EMPLOYMENT TRIBUNALS

Claimant: **Mr M Butterick**

Respondent: **The University of Leeds**

Heard at: Leeds **On: 7,8, 9 and 10 February 2023**
Deliberations in Chambers: 27 February 2023

Before: **Employment Judge Shepherd**
Members: **Ms. Blesic**
Ms. Takla-Wright

Appearances:
For the claimant: Mr Roxborough, counsel
For the respondent: Ms Barry, counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claims of indirect race and age discrimination are not well-founded and are dismissed.

2. The claims of detriment for making a protected disclosure are not well-founded and are dismissed.

3. The claims that the claimant was victimised because he had done a protected act are not well-founded and are dismissed.

4. The claim of less favourable treatment as a fixed term employee than a comparable permanent employee is not well-founded and is dismissed.

These were two cases that had been listed to be heard together. The parties attempted to narrow the issues in order that both claims could be heard. However, this had not been possible and it was agreed that it would be necessary for further particulars to be provided in respect of the second claim and investigations to be carried out by the respondent's representatives. In the

circumstances, the second claim was not considered and further case management orders will be required in case 1806708/2021.The parties' representatives will provide suggested directions at the appropriate time.

REASONS

1. The claimant represented was represented by Mr Roxborough and the respondent was represented by Ms Barry. The Tribunal heard evidence from:

Mark Butterick, the claimant;
Robert Butler, HR Manager;
Professor Mark Stuart;
Professor Jonathan Winterton.

2. The Tribunal had sight of two bundles of documents which consisted of 790 and 113 pages. The Tribunal considered those documents to which it was referred by the parties.

The issues

3. The parties provided an agreed list of issues which was said to incorporate details provided in Claimant's further particulars. The identified issues were as follows:

Time Limits

1. Have the Claimant's claims been brought within the time limit set out at s48 (3) and/or s11 (2) ERA 1996, subject to EC? The Claimant's early conciliation notification was made to ACAS on 30 September 2021. It is the Respondent's position that insofar as the claim relates to any matters occurring on or before 30 June 2021, it has been brought out of time, save insofar as paragraphs 2 and 3 below apply
2. If claims in respect of less favourable treatment/discrimination and/or detriment have been brought in respect of any acts/omissions which occurred on or before 30 June 2021, do those acts/omissions form part of conduct extending over a period and if so, did that conduct end within the primary limitation period?
3. If any of the Claimant's claims have been brought out of time:
   - 3.1 (in respect of the claim of detriment under s 47B ERA) was it reasonably practicable for such claim to be brought in time and if not, were they presented within such a reasonable time thereafter;
   - 3.2 (in respect of the less favourable treatment/discrimination claims) would it be just and equitable to extend time?

Detriment claim s 47B ERA 1996

4. What was/were the alleged act(s) constituting detriment?
   - 4.1 being issued with formal notice of redundancy on 18th March 2021;

4.2 R failed to offer any support in relation to C's health and C felt ostracised by management;

4.3

4.3.1 Failure to amend criteria to comply with employment law meant C and others could not apply for the posts;

4.3.2 Unilateral removal of work involving personal tutees and management of dissertations;

4.3.3 C left humiliated and with a professional reputation undermined by other colleagues being aware of the redundancy at a time when R was offering C and others chance to apply for two newly created roles;

4.3.4 C was forced to apply for a new role rather than continue in his existing role which he stated was not redundant. This led to him being given late notice of the teaching topics and limited time to prepare. This led to aggressive communication and what C alleges was a further act of race discrimination by R in its failure to investigate C's allegations about a Course Leader;

4.3.5 The comments by the Course Leader led to C feeling belittled and humiliated. R has failed to investigate these concerns raised by C;

4.4 R failed to investigate these concerns [regarding the appointment to the six posts]. Some 6 months later they remain unresolved;

5. Were there circumstances within the meaning of s 43A ERA 1996, namely:

5.1 Did the Claimant make disclosures to the Respondent, if so when and to whom?

5.2 What was disclosed and was it a disclosure of information (as opposed to opinion)?

5.2.1 Re 2 above: Email from C to Rosie Hudson 11th March disclosing that R had previously attempted to unilaterally vary his contract of employment that he had rejected this and this had resulted in ill feeling from colleagues. Email also raised issues with the legitimacy of the redundancy process as it applied to the department;

5.2.2 Re 3 above: Disclosure of information in meeting of 29th March that the redundancy procedure being followed was unlawful. R failed to explain the substantive reason for the redundancy. C explained the failure to follow a lawful procedure was damaging his health;

5.2.3 Re 3 above: Email from C to Irena Grugulis 17th June 2021 disclosing that the criteria for the new roles meant he and others could not apply and that the requirements contravened employment law – specifically referencing the case of Duxbury v University of Huddersfield;

5.2.4 Again re 3 above: Email from C to R – 29th June 2021 – setting out grievance and protected disclosures;

5.2.5 Again re 3 above: Email from C to R – 1st July 2020 – stating R was committing offence by not submitting HR1 notification;

5.2.6 Re 3 above: Email from C to R on 11th August 2021 – raising a grievance and disclosing that he believed the appointment of 6 new employees who were predominantly foreign nationals amounted to race discrimination.

5.3. Did the Claimant believe that

5.3.1 it tended to show one of the listed matters, s43 (1)(b) ERA 1996?

5.3.2 the disclosure was in the public interest, namely the incidents mentioned in the ET do not reflect a private employment dispute. The issues raised directly affected all members of the department. The respondent is a large public high profile institution and the department affected was dedicated to researching and teaching both employment law and best practise within HR.

Was his belief a reasonable one?

6. What was the reason for the alleged detriment? Was that on the ground of such protected disclosure?

Less favourable treatment Reg 3 FTE Regs 2002

7. What was the alleged less favourable treatment and was it in fact less favourable?

7.1 C was identified for redundancy on the grounds he was a FT employee

7.2 R failed to deal properly with C's grievances due to him being a FT employee

7.3 C not provided with equivalent support or equipment as FTE colleagues *[presumably meant to say **non**- FT employees?]*

8. Was there a comparable permanent employee, if so who? Was he/she engaged on the same or broadly similar work?

9. Was the alleged less favourable treatment on the ground that the claimant was employed on a FTC?

10. If it was, was the treatment objectively justified?

Indirect discrimination s19 EA2010

11. What is the specific protected characteristic relied upon?

    11.1 race

    11.2 age

12. Which provision, criterion or practice is relied upon?

    12.1 the requirement to hold a PHd and research background;

    12.2 the stated objective of recruiting "upcoming scholars" and therefore by definition younger employees;

    12.3 targeting recruitment primarily from non UK institutions;

    12.4 an operating culture designed to prevent older, white UK employees, particularly in the FTE roles, from applying for permanent employment;

    12.5 an operating culture that disadvantaged white male employees who made complaints about the behaviour of non white employees.

13. Is that PCP applied to others who do not share the Claimant's protected characteristic?

14. What is the particular disadvantage?

15. Is the Claimant put to that disadvantage?

16. Can the PCP be justified on ground that it is a proportionate means of achieving a legitimate aim?

Victimisation s27 EA2010

17. What is the protected act?

    17.1 Email from C to R – 29th June 2021 – setting out grievance and protected disclosures;

    17.2 Email from C to R on 11th August 2021 – raising a grievance and disclosing that he believed the appointment of 6 new employees who were predominantly foreign nationals amounted to race discrimination.

18. What is the alleged conduct to which he was subject?

    18.1 the inability to apply for the roles and the removal of tasks from his role as detailed above. In turn this led to the requirement to teach a new subject without adequate time to prepare. This in turn resulted in aggressive communication from other staff and failure due to the culture of R to deal with the matter in a non-discriminatory way.

    18.2 Being placed back into the redundancy process after raising grievance.

19. Was the Claimant subjected to the conduct:

19.1 because of the alleged protected act; and

19.2 did it constitute a detriment to him.

4. Having considered all the evidence, both oral and documentary, the Tribunal makes the following findings of fact on the balance of probabilities. These written findings are not intended to cover every point of evidence given. These findings are a summary of the principal findings that the Tribunal made from which it drew its conclusions.

5. Where the Tribunal heard evidence on matters for which it makes no finding, or does not make a finding to the same level of detail as the evidence presented, that reflects the extent to which the Tribunal considers that the particular matter assists in determining the issues. Some of the Tribunal's findings are also set out in its conclusions, to avoid unnecessary repetition and some of the conclusions are set out within the findings of fact.

6. The claimant commenced employment with the respondent on 23 September 2019. He is employed as a University Lecturer within the respondent's Business School.

7. After a dispute with regard to the grade and salary which was resolved in the claimant's favour, he was appointed at grade 8 as a Lecturer in Human Resource Management in the Work and Employment Relations Division (WERD) in the Leeds University Business School.

8. The claimant was employed on a one year fixed term contract which was planned to end on 22 September 2020. He was appointed on 0.6 Full Time Equivalent.

9. As the claimant was appointed at grade 8, he had a six month notice period.

10. The respondent had used fixed term contracts for over 10 years in order to address fluctuations of student numbers and funding.

11. On 17 March 2020 a discussion commenced with regard to the Lecturers on fixed term contracts due to expire in September 2020. A business case for renewing the claimant's fixed term contract was made and the claimant's contract was renewed in September 2020.

12. Professor Jonathan Winterton was appointed as Head of Department in August 2020. He was of the view that fixed term contracts were not a good way to manage staff and he was committed to reducing the number of fixed term teaching contracts.

13. In early 2021 there were discussions between the claimant and Professor Winterton about converting the claimant to a permanent full-time post. It was agreed that the claimant would work one hundred percent.

14. On 7 March 2021 the claimant wrote to Professor Winterton indicating that he had decided to revert to his three day a week contract with the respondent.

15. A decision was made that the division needed to focus on research and that there should be Teaching and Research recruitment rather than appointing pure teaching staff.

16. On 11 March 2021 the claimant was invited to a fixed term contract consultation meeting as had happened the year before.

17. On 18 March 2021 the claimant was sent notification of the end of his fixed term contract on 30 September 2021.

18. On 30 April 2021 the claimant sent an email to HR and copied to Professor Winterton. In that email he stated that he was still unclear as to why he was being made redundant when the work was clearly continuing and was not reducing or moving elsewhere.

19. On 14 June 2021 the HR Officer sent an email to the claimant indicating that he would be able to apply for newly created positions and that he would be eligible for redeployment.

20. On 15 June 2021 new roles were advertised for Lecturers in Management Consulting. It was indicated that there was a requirement for a PhD or that the candidate should be close to completion of a PhD. The claimant's role for which he had applied and subsequently started in 2019, had stated that there had been a requirement to hold a PhD or equivalent.

21. On 29 June 2021 the claimant sent an email to the HR Officer and Professor Winterton stating that the University was in breach of a number of its own policies and various statutory obligations. It was stated:

> "a) there is no redundancy situation
> b) only part-time staff have been targeted
> c) it indirectly discriminates against female employees
> d) it indirectly discriminates against older employees
> e) consultation has been inadequate or meaningless. Particularly the ongoing failure to mitigate the risk of dismissals
>
> All the above are contrary to the Employment Rights Act 1996 and/or the Equality Act 2010…."

22. On 1 July 2021 the claimant sent an email to the HR Officer and Professor Winterton in which he raised the issue of the respondent failing to submit an HR1 form. Stating that:

> "In addition, to the best of my knowledge – the University has also failed to submit an HR1 form (attached) to the Redundancy Payments service.… This may also constitute a criminal offence…"

23. On 11 August 2021 the claimant sent an email to the HR Officer and others, including Professor Winterton. He indicated he wished to raise a formal grievance about racial discrimination. He referred to deliberate displacement of white, older UK nationals in favour of employing less qualified younger, non-UK nationals.

24. On 26 August 2021 Professor Winterton wrote to the claimant indicating that, in the light of student numbers and recent success in research funding within the division, they had undertaken a reappraisal of the business needs and teaching capacity and he had obtained approval for a total of two FTE roles which would be teaching and scholarship focused. The roles would be ring fenced to current teaching focused staff within the Division who were currently employed on fixed term contracts and potentially at risk of redundancy. This would support ongoing efforts to find appropriate alternative employment.

25. The claimant applied. He requested an increase to 0.7 FTE. He accepted an offer of employment on an open-ended contract and was appointed to start on 1 October 2021.

26. On 27 September 2021 the Deputy Programme Director sent an email to the claimant in respect lectures he was due to deliver and the claimant replied that his contract did not begin until 1 October and that he had only been checking emails occasionally. The Deputy Programme Director replied indicating that she had been emailing him since 21 September and that it meant little to her how often he checked his emails.

27. The claimant replied indicating that he found her email incredibly rude and offensive. The claimant complained to Professor Winterton about the rude and offensive behaviour of the Deputy Programme Director. On the same day the Deputy Programme Director wrote to the claimant apologising and indicating that she didn't mean to offend the claimant.

28. On 29 September 2021 the claimant wrote to Professor Winterton raising a grievance in respect of the bullying behaviour of the Deputy Programme Director.

29. On 30 September 2021 ACAS received an early conciliation notification from the claimant.

30. On 25 October 2021 the Interim Director of HR wrote to the claimant indicating that his grievance would be assigned to an investigation team who would be in touch with him shortly to arrange a preliminary meeting. The claimant replied indicating that he had decided not to participate in the process as he had no confidence in it.

31. On 26 October 2021 the Interim Director of HR wrote to the claimant indicating that they would require the claimant's participation in order to progress his complaint and that if he changed his mind he should contact her by close of play that Friday (29 October 2021).

32. On 4 November 2021 the claimant sent an email to Robert Butler asking why the investigation had not progressed. He stated that if, as a white man, he had used the seniority of his position to victimise/discriminate against a junior female

colleague of Asian ethnicity the matter would have been dealt with robustly by the University. He referred to a very serious and deep-rooted discriminatory culture within the University.

33. On 5 November 2021 ACAS issued the Early Conciliation certificate.

34. On 24 November 2021 the claimant presented a claim to the Employment Tribunal.

The law

Indirect Discrimination

35. Section 19 of the Equality Act 2010 states:

> (1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
>
> (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—
>
> (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
>
> (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
>
> (c) it puts, or would put, B at that disadvantage, and
>
> (d) A cannot show it to be a proportionate means of achieving a legitimate aim.

> PCPs cannot be considered in isolation. The adverse disparate impact must also be established. Once a PCP has been established, the complainant must show that the PCP is to the disadvantage of his or her group. Before any assessment of the impact of the PCP can be made, the appropriate pool for comparison must be identified.

36. In the case **of Essop v Home Office (UK Border Agency); Naeem v Secretary of State for Justice [2017] UKSC 27** the Supreme Court stated that the purpose behind indirect discrimination legislation is to protect people with a protected characteristic from suffering disadvantage where an apparently neutral PCP is applied. It is about achieving a level playing field and removing hidden barriers.

37 . There is no obligation on the employee to explain the reason why the PCP put the group at a disadvantage when compared to others: it is enough simply to show that there is disadvantage. However, the requirement to

justify PCP should not be seen as placing an unreasonable burden on employers.

38. In Chief Constable of **West Midlands Police v Harold [2015] IRLR 790,** the EAT emphasised that justification is an objective evaluation. Further what has to be justified is the outcome, not the process followed. In **Allonby v Accrington and Rossendale College and others [2001] IRLR 364** the Court of Appeal made it clear that:

> "once an employment tribunal has concluded that the [PCP] has a disparate impact on a protected group it must carry out a critical evaluation of whether the reasons demonstrate a real need to take the action in question. This should include consideration of whether there was another way to achieve the aim in question."

40. The EAT emphasised in **Rajaratnam v Care UK Clinical Services Ltd (UKEAT/0435/14)** that it is the rule that needs to be justified and not its application to the individual concerned.

41.The Supreme Court held, in **Homer v Chief Constable of West Yorkshire Police [2012**] UKSC 15 that to be proportionate, a measure must be an appropriate and necessary means of meeting the legitimate aim. Actions will not be proportionate if less discriminatory means to achieve the result were available.

42.The burden of proving objective justification is on the employer. The employer needs to produce cogent evidence that the justification defence is made out. However, the claimant has to show some evidence of disparate impact before the burden of proof placed on the employer.

Section 23 states:

Comparison by reference to circumstances

43. (1) On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.

<u>Victimisation</u>

44. Section 27 of the Equality Act provides as follows:-

(1) A person (A) victimises another person (B) if A subjects B to a detriment because--

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act--

(a) Bringing proceedings under this Act;

(b) Giving evidence or information in connection with proceedings under this Act;

(c) Doing any other thing for the purposes of or in connection with this Act;

(d) Making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

45. In a victimisation claim there is no need for a comparator. The Act requires the Tribunal to determine whether the claimant had been subject to a detriment because of doing a protected act. As Lord Nicholls said in **Chief Constable of the West Yorkshire Police v Khan [2001] IRLR 830**:-

> "The primary objective of the victimisation provisions ... is to ensure that persons are not penalised or prejudiced because they have taken steps to exercise their statutory right or are intending to do so".

46. The Tribunal has to consider (1) the protected act being relied on; (2) the detriment suffered; (3) the reason for the detriment; (4) any defence; and (5) the burden of proof. To benefit from protection under the section the claimant must have done or intended to or be suspected of doing or intending to do one of the four kinds of protected acts set out in the section. The allegation relied on by the claimant must be made in good faith. It is not necessary for the claimant to show that he or she has a particular protected characteristic but the claimant must show that he or she has done a protected act. The question to be asked by the tribunal is whether the claimant has been subjected to a detriment. There is no definition of detriment except to a very limited extent in Section 212 of the Act which says, "Detriment does not ... include conduct which amounts to harassment". The judgment in **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285** is applicable.

47. The protected act must be the reason for the treatment which the claimant complains of, and the detriment must be because of the protected act. There must be a causative link between the protected act and the victimisation and accordingly the claimant must show that the respondent knew or suspected that the protected act had been carried out by the claimant, see **South London Healthcare NHS Trust v Al-Rubeyi** EAT0269/09. Once the Tribunal has been able to identify the existence of the protected act and the detriment the Tribunal has to examine the reason for the treatment of the claimant. This requires an examination of the respondent's state of mind. Guidance can be obtained from the cases of **Nagarajan v London Regional Transport** [1999] IRLR 572 and **Chief Constable of West Yorkshire Police v Khan** [2001] IRLR 830, and **St Helen's Metropolitan Borough Council v Derbyshire** [2007] IRLR 540. In this latter case the House of Lords said there must be a link in the mind of the respondent between the doing of the acts and the less favourable treatment. It is not necessary to examine the motive of the respondent see **R (on the application of E) v Governing Body of JFS and Others** [2010] IRLR 136. In **Martin v Devonshires Solicitors EAT0086/10** the EAT said that:

> "…The question in any claim of victimisation is what was the "reason" that the respondent did the act complained of: if it was, wholly or in substantial part, that the claimant had done a protected act, he is liable for victimisation; and, if not, not. In our view there will in principle be cases where an employer had dismissed an employee (or subjected him to some other detriment) in response to a protected act (say, a complaint of discrimination) but he can, as a matter of common sense and common justice, say that the reason for dismissal was not the act but some feature of it which could properly be treated as separable. The most straightforward example this were the reason relied on is the manner of the complaint.…
>
> We accept that the present case is not quite like that. What the Tribunal found to be the reason for the Appellant's dismissal was not the unreasonable manner in which her complaints were presented (except [in one relevant respect]). Rather, it identified as the reason the combination of interrelated features – the falseness of the allegations, the fact that the Apple and was unable to accept that they were false, the fact that both those features were the result of mental illness and the risk of further disruptive and unmanageable conduct as a result of that illness. But it seems to us that the underlying principle is the same: the reason asserted and found constitutes a series of features and/or consequences of the complaint which were properly and genuinely separable from the making of the complaint itself. Again, no doubt in some circumstances such a line of argument may be abused; but employment tribunal's can be trusted to distinguish between features which should and should not be treated as properly separable from the making of the complaint."

48. In establishing the causative link between the protected act and the less favourable treatment the Tribunal must understand the motivation behind the act of the employer which is said to amount to the victimisation. It is not necessary for the claimant to show that the respondent was wholly motivated to act as he did because of the protected acts, **Nagarajan v Agnew [1994] IRLR 61**. In **Owen and Briggs v James [1982] IRLR 502** Knox J said:-

> "Where an employment tribunal finds that there are mixed motives for the doing of an act, one or some but not all of which constitute unlawful discrimination, it is highly desirable for there to be an assessment of the importance from the causative point of view of the unlawful motive or motives. If the employment tribunal finds that the unlawful motive or motives were of sufficient weight in the decision making process to be treated as a cause, not the sole cause but as a cause, of the act thus motivated, there will be unlawful discrimination."

49. In **O' Donoghue v Redcar and Cleveland Borough** Council [2001] IRLR 615 the Court of Appeal said that if there was more than one motive it is sufficient that there is a motive that there is a discriminatory reason, as long as this has sufficient weight.

Burden of Proof

50. Section 136 of the Equality Act 2010 states:

> "(1) This Section applies to any proceedings relating to a contravention of this Act.
>
> (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
>
> (3) But sub-Section (2) does not apply if (A) shows that (A) did not contravene the provision.
>
> (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or Rule.
>
> (5) This Section does not apply to proceedings for an offence under this Act.
>
> (6) A reference to the court includes a reference to –
>
> (a) An Employment Tribunal."

51. Guidance has been given to Tribunals in a number of cases. In **Igen v Wong [2005] IRLR 258** and approved again **in Madarassy v Normura International plc [2007] EWCA 33.**

52. To summarise, the claimant must prove, on the balance of probabilities, facts from which a Tribunal could conclude, in the absence of an adequate explanation that the respondent had discriminated against her. If the claimant does this, then the respondent must prove that it did not commit the act. This is known as the shifting burden of proof. Once the claimant has established a prima facie case (which will require the Tribunal to hear evidence from the claimant and the respondent, to see what proper inferences may be drawn), the burden of proof shifts to the respondent to disprove the allegations. This will require consideration of the subjective reasons that caused the employer to act as he did. The respondent will have to show a non-discriminatory reason for the difference in treatment. In the case of **Madarassy** the Court of Appeal made it clear that the bare facts of a difference in status and a difference in treatment indicate only a possibility of discrimination: "They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination".

53. In the case of **Strathclyde Regional Council v Zafar [1998] IRLR 36** the House of Lords held that mere unreasonable treatment by the employer "casts no light whatsoever" to the question of whether he has treated the employee "unfavourably".

54. In **Law Society and others v Bahl [2003] IRLR 640** the EAT agreed that mere unreasonableness is not enough. Elias J commented that

> "all unlawful discriminatory treatment is unreasonable, but not all unreasonable treatment is discriminatory, and it is not shown to be so merely because the victim is either a woman or of a minority race

> or colour … Simply to say that the conduct was unreasonable tells nothing about the grounds for acting in that way … The significance of the fact that the treatment is unreasonable is that a tribunal will more readily in practice reject the explanation given for it than it would if the treatment were reasonable."

55. A Tribunal must also take into consideration all potentially relevant non-discriminatory factors that might realistically explain the conduct of the alleged discriminator.

Protected Disclosure Claim

56. Section 43B(1) of the Employment Rights Act 1996

> "(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 –
>
> (a) that a criminal offence has been committed, is being committed or is likely to be committed;
>
> (b) obligation to which he is subject;
>
> (c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
>
> (d) that the health or safety of an individual has been, is being or is likely to be endangered;
>
> (e) that the environment has been, is being or is likely to be damaged;
>
> or
>
> (f) that information tending to show any matter falling within any one the preceding paragraphs has been or is likely to be deliberately concealed".

57. Section 47B (1)

"A worker has the right not to be subjected to any detriment by an act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure."

58. Mummery LJ in in the well-known Court of Appeal case of **NHS Manchester v Fecitt & Others [2011] EWCA Civ1190** made it clear that liability arises if the protected disclosure is a material factor in the employer's decision to subject the claimant to a detriment.

> "In my judgment, the better view is that Section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a

trivial influence) the employer's treatment of the whistle-blower. If Parliament had wanted the test for the standard of proof in section 47B to be the same as for unfair dismissal, it could have used precisely the same language, but it did not do so…

Where the whistle-blower is subject to a detriment without being at fault in any way, tribunals will need to look with a critical – indeed sceptical eye – to see whether the innocent explanation given by the employer for the adverse treatment is indeed the genuine explanation.

59. In the case of **International Petroleum Limited v Osipov UKEAT/0058/17/DA**, unreported 19 July 2017), President Simler held that:

> "the proper approach to inference drawing and the burden of proof in Section 47B ERA 1996 cases can be summarised as follows:
>
> (a) 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 he or she made;
>
> (b) by virtue of Section 48(2) ERA 1996 the employer (or other respondent) must be prepared to show why the detrimental treatment was done. If they do not do so inferences may be drawn against them: see **London Borough of Harrow v Knight** at paragraph 20;
>
> (c) 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."

60. Unlike in the case of unfair dismissal by an employer, a worker can only be liable for protected disclosure detriment if they were themselves motivated by the protected disclosure: see **Malik v Cenkos Securities Plc UKEAT/0100/17/RN**, unreported, 17 January 2018 at paras 86 – 87.

Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002

61. Reg 3(1) provides:

> "A fixed- term employee has the right not to be treated by his employer less favourably than the employer treats a comparable permanent employee –
> (a) as regards the terms of his contract; or
> (b) by being subjected to any other detriment by an act, or deliberate failure to act, of his employer."

Reg 3(3) provides:

> "The right conferred by paragraph (1) applies only if –

(a) the treatment is on the ground that the employee is a fixed term employee, and
(b) the treatment is not justified on objective grounds."

Reg 3(b) is subject to Reg 4 which provides:

"Objective justification

(1) Where a fixed- term employee is treated by his employer less favourably than the employer treats a comparable permanent employee as regards any term of his contract, the treatment in question shall be regarded for the purposes of regulation 3(3)(b) as justified on objective grounds if the terms of the fixed- term employee's contract of employment, taken as a whole, are at least as favourable as the terms of the comparable permanent employee's contract of employment.

(2) Paragraph 1 is without prejudice to the generality of regulation 3(3)(b)."

Time limits

62. Section 123 of the Equality Act 2010 states:

(1)...Proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or
(b) such other period as the employment tribunal thinks just and equitable.

...

(3) For the purposes of this section—
(a) conduct extending over a period is to be treated as done at the end of the period;
(b) a failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or
(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

63. The Court of Appeal made it clear in **Hendricks v Metropolitan Police Comr [2002] EWCA Civ 1686,** that in cases involving a number of allegations of discriminatory acts or omissions, it is not necessary for a claimant to establish the existence of some 'policy, rule, scheme, regime or

practice, in accordance with which decisions affecting the treatment of workers are taken'. Rather, what he has to prove, in order to establish 'an act extending over a period', is that (*a*) the incidents are linked to each other, and *(*b*)* that they are evidence of a 'continuing discriminatory state of affairs'. The focus of the enquiry should be on whether there was an "ongoing situation or continuing state of affairs" as opposed to "a succession of unconnected or isolated specific acts". It will be a relevant, but not conclusive, factor whether the same or different individuals were involved in the alleged incidents of discrimination over the period. An employer may be responsible for a state of affairs that involves a number of different individuals.

64. In the case of **Humphries v Chevler Packaging Ltd EAT 0224/06** the EAT confirmed that a failure to act is an omission and that time begins to run when an employer decides not to make reasonable adjustment. In the case of **Kingston upon Hull City Council v Matuszowicz 2009 ICR 1170. T**he Court of Appeal held that where an employer was not deliberately failing to comply with the duty and the omission was due to lack of diligence or competence, or any reason other than conscious refusal, it is to be treated as having decided upon the omission when the person does an act inconsistent with doing the omitted act or when, if the employer had been acting reasonably, it would have made the adjustments. In the Court of Appeal case of **Abertawe Bro Morgannwg University v Morgan [2018] WLR197** it was stated:

> "In the case of omissions, the approach taken is to establish a default rule that time begins to run at the end of the period in which the respondent might reasonably have been expected to comply with the relevant duty. Ascertaining when the respondent might reasonably have been expected to comply with its duty is not the same as ascertaining when the failure to comply with the duty began. Pursuant to section 20 (3) of the Equality Act, the duty to comply with the requirement relevant in this case begins as soon as the employer is able to take steps which it is reasonable for the employer to have to take to avoid the relevant disadvantage. It can readily be seen, however, that if time began to run on that date, a claimant might be unfairly prejudiced. In particular, the claimant might reasonably believe that the employer was taking steps to seek to redress the relevant disadvantage, when in fact the employer was doing nothing at all. If this situation continued for more than three months, by the time it became a should have become apparent to the claimant that the employer was in fact sitting on its hands, the primary time limit for bringing proceedings would already have expired."

65. In the case of **South Western Ambulance Service NHS Foundation Trust v Mrs C King UKEAT/0056/19/00** Choudhury J (the then president of the EAT) held that the Employment Tribunal had erred in concluding that alleged acts of discrimination said to be part of "conduct extending over a period" where those alleged acts were found not to be discriminatory. It was stated:

> "… Reliance cannot be placed on some floating or overarching discriminatory state of affairs without that state of affairs being anchored by specific acts of discrimination occurring over time. The claimant must still establish constituent act of discrimination or instances of less favourable treatment that *evidence* that discriminatory state of affairs. If such constituent acts or instances cannot be established, either because they are not established in the facts or are not found to be discriminatory, then they cannot be relied upon to evidence the continuing discriminatory state of affairs."

66. The Tribunal has discretion to extend time if it is just and equitable to do so, the onus is on the claimant to convince the Tribunal that it should do so, and 'the exercise of discretion is the exception rather than the rule' (**Robertson v Bexley Community Centre [2003] EWCA Civ 576** per Auld LJ *at para 25)*.

. 67. Discretion to grant an extension of time under the just and equitable formula has been held to be as wide as that given to the Civil Courts by Section 33 of the Limitation Act 1980 **British Coal Corporation v Keeble** [1997] IRLR 336. Under that section the court is required to consider the prejudice which each party would suffer as a result of granting or refusing an extension having regard to all of the circumstances, in particular:-

> (a) The length of and the reason for the delay;
>
> (b) The extent to which the cogency of the evidence is likely to be affected by the delay;
>
> (c) The extent to which the parties sued had cooperated with any request for information;
>
> (d) The promptness with which the claimant acted once he or she knew of the facts giving rise to the course of action; and
>
> (e) The steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

68. These are checklists useful for a Tribunal to determine whether to extend time or not. The extent to which the claimant acted promptly and reasonably once he knew of his potential cause of action. Using internal proceedings is not in itself an excuse for not issuing within time see **Robinson v The Post Office** but is a relevant factor.

69. The extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time; the conduct of the respondent after the cause of action arose, including the extent (if any) to which he responded to requests reasonably made by the claimant for information or inspection for the purpose of ascertaining facts which were or might be relevant.

70. Regulation 7(2) of the Fixed Term Employees (Prevention of less favourable treatment) Regulations 2002 provides: so

> (2) Subject to paragraph (3), and tribunal shall not consider complaint under this regulation unless it is presented before the end of the period of three months beginning –
>
> (a) in the case of alleged infringement right conferred by regulation 3(1) or 6(2), with the date less favourable detriment to which the complaint relates or, an act or failure to act as part of a series of similar acts or failures comprising the less favourable treatment detriment, the last of them.

71. Section 48 Employment Rights Act 1996 provides:

> (3) an employment tribunal shall not consider a complaint under the section unless it is presented –
>
> (a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates, were that act or failure to act to is part of a series of similar acts or failures, the last of them or
>
> (b) within such further period Tribunal considers reasonable in a case that it was not reasonably practicable the complaint to be presented before the end of that period of three months.
>
> (4) For the purposes of subsection (3)-
>
> (a) where an act extends over a period, the “date of the act” means the last day of that period, and
>
> (b) a deliberate failure to act shall be treated as done when it was decided on

72. Time limits are short for a good purpose- to get claims before the Tribunal when the best resolution is possible. If people come to the Tribunal promptly when they have reached a point where the employer has said it will not take a step which the claimant believes should be taken, then, if it agrees with the claimant The Tribunal can make a constructive recommendation. Left unresolved, even minor omissions by employers often have devastating consequences which it is too late to remedy in that way.

73. The Tribunal had the benefit of detailed written and oral submissions provided by Mr Roxborough, on behalf of the claimant and Ms Barry, on behalf of the respondent. These were helpful. They are not set out in detail but both parties can be assured that the Tribunal has considered all the points made and all the authorities relied upon, even where no specific reference is made to them.

Conclusions

Time limits

74. It was submitted by Mr Roxborough, on behalf of the claimant, that all alleged less favourable treatment, discrimination or detriment which occurred before 30 June 2021 can be categorised as conduct which extends over a period of time and ends with acts which are actionable and within the time period.

75. Ms Barry, on behalf of the respondent, submitted that any matters occurring on or before 30 June 2021 are out of time and do not form part of conduct extending over a period. The claimant has not put forward any rationale as to why it would be just and equitable to extend time or, in the case of the claims of detriment making a protected disclosure, why it would not be reasonably practicable for the claim to be brought within the time.

76. In relation to the consultation with regard to the end of the fixed-term contract, the consultation, discussion of the new roles and notice of termination were issued prior to 30 June 2021.

77. The Tribunal has given careful consideration as to whether there was conduct extending over a period time.

78. The decision of the respondent to focus on research posts and the consultation in respect of the redundancy of those in fixed term contracts that were coming to an end was an allegation of less favourable treatment and discrimination. It was accepted by the respondent that there was a protected disclosure on 11 August 2021, within the primary limitation period.

79. As set out in the reasons below, the Tribunal has found that the acts were not established to be less favourable treatment, discrimination or victimisation. In those circumstances, and in accordance with the judgment in **South Western Ambulance Service NHS v King,** they cannot be relied upon as conduct extending over a period and matters that occurred on or before 30 June 2021 are out of time.

80. There was no reason provided as to why it would be just and equitable to extend time

81. With regard to the claims of detriment pursuant to section 47B of the Employment Rights Act 1996, the Tribunal heard no evidence as to why it would not have been reasonably practicable for the claim to have been presented within time.

82. The Tribunal has gone on to consider the issues as if they have been brought in time.

Detriment claim s 47B ERA 1996

83. Ms Barry submitted that, in relation to the Protected Disclosures set out at paragraph 5.2 of the List of issues:

(1) 11 March 2021 - email from claimant to Rosie Hudson: this does not exist.

(2) 29 March 2021 - meeting: no disclosure of information and no protected disclosure.
(3) 17 June 2021 – email from claimant to Irena Grugulis.This does not exist.
(4) 29 June 2021 - Email from claimant to respondent setting out grievance and protected disclosures.[460-1] Agreed this amounts to a protected disclosure in relation to alleged breaches of ERA but not in relation to discrimination.
(5) 1 July 2021 – email from claimant to respondent [479-480] . Not accepted this amounts to a protected disclosure.
(6) 11 August 2021 - email from claimant to respondent - grievance alleging race discrimination [540]. Agreed this amounts to a protected disclosure.

84. Mr Roxborough accepted that the email detailing the "first disclosure" made by the claimant on 11 March 2021 had not been included in the bundle. He said that the Tribunal is aware of the nature of the complaint made by the claimant and his complaints raised are consistent with those that followed .

85. The evidence before the Tribunal was that the respondent was not in receipt of any email making a protected disclosure on 11 March 2021, the claimant said that he did send it but had not produced it for disclosure within the agreed bundle. The Tribunal finds that respondent cannot have put the claimant to a detriment because of something of which it was unaware.

86. The Tribunal has seen no credible evidence that the claimant was given notice of redundancy because of, or in relation to him having made a protected disclosure. The policy that the respondent applied was the one that had been applied for at least 10 years. The same policy had been applied to the claimant in 2020.

87. In respect of the second protected disclosure on 29 March 2021, the evidence given on behalf of the Respondent was that the claimant had raised a couple of issues. There was nothing before the Tribunal to indicate that this was a protected disclosure and that the respondent should have known it was. There were no notes of the meeting and no follow up email from either party confirming what was said at the meeting. There was nothing to suggest any information that could be deemed in the public interest was disclosed during that meeting.

88. The criteria for the new posts were known to the claimant by 15 June 2021, he said that had raised the issue about the requirement for a PhD in an email of 17 June 2021 to Irina Grugulis. However, that email is not within the bundle. The respondent's evidence confirmed that it had informed all those at risk that they should apply for the roles because of their experience. Some of the group at risk did make an application and were successful. The claimant chose not to make an application, he was not prevented from doing so by the respondent. The criteria were not amended by the respondent because they could justify the requirement for asking for a PhD for roles that required research as a fundamental part of the role. They did amend the criteria verbally for those on fixed term contracts coming to an end The claimant was told that he could apply for the teaching and research roles and the requirement to have a PhD would not apply to him. There

was no credible evidence of ostracisation by management**.**

89. With regard to the alleged detriment of unilateral removal of work involving personal tutees and management of dissertations (4.3.2), the claimant had made it clear that he was not available to carry out marking at the relevant time. The claimant was about to take his annual leave before the end of his fixed term contract and the personal tutees needed to have dissertations marked. There was no evidence that this action was taken because of any protected disclosure.

90. In respect of the allegation that the claimant was left humiliated by other colleagues becoming aware of his redundancy (4.3.3). The Tribunal heard no evidence of what this was or how it came to lead the claimant to feel humiliated. The claimant was in the same situation as he had been the year before except there would be new roles created of a different nature for which he could apply.

91. In 4.3.4 of the list of issues it is alleged that the claimant was forced to apply for a new role rather than continue in his existing role. There was no existing role for the claimant to continue in. The respondent had put forward a proposed new structure in March 2021 with the legitimate aim of providing more permanent employment opportunities for staff going forward. The claimant's role was different in nature to the new roles, it was primarily concerned with teaching and the respondent wanted more balance in the team to increase its research capacity. The claimant was offered redeployment status during his notice from the fixed term contract, this would have given him access for suitable alternative roles ahead of external candidates or anyone not at risk of termination from employment. The claimant chose not to participate in redeployment. He was later ringfenced to new positions in teaching that became available in August 2021, he was successful in securing employment in a different position. This was in a time frame quite close to the start of the new course, however it was the finances and structuring of the department that drove the decisions, not the fact that the claimant had made what he says were protected disclosures.

92. The claimant's fixed term contract was coming to an end and the respondent followed a policy requirement. The procedure to support the employment of staff on fixed funding or fixed term contract policy stated **–**

> **"**Step 1 – identifying potential redundancies
>
> 5.1. Each month, central HR will supply Faculty/service Human Resources Managers (HRMs) with details of their employees where there is a potential failure of identified external fixed term funding, irrespective of contract type, or the expiry of the fixed term contract.
>
> 5.2. HRMs will normally receive this information six months before the contract or funding end date however, in the cases where notice period is six months, this information will be provided nine months in advance. HRMs will then meet with the relevant Heads of School/Service to discuss the posts. At the meeting the position of each of these posts will be discussed and, where there is potentially a risk of redundancy, e.g. there is no further funding available, this will be recorded on a spreadsheet by the HRM for each Faculty/Service for submission to OCG for collective consultation purposes…

> 5.10. Six months (nine months where a six-month notice period applies) prior to the potential termination the HRM will write to the employee on behalf of the Head of school/Surveys informing them that their funding and/or contract is due to end and to initiate appropriate individual consultation…

93. The communication with the course leader was tackled by management and there was an immediate apology. The course leader's actions have no apparent link to the claimant having made what he says were protected disclosures. There was no evidence that the course leader was aware of any of the alleged protected disclosures.

94. In relation to the respondent failing to investigate (4.3.5), the claimant withdrew from the grievance The course leader had apologised to the claimant. The claimant was informed that he was required to participate in order to progress his complaint and it was stated that, if the respondent did not hear from the claimant, the request to withdraw his grievance would be acted upon.

95. A grievance was submitted and the respondent took some action to engage with the claimant to resolve the matters formally, the claimant by his actions withdrew from the process.

96. The Tribunal has gone through the alleged disclosures identified in paragraph 5 of the identified issues.

97. As already stated above, with regard to the disclosure at 4.1. There was no evidence that the respondent was in receipt of any email making a protected disclosure on 11 March 2021 or in the meeting on 29 March 2021.

98. In respect of 4.3. An email of 17 June 2021. There was no evidence of this email.

99. The respondent accepted that the disclosure 4.3.4 was a protected disclosure but there was no detrimental treatment linked to the disclosure.

100. With regard to the alleged protected disclosure on 1 July 2021 (5.25), this could amount to a protected disclosure with regard to the allegation of a criminal offence. However, the claimant did state that the information was that 'to the best of his knowledge' the respondent had failed to submit the HR1 form. Ms Barry submitted that there was no reasonable belief and the claimant had not asked this question of the relevant individuals in the consultation meeting or escalated the matter.

101. The Tribunal accepts that email is a protected disclosure and is in time. However, there was no link to detriments after this date which are that he was humiliated by other colleagues knowing about redundancy and his application to a new post in August for which he was successful, and the communication about course work from the course leader.

102. The email to the respondent on 11 August 2021 raising a grievance in respect of the appointment of six new employees relating to race discrimination. The Tribunal accepts this was a protected disclosure. However, there was no evidence that there was any detriment on grounds of that disclosure. There were some delays but the claimant was eventually offered the opportunity to have the grievance investigated but the respondent formed a view that he had withdrawn from the grievance process by refusing to participate.

103. The Tribunal is satisfied that the respondent has shown that there was no detriment on the grounds of the claimant making a protected disclosure

Less favourable treatment Reg 3 FTE Regs 2002

104. The claimant was asked and could not identify a comparator. However, when Robert Butler gave evidence it became apparent that it was only the fixed term employees who were subject to the redundancy procedure.

105. It was submitted by Mr Roxborough on behalf of the claimant that he respondent seemingly relied on the policy supporting FTE, and the adherence to this as a reason justifying the disparate treatment between permanent and fixed-term employees. Reliance on a policy that leads to an unlawful outcome plainly cannot be justifiable. The blind reliance on a policy that itself outlines circumstances in which alternate policies ought to apply, e.g. where the reason for the potential redundancy is driven by factors such as a review of academic strategy, does not in the Claimant's submission provide any 'defence' here.

106. It was submitted by Ms Barry that the respondent was simply applying its policy (as agreed with the unions) to provide notification of the position with regard to the expiry of the claimant's fixed term contract. The claimant's identification for potential redundancy was therefore not on the ground that he was a fixed term employee but it was in line with contractual requirements. The same process had been embarked upon in the previous year and the rationale had never changed.

107. This happened every year and it had happened to the claimant the year before. The respondent was aiming to comply with the collective agreement on handling the end of fixed term contracts, it wanted to move forward with staff on permanent rather than fixed term contracts, the respondent wanted to have more research focused posts.

108. The claimant was encouraged to apply for one of the new roles and was informed that the requirement to hold a PhD would not be applied.

109. The Tribunal is not satisfied that it has been shown that there was less favourable treatment on the ground that the claimant was a fixed term employee. However, if it had found that there was such less favourable treatment, then, pursuant to regulation 3(3)(b), the Tribunal finds that the treatment is not unlawful as it is justified in objective grounds.

110. There was clear and credible evidence that there was a need for the respondent to focus on research capacity. Professor Winterton gave straightforward evidence that there had been discussions with professorial colleagues and the conclusion was that the division needed to focus on its research base and undertake strategic teaching and research recruitment rather than appointing pure teaching staff.

Indirect discrimination s19 EA2010

111. The claimant identified himself as the white British male aged 44 or 45.

112. There was no evidence before the Tribunal that someone of the claimant's age and race was less likely than those with other characteristics to have a PhD.

The appropriate pool for comparison would be all those could apply for the new teaching and research roles.

113. The PCP of 'the stated objective of recruiting "upcoming scholars" was denied to have been aimed at younger applicants. This was an entry-level research post but those applying could have had other experience and age was not a factor. It was aimed at individuals in the early stages of their research career which could be any point in their career and the claimant himself would have been considered as an upcoming scholar given that he had just started research

114. There was no evidence that the respondent was targeting recruitment primarily from non-UK situations and, the claimant conceded that the PCP identified at issue 12.3 was not operative.

115. There was no evidence that the respondent was applying 'an operating culture designed to prevent older, white UK employees, particularly in Fixed Term Employment roles, from applying for permanent employment'. The roles were advertised across the university as well as externally. There was no evidence that a particular group was targeted by advertising in a particular place

116. The claimant was encouraged to apply for the teaching and research posts and he was not put at any particular disadvantage. There was no disadvantage, the claimant could have applied for the posts and chose not to. He was told that he did not need to comply with the criterion of having a PhD

117. If any such PCP had put the claimant at a disadvantage then it would be justified as a proportionate means of achieving a legitimate aim. The respondent is a Russell Group University and needed to increase its research capacity.

118. Professor Winterton gave clear and credible evidence that the Work and Employment Relations Department had lost a substantial amount of research capacity through retirements and resignations and it needed to be replaced to maintain the respondent's reputation as part of a research intensive business school within the Russell group of universities.

119. This is a legitimate aim and it was a proportionate means of achieving that legitimate aim by ending the Fixed Term teaching only Contracts and recruiting permanent teaching and research posts.

120. The Tribunal has considered the balance of the less favourable treatment and the legitimate business aim. The claimant was told that he could apply for the teaching and research posts and he did not have to comply with the advertised requirement to have a PhD in view of his experience.

121. Any less favourable treatment was justified as a proportionate means of achieving the legitimate aim.

Victimisation

122. It was accepted by the respondent that the emails from the claimant on 29 June 2021 and 11 August 2021 were protected disclosures.

123. However, the Tribunal finds that there was no evidence of victimisation, the claimant could have applied for posts and did not. He was ringfenced for a role and accepted it. The claimant was put into a redeployment process during his

notice period of his fixed term contract. During that time the employer was seeking suitable alternative employment so that a termination could be avoided. The respondent had an agreed process with the trade unions for dealing with the termination and redeployment of those staff on fixed term contracts. They followed that process to find the claimant a role and did eventually do so before the expiry of the notice and the claimant accepted that new role.

124. The claimant was going on annual leave before the end of his fixed term contract and tasks were removed his role because students would be left without a personal tutor.

125. The respondent took action to deal with the grievances, the claimant chose not to participate in the grievance process.

126. There was no credible evidence that the claimant was subject to treatment because of protected acts. He was treated the same as the other fixed term contract employees and they were all treated the same as they had been the previous year and, in accordance with the respondent's application of the policy with regard to the fixed term contracts and consultation had started as appropriate.

127. The Tribunal has carefully considered all the evidence in respect of the identified issues and finds that the claimant claims are not well-founded and are dismissed in their entirety.

Employment Judge Shepherd
9 March 2023

JUDGMENT SENT TO THE PARTIES ON
17th March 2023
FOR THE TRIBUNAL OFFICE