



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Mr Nikolaos Sarantakis

v

The Metanoia Institute

**Heard at:** London Central

**On:** 19 - 25 March 2024

**Before:** EJ G Hodgson  
Ms Z Darmas  
Mr S Godecharle

## Representation

**For the Claimant:** Mr P Nath, counsel

**For the Respondent:** Mr A Leonhardt, counsel

## JUDGMENT

**All claims of direct discrimination fail and are dismissed.**

## REASONS

### Introduction

- 1.1 On September 2022, the claimant brought proceedings alleging disability discrimination, and direct race and sex discrimination.

### **The Issues**

- 2.1 The issues in this case are set out at appendix 1.
- 2.2 The remaining claims are allegations of direct sex discrimination.
- 2.3 The claims of race discrimination and disability discrimination were previously dismissed on withdrawal.

### **Evidence**

- 3.1 The claimant gave evidence. The claim is issued under the name Nikolaos Sarantakis although in evidence the claimant confirmed he uses the name Mr Nicholas Sarantakis
- 3.2 Dr Lia Foa, clinical director; Dr Ariana Jordan, director of studies, Dr Biljana VanRijn, head of faculty; and Prof Carrie Weston produced statements and gave evidence for the respondent.
- 3.3 Ms Toyin Allen, former head of HR, was summonsed. She gave evidence on day 3.
- 3.4 We received written submissions from both sides.

### **Concessions/Applications**

- 4.1 On day one, we considered the issues. At a case management hearing on 23 February 2023, EJ Klimov recorded the complaints as direct sex discrimination, and “positive” direct disability discrimination. He noted the claimant had provided “further information” on 17 February 2023 and that document was accepted by the respondent as providing “sufficient detail for it to understand and respond to the claim.”
- 4.2 Later in the case management summary, at 2.1, EJ Klimov referred to the allegations of discrimination as being “set out in the claimant’s further information document.”
- 4.3 The only claims that can proceed are those which are set out in the claim form, and it is apparent that it is the claim, as set out in the claim form, which EJ Klimov understood to be clarified by the additional information. No amendment was sought or granted.
- 4.4 At the hearing, we agreed that only the claims in the claim form could proceed. Mr Nath confirmed the tribunal had identified the claims correctly. There were a number of matters which the tribunal sought to clarify on the afternoon of day one, after the parties had considered draft one of the list of issues. A number of the matters were clarified, and further information was included by consent without the need for formal amendment.

- 4.5 One allegation concerned the failure to investigate a grievance. During the discussion, it was suggested that the true intent was to say the grievance was investigated, but was investigated inadequately. An allegation of inadequate investigation is not set out in the claim form and the tribunal confirmed such an allegation would require an amendment.
- 4.6 In addition, the claimant filed a draft list of issues. Paragraphs 5 to 7 contained new claims as follows:
- 5. Manipulation of male ex-staff member Dr. George Georgiou by female staff member BVR (bundle 2 texts pp. 244-248)**
- 6. Less favourable treatment between the female staff member Erin Reid in terms of praise and payment of overtime work (p. 250 (evidence they refused to provide ER's contract, thus not facilitating comparison), p. 22 (my performance review stating I need to contain my working hours), p. 247B (BVR offering praise and additional payment for overtime work, in contrast with the treatment)**
- 7. Fabrication of 'zoom meeting' minutes by Respondent (bundle 2, p. 250 evidence that the minutes of the 'zoom meeting' were genuine and it was not provided).**
- 4.7 These were new claims which would require an amendment. The parties agreed to deal with this by way of written submissions to be exchanged prior to day two, when the tribunal would give its decision.
- 4.8 The claimant's written submissions did not refer to points 5 – 7 set out above. Instead, there were two further applications. The first concerned "overtime pay." Which was said to be less favourable treatment between female staff and the claimant "in terms of praise and payment of overtime work." The second amendment referred to a Zoom meeting and the failure to provide proof that the minutes of the Zoom meeting were genuine. These matters were said to be sex discrimination.
- 4.9 The respondents submissions dealt with items 5 – 7 and with the two further applications of 19 March 2024.
- 4.10 Items 5 – 7 above are three new claims. The relevant date is not given, but they appear to postdate the original claim form. It would be possible to bring these claims as a separate action, as of right. It may still be possible to bring those claims. It is rare that it will be appropriate for claimants to seek to amend an existing claim to include matters that postdate that claim when the claims can be brought as of right. If the claimant suffers any prejudice because those claims are out of time at the point when the application is made or granted, such prejudice is entirely the fault of the claimant who was chosen not to bring the claim as of right.
- 4.11 Allowing these claims to proceed would significantly lengthen the hearing and would lead to adjournment, as further evidence would be needed. It is inappropriate for a claimant to wait until the hearing of a claim to seek to include other claims which postdate the original claim, and which could be brought as of right in a separate claim. This is particularly so when the

effect would be to cause the first hearing to be postponed. The application to amend was refused.

- 4.12 The proposed amendment relating to overtime pay appears to be a wholly unparticularised claim of equal pay. There is no good reason why the claim could not have been brought originally. It now appears to be out of time. Allowing it would create significant difficulty as the claim cannot be answered in its current form. The hearing would be postponed. Further evidence would be needed. That would cause further delay. That application was refused.
- 4.13 The application for amendment relating to the Zoom meeting was made late in the day. There is no reason why it could not have been made earlier. It is unclear what is said to be the act of less favourable treatment. It would lead to this hearing being postponed because of the need for further evidence. This would create hardship for the respondent. There is little hardship to the claimant as he may pursue the claims that he already has. The application was refused.
- 4.14 On day one of hearing the claimant sought permission to rely on a supplemental statement. The application failed to set out adequately or at all why the evidence was relevant to the issues in this claim, or why it could not have been dealt with earlier.
- 4.15 The respondent submitted that the evidence related largely to matters which arose after the claimant had left employment.
- 4.16 Mr Nath confirmed that it was concerned largely with the treatment of others, which was said to be probative.
- 4.17 The tribunal did not accept that the evidence was sufficiently relevant. An allegation that another person was treated in a similar way to the claimant after the claimant had left, and that such treatment amounted to discrimination, was not sufficiently relevant to the issues arising in this case. The tribunal noted that if the amendments, being those amendments we have referred to above, were allowed, it may need to revisit its decision on admissibility of this evidence. Ultimately, the amendments were refused.
- 4.18 In the final written submissions Mr Nath refers to placing the claimant on garden leave as being a dismissal and he appears to suggest dismissal was an allegation of discrimination, which was included in the issues.. This was never raised at the hearing or in the claim form and any such allegation would have required an amendment.
- 4.19 For the reasons we will come to, we find the claimant was not dismissed when he was placed on garden leave.

## **The Facts**

Background

- 5.1 The respondent is a teaching institute which works in conjunction with Middlesex University. It has counselling psychology and psychotherapy programmes.
- 5.2 From 1 October, The respondent employed the claimant as director of studies for the doctorate in the counselling psychology and psychotherapy programme. He was appointed following an interview with Dr Biljana VanRijn who became his line manager.
- 5.3 The claimant was on sick leave from shortly after 14 April 2022.
- 5.4 On 13 May 2022, whilst on sick leave, the claimant resigned, and stated he would work until 30 June 2022. The letter of resignations stated: "I would hereby like to submit my notice of resignation." He gave no reason.

The facts relevant to the individual allegations

- 5.5 In considering our conclusions on the allegations, we will take into account all of the facts. We have set out below the facts most relevant to each allegation.

Allegation one

- 5.6 The claimant was line managed by Dr Biljana VanRijn. He had responsibility for line managing others including Dr Ariana Jordan, who at the time was a senior lecturer.
- 5.7 The working relationship between the claimant and Dr Ariana Jordan became seriously strained at an early stage. We consider this further below.
- 5.8 The claimant alleges that, in a meeting with Dr Biljana VanRijn, he complained about Dr Ariana Jordan making false allegations and he alleges Dr Biljana VanRijn said words to the effect, "What can we do she is autistic."
- 5.9 The claim form fails to identify the date this occurred, or the circumstances. During evidence, the claimant stated it occurred sometime in March 2022 during a routine Monday meeting with Dr Biljana VanRijn.
- 5.10 The allegation is not dealt with in the claimant's witness statement.
- 5.11 There is no contemporary documentation which refers to it. The allegation is not in the claimant's grievance.

- 5.12 Dr Biljana VanRijn denied the allegation in her witness statement, and repeated the denial when cross-examined. She indicated that it would not have been a comment she would ever have made.
- 5.13 It for is the claimant to prove this allegation occurred. He failed to set out the date. He failed to set out the circumstances. There is no contemporaneous evidence. There is no evidence to suggest that any member of staff described Dr Ariana Jordan in such terms. We have no reason to doubt Dr Biljana VanRijn's evidence, that she would not have made such a reference, and we accept her evidence that she did not.

Allegation two

- 5.14 On 9 April 2022, Dr Ariana Jordan sent an email to the claimant which she copied to others using a distribution list. The others were predominantly management colleagues. An external examiner was part of the group. We accept Dr Jordan's evidence that she did not realise the examiner was part of the group.
- 5.15 The email referred to her having an "awkward time checking with the year 2s yesterday morning." She described the students as angry and upset because of a lack of communication. She stated they had been asked to comment on her and that the students felt uncomfortable about it. She stated they had told her they feared a lack of cooperation could affect their grades. The background is that Dr Ariana Jordan understood that the claimant asked students for feedback about her.
- 5.16 The email sets out a several matters and concerns raised by the students. She stated:
- Can we please put on the agenda for our next team meeting how we can work together to present a united front and what we need to avoid which goes against this and puts pressure on our students?**
- 5.17 We accept Dr Ariana Jordan considered the claimant's conduct, in seeking feedback from the students, to be motivated by his negative attitude towards Dr Ariana Jordan. Dr Ariana Jordan's email was not neutral. It was critical, implicitly, of the claimant and his conduct. Copying in others would undoubtedly have escalated the situation. It was likely to cause an already strained relationship to deteriorate.
- 5.18 On 14 April 2022, Dr Biljana VanRijn sent an email to the claimant marked "student reps feedback individual." This was sent following a request by a year 2 student representative, on 10 April, for an urgent meeting to consider matters raised by the students. This led to a meeting on 14 April and subsequently Dr Biljana VanRijn sent emails to the claimant and Dr Ariana Jordan.
- 5.19 This did not refer directly to the email of 9 April 2022, but did deal with student feedback. The feedback concerned the claimant's "boundaries of professional conduct" and the "CBT module" he was teaching.

5.20 The email reported feedback given by students. It included the following statement “The students felt threatened that if they didn’t give the feedback the grades would be affected.” This related to alleged feedback requested by the claimant concerning Dr Jordan. Dr Biljana VanRijn noted the students felt uncomfortable. She also referred to changes to the programme, and this contained details which we do not need to record. It concludes by giving a direction as follows: “I would like to ask you to keep the professional boundaries and not disclose this to students, or use them for support.” Dr Biljana VanRijn’s email is lengthy. It is written in neutral and professional language. It encourages the claimant to discuss the matter. It is clear that Dr Biljana VanRijn is raising concerns. It was reasonable for her to do so. It is apparent she had clear and appropriate grounds. We reject any suggestion that there was any fabrication of allegations.

#### Allegation three

5.21 This allegation refers to Dr Biljana VanRijn crossing professional boundaries and making further allegations. The claimant failed to identify the email referred to.

5.22 During his evidence, his position appeared to shift, but ultimately he stated he did not have in mind the email of 14 April 2022., albeit we note there were two emails. It follows it remains unclear what email the claimant is referring to. The allegation was not identified adequately or at all; it was not put to Dr Biljana VanRijn in cross examination. The claimant fails to establish any factual basis in support of this allegation.

#### Allegation four

5.23 The claimant was on sick leave when he handed his resignation in. He wished to return to the Institute to say goodbye to the students. He also wished to teach a class.

5.24 On 18 May 2022, by email, the claimant advised Dr Biljana VanRijn that he would not return before 3 June 2022. He wanted to work on Sunday, 5 June 2022. In addition, he proposed to come to the office on 30 June 2022 to hand in his laptop and to say goodbye to members of staff.

5.25 On 19 May 2022, Dr Biljana VanRijn responded and confirmed his proposals. She suggested he contact his colleague to make arrangements.

5.26 On 27 May, Mr Saadi sent an email saying “No problem at all. See you then.”

5.27 Following this exchange, the claimant contacted Ms Helen Miller, who would also be working on 12 June 2022. He stated he would deliver his

last session on that day and hoped to say goodbye to the year one students. Ms Miller responded. Her email stated:

**It was lovely to hear from you and hope that you are well. We already have this covered as Jasenka will be co-facilitating the next two sessions as she plans to take over this module from me when I also finish working with Metanoia . I am aware that you need an opportunity to say goodbye to the group so some time has been given on Friday at 1pm on the 10<sup>th</sup> of June with the first years and thought this may be a good time as you are already in to see the 2<sup>nd</sup> years. Hopefully I will also be there on Friday to see you before you go.**

- 5.28 We accept the claimant did not read all of his emails .
- 5.29 The claimant attended on 12 June 2022. During his visit, Dr Lia Foa , a clinical director who the claimant had not met, was teaching a class, covering a module for year two of the DC psych course, as the regular tutor had left.
- 5.30 Having made no previous contact, the claimant entered Dr Foa's class, he failed to address Dr Foa, he walked to the centre of the room, and he began to talk to the students regarding his departure. Dr Foa did intervene, she realised who he was, and she sought to deal with the situation by speaking to the students, and checking they would make space for the claimant to talk to them.
- 5.31 The claimant's did speak to the students. We accept some of his statements caused the students concern. He referred to tutors leaving the Institute. He disclosed, at least in relation to one tutor, a resignation which was not public knowledge. That individual was the personal tutor for some of the students in the class. They were unsettled, and Dr Foa sought to deal with the distress, after the claimant had left. She stated some students were very angry. One student stated the claimant had come in to "shit-stir." Dr Foa was left feeling shocked and appalled. She considered the claimant's conduct to be unprofessional.
- 5.32 Following this, she raised the matter with the respondent's human resources.
- 5.33 Ms Toyin Allen, head of HR, asked Dr Foa to write an account. Dr Foa sent an account by email of 15 June 2022. The email included straight reporting of the events of Sunday, 12 June. It described the claimant's behaviour, and referred to his comments concerning the Institute and the tutors leaving. She stated the students were upset and considered his behaviour "intrusive and unboundaried." She concluded by saying:

**Given that the students have experienced a lot of instability in their course, I would have expected someone who held the role of director of studies to act in a grounding, stabilising manner, and to help to contain the anxiety that the students were already feeling. This was the opposite of what Nicholas did, and the students were left feeling even more distressed as a result.**



5.34 Dr Lia Foa had no further involvement. None of the respondents staff, including Dr Lia Foa, could have anticipated the claimant's actions on 12 June 2022. It has been alleged that, in some manner, and in a premeditated way, Dr Lia Foa colluded with Dr Ariana Jordan and Dr Biljana VanRijn to produce a false and negative account of the claimant's actions. There is no evidence on which we could find this. We reject the assertion.

Allegations five and six

5.35 The claimant was placed on garden leave. The decision was made by Ms Toyin Allen, having received the report of the events on Sunday, 12 June 2022. On 13 June 2022, Ms Toyin Allen tried to contact the claimant by phone. He did not respond.

5.36 Ms Toyin Allen considered the claimant's actions on 12 June 2022 to be unprofessional. He had given notice to terminate his employment. She decided to place the claimant on garden leave. We accept her evidence that she considered his behaviour to be unprofessional and that she was concerned to protect the claimant, the Institute, and the students. The way to achieve that was to preserve the position. We accept she considered it necessary to terminate his access to work emails in consequence of his being on garden leave. As the claimant was on garden leave, the claimant would not be expected to attend, and any difficulty with inappropriate email traffic would be reduced.

5.37 It follows Ms Allen also took the decision to remove his access to his work email.

5.38 Dr Biljana VanRijn was made aware the decision. She fully supported it.

Allegation seven

5.39 This allegation is that the respondent failed to conduct a grievance. The claimant's grievance is recorded in the grievance outcome.

5.40 We do not need to set out the full grievance. It contained a number of themes. The grievance is lengthy and in places unfocused. He referred to Dr Biljana VanRijn and her repeating of Dr Ariana Jordan's alleged false declarations. He complained he had received no evidence. He referred to his freedom of information request. He accused Dr Ariana Jordan of making false allegations against him. He set out a number of examples. He alleged it had been agreed that he would attend on 12 June 2022.

5.41 Ms Toyin Allen conducted the investigation, and dealt with the grievance. We accept her evidence that she interviewed Dr Ariana Jordan Allen, Dr Biljana VanRijn, and some student reps. She did not take witnesses

statement and the investigation had a degree of informality. Based on that investigation, she reached her conclusions. Largely the grievances were not upheld, however, she made one finding concerning Dr Ariana Jordan . She accepted that Dr Ariana Jordan copied her email of 9 April 2022 to the whole team, when it was inappropriate to do so. She also found the claimant had behaved in a similar way. She partly upheld the grievance and recommended an apology letter be sent to the claimant, as he was not seeking any form of financial redress.

- 5.42 The grievance and outcome was later reviewed by Prof Carrie Weston. She did not undertake any further specific investigation.

#### Allegation eight

- 5.43 This concerns Dr Jordan blaming the claimant saying to students “many other staff are about to resign.” The factual basis for this allegation is unclear. The claimant failed to identify any email. He does not say if the statement was oral. In evidence he suggested that this related to events on 12 June 2022. We find that the claimant, when he interrupted Dr Foa’s class, did refer to members of staff resigning. He identified at least two.

#### Allegation nine

- 5.44 This concerns the appointment of Dr Jordan to the position of director of studies, after the claimant had left.
- 5.45 Dr Ariana Jordan joined the Institute on 1 April 2019. She gained experience. The position of director of studies became available in spring 2021. She was asked to apply. She declined. She did not want the role. She agreed to be acting director of studies, until someone was appointed. The claimant was appointed on 1 October 2021.
- 5.46 It is apparent that the working relationship between the claimant and Dr Jordan became strained. For the first meeting, Dr Ariana Jordan had travelled for two hours to go to work to meet the claimant. However, she found the meeting unsatisfactory. She found the claimant did not engage with her. She found the claimant disorganised.
- 5.47 As the relationship developed, Dr Jordan came to consider the claimant as aggressive. She found his emails inappropriate. She considered the claimant was hostile to her.
- 5.48 She considered some of his behaviour to be unprofessional, and she gives an example of his failing to respond to her holiday request, and then suggesting that her failure to request holiday appropriately meant she was on annual leave without authorisation, and in future she may be subject to disciplinary action.

- 5.49 Equally, the claimant had a negative view of Dr Ariana Jordan and accused of her inventing complaints. He asked students to report back on her.
- 5.50 We do not need to set out the full detail, it is clear that the relationship was strained and unhappy.
- 5.51 When the claimant left, Dr Ariana Jordan was offered, and accepted, the role of director of studies. We accept that the post was not advertised externally. There was an interview process, albeit we accept this appears to have been a formality.

Other matters

- 5.52 The claimant referred to the treatment of other men. He suggests those men were treated badly because of their sex. He refers to several individuals.
- 5.53 His evidence in relation to Mr Vos is entirely speculative, as is any reference to Dr Georgiou.
- 5.54 The claimant speculates in his statement about the treatment of two men, Dr Boden and Dr Saadi.
- 5.55 We do not accept there is any evidence of maltreatment of Dr Boden by the respondent. On 26 April 2022, Dr Boden wrote to Ms Toyin Allen . This email is critical of the claimant and in particular his conduct towards Dr Ariana Jordan . He stated that the claimant's conduct, was not "worthy of the role of a counselling psychologist, let alone that of director." In that context, he stated he was "currently considering" his own role.
- 5.56 Dr Saadi set out his concerns, including his concerns about the claimant in several emails.
- 5.57 The claimant, at para 18 of his statement, says of Dr Boden and Dr Saadi, "They tried to collude with their<sup>1</sup> discriminatory practices, to avoid discrimination against themselves." We reject that assertion which is speculation.
- 5.58 The claimant has alleged that the minutes of a meeting which took place by Zoom on 17 June 2022, had in some manner been manipulated or doctored, and that this was part of some conspiracy against him.
- 5.59 The meeting on 17 June 2022 was attended by interested parties, including employees of the Institute and Middlesex University. There were 17 attendees. Minutes were prepared. They were circulated. They were adopted at the next meeting. There is no evidence on which we could find

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<sup>1</sup> Female staff members.

that the minutes were manipulated or fabricated. Fabrication is speculation on the claimant's part.

- 5.60 The meeting of 17 June 2022 was a formal meeting between the respondent and the University. It concerned the programme. The minutes were circulated and ultimately they were approved the next meeting. The attendees could have objected. It is fanciful to suggest that there was manipulation.
- 5.61 The respondent's workforce is predominantly female, with around 90% of senior management being women. However, the evidence on this was poor. We accept the counselling profession as a whole is about 80% female. The faculty has four doctoral programmes, of which three were managed by men. Of the two previous permanent Directors of Studies on the programme managed by the Claimant, one was female and one male.

### **The Law**

- 6.1 Direct discrimination is defined in section 13 of the Equality Act 2010.

#### **Section 13 - Direct discrimination**

**(1) 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.**

- 6.2 **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] ICR 337 is authority for the proposition that the question of whether the claimant has received less favourable treatment is often inextricably linked with the question why the claimant was treated as he was. Accordingly-

**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. (para 10)**

- 6.3 **Anya v University of Oxford** CA 2001 IRLR 377 is authority for the proposition that we must consider whether the act complained of actually occurred (see Sedley LJ at paragraph 9). If the tribunal does not accept that there is proof on the balance of probabilities that the act complained of in fact occurred, the case will fail at that point.

- 6.4 Section 23 refers to comparators in the case of direct discrimination.

#### **Section 23 Equality Act 2010 - Comparison by reference to circumstances**

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

- 6.5 Section 136 Equality Act 2010 refers to the reverse burden of proof.

#### **Section 136 - Burden of proof**

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

- 6.6 **In considering** the burden of proof the suggested approach to this shifting burden is set out initially in **Barton v Investec Securities Ltd [2003] IRLR 323** which was approved and slightly modified by the Court of Appeal in **Igen Ltd & Others v Wong [2005] IRLR 258**. We have particular regard to the amended guidance which is set out at the Appendix of **Igen**. We also have regard to the Court of Appeal decision in **Madarassy v Nomura International plc [2007] IRLR 246**. The approach in **Igen** has been affirmed in **Hewage v Grampian Health Board 2012 UKSC 37**
- 6.7 When considering these claims, we have in mind the helpful guidance given by the Employment Appeal Tribunal in **London Borough of Islington v Ladelle 2009 IRLR 154**. In particular, we note paragraphs 40 and 41.

## **Conclusions**

- 7.1 To succeed in a claim of direct discrimination we need to consider the following steps. First, what is the act or omission, as pleaded, which is said to amount to a detriment? Only those alleged detriments set out in the claim form can be adjudicated. Second, has the claimant proven that the act or omission happened at all? If not, there is no action or omission capable of being a detriment. Third, if the potential detriment is established factually, is it detrimental treatment at all? Fourth, are there facts from which we could conclude that the treatment contravened the relevant provision? Fifth, has the respondent established, on the balance of probability, an explanation for the treatment which in no sense whatsoever is a contravention the provision, in this case section 13 Equality Act 2010?
- 7.2 In support of his allegations that he has suffered discrimination because of sex, the claimant has referred to a number of general background matters,

and we have had full regard to those. In considering each allegation, we have had regard to the totality of the evidence and all the facts.

- 7.3 We should make some findings in relation to the principal background issues relied on.
- 7.4 The claimant alleges there has been discrimination against other men, including Dr Voss and Dr Bowden. There is no evidence for this.
- 7.5 The claimant alleges that the minutes from the meeting on 17 June 22, which took place by Zoom, were in some manner fabricated. There is no evidence for that.
- 7.6 The claimant points to the make-up of the workforce and gives evidence, which was unchallenged, that women made up 90% of the workforce and appears to suggest that as a matter from which we could draw an inference of discrimination.
- 7.7 There may be occasions when the make-up of a workforce could be evidence from which an inference could be drawn. The circumstances are limited and the respondent has, helpfully, drawn our attention to the cases of **West Midlands Passenger Transport Executive v Singh** [1988] 1 WLR 730 and **Home Office (UK Visas & Immigration) v Kuranchie** UKEAT/0202/16/BA. We do not need to consider those cases in detail. Where the make-up of the workforce is sufficiently closely related to the alleged discrimination, it may provide evidence. This could occur, for example, when allegation concerns a failure to appoint an individual. Each case will be taken on its merits.
- 7.8 The claimant was invited to set out any case law supporting the assertion that inferences of discrimination can be drawn from the make-up of the workforce. The submissions fail to address the law on this point but instead assert at paragraph 60 the following.
- The disproportionate workforce of 10% of the management team being male and 90% being women, inadvertently created a structure of colluding against the male members of the team. C found himself in a position where he had no support from his immediate line manager and found the culture of a very women dominated workforce as discriminatory and sufficient evidence has been proved to the tribunal to show that he was treated different due to his sex.**
- 7.9 The allegations in this case concerned the actions of individuals. Our focus is on the conscious or subconscious motivation of those individuals. It cannot be assumed that a specific individual is more likely discriminate if the workforce is predominantly women. We find that the make-up of the workforce is not a fact which we could draw an inference in this case.
- 7.10 The claimant alleges that much of the respondent's conduct was unreasonable. We accept that where there is unreasonableness, and there is a failure of explanation for the unreasonableness, there can be an

inference of discrimination. It is the failure of explanation from which the inference can be drawn. It is necessary to show what behaviour was unreasonable before considering whether there is a reasonable explanation.

- 7.11 The submissions are not clear as to what is said to be the unreasonable conduct, but it is possible to infer a number of themes.
- 7.12 We have considered the grievance process which was criticised by the claimant on numerous levels. We do not accept that the grievance process was unreasonable. In any event, to the extent that it can be said it was unreasonable, we have considered Ms Allen's explanation. She sought to follow due process and interview those individuals she considered appropriate. By doing so, she obtained ample evidence in support of her conclusions. It is possible a different manager would have approached the grievance in a different way, but that does not make Ms Allen's approach unreasonable. Her findings are fully supported by evidence obtained by appropriate interviews. Moreover, she upheld part of the grievance. Ms Jordan did, contrary to the claimant's assertion, face disciplinary action for circulating her email of 14 April 2022.
- 7.13 We considered Professor Weston's evidence. She summarised the position succinctly. She felt that she had been brought in to referee a fight.
- 7.14 The fact that Ms Jordan was promoted following the claimant's resignation, without the position being openly advertised, provides no evidence from which we could draw an inference in relation to any of the allegations before us. We accept the respondent explanation that the job was not advertised because it had proved very difficult to fill and there was a suitable internal candidate who had undertaken the position before. We accept the respondent was concerned to stabilise a difficult situation.
- 7.15 We now consider the individual allegations.

*Allegation one – by Dr Biljana VanRijn stating on [date unclear] in relation to alleged false allegations made by Dr Ariana Jordan "What can we do she is autistic."*

- 7.16 This allegation fails. Dr Biljana VanRijn did not use alleged words.
- 7.17 In any event, it is difficult to see how a reference to autism would be supportive of a claim that the reason for the treatment was the claimant's sex. This allegation fails.

*Allegation two – following Dr Jordan's email of 9 April 2022, by Dr Biljana VanRijn on 14 April 2022, by email at 18:11 blaming the claimant for crossing professional boundaries.*

*Allegation three – by Dr Biljana VanRijn sending an email repeating the allegation of crossing professional boundaries and making further allegations.*

- 7.18 We accept that these are essentially the same allegation. The only email identified by the claimant which refers to Dr Biljana VanRijn suggesting the claimant crossed professional boundaries was the email of 14 April 2022.<sup>2</sup>
- 7.19 The email did refer to the claimant crossing professional boundaries. It appears to be the claimant's case that the comments were discriminatory because they were fabricated, in the sense that the students had not reported matters of concern. This is portrayed as some form of conspiracy largely conducted by Dr Jordan and Dr Biljana VanRijn.
- 7.20 There is clear evidence that the students were concerned. The claimant did not deny that he had asked the students to report on Dr Jordan. It is not surprising that his request caused concern to the students; his request was extraordinary. Dr Biljana VanRijn was justified in raising her concern that the claimant had crossed professional boundaries. Dr Biljana VanRijn had no realistic option other than to raise the matter. She did so in a professional and reasonable way. The issue of the claimant's observation of boundaries was raised because there were complaints from the students and it was appropriate for the matter to be addressed. It had nothing to do with claimant's sex. These allegations fails.

*Allegation four – by Dr Lia Foa on 13 June 2022 verbally blaming the claimant for revealing's personal information of members of staff, being sharing information regarding resignations. Thereafter by Dr Foa repeating the allegation in an email 15 June 2022 at 9:06.*

- 7.21 We accept that Dr Fao raised with the respondent the claimant's behaviour on 12 June 2022. Her concerns included the disclosing of personal information. Part of that personal information, as she understood it, concerned revealing that a tutor was leaving when that resignation was not public knowledge. Several students were directly affected because the person leaving was their tutor. Dr Fao repeated her concerns in an email, having been invited to set them out by Ms Allen. This allegation fails.
- 7.22 Dr Foa had reasonable concerns which were based on a clear and rational analysis of behaviour she considered to be unprofessional. It was appropriate for her to raise the matter and to set out her a report. Her actions were because of the claimant's behaviour and not because of his sex. This allegation fails.

*Allegation five – following the events of 13 June 2022 by Dr Biljana VanRijn placing the claimant on garden leave.*

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<sup>2</sup> It appears there was another email of the same day, but that has not been relied on by the claimant.



*Allegation six – following the events of 13 June 2022 by blocking the claimant's email account.*

- 7.23 It is accepted the claimant was placed on garden leave. That decision was made by Ms Allen and fully supported by Dr Biljana VanRijn who was aware of it.
- 7.24 She had obtained evidence of the claimant's inappropriate and unprofessional behaviour the day previously. She was, reasonably, concerned by the claimant's actions. She wanted to preserve the position in order to protect the claimant, the Institute, and the students. By placing the claimant on garden leave, it was made clear to him that he should not attend again. It also precipitated the removal of email access. This was a reasonable
- 7.25 Removal of the claimant's email access was a precaution. He no longer needed access to his emails. It prevented any potential difficulty by limiting the possibility of inappropriate email traffic. This in turn ensured a distance between the claimant and the students. The claimant suggests that lack of access to his emails prevented him from dealing with telephone calls. We do not accept this. The action was reasonable and appropriate. It had nothing to do with the claimant's sex.
- 7.26 These allegations fail.

*Allegation seven – by failing to conduct an investigation into a grievance but instead sending an apology letter dated 27 July 2022.*

- 7.27 We have considered the nature of the investigation into the claimant's grievance. This allegation fails because there was an investigation.
- 7.28 To the extent the allegation could be interpreted as suggesting the investigation was inadequate, we have dealt with this above. The investigation was one open to a reasonable employer. It was sufficiently thorough. It led to clear findings of fact, which were justified. The report was produced. An outcome was sent. That outcome was reasonable. It upheld one of the claimant's grievances, and reasonably rejected the others. As a result of the grievance, Dr Jordan did face disciplinary action.
- 7.29 This allegation fails.

*Allegation eight by Dr Jordan on a date not specified, blaming the claimant for saying to students "many other staff are about to resign."*

- 7.30 This allegation fails. First, the claimant fails to establish the factual basis for it. We accept that there was concern raised about the claimant referring to members of staff resigning when he spoke to students on 12 June. That concern was reasonable and well-founded and it was appropriate that it should have been raised, and the claimant held to account. In no sense whatsoever was this because of the claimant's sex. This allegation fails.

7.31 Allegation nine

*Allegation nine – by appointing Dr Jordan to the claimant's vacant role as director of studies.*

7.32 Appointing Dr Jordan to the claimant's vacant position was not a detriment to the claimant. It follows the claim fails. Advertising it externally is not evidence from which we could draw an inference of discrimination.

The comparator

7.33 We have not considered it necessary to construct a hypothetical comparator for any of the allegations. For each, it has been sufficient to consider the reason for the treatment. The hypothetical comparator would be a women in the claimant's role who behaved in the same way as the claimant to staff and students.

Time

7.34 we do not need to consider if any claim is out of time given that all the allegations fail on other merits.

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Employment Judge Hodgson

Dated: 25 April 2024

Sent to the parties on:

15 May 2024

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For the Tribunal Office

1. The claim form appears to contains the following allegations of direct sex discrimination:
  - a. Allegation one – by Dr Biljana VanRijn stating on [date unclear]<sup>3</sup> in relation to alleged false allegations made by Dr Ariana Jordan "What can we do she is autistic."
  - b. Allegation two – following Dr Jordan's email of 9 April 2022, by Dr Biljana VanRijn on 14 April 2022, by email at 18:11 blaming the claimant for crossing professional boundaries.<sup>4</sup>
  - c. Allegation three – by Dr Biljana VanRijn sending an email repeating the allegation of crossing professional boundaries and making further allegations.<sup>5</sup>
  - d. Allegation four – by Dr Lia Foa on 13 June 2022 verbally blaming the claimant for revealing's personal information of members of staff, being sharing information regarding resignations. Thereafter by Dr Foa repeating the allegation in an email 15 June 2022 at 9:06.<sup>6</sup>
  - e. Allegation five – following the events of 13 June 2022 by Dr Biljana VanRijn placing the claimant on garden leave.<sup>7</sup>
  - f. Allegation six – following the events of 13 June 2022 by blocking the claimant's email account.
  - g. Allegation seven – by failing to conduct an investigation into a grievance but instead sending an apology letter dated 27 July 2022.<sup>8</sup>
  - h. Allegation eight by Dr Jordan on a date not specified, blaming the claimant for saying to students "many other staff are about to resign."<sup>9</sup>
  - i. Allegation nine – by appointing Dr Jordan to the claimant's vacant role as director of studies.

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<sup>3</sup> Not clarified during our discussion on the afternoon of day one.

<sup>4</sup> Clarified on day one. The email is at page 123 – 125 (bundle 11 March 2024).

<sup>5</sup> This appears to be the same as allegation Mr Nath requested it remain.

<sup>6</sup> As clarified on day one.

<sup>7</sup> As clarified on day one.

<sup>8</sup> On day one it was suggested that concerned failure to investigate adequately by two people who conducted investigations. The allegation in the claim form concerns a failure to conduct an investigation, not a failure to conduct the investigation adequately by named individuals. Such allegations would be new claims and would require amendment.

<sup>9</sup> On day one Mr Nath was unable to provide a specific date or dates.

Time

2. It is the respondent's position at any claim prior to 18 April 2022 years out of time. The respondent denies any conduct extending over a period.