ticket to request the title change* .

336. Professor Eccles herself received an e-mail from the claimant stating that both herself and professor Garth Thomas felt that they had had a positive discussion with Professor Eccles and appreciated the suggestion that the University of Southampton should pay for 10% of my employment costs by buying that proportion of my time from UOL Professor Savelyeva says in her e-mail *you assured me you would act on this after you had discussed it with my HoD Professor Underwood* .

### **337. The Relevant Legal Principles**

338. Section 47B of the Employment Rights Act 1996 provides that a worker has the right not to be subjected to any detriment on the ground that the worker has made a protected disclosure.

339. Section 43B of the Employment Rights Act 1996 sets out the circumstances in which a disclosure qualifies for protection.

340. It states at 43B

(1) in this part a 'qualifying disclosure' means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following ...

341. This means that the worker must reasonably believe both that the disclosure was in the public interest, and that it tended to show one of the matters set out in section.

342. The components of a qualifying disclosure, were summarised by HHJ Auerbach in Williams v Michelle Brown UKEAT /0044/19/00.

*First, there must be a disclosure of information. Secondly, the worker must believe that the disclosure is made in the public interest. Thirdly, if the worker does hold such a belief, it must be reasonably held. Fourthly, the worker must believe that the disclosure tends to show one or more of the matters listed in sub-paragraphs (a) to (f). Fifthly, if the worker does hold such a belief, it must be reasonably held.( paragraph 9).*

343. There are five potential relevant matters or circumstances which the worker might believe are shown by the information they have disclosed.

344. For the purposes of this case the matters relied upon by Prof Savelyeva were that

344.1. a person has failed is failing or is likely to fail to comply with any legal obligation which he is subject and/or

344.2. that the health or safety of any individual has been, is being or is likely to be endangered.

345. In order to determine whether or not there had been any public interest disclosure made, the first question that we had to consider was whether there had been a disclosure of information , then whether in the reasonable belief of Prof Savelyeva, the disclosure of that information was made in the public interest and third, whether, in the reasonable belief of Professor Savelyeva, the information tended to show either of the matters she relied upon.

346. We reminded ourselves that the concept of information within section 43B is capable of covering statements which might also be characterised as allegations, although not all allegations will necessarily amount to a qualifying disclosure. Whether they do so or not, depends on whether what is said is a statement of specific factual content, which can properly comprise information, as opposed to a general

statement with no information. We remind ourselves that we must consider and apply the statutory language and consider whether or not the statements or information relied on by the claimant satisfy those tests. (see for example *Kilraine v London Borough of Wandsworth* [2018] ICR 1850, per Sales LJ at par 30-36. )

347. The question of whether or not the employee holds the belief that the disclosure tended to show one of the relevant forms of wrongdoing and whether that belief is reasonable, involves subjective and objective elements.

348. In *Chesterton Global Ltd (t/a Chestertons) and anor v Nurmohamed (Public Concern at Work intervening)* 2018 ICR 731, CA, the EAT stressed that the test of reasonable belief remains that set down by the Court of Appeal in *Babula v Waltham Forest College* 2007 ICR 1026 CA.

349. The same test is to be applied to the requirement that the worker making the disclosure reasonably believed that the disclosure was made in the public interest. The public interest test in S.43B(1) can be satisfied even where the basis of the public interest disclosure is wrong and/or there was no public interest in the disclosure being made, provided that the worker's belief that the disclosure was made in the public interest was objectively reasonable.

350. In *Chesterton Global Ltd v Nurmohamed* [2018] ICR 731 Underhill LJ considered a situation in which a worker discloses information relating to their own contract of employment, and whether such a situation would preclude the employee also holding reasonable belief that a disclosure was made in the public interest .

351. The court judged that there is nothing in the legislative provisions that preclude the possibility that it is reasonable to regard disclosure of factors of one's own contract, or indeed matters that may be a personal interest of the employee as being in the public interest. The correct approach to that test is to consider all the circumstances of the case. This is of particular relevance in this case as Prof Savelyeva relied on some disclosures of information which primarily concerned her research work, and her own contract of employment .

352. for a disclosure to qualify under S.43B(1) ERA , the worker need only have a *reasonable belief* that her disclosure is made in the public interest. We are therefore asking ourselves what Prof S believed to be in the public interest and whether she believed the disclosure to be in the public interest and whether or not that belief was a reasonable one.

### **Breach of a legal obligation**

353. 'breach of a legal obligation' under s. 43B (1)(b) was a broad category and has been held to include tortious and/or statutory duties such as defamation (*Ibrahim-v-HCA* UKEAT/0105/18). This might include a potential breach of the contractual obligations either of the University or the potential breach of the provisions of the research contract between the University and external funders or the potential breach of specific legislation such as the equality act.

354. One question we had to consider was whether or not it was necessary for the claimant to identify specifically the legal obligation which had been; was being or might be breached in any specific situation.

355. Did the claimant have to identify the Equality Act 2010; did she have to identify a breach of a specific provision of the Equality Act 2010, or was it sufficient to say, as she did, that she understood a colleague to consider that he had been harassed.

356. We had to decide whether or not a legal obligation had been identified such that the employee making the disclosure can be said to have disclosed information tending to show that a legal obligation has been breached.

357. We have considered the judgements and guidance of the EAT in *Blackbay Ventures*, in which the EAT required that the source of the obligation should be identified and capable of verification. Some observers have considered that this was a departure from the earlier acceptance in *Bolton School v Evans* (above) and *Western Union Payment Services UK Ltd v Anastasiou* (above) that the disclosure need not be specific about the particular legal obligation envisaged by the worker.

358. We also reminded ourselves that in *Eiger Securities LLP v Korshunova 2017 ICR 561*, the EAT, did not consider that there was any conflict.

359. Where there was an issue about whether there was or was not a legal obligation, the tribunal should, as explained in *Blackbay Ventures*, have identified the source of the legal obligation to which K believed her line manager or ES LLP was subject and how he or it failed to comply with it. The EAT clarified that the identification of the legal obligation would not have to be detailed or precise but would have to be more than a belief that certain actions are wrong. Actions may be considered to be wrong because they are immoral, undesirable or in breach of guidance without being in breach of a legal obligation.

360. This requires us to consider the language used by the claimant in the documents she relies on as disclosures, and to ask whether or not she has identified the source of the legal obligation as opposed to simply stating that various actions of a person are wrong.

361. We have also applied the relevant tests to the question of possible breaches of Health and Safety. We understand the claimant to rely upon the inherent stress of the work place during covid and its potential impact upon her.

### **The Question of causation**

362. The second question that we had to consider was whether any protected disclosure Prof Savelyeva had made were the cause or reason for any detrimental treatment which she had proved had occurred.

363. The test which we must apply is whether or not any proven protected disclosure materially influenced the employers treatment of the whistleblower. We need to consider what motivated the actions of each of the perpetrators of alleged detrimental treatment.

364. We have reminded ourselves and been reminded by Counsel, of S.48(2). Of the employment rights act 1996. This provides that in any detriment claim under that



provision, it is for the employer to show the ground on which any act, or deliberate failure to act, was done.

365. We reminded ourselves that this does not mean that once a claimant asserts that he or she has been subjected to a detriment, the respondent must disprove the claim.

366. It does mean that if the claimant proves on balance of probabilities, that she did make protected disclosures, and that there was a detriment and that the respondent subjected her to that detriment, that the burden will shift to the respondent to prove that the worker was not subjected to the detriment on the ground that she had made the protected disclosure.

367. We remind ourselves that if we have no evidence to indicate the ground on which the respondent subjected to the claimant to detriment it does not necessarily follow that the claimant will succeed in the claim (see for example *Ibekwe v Sussex Partnership NHS Foundation Trust* EAT 0072/14. ) There, the EAT adopted the same approach as that taken by the Court of Appeal in *Kuzel v Roche Products Ltd* 2008 ICR 799, CA. While *Kuzel* was an unfair dismissal claim brought under S.103A ERA, which covers dismissals for making a protected disclosure, a similar burden of proof applies. The Court of Appeal in *Kuzel* held that, having rejected the reason for dismissal advanced by the employer, a tribunal is not then bound to accept the reason advanced by the employee: it can conclude that the true reason for dismissal was one that was not advanced by either party. In *Ibekwe*, the EAT concluded that there were no grounds for interfering with the tribunal's unequivocal finding that there was no evidence that an unexplained 'managerial failure' to deal with an employee's grievance was on the ground that the grievance contained a protected disclosure.

368. If it is necessary to draw inferences, we remind ourselves that the proper approach to drawing inferences in a detriment claim was summarised by the EAT in *International Petroleum Ltd and ors v Osipov and ors* EAT 0058/17 as follows:

369. First , the burden of proof lies on a claimant to show that a ground or reason (that is more than trivial) for detrimental treatment to which he or she is subjected is a protected disclosure that he or she made

370. Second by virtue of S.48(2), the employer must be prepared to show why the detrimental treatment was done. If it does not do so, inferences may be drawn against the employer (or worker or agent) — see *London Borough of Harrow v Knight* 2003 IRLR 140, EAT

371. However, as with inferences drawn in any discrimination case, inferences drawn by tribunals in protected disclosure cases must be justified by the facts as found.

372. We also took into account the judgment of the EAT in *Aspinall* in which it borrowed the words of Lord Scott in the *Khan* case when concluding that, ‘for there to be detriment under S.47B “on the ground that the worker has made a protected disclosure” the protected disclosure has to be causative in the sense of being “the real reason, the core reason, the causa causans, the motive for the treatment complained of”’.

373. We also reminded ourselves of Elias LJ’s formulation of the causation test in *Fecitt and ors v NHS Manchester (Public Concern at Work intervening)* that the question is whether the protected disclosure materially (in the sense of more than trivially) influences the employer’s treatment of the whistleblower. Whilst we must apply the words of the statute themselves, we have used this as a guide to the correct approach.

## Discussion and conclusions

### Public interest disclosures

#### 378. Did the claimant make the following disclosures

1. A disclosure in writing by email to Professor Underwood on 8 June 2020;
2. A disclosure to Miss Nugent in writing by email on 14 June 2020;
- 3 .A disclosure to Professor Eccles in writing by email on 29 June 2020.

374. We all agree that the claimant made a public interest disclosure in her email to Professor Underwood of 8 June 2020. There is a disclosure of information about a potential breach of legal obligations by the University, arising from the contracts for research and contractual obligations to funders.

375. We conclude that the claimant reasonably believed that delays to research about possible vaccines for some cancers, which may flow for the breach of legal obligations, were matters that would be in the public interest.

376. Part of her reason for writing the email was because she was concerned about the threats to funding if the project was delayed, although the reason she wrote the email was not primarily because of that concern or view but was rather because she wanted some help in reinstating Dr Wang to do the work needed to complete the project. We conclude that she reasonably believed that the information disclosed tended to show a breach of a legal obligation in respect of contracts.

377. We also conclude that information was disclosed that Dr Wang may have been harassed by a colleague. This was both information and an allegation. The legal obligation relied upon is not specified and we all agree that the use of the word *harassed* does not in this context suggest or point to any obvious unlawful action.

378. We conclude that the claimant did not reasonably believe this matter to be in the public interest.

379. If we are wrong, and in any event, we find that the email we were referred to and which she said she had seen, was not one which could lead any one to reasonably believe that there was breach of a legal obligation, and we conclude that the claimant did not reasonably believe that the information she disclosed tended to show such a breach.

380. We conclude that the next sentence, in which the claimant asks Professor Underwood to intervene to prevent the circumstances, is not of itself part of that disclosure, and nor is it a protected disclosure of itself, but is a request for help to get a member of staff who has been suspended for alleged breach of covid rules, back to work. The fact that there is a protected disclosure in the earlier part of the letter does not make the entire letter a protected disclosure. Rather it is a letter which contains a protected disclosure as well as other matters, including the request to intervene.

381. We consider that this is of key importance because the letter is very long, and the part which we find Professor Underwood objected to, and the part which formed the basis of the allegations against Prof Underwood, was a very specific part of the letter. It was the sentence that asked him to intervene.
382. The Claimant sent the email containing a public interest disclosure to Miss Nugent as part of her amended witness statement and at that point, she had made a public interest disclosure to Miss Nugent, and we all accept that from that point the respondents staff dealing with the complaints and the investigation, including HR became aware of the contents of the letter, whether or not they read it in detail.
383. The Claimant also sent an email to Professor Eccles on the 29 June and this also contained disclosures of information and allegations .
384. From our findings of fact, we conclude that in so far as there is a repetition of the earlier disclosures, these are also disclosures which are protected, to Professor Eccles.
385. We have considered whether there was any information disclosed which amounted to a public interest disclosure in respect of racial harassment and conclude there was not.
386. We have also considered whether any of the information disclosed amounts to a public interest disclosure about health and safety matters. We conclude there is not. Whilst the claimant did raise her own health and referred to stress, this is in the context of her work at a time of covid. We accept that this could, in the context , be disclosure of information , rather than a statement.
387. However, we do not make any findings of fact to support such a general statement being something that the claimant thought or reasonably believed to be in the public interest. We find that it was not.
388. In any event, we conclude that any information about the impact of events ion the claimant was not causative of any of the events or matters of which she complained.

## **Detriments**

389. We have then considered what detriments the Claimant says flow from this disclosure.

1. **The respondent commenced a disciplinary investigation into the Claimant's alleged conduct by letter dated 13 June 2020;**
2. First the claimant says that the decision to make allegations against her on 13 June 2020 was caused by her having made a protected disclosure. Second, she alleges that the first two allegations in particular were made by Professor Underwood, because of her disclosures
3. The only disclosure we find to have been made at that time was in respect of the breach of legal obligations, in respect of potential contractual breaches.
4. We find that there were genuine concerns about the Claimants own behavior which came to light following the Interview with Dr Wang. The first person to raise concerns was Miss Nugent. We accept her evidence that she raised them because she was concerned about what she had been told. We find that her concern was genuine and reasonable and was the only reason she contacted professor underwood with her concerns. We conclude this had nothing to do with any disclosure made. At the time she raised her concerns, she had not seen the email containing the disclosures.
5. It is true that it was Professor Underwood who determined that there should be an investigation into her behaviour as well, and it is true that he included two allegations which the claimant has argued do not appear to arise from the concerns raised specifically by Miss Nugent, and we have therefore considered his approach to the issue and his reaction to the emails sent by PS.
6. None of the evidence we have heard, and none of the documents we have been referred to suggest to us that Professor Underwood was disturbed or angry or annoyed with Professor Savelyeva because she was raising concerns about the risks to the project. We find that Professor Underwood had in fact been sympathetic to these concerns only days earlier, when he had agreed to delay Dr Wang's suspension.

7. Rather, we find Professor Underwood was specifically annoyed and concerned because he believed he was being asked to interfere in an internal investigation. The reason for the request was not, we find, a matter of concern to him. It was the fact of the request being made at all, that caused him concern, and annoyed him.
8. We conclude that the reason why Professor Underwood wrote his email stating that it was totally inappropriate was a response, not to her raising concerns about the contract, but only to her request to him to intervene.
9. We reject the Claimants suggestion that his response was so unreasonable that it could not be a true reason. We find that it was a genuine reaction and that he did believe her request to be totally inappropriate.
10. We also reject the Claimants suggestion that the only explanation for his response, is that he is responding to the public interest disclosure.
11. We have considered the conflict on the evidence in respect of the source of the allegations 1 and 2. We do think that Professor Underwood was determined to cover all the bases at this point, and all agree that now, looking back on the information available to us, and with the benefit of hindsight, it is not obvious where those two allegations arose from. However, Professor Underwood did not have the information we have had, and we observe that he was dealing with matters which were new and where similar allegations had been made against Dr Wang, who admitted to wrongdoing, and there was a specific concern at the time about access to buildings and permissions for access.
12. We have carefully considered whether or not the fact that he was upset at Professor Savelyeva's request that he intervene, influenced him in his choice of or drafting of the allegations or in the decision to instigate the investigation. We conclude that, even if his irritation with the request to intervene was in his mind, it was not a material factor in his reasoning and, in any event, his irritation was

nothing to do with the protected disclosure that had been made. We accept his explanation for the reasons set out and reject the claimants claim in this respect.

13. Professor Underwood did not either institute the proceedings, or include the two first allegations for the reason or principle reason that the claimant had made a protected disclosure, but rather because there were a genuine and understandable concerns about Professor Savelyeva, and that the reason, or the principle reason for Professor Underwood instigating the investigation, and for drafting and including the allegations which he did, was that he believed there to be grounds for concern, which needed investigating.

#### **2.1.2 Professor Eccles' alleged unreasonable refusal of the Claimant's request to permit Dr Wang to return to the laboratory as a visitor to complete his experiments on 16 July 2020;**

We find that this decision was nothing to do with any disclosure made by the claimant, and everything to do with the behaviour of Dr Wang himself, and the fact that he had left the university and there were concerns about the practicalities. We dismiss this claim.

#### **2.1.3 Mistakenly finding that she had been guilty of conduct in relation to building access (paragraphs 27-30 of the Claim Form)**

We have set out our findings about how Miss Nugent conducted the investigation, and the difficulties she faced, partly due to her own time pressures and partly due to the lack of face-to-face discussion. There was an error over which logbook had been looked at and what conclusions drawn, but it was a genuine and understandable error which arose from the circumstances. Once Professor Savelyeva pointed out the error, the respondent re investigated and recognised that a mistake had been made.

We conclude that whilst this was a detriment to the claimant, it was not materially influenced or influenced at all by the fact of any protected disclosure made. It was a genuine error.

**2.1.4 Modifying the disciplinary allegation and then reaching a further conclusion on that modified allegation without process (paragraphs 34-35 of the Claim Form);**

The respondent did change the allegation and did then modify the outcome to a limited extent. Overall, the result for the claimant was the same – there was no disciplinary action taken against her, and no warning put on her record. However to do this without due process was a detriment to the claimant.

The process followed by the respondent did, as we have observed, fall short of best practice in a number of ways, but the reason for that was a genuine concern about how the claimant had behaved and responded to the implementation of serious and necessary rules put in place to deal with the pandemic. Dean Eccles considered that the Claimant needed to know that her behavior, although explained by her concerns over her own project, had fallen short of what was required of a senior member of staff.

We accept the reasons given by Dean Eccles and set out in our findings as true, and conclude that the fact of any protected disclosure had no material influence on these decisions and actions at all. We dismiss this part of the claim.

**2.1.5 Miss Nugent failed to investigate the Claimant’s complaint in relation to Professor Underwood’s treatment of her, which was set out in her email to Professor Eccles on 29 June 2020;**

390. We have found that there was a failure to specifically deal with some of the claimants complaints about Professor Underwood.

391. This was a significant failure and was a detriment to the claimant. Miss Nugent had the information from the claimant which we have found did amount to a protected disclosure arising from her initial email.

392. We have found that Miss Nugent did her best to conduct a fair investigation, but that she overlooked the requirement to investigate the complaints made by Professor Saveleyva as well as those against her. We have made findings about the circumstances and the explanations given by the Respondent. We have found that the after the event attempts to remedy the failure to investigate was not the best way of doing things, and it may well have been an unfair process. We conclude that this was a detriment to the claimant.



393. We have therefore considered what reason the respondents have given for the detrimental treatment.

394. We conclude that the reason for the respondent's dealing with matters as they did, was nothing to do with the claimant having raised a protected disclosure, but was rather a combination of the respondents wanting to reach a resolution of the concerns about the claimant and those complaints made by her swiftly and all at once, the difficult circumstances in which they were working in the summer of 2020, and the time pressures and work pressures of all those in the Department both because of the range of research projects needing management and because of Miss Nugent's imminent hospitalisation.

395. We have made no findings of fact, except for the fact of the failure to address the matter and the way that it was handled, to suggest that the PID was a material factor which influenced either HR2 who suggested the approach to MS Nugent, or in Miss Nugent in adopting the approach.

396. We find that Miss Nugent Prof Eccles and HR2 did their best in difficult circumstances. They made many mistakes and errors, but we do not find that any of the mistakes or errors were materially influenced or influenced at all by the fact that the claimant had made any protected disclosures.

#### **2.1.6 Professor Eccles' alleged 'inflation' of the findings in the investigation report (paragraph 33 of the Claim Form);**

We have set out our findings in respect of the steps taken by Dean Eccles on receipt of the report. We accept that she did change the findings. We accept that the claimant considered this was to her detriment. We conclude that her changes to the report were not an inflation of the findings but were the true opinion and view of Dean Eccles on receipt of the report. We conclude that this opinion was influenced by the Claimant's actions in not abiding by the rules, and not at all by any protected disclosure made by the claimant. It was wholly caused by the genuine concerns which Dean Eccles had about the way the claimant had conducted herself during the Covid 19 Pandemic, and in particular the claimant's attitude toward rules designed to protect staff and the university. We dismiss the claimants' allegations in this respect.

In respect of the allegations arising from the investigation and the claimant's own complaints, prior to reaching our conclusions, we have considered the whole picture. We can all see that there is an argument that the treatment, being unusual and haphazard in some respects, may have been materially influenced by the claimant's PIDS. However, from the facts we have found we conclude that in this case, the real reason for the actions and for the shortcoming, was a pandemic, a set of rules being imposed as urgent measures on staff in the most extraordinary circumstances, and the Claimant's attitude that the rules were not as important as her research and the work of her associate.

We are all satisfied that the whole sequence of events enforces and underlines our conclusion, that the respondents' actions were nothing to do with any protected disclosure made.

**2.1.7 Failure to refer her complaint to the Respondent's Chief Operational Officer following her request on 28 September 2020;**

We find that the matter was referred, and that the claimant knew it had been referred. We find that the COE did not consider that it was necessary to carry out any further investigations. We conclude the claimant was not subjected to this detriment and dismiss this allegation.

**2.1.8 Following her appointment to the role of Professor, as detailed in her resignation letter of 12 May 2021, the Respondent refused or failed to bestow the title of 'Professor' to the Claimant's visitor status, instead electing that her visitor status should be that of 'Principal Research Fellow';**

We conclude on the facts found, that there was not a detriment for the claimant. She was treated in the way she was because this was usual practice and it had nothing whatsoever to do with any protected disclosure. We dismiss this claim.

**2.1.9 Professor Underwood intervening, on or about 17 June 2021, to insist the Claimant made a case for the funding for retaining a formal role after her resignation, despite one of the Respondent's other professors already having requested that she continue to collaborate on projects and the Faculty and the Dean having explored terms of that retention.**

We reject this allegation. There is no evidence that Professor Underwood intervened. The claimant relies upon an email to which he was copied in, on 17 June, in which the matter is discussed and Dean Eccles made it clear that the claimant would require a compelling business case, which would need to be discussed and agreed at the next faculty board, because there was no money in the department's budget for such an arrangement.

We conclude that this was the real reason for the treatment, and it was nothing to do with and disclosure made.

For these reasons we therefore dismiss all the claimants made by the claimant.

**Employment Judge Rayner**

Southampton

Dated 14 November 2022

Redacted 21 September 2023

Sent to the parties: 22 September 2023

For the Tribunal Office

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.