EMPLOYMENT TRIBUNALS

Claimant: Professor J McCambridge

Respondent: The University of York

Heard at: Leeds (by video) **On:** 23 January 2024

Before: Employment Judge Miller

Appearances
For the claimant: In person
For the respondent: Mr T Welch – counsel

RESERVED JUDGMENT

The application that the claim is struck out under Employment Tribunal Rule 37(1)(a) because it has no reasonable prospect of success is refused. The claim is not struck out.

REASONS

Introduction

1. The claimant is employed as at the date of this hearing by the respondent, the University of York, as Professor of Addiction and Health Behaviour.

2. Following a period of early conciliation from 25 July 2023 to 5 September 2023 the claimant brought an Employment Tribunal claim dated 5 October 2023 for protected disclosure detriment and harassment related to his asserted philosophical belief.

3. In their response the respondent requested further detailed information from the claimant about his claim. The also made an application that the initial preliminary hearing in private ought to be converted to a preliminary hearing in public for one day to determine the following matters:

    a. Whether the claimant made a protected disclosure;

    b. Whether the claimant's asserted philosophical belief fell within the meaning of section 10 of the Equality Act 2010; and

c. Whether the claim should be struck out or deposit order made on the grounds that the claim has no or little reasonable prospects of success respectively.

4. The claim and response were considered under rule 26 of the Employment Tribunal Rules of Procedure 2013 by Employment Judge Wade and she directed that the hearing listed for 23 January 2024 be converted to a preliminary hearing in public for three hours to determine whether the claim should be struck out or a deposit order made on the basis that the claimant's claim had no or little reasonable prospects of success respectively.

The hearing

5. There had been an exchange of correspondence between the parties prior to this hearing and the claimant had sought to provide the additional information about this claim that the respondent requested in their response.

6. The claimant also provided copies of two documents that he relied on as the basis for his asserted protected disclosures.

7. With the assistance of both parties I spent the first one hour and 50 minutes of the hearing clarifying and recording the issues to be determined. That resulted in a statement of the claimant's asserted philosophical belief, clarification of the asserted protected disclosures and identification of 16 alleged detriments which were also said to be 16 instances of harassment. The list of issues clarified at this hearing is attached as an appendix to these reasons.

8. Having clarified and identified the issues with the parties, I then heard submissions about the respondent's applications that the claimant's claim be struck out as having no reasonable prospects of success or made subject to deposit order on the grounds of the claim had little reasonable prospects of success.

9. I record that Mr Welch on behalf of the respondent submitted that it would not be possible to fairly consider the respondent's applications within the remaining hour after clarifying the issues and that I should arrange a further hearing to properly consider those applications giving the parties time to prepare. The claimant objected to that proposal. He said that he had attended the hearing prepared and ready to address the matters set out in Employment Judge Wade's directions.

10. In the event I decided, with the parties agreement, to hear submissions and then decide if I was able to fairly make a decision within the time available. If not I would rearrange a further hearing. On the conclusion of those submissions I decided that I would be able to make a decision on the respondent's applications as I considered that the parties had had a fair and proportionate opportunity to make representations. Due to the time available, however, I would need to reserve the decision.

11. My reasons for concluding that I would be able to make a decision on the submissions that I have received are as follows. In respect of an application to strike out the claimant's claims, I must take the claimant's claim at its highest. It is well established that I am not required to consider evidence or conduct a mini trial and to an extent the pleadings and the clarified list of issues speak for themselves in terms of whether the claim would have no reasonable prospects of success.

12. Mr Welch was able to provide clear and succinct submissions and I do not consider that the respondent was prejudiced by this.

13. The claimant, conversely, was keen to go ahead. It is my view that the claimant was at a greater risk of prejudice in not having had additional time to prepare than the respondent because he was representing himself without benefit of legal training or advice and he stood to have his claim potentially dismissed. Having heard the claimant's submissions, it was clear that the claimant was well prepared and was not prejudiced by me going ahead today.

14. The matter was potentially slightly different in respect of the application for a deposit order. When considering whether a claim has little reasonable prospects of success I must also take into account the chances of the claimant being able to prove the assertions that he makes. The claimant might therefore have been prejudiced by the inability to produce one or two key pieces of evidence that might have impacted on my assessment of his prospects of being able to prove his case.

15. However, the claimant had already produced some documents and those were before me. The claimant also quoted from a further document in the course of his submissions to which the respondent's representative did not have access. Mr Welch very properly submitted to me that it would not be fair for me to take into account anything set out in that document that he had not had an opportunity to comment on. I agree with that submission. The claimant has had the opportunity to submit that document to the tribunal but has chosen not to.

16. On balance, it was in the interests of fairness and proportionality to address the matters for which the hearing be listed today.

Parties' submissions

17. The respondent had three main arguments that applied to both the application to strike out the claimant's claims and their application for deposit order. They were:

    a. that no sensible reading could the claimants asserted protected disclosures be said to satisfy the test of a protected disclosure;

    b. that the claimants asserted philosophical belief did not amount to a philosophical belief within the meaning of section 10 of the equality act 2010; and

    c. that in any event there was no reasonable prospect of the claimant being able to demonstrate any causal link between either the alleged protected disclosure or his asserted philosophical belief.

18. The claimant responded to those submission and made his own clear points.

19. I will address the submissions and then set out the relevant law and my conclusions.

20. The claimant's alleged protected disclosure is set out, the claimant says, in two documents that were emailed to Prof Smith and Prof Atkin on 16 November 2016 and 27 January 2017 as identified in the appended list of issues.

21. It was the claimant's case that the emails contained information which tended to show that the health and safety of any individual has been, is being or is likely to be endangered in accordance with section 43B (1)(b) of the Employment Rights Act 1996.

22. Mr Welch's submission was, effectively, that firstly the emails did not contain the disclosure of any information and secondly that even taking a generous interpretation of those emails they did not reference in any way whatsoever to a

potential risk to health and safety of an individual. I was referred to the book Whistleblowing Law and Practice by John Bowers KC which provides an example of the difference between identifying a risk to particular individuals or group of individuals and a potential risk to society at large. That example related to a disclosure that a factory was producing dangerous but legal chemicals as presenting a risk to people at large rather than for example ca leak at the factory where particular individuals at risk.

23. Mr Welch said that the claimant's case was analogous to that one: While, of course, smoking is dangerous and presents a health risk, he said, the claimant's alleged protected disclosure does not tend to suggest that any particular individuals would be at risk, or greater risk, to their health and safety because of the matters set out in that correspondence.

24. The claimant said, conversely, that he was concerned with public health and that the public are made up of a number of individuals. The impact of Mr McKeganey's relationship with the University of York would be to impact adversely on the health of some unidentified people in society. This was explained in two ways: firstly, that Mr McKeganey's association with the University would improve his credibility. Because he (allegedly) supports tobacco companies, an improvement in his credibility will add greater weight to any support he gives to tobacco companies, thereby increasing the risk that more people will smoke and thereby impact on the health of those (unidentified) people. Secondly, that an association with Mr McKeganey by the university would undermine their criticism of tobacco companies thereby increasing the risk that more people might smoke similarly presenting an increase risk to those unidentified people.

25. I was not referred to nor have I been able to find any case law on this particular point. In my view, there is an obvious argument that to exclude from protection for making disclosures which tend to suggest a risk to the health and safety of a large but unidentified section of the public, rather than a small identifiable group of people, would be contrary to public policy.

26. Mr Welch's second argument in respect of this was that the documents relied on as comprising the disclosures did not contain any information. I was referred to the case of *Cavendish Munro Professional Risks Management Ltd v Geduld* 2010 ICR 325 in which a distinction was made between information and an allegation. It was held that in order to fall within the definition of a protected disclosure there had to be the disclosure of information, which meant conveying facts. In *Kilraine v Wandsworth LBC* [2018] EWCA Civ 1436 the court of appeal clarified that information wihtin the meaning of the Employment Rights Act 1996 might also include statements that could be categorised as allegations. There is no distinct line – it is a question of whether the alleged disclosure contains sufficient factual content and specificity to be capable of tending to show, in this case, that the health and safety of any individual was at risk.

27. The claimant also referred to *Chesterton Global Ltd v Nurmohamed* 2018 ICR 731 CA which said that the reasonableness of the belief of the claimant as to whether the alleged disclosure tended to show that health and safety was at risk will be closely aligned with the question as to whether the alleged disclosure contained sufficient facts to amount to a disclosure.

28. I have read the documents on which the claimant relies as his protected disclosures. I do not make any particular findings of fact about this, so as to avoid inadvertently binding any future tribunal, but it is arguable that the first document does contain information in the sense of conveying facts. This includes, for example, the first sentence of paragraph 2 in the document dated 16 November 2016. The second document dated 27 January 2017 also arguably includes

information although it may be difficult to separate it out from analysis and opinion. In accordance with *Kilraine*, however, that does not automatically mean that the document does not include the disclosure of information.

29. It is also, in my view, just about arguable that the claimant might be able to show that he reasonably believed that the information set out in these documents (to the extent that it is found to be information) demonstrated that the health of society at large, and consequently the people who make up that society, was being put at an increased risk from tobacco companies.

30. These arguments are certainly not completely clear and obvious. Mr Welch referred to these documents being read by a layperson, and it not being obvious that they were referencing any information suggesting the health of any individual might be at risk. However, it may be relevant that the claimant is an experienced academic communicating with other experienced academics and that the context of these communications and other surrounding communications would provide context which would make the meaning and content of these communications clear, or at least clearer, to the intended recipients.

31. I consider now the claimant's assertion that his consistently held belief amounted to a protected philosophical belief within the meaning of Section 10 of the equality act 2010.

32. The terms of that certain belief are set out in the appendix and I do not need to repeat them here. I was referred to *Grainger Plc v Nicholson* [2010] IRLR 4 and particularly the five criteria for determining whether a belief falls within section10 set out in paragraph 24 of that decision.

33. They are

    (i) The belief must be genuinely held.

    (ii) It must be a belief and not, as in McClintock, an opinion or viewpoint based on the present state of information available.

    (iii) It must be a belief as to a weighty and substantial aspect of human life and behaviour.

    (iv) It must attain a certain level of cogency, seriousness, cohesion and importance.

    (v) It must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others (paragraph 36 of Campbell and paragraph 23 of Williamson).

34. Mr Welch's submissions was that the claimant's views were not a belief but, by his own case, an opinion formed by literature, evidence and knowledge. He said that it was not at all like a belief in climate change being a man-made phenomenon, but he did not explain why. The other *Grainger* criteria that Mr Welch attacked was that the claimant's belief did not attain the requisite level of cohesion and importance. From this I conclude that he meant it does not impact on wide aspects of the claimant's day-to-day life. It is, as Mr Welch said, an aspect of academic policy, albeit that it might be an important one, but nothing more.

35. The claimant said that it went further than just being a matter of academic policy. He referred to the idea of the integrity of science being based on the idea of the importance of truth in science and that this is more than just a transitory idea.

36. Mr Welch's final argument related to the difficulty the claimant would have in establishing a causal link between the alleged protected disclosure or his asserted philosophical belief and the alleged detriments. He said, effectively, that the claimant had expressed his views in 2016 and 2017 and that two years later he had been the subject of a series of complaints which have resulted in disciplinary and grievance procedures.

37. Retrospectively, Mr Welch submitted, the claimant has decided that these earlier communications were the cause of the later processes. Further, the sheer number of individuals involved in the processes about which the claimant now complains, Mr Welch submitted, mean that the claimant would have to do prove that there was a conspiracy amongst all these individuals to some two years after the event seek retribution for these communications.

38. The claimant, conversely, says that in fact the delays were caused by his complicated relationship with the University. The claimant had obtained some substantial grants and it was only when the first complaints arose that the University saw their chance to encourage the students to pursue and/or formalise their complaints against the complainant.

Law

39. The relevant legal provisions are set out an Employment Tribunal Rules of Procedure 2013. Rule 37 says, as far as is relevant, that

    The tribunal may strike out all or part of a claim or response in any of the following grounds…that it is scandalous or vexatious or has no reasonable prospects of success.

40. When considering whether the claim has no reasonable prospects of success, I must take the claim at its highest. It is well established that discrimination and whistleblowing claims are fact sensitive and only in the most obvious cases should the tribunal take the draconian step of striking out such a claim as having no reasonable prospects of success.

41. Rule 39 provides that

    Where at a preliminary hearing the tribunal considers that any specific allegation or argument in the claim or response has little reasonable prospects of success, it may make an order requiring a party to pay deposits not exceeding £1000 as a condition of continuing to advance that allegation argument.

42. Even if I decide that the claim has little reasonable prospects of success, I am not bound to make a deposit order. I must have regard to the overriding objectives set out in rule two which provides that I should deal with cases justly and fairly including ensuring that parties are on an equal footing.

43. The test of little reasonable prospects of success is not as rigorous as the test for no reasonable prospects of success. When considering whether a claim has little reasonable prospects of success, I am entitled to have regard to the likelihood of the claimant being able to prove the facts that he asserts.

44. I am entitled to take into account any information I have about the claimant's financial means when deciding whether to make a deposit order and if so how much.

Conclusions

Strike out

45. In my judgement I cannot say that the claimant has no reasonable prospects of success in either establishing that he made a protected disclosure, establishing that he has a protected philosophical belief or in establishing causation between either of those matters and the alleged detriments.

46. The factual matters underlying each of those three arguments are complex. It is not fair or proportionate to dispose of the claimant's claims without giving him an opportunity to produce evidence which may prove them.

47. The question of whether the communications amount protected disclosures will depend on the surrounding context which can only be determined having heard all the evidence.

48. The question of whether the claimant's asserted protected belief is in fact a protected philosophical belief will depend on a detailed analysis of what that belief is and detailed submissions as to the law.

49. The causal link between the alleged protected disclosure or the asserted philosophical belief and the alleged detriments again depends very significantly on the factual matrix. For example the claimant asserted that Prof Atkin was a common theme between all the alleged detriment and the initial communications in 2016/2017.

50. For those reasons I cannot and do not say that the claimant's claim is of no reasonable prospects of success and they are not struck out.

Deposit order

51. In my judgement the claimant has more than little reasonable prospects of showing that his stated belief amounts to a protected philosophical belief. With respect to Mr Welch's submissions, it is not at all obvious why this asserted belief is significantly different from the belief in climate change being a man-made phenomenon that was the subject matter of the *Grainger* case itself.

52. Equally, it is not obvious why this is different to other philosophical beliefs which have been held to benefit from the protection of section 10 of the Equality Act 2010 such as inability to change one's sex. These asserted beliefs all have in common that they appear to be somewhat niche and involve complex academic arguments. Further, it is not at all obvious that they attain the requisite level of cohesion and importance (in the sense of impacting on wider aspects of day to day life) in a way that the claimant's asserted protected belief would not.

53. For these reasons, it appears that the claimant has more than little reasonable prospects of success of being able to show that his philosophical belief is also protected. I do not therefore make a deposit order in respect of this argument.

54. In my judgement again the claimant has more than little reasonable prospects of successfully showing that his communications of 16 November 2016 and 27 January 2017 amount together and in the context of the claimant's employment and other surrounding communication to a protected disclosure. As already stated in respect of the strikeout application, this is a very fact specific issue and it would not be in the interests of justice for me to inhibit the claimant's ability to produce evidence to show that this correspondence amounted to a protected disclosure.

55. I do not say that the claimant has a good chance of successfully demonstrating this, merely that he has more than little reasonable prospects of success. I do not therefore make a deposit order in respect of this argument.

56. I consider finally the argument that the claimant will not be able to demonstrate a causal link between either the alleged protected disclosure or his asserted philosophical belief and the alleged detriments.

57. In my judgement, having regard to the nature of the alleged detriments, the large number of people involved in the procedures and the long period of time between January 2017 and the first of the complaints arising in 2019, the claimant does have little reasonable prospects of successfully demonstrating a causal link between either his asserted philosophical belief or the alleged protected disclosure.

58. The claimant does not dispute that complaints were made by students, merely that they were encouraged to make formal complaints rather than informal ones. In respect of the complaints against the claimant some of them were upheld and some of them were not. All of these factors together suggest that the claimant will have a great deal of difficulty in demonstrating that the respondent did not undertake these procedures for legitimate reasons unrelated to his asserted protected belief or his alleged protected disclosures.

59. Furthermore, the claimant is likely to have high degree of difficulty in establishing that any procedural defaults in any of the disciplinary or grievance processes were because of either his asserted philosophical belief or the alleged protected disclosure rather than the inevitability of such mistakes in a large institution dealing with a series of ongoing employee related issues.

60. It is proportionate to make a deposit order therefore in respect of the arguments that any of the alleged detriments were either because the claimant made a protected disclosure or because of his asserted philosophical belief.

61. I have had regard to the claimant's financial circumstances and make a deposit order of £250 in respect of each argument. The precise terms of the order are set out in the deposit order.

Employment Judge **Miller**

24 January 2024

Appendix - The Issues

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

1. Time limits

1.1 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

- 1.1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
- 1.1.2 If not, was there conduct extending over a period?
- 1.1.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
- 1.1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
  - 1.1.4.1 Why were the complaints not made to the Tribunal in time?
  - 1.1.4.2 In any event, is it just and equitable in all the circumstances to extend time?

1.2 Was the complaint of detriment because of a protected disclosure made within the time limit in section 48 of the Employment Rights Act 1996? The Tribunal will decide:

- 1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act complained?
- 1.2.2 If not, was there a series of similar acts or failures and was the claim made to the Tribunal within three months (plus early conciliation extension) of the last one?
- 1.2.3 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
- 1.2.4 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

2. Protected disclosure

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

- 2.1.1 What did the claimant say or write? When? To whom? The claimant says they made disclosures on these occasions:
  - 2.1.1.1 On 16 November 2016 and 27 January 2017 the claimant sent emails to Prof Deborah Smith (pro VC for research), copied to Professor Karl Atkin disclosing information about Neil McKeganey and

his relationship with Charlie Lloyd and the University of York which tended to show that a relationship between Mr McKeganey and the University of York would improve the reputation of Mr McKeganey thereby improving his credibility, assisting the tobacco industry in their efforts to promote smoking or minimise the harmful effects of smoking and thereby cause harm members of the public.

2.1.2 Did they disclose information?
2.1.3 Did they believe the disclosure of information was made in the public interest?
2.1.4 Was that belief reasonable?
2.1.5 Did they believe it tended to show that:

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

2.1.6 Was that belief reasonable?

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

3. Detriment (Employment Rights Act 1996 section 48)

3.1 Did the respondent do the following things:

3.1.1 In summer 2019 to autumn 2020 three students made informal complaints about the claimant (who was their supervisor) to Prof. Lightfoot. She wrongly advised each of them to put in formal complaints rather than attempting to resolve the informal complaints. She incorrectly advised two of them that the only way a new supervisor could be arranged was if a formal complaint was made. (The claimant says that Prof. Lightfoot had had undisclosed discussions with Prof. Atkins in the course of the investigation and he says this shows a link with the protected disclosure).

3.1.2 On 17/09/19 Prof Atkin linked the protected disclosure/characteristic correspondence with informal complaints made against the claimant in communications to HR.

3.1.3 The investigation was characterised by what the claimant contended was clear evidence of procedural unfairness, and given early sight of the report on 18/02/21 Prof. Atkin argued that the findings left the department with a problem, and risks for the institution. The claimant clarified that by procedural unfairness, he meant that the interviews with the complainants introduced material that should not have been introduced. This included previous anonymous

complaints made against the claimant and discussion of disciplinary proceedings against the claimant. The complaints were upheld.

3.1.4 The report (into the complaints against the claimant) was then interfered with by HR (by HR making amendments to the report) before being released, contrary to the ongoing views of the independent investigator (Prof. Caroline Hunter, Head of Law School), who nevertheless went along with the alterations to the conclusions and recommendations in order to permit a case for disciplinary action against the claimant.

3.1.5 The allegations were dismissed at the subsequent disciplinary hearing on 09/07/21, by which time Prof. Doherty had assumed the HOD role. Thereafter he was reluctant subsequently to discuss informally how to move on from this episode. The claimant clarified that the detriment was that Prof. Doherty failed to discuss with the claimant how to move on until April 2022 and in any event advised the claimant to lodge a grievance (rather than discussing how to move on).

3.1.6 The reports that had been altered by HR (referred to in para 3.1.4) were withheld after having been requested by the claimant in a subject access request (and were only made available later after further request), as was other information forming part of the investigation.

3.1.7 A further formal complaint was made against the claimant on 14/04/22 following a similar pattern, this time with Prof. David Torgerson (DHOD [Research]) giving incorrect advice that precluded an informal resolution of the complaint. Prof. Torgerson resigned from this role soon after the claimant drew attention to what had happened.

3.1.8 Prof. Doherty decided on a formal investigation of this complaint on 05/05/22 and appointed an Investigating Officer from within the department, even though by this time the claimant had been advised by Prof. Brian Fulton (Dean of Science Faculty) on 06/04/22 to make a formal grievance about the earlier complaint. The claimant complains specifically that a second investigation was started AND that it was kept wihtin the same department rather than being given to a different department.

3.1.9 The investigation of the complaint was undertaken by Prof. Kate Flemming. They were also appointed in June 2022 to replace Prof. Doherty as HOD before any investigatory interviews had taken place. This meant that the investigator was also the incoming Head of the Department against which a grievance was made

3.1.10 The claimant submitted the grievance formally on 29/06/22. This covered the first complaint and the early stages of the second. The grievance process ran concurrently with complaint investigation and subsequent disciplinary process until 22/12/22 when it was paused. The claimant complains particularly that the disciplinary and grievances processes dragged on for much longer than they should have done.

3.1.11 The response to the grievance (by Deputy Vice Chancellor Prof. Saul Tendler) on 24/10/22 claimed there was no basis to conduct an investigation into events which have been concluded, thus appearing to deny the possibility of any kind of appeal, for example against the interference with the investigation report. This response omitted the substance of the grievance, which was expressly about the culture of the department and how it was supported by HR.

3.1.12 The investigation into the second complaint against the claimant was characterised by serious procedural unfairness, even more so than the investigation of the first complaint, and the claimant's contemporaneously made objections were ignored. It recommended there was a disciplinary case to answer on 03/11/22. The claimant clarified that the procedural unfairness was:

3.1.12.1 At the informal stage the complainant was misled into making a formal complaint;

3.1.12.2 The informal stage was not investigated;

3.1.12.3 The investigation was being conducted by the head of the department against which the claimant had raised a grievance

3.1.12.4 The claimant's objections to the investigating officer had been ignored

3.1.12.5 The claimant was given insufficient notice of the investigation meeting

3.1.12.6 The investigating officer claimed they were unaware of the grievance the claimant had raised

3.1.12.7 The claimant was not given adequate information about the complaint against him

3.1.12.8 The investigation meeting notes were inadequate

3.1.13 The conduct of the disciplinary hearing on 08/12/22 departed from ACAS guidance in numerous ways. For example, the Chair (Prof. James Moir, a fellow HOD within the Science Faculty) allowed Prof. Flemming to present the university management case despite objection, even

after the claimant drew attention to intimidation in the investigation. The claimant contended that the hearing did not give the claimant a reasonable opportunity to set out his case as required in the ACAS Code of Practice.

3.1.14 The disciplinary hearing did not permit scrutiny of the extensive documentary and other evidence the claimant produced on either the substantive or the process issues, and thus there was no process for weighing up the balance of probabilities fairly. It was concluded that the claimant had committed bullying and harassment.

3.1.15 The procedural unfairness was continued in the conduct of the disciplinary appeal by Prof. Karen Rowlingson (Dean of Social Sciences Faculty) on 13/02/23. The appeal did not address the claimant's evidence on the key problems with the original hearing, such as on the role of Prof. Flemming, and upheld the original decision on 28/02/23.

3.1.16 The grievance appeal took the form of an interview with Prof. Kiran Trehan (PVC for Partnerships & Engagement) on 03/04/23, contrary to university guidelines and notwithstanding objection about unmanaged conflict of interest. Continued avoidance of meaningful attention to the substance of the grievance and further process issues were features of the appeal, which was rejected on 28/04/23.

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

3.3 If so, was it done on the ground that [they made a protected disclosure / other prohibited reason]?

4. Remedy for Protected Disclosure Detriment

4.1 What financial losses has the detrimental treatment caused the claimant?

4.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

4.3 If not, for what period of loss should the claimant be compensated?

4.4 What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that?

4.5 Has the detrimental treatment caused the claimant personal injury and how much compensation should be awarded for that?

4.6 Is it just and equitable to award the claimant other compensation?

4.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

4.8 Did the respondent or the claimant unreasonably fail to comply with it?

4.9 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

4.10 Did the claimant cause or contribute to the detrimental treatment by their own actions and if so would it be just and equitable to reduce the claimant's compensation? By what proportion?

4.11 Was the protected disclosure made in good faith?

4.12 If not, is it just and equitable to reduce the claimant's compensation? By what proportion, up to 25%?

5. Philosophical belief

5.1 Does the Claimant hold a belief that public health needs to be protected from policy interference and associated interventions within science by the alcohol and tobacco industries, so that the integrity of science is preserved? ("Alleged Belief")

5.2 If so, is the Alleged Belief a philosophical belief; in particular:

5.2.1 Is it a belief, as opposed to opinion or viewpoint;

5.2.2 Does it relate to a weighty and substantial aspect of human life and behaviour;

5.2.3 Does it attain a minimum level of cogency, seriousness, cohesion and importance; and

5.2.4 Is it worthy of respect in a democratic society, and not incompatible with human dignity and not in conflict with the fundamental rights of others?

6. Harassment related to Philosophical Belief (Equality Act 2010 section 26)

6.1 Did the respondent do the following things:

6.1.1 The claimant relies on the allegations set out as detriments under paragraph 3.1 above

6.2 If so, was that unwanted conduct?

6.3 Did it relate to the claimant's philosophical belief

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

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

7. Remedy for discrimination or victimisation

7.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

7.2 What financial losses has the discrimination caused the claimant?

7.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

7.4 If not, for what period of loss should the claimant be compensated?

7.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

7.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

7.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

7.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

7.9 Did the respondent or the claimant unreasonably fail to comply with it by [specify breach]?

7.10 If so is it just and equitable to increase or decrease any award payable to the claimant?

7.11 By what proportion, up to 25%?

Should interest be awarded? How much?