EMPLOYMENT TRIBUNALS

Claimant: Dr M Maarabouni
Respondent: The University of Keele
Heard at: Birmingham (by CVP)
On: 14 – 22 December 2022
Before: Employment Judge Meichen, Mrs R Forrest, Mr J Kelly
Appearances
For the claimant: in person
For the respondents: Mr N Grundy, barrister

JUDGMENT was sent to the parties dated 22 December 2022. The claimant's claim of indirect sex discrimination was dismissed following a withdrawal of that claim by the claimant and the claimant's claims of direct race discrimination and harassment related to race failed and were dismissed. Written reasons were subsequently requested by the claimant in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013. The following reasons are provided. Oral reasons were given at the end of hearing and so these written reasons are based on the recording of the reasons given orally.

REASONS

The issues

1. The issues in this case were set out and agreed at the preliminary hearing on 23 March 2022 before Employment Judge Kelly. Neither party made any application to vary the list of issues following that hearing.
2. The claimant withdrew her indirect sex discrimination claim at the start of this hearing and agreed it should be dismissed and so we do not have to determine that.
3. Therefore the liability issue for us to determine are as follows:

1. **Time limits**

1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 8 February 2021 may not have been brought in time.

1.2 Were the complaints made within the time limit in section 123 of the Equality Act 2010 ("EqA")? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?
1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
1.2.4.1 Why were the complaints not made to the Tribunal in time?
1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. **Direct race discrimination (EqA section 13)**

2.1 The Claimant is a Lebanese national and of Arab ethnic origin and seeks to rely upon her nationality and/or ethnic origin.

2.2 Did the respondent do the following things:

In 2016

2.2.1 The Claimant was replaced as PhD Advisor for a student and the progression Viva panel noted in their report that the Claimant had not provided progression forms despite this not being a requirement. The Claimant did not subsequently receive confirmation that the comment had been removed from the report. The Respondent accepts that the report noted the absence of forms for the progression and that the Claimant raised concerns about this. The Respondent denies that the Claimant did not receive confirmation that the comment had been removed from the report.

In 2017

2.2.2 The Claimant was not allowed to get involved with the Malaysian University USM and was not invited to meet an academic visitor in February 2017. This is not admitted by the Respondent. The Respondent contends that it is not clear to which academic visitor the Claimant refers.

In 2018

2.2.3 The Claimant's requested that she be considered for the Human Biology Programme Director role but these requests were not granted on a number of occasions before the Claimant's appointment to that role in 2018. It is denied that the Claimant was "not considered" for leadership roles.

2.2.4 After appointment to the Programme Director role, the Claimant was not allowed to be theme lead. This is denied by the Respondent.

In 2019

2.2.5 The Respondent's promotions committee promoted the Claimant to Senior Lecturer in 2019 but failed to do so on two prior occasions. This was due to the committee insisting that the Claimant needed to have PhD completion. The Claimant claims that this is not a requirement set out in the University promotion criteria for Senior Lecturer. The Respondent accepts that the Claimant was unsuccessful in her application for Senior Lecturer in 2014 and 2015 but contends that the fact the Claimant did not have a PhD candidate completion at the time was not the only reason why she was unsuccessful. The Respondent accepts that PhD candidate completion is not a requirement set out in the Respondent's promotion criteria for Senior Lecturer but contends that this is usually an expectation for promotion to Senior Lecturer level.

In 2020

2.2.6 In February 2020 the Claimant expressed an interest in the role of Postgraduate Research Lead in response to an email from Professor Dawn Scott. The allocation of roles was announced by Professor Scott in a School meeting in May 2020 and invited staff to show their interest again. The Claimant claims that she was "not considered" for the role. This is denied by the Respondent.

In 2021

2.2.7 In February 2021 the Claimant did not receive a reply to an email to Professor Scott updating Professor Scott in relation to the Malaysian University USM. This is denied by the Respondent.

2.2.8 On 16 February 2021, Professor Scott failed to reply to the Claimant regarding her concerns about the Promotion Committee's feedback including passing those concerns on to Professor Wastling whom had offered to meet with the Claimant to discuss a forward plan. This is denied by the Respondent.

2.2.9 The Claimant's application for promotion to Reader in February 2021 was unsuccessful. This is accepted by the Respondent. The Claimant alleges that in making its decision the Promotions Committee failed to adequately take into account (which is denied by the Respondent):

2.2.9.1 that the Claimant was the first staff member at the Respondent's School of Life Sciences to complete the MA in teaching and learning in higher education;

2.2.9.2 the Claimant's work in the Human Biology programme led to a growth in student numbers by her development of new core modules;

2.2.9.3 the Claimant developed the Pre-MSc in Biomedical Science programme, which is aimed at supporting recruitment amongst international students;

2.2.9.4 the Claimant has developed five new modules designed to fill gaps in the syllabus of the MSc and BSc programmes;

2.2.9.5 the Claimant's expertise in Cell Signalling which led to her being appointed as a visiting lecturer at another university and being approached to review and edit current book editions on the topic;

2.2.9.6 the Claimant's involvement and subsequent recognition in assisting with the implementation of flexible digital delivery due to COVID-19;

2.2.9.7 the Claimant's personal circumstances, namely that she was sole carer for elderly parents for over 20 years and that she needed to balance her caring responsibilities, bring a mum of 4 and her job throughout her career.

2.2.10 In June 2021 both Professor Scott and Research Lead Dr Helen Price failed to respond to the Claimant's email regarding the setback of the Claimant's research due to the disappearance of expensive consumables and the unplugging of a freezer. This is accepted, though the Respondent contends that it is unclear why the Claimant contends this should warrant a personal response from Professor Scott or Dr Price.

General (undated) allegations

2.2.11 Professor Peter Andras contacted a PhD Advisor who had been nominated by the Claimant to explain that the Respondent had approved another Advisor but did not contact the Claimant. This is not admitted. The Respondent contends that it is unclear to which student the Claimant refers.

2.2.12 Faculty PGR Director Professor Peter Andras and School PGR Lead Dr Price would start the process of looking for a new PhD supervisor, if a student complained about the Claimant, which

was not the case with other PhD supervisors. This is denied by the Respondent.

2.2.13 Staff at the Respondent did not provide support to the Claimant with regard to a PhD student's thesis as detailed below:

2.2.13.1 Professor Andras changed a PhD student's supervisor from the Claimant after the Claimant refused to allow the student to include data in their thesis which could not be validated. The Respondent accepts that the PhD student's supervisor was changed but denies this was because the Claimant refused to allow the student to include data in their thesis which could not be validated.

2.2.13.2 The Respondent did not offer the Claimant support when the External Examiner of a student's thesis failed her PhD after questioning how the student was allowed to include such data, and also included in his comments that the Claimant should be acknowledged as her supervisor. This is denied by the Respondent.

2.2.13.3 The Claimant was not offered the opportunity to meet with the investigating officer of the complaint a student filed against the Claimant. This is accepted by the Respondent.

2.2.13.4 Professor Hoole, the Respondents HR department, Pro Vice Chancellor (Research) Professor David Amigoni and Professor Jonathan Wastling failed to respond to the Claimant when she raised that the investigation had caused her distress and personal injury. This is denied by the Respondent.

2.3 Was that less favourable treatment?

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

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

The claimant says she was treated worse than the following people:

Dr Helen Price who was promoted to Reader in April 2020. The Respondent accepts that Dr Price is from Biomedical Sciences and was promoted in April 2020 but contends that there were material differences in the quality of the application for promotion.

Dr Sue Hunter (medical sciences), Dr Danila Prikazchikov (mathematical sciences), Dr Sandra Woolley (computer sciences), Dr Sue Sherman (psychology), Dr Alison Pooler (health professional education), Dr Mark Lambie (clinical academic), Dr Zoe Paskins (rheumatology clinical academic) in respect of promotion to Reader in April 2021 who were promoted to Reader in 2021. The Respondent accepts that these colleagues were promoted to Reader in 2021 but contends that there are material differences; these colleagues are from different disciplines and expectations vary substantially according to disciplinary norms, which is expressly stated in the Respondent's promotions criteria.

Dr Daniel Tongue and Dr Annette Shrive regarding support given following student complaints. The Respondent does not accept that Dr Tongue and Dr Shrive are comparable because no formal complaints were made regarding their PhD supervision.

2.4 If so, was it because of race?

2.5 Did the respondent's treatment amount to a detriment?

3. **Harassment related to race (EqA section 26)**

3.1 Did the respondent do the things identified at allegations 2.2.1, 2.2.2, 2.2.3, 2.2.6, 2.2.7, 2.2.11, 2.2.13, 2.2.14 above?

3.2 If so, was that unwanted conduct?

3.3 Did it relate to race?

3.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

3.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

The law

Time limits

4. Section 123 EqA states:

123 Time limits
(1) Subject to sections 140A and 140B, 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) 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.

5. If any allegation made under the EqA is out of time and not part of conduct extending over a period bringing it in time then we only have jurisdiction to hear it if it was brought within such other period as we think just and equitable. We should remind ourselves that the just and equitable test is a broader test than the reasonably practicable test found in the Employment Rights Act 1996. We should take into account any relevant factor. We should consider the balance of prejudice. It is for the claimant to satisfy the tribunal that it is just and equitable to extend the time limit. The tribunal has a wide discretion but there is no presumption that the Tribunal should exercise that discretion in favour of the claimant. It is the exception rather than the rule - see Robertson v Bexley Community Centre 2003 IRLR 434. There is no requirement that a tribunal must be satisfied that there is good reason for a delay in bringing proceedings - see Abertawe Bro Morgannwa University Local Health Board v Morgan [2018] IRLR 1050 CA.

6. Relevant factors which may be taken into account are set out in British Coal Corporation v Keeble [1997] IRLR 336 derived from section 33(3) of the Limitation Act 1980, which deals with discretionary exclusion of the time limit for actions in respect of personal injuries or death. Those factors are: the length and reasons for the delay; the extent to which the cogency of the evidence is likely to be affected by it; the extent to which the respondent had cooperated with requests for information; the promptness with which a claimant acted once aware of facts giving rise to the cause of action; and steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

7. Having referred to Keeble however the important point to bear in mind is that the Tribunal has a very broad general discretion and therefore we should assess all the factors which are relevant to whether it is just and equitable to extend time without necessarily rigidly adhering to a checklist. The factors which are almost always likely to be relevant are the length of and reasons for the delay and whether the delay has prejudiced the respondent (for example by preventing or inhibiting it from investigating the claim while matters were fresh). This was explained by Lord Justice Underhill in Adedeji

v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23.

8. In Miller v Ministry of Justice UKEAT/0003/15 (15 March 2016, unreported), Laing J observed that there are two types of prejudice which a respondent may suffer if the limitation period is extended: firstly, the obvious prejudice of having to defend the claim which would otherwise have been defeated by a limitation period; and secondly the "forensic prejudice" caused by fading memories, loss of documents, and losing touch with witnesses. Forensic prejudice is "crucially relevant" in the exercise of discretion and may well be decisive. However, the converse does not follow: if there is no forensic prejudice to the respondent that is not decisive in favour of an extension.

9. The EAT has recently explained the extent to which the potential merits of a proposed complaint can be taken into account when considering whether it is just and equitable to extend time, in Kumari v Greater Manchester Mental Health NHS Foundation Trust 2022 EAT 132. The EAT held that the potential merits are not necessarily an irrelevant consideration even if the proposed complaint is not plainly so weak that it would fall to be struck out. However, the EAT advocated a careful approach. It said:

> *"It is permissible, in an appropriate case, to take account of its assessment of the merits at large, provided that it [the tribunal] does so with appropriate care, and that it identifies sound particular reasons or features that properly support its assessment, based on the information and material that is before it. It must always keep in mind that it does not have all the evidence, particularly where the claim is of discrimination. The points relied upon by the tribunal should also be reasonably identifiable and apparent from the available material, as it cannot carry out a mini-trial, or become drawn in to a complex analysis which it is not equipped to perform.*
>
> *So, the tribunal needs to consider the matter with care, identify if there are readily apparent features that point to potential weakness or obstacles, and consider whether it can safely regard them as having some bearing on the merits. If the tribunal is not in a position to do that, then it should not count an assessment of the merits as weighing against the claimant. But if it is, and even though it may not be a position to say there is no reasonable prospect of success, it may put its assessment of the merits in the scales. In such a case the appellate court will not interfere unless the tribunal's approach to assessing the merits, or to the weight attached to them, is, in the legal sense, perverse."*

The burden of proof

10. Section 136 EqA sets out the burden of proof provisions which apply to any of the claims under the EqA which we have jurisdiction to hear. Section 136(2) states: "*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".* Section 136(3) then

states: *"but subsection (2) does not apply if A shows that A did not contravene the provision".*

11. These provisions enable the employment tribunal to go through a two-stage process in respect of the evidence. The first stage requires the claimant to prove facts from which the tribunal could conclude that the respondent has committed an unlawful act of discrimination.

12. The second stage, which only comes into effect if the claimant has proved those facts, requires the respondent to prove that he did not commit the unlawful act. That approach has been settled since the case of Igen Ltd v Wong [2005] IRLR 258 and it was reaffirmed in Efobi v Royal Mail Group Limited [2019] IRLR 352

13. It is well established that the burden of proof does not shift to the employer simply on the claimant establishing a difference in status and a difference in treatment. Those facts only indicate the possibility of discrimination. They are not, without something more, sufficient material from which the tribunal could conclude that the respondent had committed an unlawful act of discrimination. This principle is most clearly expressed in the case of Madarassy v Nomura International plc 2007 [IRLR] 246.

14. The Supreme Court has emphasised that it is for the Claimant to prove the prima facie case. In Hewage v Grampian Health Board [2012] IRLR 87 Lord Hope summarised the first stage as follows: "The complainant must prove facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the complainant which is unlawful. So the prima facie case must be *proved*, and it is for the claimant to discharge that burden". The claimant must prove facts from which it could be decided not simply that discrimination is a possibility but that it has in fact occurred (see South Wales Police Authority v Johnson [2014] EWCA Civ 73 at paragraph 23).

15. Before the burden can shift there must be something to suggest that the treatment was discriminatory (see B and C v A [2010] IRLR 400). Mere proof that an employer has behaved unreasonably or unfairly would not by itself trigger the transfer of the burden of proof, let alone prove discrimination (see in particular Bahl v The Law Society and others [2004] IRLR 799). Therefore inadequately explained unreasonable conduct and/or a difference in treatment and a difference in status and/or incompetence is not sufficient to infer unlawful discrimination (Quereshi v London Borough of Newham [1991] IRLR 264; Glasgow City Council v Zafar [1998] ICR 120 HL; Igen, Madarassy).

16. In Chief Constable of Kent Constabulary v Bowler EAT 0214/16 it was held that an employment tribunal had impermissibly inferred direct race discrimination solely from evidence of procedural failings in dealing with the claimant's grievances and internal appeal against the rejection of those grievances. The EAT memorably observed: *'Merely because a tribunal concludes that an explanation for certain treatment is inadequate, unreasonable or unjustified does not by itself mean the treatment is*

discriminatory, since it is a sad fact that people often treat others unreasonably irrespective of race, sex or other protected characteristic.'

17. The statutory burden of proof provisions only have a role to play where there is doubt as to the facts necessary to establish discrimination. Where the tribunal is in a position to make positive findings on the evidence one way or another as to whether the claimant was discriminated against they have no relevance. This was confirmed by Lord Hope in Hewage and is consistent with the views expressed in Laing v Manchester City Council and anor 2006 ICR 1519, EAT.

Direct discrimination

18. Section 13 EqA provides that: *"a person (A) discriminates against another (B) if because of a protected characteristic A treats B less favourably than A treats or would treat others".* Section 23 EqA provides that on a comparison of cases for the purposes of section 13, there must be no material difference between the circumstances relating to each case.

19. In Nagarajan v London Regional Transport [1999] IRLR 572, the House of Lords held that if the protected characteristic had a 'significant influence' on the outcome, discrimination would be made out. The crucial question in every case is, *'why the complainant received less favourable treatment…Was it on the grounds of [the protected characteristic]? Or was it for some other reason..?'.*

20. In Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 Lord Nicholls said *'… employment Tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the Claimant was treated as she was. Was it on the proscribed ground which is the foundation of the application? That will call for an examination of all the facts of the case. Or was it for some other reason? If the latter, the application fails. If the former, there will be usually be no difficulty in deciding whether the treatment, afforded to the Claimant on the proscribed ground, was less favourable than was or would have been afforded to others.*

The most convenient and appropriate way to tackle the issues arising on any discrimination application must always depend upon the nature of the issues and all the circumstances of the case. There will be cases where it is convenient to decide the less favourable treatment issue first. But, for the reason set out above, when formulating their decisions employment Tribunals may find it helpful to consider whether they should postpone determining the less favourable treatment issue until after they have decided why the treatment was afforded to the Claimant …'.

21. As was confirmed in Martin v Devonshire's Solicitors [2011] ICR 352 since Shamoon, the recommended approach from the higher courts has generally been to address both stages of the statutory test by considering the single 'reason why' question: was the treatment on the proscribed ground, or was it for some other reason? Considering the hypothetical or actual treatment of comparators may be of evidential value in that exercise.

Harassment

22. Section 26 EqA states as follows:

> (1) *A person (A) harasses another (B) if—*
> *(a) A engages in unwanted conduct related to a relevant protected characteristic, and*
> *(b) the conduct has the purpose or effect of—*
> *(i) violating B's dignity, or*
> *(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B*
> *. . .*
> *(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*
> *(a) the perception of B;*
> *(b) the other circumstances of the case;*
> *(c) whether it is reasonable for the conduct to have that effect.*

23. In GMB v Henderson [2017] IRLR 340, the Court of Appeal suggested that deciding whether the unwanted conduct "relates to" the protected characteristic will require a "consideration of the mental processes of the putative harasser".

24. The test as to whether conduct has the relevant effect is not subjective. Conduct is not to be treated, for instance, as violating a complainant's dignity merely because she thinks it does. It must be conduct which could reasonably be considered as having that effect. However, the tribunal is obliged to take the complainant's perception into account in making that assessment.

25. A number of important authorities have given guidance as to how to interpret the test under Section 26:

    25.1 *"… not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."* Richmond Pharmacology v Dhaliwal [2009] IRLR 336.

    25.2 *"The word "violating" is a strong word. Offending against dignity, hurting it, is insufficient. "Violating" may be a word the strength of which is sometimes overlooked. The same might be said of the words "intimidating" etc. All look for effects which are serious and marked, and*

not those which are, though real, truly of lesser consequence." Betsi Cadwaladr University Health Board v Hughes [2014] UKEAT/0179/13.

25.3 *"When assessing the effect of a remark, the context in which it is given is always highly material. Everyday experience tells us that a humorous remark between friends may have a very different effect than exactly the same words spoken vindictively by a hostile speaker. It is not importing intent into the concept of effect to say that intent will generally be relevant to assessing effect. It will also be relevant to deciding whether the response of the alleged victim is reasonable ... Tribunals must not cheapen the significance of these words ["violating dignity", "intimidating, hostile, degrading, humiliating, offensive"]. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."* Grant v HM Land Registry [2011] IRLR 748 *CA.*

Findings

Background

26. We will firstly set out our background findings of fact.

27. The claimant has been employed by the respondent university since 1999. She remains an employee of the respondent. The claimant's field of expertise is bioscience. The claimant's department is the School of Life Sciences in the Faculty of Natural Sciences.

28. The claimant was originally employed by the respondent as a Post-Doctoral Research Assistant. In 2009 the claimant took up her first post as a Lecturer working on a 70% basis and in 2011 she assumed the position of Lecturer on a full-time basis.

29. In 2014 and 2015 the claimant submitted two applications for promotion to Senior Lecturer which were unsuccessful.

30. The claimant was appointed to the role of Internationalisation Director in September 2016.

31. In September 2018 the claimant was appointed to the Human Biology Programme Director role.

32. In May 2019 the claimant was promoted to Senior Lecturer.

33. At this juncture although we do not consider it is necessary to go into detail we think we should record that from the evidence we have seen and heard it is obvious that the claimant has been through significant challenges in her personal life. We think that the claimant deserves great credit for making a success of her academic career notwithstanding those undoubted challenges

34. In December 2020 the claimant applied for promotion to Reader and in February 2021 she was informed that that application had been unsuccessful. The claimant was provided with feedback on her application which set out advice as to how she might improve her application in the future.

35. Although the provision of feedback was we think intended to provide constructive guidance as to how the claimant may achieve promotion in the future the claimant took the view that the feedback set unrealistic targets for her and it appears to us that following the receipt of the feedback the claimant became dissatisfied with her career progression at the respondent.

36. In her closing submissions the claimant described the feedback she received as “derogatory and belittling”. This gives an idea of the claimant’s strength of feeling, but we have to say we consider her view in this respect is not accurate or objectively reasonable.

37. The unsuccessful Reader application and the feedback which the claimant received following the application appears to have been the prompt for the claimant to submit this claim, although the subject of the claim has expanded far beyond just those matters. The claimant’s dissatisfaction with the Reader application and feedback has apparently led her to view other potentially adverse events as possible acts of race discrimination or harassment. In some cases the events were a long time ago (2014 to 2017) and/or were relatively minor (for example receiving no response to an email about a freezer being unplugged). In all cases it is unclear why the claimant considers her treatment to be because of or related to race.

38. On 10 May 2021 the claimant raised a grievance regarding her Reader application and in particular what she regarded as the unrealistic and unfair feedback that she received. The claimant did not allege race discrimination in her grievance, even though that is the nature of the claim which she has brought to the tribunal. Even in respect of this primary allegation it is unclear why the claimant considers her treatment to be because of or related to race.

39. The respondent conducted a grievance investigation including meeting with the claimant and relevant witnesses. On 20 July 2021 the claimant was informed of the outcome which was that the grievance was not upheld. The claimant was informed of her right to appeal but we understand no appeal was lodged by the claimant within the time set by the respondent.

40. In light of some recommendations set out in the respondents grievance investigation report the claimant was provided with revised feedback from the Readership promotions committee in March 2022. Plainly it would have been better if that revised feedback had been provided more promptly.

Allegations

41. We will now set out our findings on the allegations that we have to determine.

42. Allegation 2.2.1 was that in 2016 the claimant was replaced as PhD advisor for a student and the viva panel noted in their report that the claimant had not provided progression forms despite this not being a requirement. The claimant says that she did not subsequently receive confirmation that the comment had been removed from the report.

43. The context here is that the PhD advisor provides pastoral support for the PhD student. The particular student referred to had experienced a number of major issues and had become very reliant on the claimant including asking to meet the claimant several times a week and taking up a large amount of her

time. The claimant raised concerns about that to Prof Price (currently Research Director for the School of Life Sciences and the Deputy Director of Keele's Institute for Global Health, previously the Postgraduate Research Lead for the School of Life Sciences). As a result when the progression panel met to discuss the student's progression into the next year of the course it was decided that the claimant should no longer be the student's advisor

44. At the time the claimant said that she was relieved that that decision had been taken. This is not surprising considering how much of her time the student was taking up. Therefore, we do not consider there is any detriment here. Further, the reason for the decision was that the panel decided that the student needed to become more independent and not rely on the claimant's support so much.

45. A statement was also included in the progression report that certain forms were not available. The student interpreted that to mean that the claimant had not done something which she was required to do as part of the standard process. That was incorrect because in fact the forms were no longer required which was a change in the process from previous years. The claimant raised a concern with Prof Price about the statement regarding the forms and Prof Price responded to the claimant to confirm that the forms were no longer required and that she would be happy for the sentence to be removed from the student's progression report. Prof Price also verbally advised the student that the forms were not required after all. Prof Price explained this position in an email to the claimant which is dated 20 November 2016 and could be seen in the bundle at page 201. Therefore we find this allegation was not made out on the facts – the claimant was informed that the comment would be removed and it was made clear to everyone concerned that there was no cause for criticism of the claimant. Again, there is no detriment here.

46. Allegation 2.2.2 dated back to 2017. The claimant alleged that she was not allowed to get involved with a Malaysian university and she was not invited to meet an academic visitor, presumably from that university, in February 2017.

47. This allegation relates to a Professor Hoole. The tribunal did not hear evidence from Prof Hoole and we understand that he has now left the University. Prof Hoole was the Head of School of Life Sciences and the partnership lead with the Malaysian University USM. We should note that the claimant agreed in evidence that Prof Hoole had assisted her career by appointing her to be the Internationalisation Director and the claimant had relied on that responsibility in her subsequent applications for promotion.

48. The allegation is from a long time ago and the claimant provided very little evidence about it. In her witness statement the claimant said that she had not been given the opportunity to get involved with the Malaysian university and was not invited when their staff visited Keele. There is no evidence that the claimant raised any concerns about this at the time. The claimant provided very little detail about what happened when the academic visitor visited and why she felt she was not allowed to get involved. It is unlikely in the tribunal's view that Prof Hoole would have appointed the claimant to the role of Internationalisation Director but then undermined her by not inviting her or

purposely not allowing her to get involved with the Malaysian university. We consider the factual basis for this allegation has not been made out – we find the claimant was not in fact subject to the treatment complained of.

49. Allegation 2.2.3 is about the claimant's appointment to the Human Biology Programme Director role. As we have mentioned the claimant was appointed to that role in 2018 but the claimant alleges that she requested to be considered for it on a number of occasions prior to 2018 and those requests were not granted.

50. Prior to the claimant being appointed into the Programme Director role the position was filled by another person who was Dr Chakravorty. In her witness statement the claimant said that programme directors are normally changed every 3 to 4 years but that Dr Chakravorty remained in post for eight years. The claimant did not substantiate the suggestion that programme directors are normally changed every 3 to 4 years.

51. We find that any change of Programme Director will be dependent on the particular circumstances at the relevant time. There was no specific rule or practice that changes should be made every 3-4 years

52. The claimant acknowledged in her witness statement that Prof Hoole had been reluctant to replace Dr Chakravorty as that would be a difficult conversation with Dr Chakravorty. The tribunal found that was the reason why Dr Chakravorty was not replaced any sooner.

53. Allegation 2.2.4 was that after the claimant's appointment to the Programme Director role in 2018 the claimant was not allowed to be Theme Lead. The context to this allegation is that the University decided to combine the course of Human Biology with Biomedical Science and the Biomedical Science director became the Theme Lead rather than the claimant.

54. In her evidence the claimant accepted that Biomedical Science was the bigger course and Prof Price's evidence, which we accept, was that it was six times bigger. The tribunal found this was the reason why the Biomedical Science director became the Theme Lead rather than the claimant.

55. The evidence does not establish that the claimant was "not allowed" to be the Theme Lead after she became the Programme Director for Human Biology. The decision was taken in the context of it being the Head of School's role to ensure that staff are not overloaded with administrative tasks and this was taken into account when deciding not to appoint the claimant.

56. Allegation 2.2.5 concerned the claimant's promotion to Senior Lecturer. As we have mentioned the claimant was promoted to Senior Lecturer in 2019 but she had failed in two earlier applications to become Senior Lecturer.

57. The claimant alleges that her failure on the two prior occasions was due to the committee insisting that the claimant needed to have a PhD candidate completion. The claimant says that this is not a requirement set out in the University promotion criteria for Senior Lecturer.

58. The respondent has accepted that the claimant was unsuccessful in her applications for Senior Lecturer in 2014 and 2015 but contends that the fact

that the claimant did not have a PhD candidate completion at the time was not the only reason why she was unsuccessful. We accepted the respondent's evidence to that effect.

59. The respondent also accepts that PhD candidate completion is not a requirement set out in the promotion criteria for Senior Lecturer but contends that this is usually an expectation for promotion to Senior Lecturer level. We accepted the respondent's evidence to that effect too.

60. We should make clear that in a similar way to her dissatisfaction with her Reader application the claimant made it clear in her evidence that the focus of her complaint was not on the fact that she had not been promoted but on the feedback that she was provided with. The claimant takes the view that the feedback she obtained was unrealistic and introduced new criteria that she had to achieve.

61. Professor Wastling was cross examined by the claimant at some length on this matter. Prof Wastling is the Pro Vice-Chancellor and Executive Dean for the respondent's Faculty of Natural Sciences. The tribunal accepts Prof Wastling's evidence that feedback does not and is not intended to introduce a new set of criteria. Rather it is designed to provide bespoke help or support to the individual candidate as to the areas they can work on for career development in order to improve their chance of promotion in the future. It is designed to guide candidates as to how they might improve their prospects for promotion in the future.

62. The tribunal is satisfied that everything that was specified or highlighted for the claimant to work towards were usual and/or reasonable expectations and that the feedback was designed to be helpful to the claimant. There was no detriment here. PhD candidate completion was part of the advice that was given to the claimant as to how she could improve her application in the future. We accept it was not the only reason why she was not promoted in 2014 or 2015, rather the claimant's application was judged as a whole. Therefore the factual basis for this allegation has not been made out.

63. Allegation 2.2.6 is that in February 2020 the claimant expressed an interest in the role of Postgraduate Research Lead and then in May 2020 Prof Scott invited staff to show their interest. The claimant was ultimately not appointed and she alleges that she was not considered for the role. Prof Scott was previously Head of the School of Life Sciences but she left her employment with the respondent in 2021.

64. The claimant raised concerns about this process with Prof Scott at the time. The tribunal has had regard in particular to the email chain of 18 May 2020 which could be seen at page 278 to 279 of the bundle and also Prof Scott's email to the claimant of 18 June 2020 which could be seen at page 288 of the bundle. These emails clearly explain the following:

    64.1 Firstly that the appointment of the role was put on hold in February but the claimant was informed that this did not mean she had been unsuccessful.

64.2 Secondly that the claimant's application was considered in May but it was felt that the claimant already had several different roles and that she would be stretched to take on an additional role.

65. The tribunal also heard evidence that the person who was appointed instead, Marcelo Lima, had particular experience which was relevant to that appointment.

66. The tribunal saw no reason to doubt any of this evidence. We found that the claimant was considered for the role but was not appointed because of the respondent's belief that she would be stretched to take on an additional role and the experience of Marcelo Lima made him an attractive candidate to perform the role.

67. Allegation 2.2.7 is an allegation against Prof Scott for not replying to a specific email from the claimant.

68. The relevant email could be seen at page 293 of the bundle It is dated 11 March 2021. The email is entitled Malaysia Update. The title is apt. It appears clear to the tribunal that the email is very simply providing an update of relevant information regarding the respondent's link with the university in Malaysia.

69. The claimant's email does not pose any questions of Prof Scott, she does not request any meeting and there is nothing on the face of the email which leads the reader to believe that a response might be required or expected. We consider there is no detriment here. Furthermore, we find that the reason why Prof Scott did not reply is because she did not consider that a response was required or expected.

70. Allegation 2.2.8 is also an allegation against Prof Scott. The claimant alleges that on 16 February 2021 Prof Scott failed to reply to the claimant regarding her concerns about the promotion committees feedback. This is in the context of the claimant's unsuccessful application to Reader and her dissatisfaction with the feedback that she received in respect of that application.

71. We should note that at this time Prof Scott was the claimant's Head of School but she was not part of the relevant promotions committee and she was not responsible for the feedback. The responsibility for that lay with Prof Wastling.

72. After she received the feedback from Prof Wastling the claimant sent an email to Prof Scott on 16 February 2021 in which the claimant raised her concerns about the unrealistic nature of the feedback.

73. The evidence shows that Prof Scott promptly responded and acted upon the claimant's email. Prof Scott forwarded the claimant's concerns to Prof Wastling and she offered to speak to the claimant herself. Prof Scott also said that she thought a meeting with Prof Wastling and the claimant would be helpful, but it seems the claimant was not willing to do that.

74. We think the claimant's decision in this respect was unfortunate as Prof Wastling said in his email in response to Prof Scott that the written feedback could look stark but in a discussion it would be possible to sound more

encouraging. Prof Wastling emphasised to Prof Scott that he would be very happy to meet the claimant for that reason.

75. We are satisfied that that message was passed on to the claimant by Prof Scott. In reaching that conclusion we had particular regard to an email sent from Prof Scott to the claimant on 28 April in which she recorded that she had mentioned to the claimant that Prof Wastling was happy to meet and she again suggested that the claimant should do that. She even suggested that the claimant should contact Prof Wastling's secretary to book an appointment. Not long after that email the claimant sent Prof Scott a response, on 4 May 2021, in which she thanked Prof Scott for support.

76. We therefore find that the factual basis for this allegation has not been made out because Prof Scott did not fail to reply to the claimant regarding her concerns about the promotion committees feedback. Not only did Prof Scott in fact reply she also sought to support and assist the claimant.

77. Allegation 2.2.9 also concerns the claimant's unsuccessful application for promotion to Reader in February 2021. The first part of the allegation is the simple fact that the claimant's application was unsuccessful and the second part of the allegation is that the claimant alleges that in making its decision the promotions committee failed to adequately take into account various factors relating to her achievements and her personal circumstances which are set out in the list of issues.

78. Prof Wastling was robustly cross-examined by the claimant as to the reasons why her application was unsuccessful and the feedback which she was provided with. The tribunal accepted Prof Wastling's evidence that the views expressed about the claimant in respect of her application were not unwarranted criticism but rather were fair and cogent observations about the claimant falling short of the level expected at Readership.

79. It is relevant to note that the claimant's application for Reader came relatively quickly after her promotion to Senior Lecturer and therefore the claimant had not had much time to build an impressive application at readership level. The respondent's view, which we find was genuinely and reasonably held, was that the claimant's application for promotion to Reader was premature. As Professor Wastling explained in his statement it was very difficult for the claimant to meet the significant leap in extra activity over and above what is done to get promoted to Senior Lecturer in the time since her promotion. Professor Dani and Professor Scott expressed similar views. We accept that evidence. That is the reason why the claimant was not promoted to Reader in February 2021.

80. In the tribunal's view the claimant did not establish that any relevant matter had not been taken into account and we were satisfied that Prof Wastling and the committee were fully aware of the claimant's achievements and personal circumstances. They properly took these into account but simply decided that she was not yet at the level to be expected for promotion to Reader. Therefore the factual basis for the second part of this allegation is not made out.

81. Allegation 2.2.10 is based upon the fact that Prof Scott and Prof Price did not respond to an email from the claimant dated 17 June 2021. This email could

be seen on page 296 of the bundle. This email was sent by the claimant to several groups of recipients and we assume that Professors Scott and Price were included within one or more of those groups.

82. The subject matter of the email was a fridge freezer and the content of the email was that the claimant explained that a particular fridge freezer had been unplugged and therefore the contents of the freezer had been lost because everything was defrosted.

83. The claimant did not ask any questions in the email or say anything which indicated that a response might be expected from any particular individual. We find that the reason why Professors Scott and Price did not respond to the email directly was because they did not realise that a response from them was required or expected.

84. Prof Price gave evidence that following receipt of the email she discussed the incident with Prof Scott and they agreed to provide funding to replace the contents of the fridge from the school's research budget. The claimant did not challenge that evidence and we accepted it. We consider that the claimant was not subject to any detriment in relation to this allegation.

85. Allegation 2.2.11 was undated but the claimant indicated during the hearing that it dated back to 2015. The allegation is that the claimant had nominated a colleague to become a PhD advisor for a student but the colleague was not approved as the adviser and somebody else was. The claimant's complaint is that Prof Andras contacted the claimants nominee to explain the situation but did not contact the claimant.

86. The claimant provided very little evidence about this allegation. In her witness statement at paragraph 42 the claimant said that she felt undermined as she was not even given the courtesy of being told about the decision.

87. The tribunal does not see how the claimant was being undermined. It seems to the tribunal that it was appropriate for Prof Andras to explain the decision not to appoint the claimants nominee to the nominee since he was the person who was directly affected. We find that was the reason why the nominee was informed rather than the claimant.

88. After he had been informed the claimant's nominee could then have discussed the matter with the claimant if he wanted to. It seems to the tribunal that would have been more appropriate rather than Prof Andras telling the claimant as the nominee may not have wanted that. We do not consider the claimant was subject to any detriment here.

89. Allegation 2.2.12 is also undated. We understand it dates back to 2016. The allegation is that Prof Andreas and Prof Price would start the process of looking for a new PhD supervisor if a student complained about the claimant which was not the case with other PhD supervisors

90. The background to this allegation is that in 2014 a student "SM" started her PhD under the claimant's supervision. Later, SM's sister "HM" was also supervised by the claimant whilst working towards her own PhD.

91. It is abundantly clear that the relationship between the claimant and HM and SM became very difficult. Allegations and counter allegations were made and the working relationship became untenable.

92. In respect of SM matters came to a head in September 2016 and at that stage the claimant was removed as SM's PhD advisor.

93. In respect of HM the claimant remained in place as her adviser but it is apparent that the relationship remained fraught. By the time HM submitted her PhD thesis in May 2017 she was refusing to communicate with the claimant and would not acknowledge her as supervisor on the thesis.

94. The claimant raised concerns about HM's thesis: firstly that she should have been acknowledged and secondly that the thesis contained confidential information. These concerns were considered by the University. Ultimately it was concluded that it was the student's own decision whether or not to acknowledge a supervisor and the thesis did not contain information that should be classed as confidential.

95. This did not satisfy the claimant who went so far as to allege that HM was guilty of research misconduct. As far as the University is concerned that allegation was not substantiated

96. When it was assessed (not by the claimant) criticisms were made of the thesis submitted by HM and in September 2017 she lodged a formal student complaint against the claimant. The investigation into this complaint took a long time and we accept that it would have been a stressful process for the claimant. The claimant was asked to provide information in response to the complaint in writing. Ultimately the complaint was not upheld.

97. The claimant's own evidence made it clear that she found supervising HM and SM to be extremely difficult. For example in respect of her agreement to supervise SM the claimant described it at paragraph 41 of her witness statement as the worst decision she has made in her life.

98. The tribunal is in no doubt that the reason for the decision to replace the claimant as SM's PhD supervisor was the complete and irretrievable breakdown in the relationship between the claimant and SM. This was explained to the claimant in emails sent at the time in particular those dated 16 September and 20 October 2016 which could be seen on page 177 and 183 of the bundle. Those emails made it clear that the claimant was not being blamed for the situation. We accept that, and in the tribunal's view it was quite clearly a decision which was taken for the benefit of both parties. We do not consider the claimant was subject to any detriment here.

99. The claimant has not substantiated the suggestion that the process of looking for a new supervisor was taken more promptly in relation to her than it would have been for others. We accepted Prof Price's evidence that these situations are dealt with on a case-by-case basis and in this particular case it was abundantly clear that the relationship had irreparably broken down. That was the reason why the claimant was removed as SM's supervisor at the time she was. The same decision would have been taken at the same time if another supervisor had been in the claimant's position.

100. Allegation 2.2.13 was also undated but it appears clear to the tribunal that it dates to 2017 and events following submission of HM's PhD thesis. The substance of the claimant's allegation is that the respondent did not provide support to the claimant with regards to this situation.

101. The tribunal must observe in relation to this allegation that the claimant spent quite a lot of time on questions about HM but very few questions went to the substance of the allegation which we have to consider. In particular despite prompting from the tribunal the claimant did not make it clear what support she was suggesting ought to have been provided that was not.

102. The tribunal accepted Prof Price's evidence that she had regular discussions with the claimant about the situation to provide support and guidance. We therefore do not accept that the claimant was not supported and so the factual basis for the allegation has not been made out.

103. Prof Price also regularly discussed the situation with HM and she attempted to persuade HM to effectively soften her stance and communicate with the claimant. This was a further form of support for the claimant as this was done to try and improve the situation. Prof Price's efforts were not successful but at the end of the day it was recognised that HM could not be forced to communicate with the claimant or to acknowledge her in her thesis and if she wanted to effectively run the risk of not taking full advice or including full acknowledgements in her thesis then that was her prerogative. As it happens it appears to the tribunal that HM ran that risk and it didn't pay off, because ultimately criticisms were raised when she submitted her PhD thesis which might have been avoidable had she had a better working relationship with the claimant.

104. We make the following findings in relation to each of the four components of allegation 2.2.13:

    104.1 In respect of allegation 2.2.13.1 it was not clear whether this related to HM or SM or both. In relation to SM we have already made findings as to why the claimant was removed as her PhD supervisor. It was not because of the claimant refusing to allow data in the thesis which could not be validated. It was because of the irretrievable breakdown in the working relationship, and there was no detriment to the claimant in removing her from that situation. In respect of HM the claimant was not removed as the student's supervisor but by the time HM came to submit her thesis she was refusing to communicate with the claimant or to acknowledge the claimant as the supervisor. This meant that other staff had to step in effectively to sign off on HM's work. This was done purely because of HM's own decision that she did not want to communicate with the claimant or to acknowledge her. It seems that the claimant is correct in that she raised concerns about some data included in HM's thesis and a similar concern was then raised by the external examiner, however the decision to nevertheless include that data was HM's. There is no detriment to the claimant here – it was HM's work and she was responsible for the data being included.

    104.2 In respect of allegation 2.2.13.2 it is not clear what support the claimant is saying she should have been offered when HM submitted her PhD

thesis and the external examiner included comments questioning why the student had included such data and suggesting that HM should acknowledge her supervisor. The tribunal has already noted that we are satisfied that Prof Price attempted to support the claimant throughout the difficult process with HM and we therefore do not consider that the factual basis for the allegation has been made out. It seems to the tribunal that what the claimant was really seeking was a finding that HM had been guilty of research misconduct as she alleged. We do not consider that that can really be seen as a form of support for the claimant. In any event we do not see how we can go behind the decision which the university took as to the thesis being HM's own work. Such a finding would be well outside the remit of this tribunal. We do not consider the claimant was subject to any detriment here. It was HM who faced criticism, not the claimant.

104.3 Allegation 2.2.13.3 was that the claimant was not offered the opportunity to meet with the investigating officer who was considering the complaint raised by HM. This was accepted by the respondent. The reason for the treatment was because it was the respondent's usual practice in respect of a student complaint for the academic to provide their response in writing. There is no evidence that the claimant was treated any differently to anybody else facing a complaint. Further, we do not consider that there was any detriment here. The claimant was able to respond to the complaint in writing and ultimately it was not upheld.

104.4 During the hearing it was agreed that allegation 2.2.13.4 should be amended so as to remove reference to Professors Amigoni and Wastling. Therefore what is left is a narrow issue that Prof Hoole and the HR Department failed to respond to the claimant when she raised that the investigation into HM's complaint had caused her distress and personal injury. This was in relation to the lengthy time which it took to investigate HM's complaint. The claimant did not lead much evidence about this allegation. She referred in her witness statement to an email which Prof Hoole sent in October 2018 chasing an update on the complaint made by HM. In his email Prof Hoole explained that the claimant had been experiencing anxiety about the outcome. In their response the complaints team asked Prof Hoole to pass on their apologies and they explained where the case was up to. In cross-examination the claimant accepted that she had received an apology but said she didn't accept it. There is no evidence of the claimant raising other concerns with Prof Hoole or to the respondent's HR department that were not responded to. Therefore we find that the claimant was not in fact subject to the treatment complained of.

Comparators

105. The claimant relied on a number of comparators. The first group of comparators were people who were promoted to Reader and they were therefore potentially relevant to the claimant's allegation about not being promoted that post. It is worth pointing out that promotion to Readership is

not a comparative competitive process but rather candidates progressed to this next level when it was deemed they were ready.

106. The first comparator was Dr Helen Price who was promoted to Reader in April 2020. Dr Price was the only comparator relied upon from Biomedical Sciences. We consider Dr Price is not an appropriate comparator because there were material differences in the quality of her application for promotion. We should note that Dr Price is now Prof Price and that gives an indication as to the trajectory of her career and the high regard in which she is obviously held by the respondent. At the time of her readership promotion Dr Price had already applied to become a Professor but it was thought that she was not quite at the level yet to be appointed as a Professor. She was therefore appointed as a Reader but it was already obvious that she was operating at a high level. The key and obvious difference between Dr Price's application and that of the claimant was the high research income generated by Dr Price which was in the region of 5.5 million pounds. It was clear from Prof Wastling's evidence, and we accept, that this was an exceptional factor which made her application particularly impressive. A further material difference was that Dr Price applied under a different promotion pathway (the research pathway).

107. The claimant also relied on comparators who were not from the same academic discipline. These were: Dr Sue Hunter (medical sciences), Dr Danila Prikazchikov (mathematical sciences), Dr Sandra Woolley (computer sciences), Dr Sue Sherman (psychology), Dr Alison Pooler (health professional education), Dr Mark Lambie (clinical academic) and Dr Zoe Paskins (rheumatology clinical academic). These people were promoted to Reader in 2021. We found that the fact they were from different academic disciplines was a material difference. We accepted the respondent's evidence that expectations for promotion vary substantially according to disciplinary norms (this is expressly stated in the respondent's promotions criteria). Therefore it is not appropriate to make a comparison between applications in two different disciplines.

108. Furthermore only 4 of the other comparators relied upon by the claimant applied for promotion upon the same pathway as the claimant (the education and research pathway). These were Dr Hunter, Dr Prikachikov, Dr Wooley and Dr Sherman. However, unlike the claimant they were not basing their application upon excellence in education, but instead upon excellence in citizen and leadership. Professor Wastling explained the significant differences between these routes in his witness statement and we accepted his evidence. These were further material differences between the claimant and her comparators.

109. The claimant also relied on two comparators which were potentially relevant to her allegation regarding support given following student complaints. These were Dr Daniel Tongue and Dr Annette Shrive. They were not appropriate comparators because of a key material difference; no formal complaints were made regarding their PhD supervision. There was no evidence of a comparator who was in a similar situation to the one the claimant found herself in with HM and SM. That situation was highly unusual and unfortunate. Furthermore, the claimant did not substantiate the suggestion that Dr Tongue

and Dr Shrive received any form of support that she didn't and it remained unclear what support the claimant had in mind.

110. For these reasons we found that there were material differences between the claimant and the comparators she sought to rely on. The treatment of the comparators did not suggest that the claimant was treated less favourably because of race.

111. We should also mention that the claimant also asserted that at the time of her application to Reader she was the only applicant from a "BAME" background and she was the only applicant (out of 12) who was not appointed. It is not clear if that assertion has ever been substantiated. In any event it is at most simply a difference in treatment and a difference in status; it does not assist the claimant with establishing the facts from which we could conclude that unlawful discrimination has occurred.

Jurisdiction

112. Allegations 2.2.1 to 2.2.6 and 2.2.11 to 2.2.13 were out of time. They were not part of any continuing act. We find it is not just and equitable to extend time. We took into account the following factors when making this decision:

(i) The onus is on the claimant to show why it would be just and equitable to extend time and she has not done so.
(ii) The claimant has not presented any evidence as to why she did not bring a claim earlier.
(iii) There is no evidence that the claimant would have been unable to bring a claim earlier, or even that she would have found it difficult to do so.
(iv) We find that there was no good reason for the claim not to have been brought in time or earlier.
(v) There is no suggestion that the respondent failed to respond to requests for information. Rather the evidence indicates that the respondent was willing to engage with the claimant's complaints.
(vi) The claimant is clearly intelligent and articulate. She is obviously capable of obtaining advice and/or researching how to bring a claim and in what timeframe. We therefore consider that the claimant could and should have brought her claim within time.
(vii) The delay is substantial because the claimant now wishes to complain about events going back to 2014, 2015, 2016 and 2017. As a result of the delay some of the allegations were stale even by the time the claim was submitted.
(viii) There is a public interest in the enforcement of time limits in employment tribunals (this was described as "unexceptionable" in Adedeji).
(ix) We accept there is a general prejudice against the respondent if we accept a claim against it out of time (i.e. the first type of prejudice identified in Miller).
(x) There is evidence of the type of forensic prejudice identified in Miller. For example, Professor Hoole has now left the respondent and was unavailable as a witness.
(xi) There cannot be said to be any prejudice to the claimant in these circumstances in applying the well-known rules on time limits. Conversely we consider that there is a prejudice to the respondent in

hearing a claim out of time when there is no good reason to do so and they have been deprived of investigating and responding to it while matters were still fresh.

(xii) We considered the claimant's claim in its entirety in any event and we found all of the allegations would fail for the reasons we have set out.

113. The tribunal concluded that all of these relevant factors weighed against the granting of an extension. We find that there is no basis to grant an extension on just and equitable grounds. The claim was not brought within such other period as we think just and equitable. Therefore we do not have jurisdiction to consider allegations 2.2.1 to 2.2.6 and 2.2.11 to 2.2.13. Nevertheless and for completeness we have set out our findings on those allegations in any event and our conclusion below applies to all the allegations.

Conclusion

114. We have already explained in our findings that we consider that in relation to a number of allegations the claimant was not in fact subject to the treatment complained of or if she was there was no detriment. We have also made a number of positive findings as to the reasons why the claimant was treated the way she was. None of those reasons had anything to do with race. Assessing the totality of the evidence and submissions we must further conclude that the claimant has not come close to proving facts from which we could conclude that direct discrimination or harassment has occurred. There was a striking paucity of any evidence suggesting that the claimant's treatment was because of was related to race. We find that the claimant was not subject to any less favourable treatment because of race and she was not subject to any unwanted conduct that was related to race. The claimant was not subject to any treatment because she is a Lebanese national and of Arab ethnic origin. She would have been treated the same way if she was a different nationality and/or ethnic origin Further, there was no conduct which had the purpose or effect necessary to constitute harassment.

115. It follows that this claim must fail and be dismissed.

Employment Judge Meichen

3 March 2023