EMPLOYMENT TRIBUNALS

Claimant: Dr M Morgan

Respondents: Secretary of State for Justice (1)
Dr Jo Farrar (2)

HELD AT: London Central Employment Tribunal

ON: 20 - 29 November 2023,
4 - 8,12 -15 December 2023, 18,22 December & 18-19 April 2024 (in Chambers)

BEFORE: Employment Judge Akhtar

Members: Mr D Kendall
Mr P Madelin

Representation:

For Claimant: In person with Mr P Haughton as "McKenzie Friend"

For Respondent: Mr A Heppenstall KC
Ms G Hirsch (Junior Counsel)

RESERVED JUDGMENT ON LIABILITY

The unanimous Judgment of the Tribunal is that:

1. The complaints of harassment related to sex and race are not well-founded and are dismissed.

2. The complaints of direct sex and race discrimination are not well-founded and are dismissed.

3. The complaints of victimisation are not well-founded and are dismissed.

CLAIMS AND ISSUES

1. The Claimant brings claims of victimisation, harassment and direct discrimination related to sex and race. The issues were identified and agreed at a preliminary hearing on 11 and 12 January 2023, before Employment Judge Davidson and are set out below.

2. At this final merits hearing, the parties confirmed that the List of Issues remain accurate and agreed.

LIST OF ISSUES

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 16 December 2020 may not have been brought in time.

1.2. Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? 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 sex and/or race discrimination (Equality Act 2010 section 13)*

2.1. The Claimant is a black woman. For the purposes of her race discrimination/harassment claims she relies on her colour and African-Caribbean ethnicity.

2.2. Did the respondent do the following things:

2.2.1. Carry out a 'simple investigation' into the Claimant during March – April 2019 (**Complaint 1**);

2.2.2. Criticise her research in March 2019 in Ms Carter reviewing the content of the Claimant's book, repeated and added to by Deputy Director ("DD") Grugel in May 2019, both forming part of the investigation report (**Complaint 2**);

2.2.3. Inappropriately disclose information (**Complaint 3**), in particular:

2.2.3.1. DD Morris to DD Singh-Matharu, Executive Director ("ExD") Ian Blakeman and Ms Stevens regarding the disciplinary investigation into alleged gross misconduct;
2.2.3.2. DD Tasker to DD Whatmore on 5 April 2019 in relation to potential reputational damage and by sharing information;
2.2.3.3. DD Grugel disclosing information to The Open University and to Edward Mellen publishers on or around 4 June 2019;
2.2.3.4. Ms Noble disclosing content of C's appeal to Ms Carter;
2.2.3.5. Ms Noble making entries into Case Summary for the Complex and High Profile Case Team on various dates;
2.2.3.6. Ms Noble disclosing C's grievance to DD Wooding on 25 June 2019;

2.2.4. [**Complaint 4** - part of harassment claim]

2.2.5. Make false accusations about the Claimant (**Complaint 5**), in particular:

2.2.5.1. on 5 April 2019 by person unknown;
2.2.5.2. by Ms Noble and Mr Burton;
2.2.5.3. DD Grugel to Director General ("DG") DG Copple and ExD Scott;
2.2.5.4. Ms Noble to Ms Davies and Mr Rawat on 11 April 2019;
2.2.5.5. Ms Noble to DD Hamer on 2 December 2020;
2.2.5.6. Entries into Case Summary for the Complex and High Profile Case Team on various dates;

2.2.6. Breach policies (**Complaint 6)**, in particular:
PSI 28/13 (Outside activities);
PSL 1300 (Investigations);
PSL 8010 (Equal Opportunities);
PSI 06/2010 (Conduct and Discipline);
PSL 8550 (Grievance Policy)

2.2.7. Invade the Claimant's social media by DD Whatmore and DD Mahoney checking her social media presence and asking her to remove content from LinkedIn (**Complaint 7**);

2.2.8. Carry out a disciplinary investigation starting in May 2019 (**Complaint 8**);

2.2.9. Fail to deal with and/or uphold grievance and grievance appeals (**Complaint 9**), namely:
2.2.9.1. on 3 June 2019 to DD Tasker, then appealed to ExD Scott;
2.2.9.2. on 3 June 2019, 3 July 2019, 23 October 2019 to DG Copple;
2.2.9.3. on 3 June 2019 to NRC ;
2.2.9.4. on 9 April 2020 to DG Copple;
2.2.9.5. on 22 September 2020 to Acting DD Cole;
2.2.9.6. on 11 January 2021 to second respondent .

2.2.10. Fail to afford the Claimant the appropriate 'reward and recognition', in particular SPDR (Staff Performance and Development Record), R&R (Reward and Recognition monetary award) and requiring C to go through process in order to be able to lecture at UEL (University of East London) (**Complaint 10**);

2.2.11. Misuse Claimant's intellectual property by Ms Carter sharing the content of her book with Ms Noble, Ms Robinson and Acting DD Cole and other unknown individuals without her consent (**Complaint 11**);

2.2.12. Exclude the Claimant from research projects, in particular from the respondent's
Intersectionality toolkit and events (**Complaint 12**);

2.2.13. Share misinformation, (**Complaint 13**) in particular:

2.2.13.1. emails between ExD Caddle and Ms Robinson in relation to permission for research and ancillary matters on 24 October 2019;
2.2.13.2. emails from DD Grugel to ExD Scott in relation to grievance on 23 May 2019;
2.2.13.3. stereotypical characterisations of the Claimant which have been passed to other colleagues in October 2019;
2.2.13.4. Griffiths email to ExD Scott and others in March 2019 ;
2.2.13.5. Email from Mr Bissell to DD Tasker dated 11 September 2019.

2.3. Was that less favourable treatment?

3.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.

4.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.

5. The Claimant says she was treated worse than:
5.1. Dr Bennett (a white male) for complaints 1, 5, 6, 8, 11 and 12, and
5.2. Ms Mallon, Ms Moore and Ms Collins (white females) for complaint 10;
5.3. DD Hamer (white female) for complaints 1 and 8 (as set out in paragraph 571- 574 of the Claimant's witness statement).
5.4. The Claimant also relies on hypothetical comparators.
5.5. If so, was it because of the Claimant's sex and/or race?

6. ***Harassment related to sex and/or race (Equality Act 2010 section 26)***

6.1. Did the respondent do the following things:

6.1.1. Carry out a 'simple investigation' into the Claimant during March – April 2019 (**Complaint 1**);

6.1.2. criticise her research in March 2019 in Ms Carter reviewing the content of the Claimant's book, repeated by DD Grugel in May 2019 and as part of the investigation report (**Complaint 2**);

6.1.3. Inappropriately disclose information (**Complaint 3**), in particular

6.1.3.1. DD Morris to DD Singh-Matharu, ExD Blakeman and Ms Stevens regarding the disciplinary investigation into alleged gross misconduct;

6.1.3.2. DD Tasker to DD Whatmore on 5 April 2019 in relation to potential reputational damage and by sharing information;

6.1.3.3. DD Morris to Ms Rotherforth on 5 March 2021;

6.1.3.4. Mr Bell to DD Singh-Matharu on 25 October 2020 ;

6.1.3.5. DD McKnight to ExD Scott on 16 May 2019;

6.1.4. Make defamatory comments, as particularised in the Further and Better Particulars (**Complaint 4**);

6.1.4.1 *Did DD Grugel violate Dr Morgan's dignity, bully her, and create an intimidating, hostile and offensive environment for Dr Morgan to work in when she wrote the comment "there is significant evidence that approval was denied retrospectively, partly due to the negative impact on HMPPS" before she had interviewed Dr Morgan*?

6.1.4.2 *Did DD Grugel violate Dr Morgan's dignity and bully her, by contacting organisations outside of HMPPS - The Open university and Edwin Mellen Press to inform them that she was subject to a disciplinary of gross misconduct and other defamatory information. Did this breach PSO 1300 Investigations para 3B 2.1ii*?

6.1.4.3 *Did DD Grugel use unnecessarily intrusive methods by contacting The University and Edwin Mellen Press without informing Dr*

Morgan? Did this breach PSO 1300 Investigations para 3B 2.1ii? Did this amount to harassment and/or victimisation?

6.1.4.4 *Has Dr Morgan suffered detriment, disadvantage, or was she put in a worse position when DD Grugel's action to contact The Open University and Edwin Mellen Press fell beyond the remit of the ToR?*

6.1.5. Make false accusations about the Claimant on 5 April 2019 by person unknown, by Ms Noble and Mr Burton (**Complaint 5**);

6.1.6. Invade the Claimant's social media by DD Whatmore and DD Mahoney checking her social media presence and asking her to remove content from LinkedIn (**Complaint 7**);

6.1.7. Carry out a disciplinary investigation starting in May 2019 (**Complaint 8**);

6.1.8. Fail to deal with and/or uphold grievance and grievance appeals (**Complaint 9**), namely:

6.1.8.1. on 3 June 2019 to DD Tasker, appealed to ExD Scott;
6.1.8.2. on 3 June 2019, 3 July 2019, 23 October 2019 to DG Copple;
6.1.8.3. on 3 June 2019 to NRC ;
6.1.8.4. on 9 April 2020 to DG Copple;
6.1.8.5. on 22 September 2020 to Acting DD Cole;
6.1.8.6. on 11 January 2021 to second respondent ;

6.1.9. Fail to afford the Claimant the appropriate 'reward and recognition', in particular SPDR (Staff Performance and Development Record), R&R (Reward and Recognition monetary award) and requiring C to go through process in order to be able to lecture at UEL (University of East London) (**Complaint 10**);

6.1.10. Misuse Claimant's intellectual property by Ms Carter sharing the content of her book with Ms Noble, Ms Robinson and Acting DD Cole and other unknown individuals without her consent (**Complaint 11**);

6.1.11. Exclude the Claimant from research projects, in particular from the respondent's Intersectionality toolkit and events (**Complaint 12**);

6.1.12. Share misinformation, in particular; emails between ExD Caddle and Ms Robinson and from investigating officer to ExD Scott in relation to grievance and as set out in the Further and Better Particulars and stereotypical characterisations of the Claimant which have been passed to other colleagues (**Complaint 13**).

6.2. If so, was that unwanted conduct?

6.3. Did it relate to sex or race?

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. *Victimisation (Equality Act 2010 section 27)*

7.1. Did the Claimant do a protected act as set out in paragraphs 149 – 152 of the Further and Better Particulars?

7.2. Did the respondent do the following things:

7.2.1. Carry out a 'simple investigation' into the Claimant during March – April 2019 (**Complaint 1**);

7.2.2. Invade the Claimant's social media by DD Whatmore and DD Mahoney checking her social media presence and asking her to remove content from LinkedIn and Acting DD Cole looked C's social media and used it in the appeal process (**Complaint 7**);

7.2.3. Carry out a disciplinary investigation starting in May 2019 (**Complaint 8**);

7.2.4. Fail to deal with and/or uphold grievance appeals (Complaint 9) namely:

7.2.4.1. on 3 June 2019 to DD Tasker, appealed to ExD Scott;

7.2.4.2. on 3 June 2019, 3 July 2019, 23 October 2019 to Phil Copple;

7.2.4.3. on 3 June 2019 to NRC;

7.2.4.4. on 9 April 2020 to DG Copple;

7.2.4.5. on 22 September 2020 to DD Cole;

7.2.4.6. on 11 January 2021 to second respondent;

7.2.5. Exclude the Claimant from research projects, in particular from the respondent's Intersectionality toolkit and events (**Complaint 12**);

7.2.6. Share misinformation, in particular emails between ExD Caddle and Ms Robinson and from investigating officer to ExD Scott in relation to grievance and as set out in the Further and Better Particulars and stereotypical characterisations of the Claimant which have been passed to other colleagues (**Complaint 13**).

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

7.4. If so, was it because the Claimant did a protected act?

7.5. Was it because the respondent believed the Claimant had done, or might do, a protected act?

8. ***Remedy for discrimination or victimisation***

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

8.2. What financial losses has the discrimination caused the Claimant?

8.3. What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

8.4. Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?

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

8.6. Did the respondent or the Claimant unreasonably fail to comply with it as set out in Column
5 of the Further and Better Particulars .

8.7. If so is it just and equitable to increase or decrease any award payable to the Claimant?

8.8. By what proportion, up to 25%?

8.9. Should interest be awarded? How much?

Procedure, documents and evidence heard

1. The Tribunal heard oral evidence from the Claimant and on her behalf from the following witnesses:

   Mr Paul Haughton MBE, Senior Programme Manager HMPPS (Claimant's McKenzie friend)
   Ms Olivia Ebanks, retired Civil Servant

2. The Tribunal also read the unchallenged written evidence of the following witnesses on behalf of the Claimant:

   Mr Tajinder Singh-Matharu, Deputy Director, Head of Assurance, Risk Management & Governance;
   Mr Clive Windsor, Claimant's line manager at HMP Lewes.

3. The Tribunal heard the evidence of the following witnesses on behalf of the Respondent:
   Ms Lynne Carter, HR Change Lead, People Group, MOJ;
   Ms Suzanne Cole, Acting Deputy Director People Team, Strategic Development Group (Disciplinary decision maker);
   Mr Phil Copple, Director General of Prisons;
   Dr Jo Farrar, Chief Executive HMPPS from 2019 – Sept 2022 (2nd Respondent);
   Ms Julie Grugel, Deputy Director, Change Strategy & Planning Directorate (Investigating officer);
   Ms Alison Hamer, Divisional Director HR (Grievance hearing officer re: slide removal)
   Mr Robert Bissell, Head of Capital Reconfiguration delivery (Claimant's line manager from approximately October 2018)
   Mrs Marion Mahoney OBE, Head of Reconfiguration, Prison Estates, Transformation Programme (PETP);
   Mr Dave Mann, Deputy Director of HR (Grievance appeal authority, slides removal)
   Ms Kate Morris, Deputy Director Strategic Development Group (Appeal Authority, disciplinary investigation);
   Ms Sarah Louise Noble, Civil Service HR caseworker;

Mr Adrian Scott, Executive Director of Change, Strategy & Planning Directorate (2015-2020);
Ms Stacey Tasker OBE, Deputy Director, Prison Supply Directorate;
Ms Elizabeth Whatmore, Programme Director of PETP (Investigation Commissioning Officer).

4. There was a tribunal bundle of approximately 3294 pages. Various additional documents were handed up during the course of the hearing. These pages were numbered and added to the bundle. We informed the parties that unless we were taken to a document in the bundle, we would not read it.

5. We had the benefit of written submissions together with further oral submissions provided by the representatives. These submissions are not set out in detail in this judgment but the parties can be assured that we have considered all the points made and all the authorities relied upon, even where no specific reference is made to them.

Findings of fact

6. Having considered all the evidence, both oral and documentary, we made the following findings of fact. These findings are not intended to cover every point of evidence given but are a summary of the principal findings that we made from which we drew our conclusions. We have made findings not only on allegations made as specific discrimination complaints but on other relevant matters raised as background. These findings may have been relevant to drawing inferences and conclusions.

Background

7. On 16 August 2004, the claimant commenced employment at HMP Hindley, with His Majesty's Prison and Probation service, 'HMPPS' formerly known as the National Offender Management Service, 'NOMS'.

8. The claimant commenced work at HMP Lewes in January 2008.

9. In or around 2008, the claimant sought and was given permission from the now retired Governing Governor, Eoin McLennan-Murray to complete a PhD at the Open University. The PhD was part funded by HMPPS (NOMS).

10. At the time the claimant commenced her PhD, the relevant policy in place was PSO 7035, the claimant states and we accept that she followed this policy in terms of approval for her research. Paragraph 3 of the policy, states that if the research is taking place in one prison, then the research application is to be reviewed by the Prison Governor.

11. PSO 7035 does not set out any process for approval in relation to publications other than a brief reference in Annex C, which sets out that *"the researcher should make the draft of any report/publications resulting from the research available to the Prison Service research contact for comment and to check for factual inaccuracies".*

12. At the time of seeking permission from the governing governor to complete her PhD, the claimant also submitted an application to the Open University for ethical approval for her research, which was granted. As part of this application form and with regard to a specific question relating to dissemination of her research, the claimant indicated that this would be by way of thesis and article. The examples of dissemination provided on the form included reference to a book. We find at the time of her application to the Open University, the Claimant did not contemplate publishing a book.

13. The claimant also contacted the National Research Council 'NRC' in 2009, to see if they could support her to gain access to prisons. We accept the claimant was not seeking permission from the NRC to complete her research as she already had permission from the Governor to complete her PhD. The NRC did not approve her application setting out concerns both around the merits of the research and the weakness of the methodology. Ultimately, the claimant did not access prisons, instead she advertised her research asking for black and minority ethnic 'BAME' staff to contact her and she then interviewed them outside of work.

14. The Claimant completed her PhD in December 2016 and was awarded a doctorate. The title of the Claimant's PhD thesis which was published by the Open University was, *"Defining our experience: A Psychosocial Analysis of the Racial, Gendered and Subjectivity of Black Women Employees in the British Prison Service".*

<u>Permission to publish a book</u>

15. On 1 October 2018, the claimant contacted Lynne Carter, HR Change Lead, People Group, and informed her about the upcoming publication of her book, *Black Women*

Prison Employees: The Intersectionality of Gender and Race, which she avers and the respondents' accept is an easy-read version of her thesis. Whilst it is agreed between the parties that HR permission for publication was not granted, it is disputed whether the claimant was aware of the requirement to seek HR consent before publication and whether she actively sought this permission.

16. There are a number of relevant email exchanges, which address these issues. In an email to Lynn Carter on 1 October 2018, the claimant wrote *"I was speaking to Andy and he advised me that I should inform you that my thesis has been converted into a book and will be published……..Reading through PSI 28/2013 it states I have to inform someone from HR. My line manager at the time when I started writing and published my academic article was informed about this book".*

17. On 9 October 2018, Ms Carter wrote to the claimant stating *"any form of publication by HMPPS employees (current and ex) needs to be cleared by HR (me!), If you could send me a copy of the book and an idea of your deadline I will have a look and confirm my agreement asap".* In response on 10 October 2018, the claimant wrote *" I have attached a copy of my manuscript. It is with the publishers and due to go to print January 2019".*

18. On 1 October 2018, the claimant also wrote to the press office stating *"The purpose of me informing you is because PSI 28/2013, states that Press Office should be informed. My book is based on my research and race/genderissues tend to attract attention plus there is a lot of interest in HMPPS at the moment…I guess, as this is my first book, it is an academic book and it discusses issues that may attract media attention, I just wanted some advice, to avoid any problems".*

19. At the time of publication of her book, the respondent's internal policy, PSI 28/2013, 'Outside Activities', was in existence, this required staff to obtain HR permission before publishing a book that related to the official business of the Ministry of Justice 'MoJ'.

20. PSI 28/2013, at 1.4 states that all staff must be familiar with all sections of this policy. In respect of publications, paragraph 2.31 states the following, *"staff must obtain written permission from the NOMS headquarters HR policy group before publishing electronically or in hard copy a book, article, letter or any other publication including film, video or audio material that relates to the official business of the MOJ or any other*

government department. This applies even where staff have retired or left the service. Where the requirements are breached NOMS may take disciplinary or legal action".

21. Paragraph 2.32 of PSI 28/2013 further states, *"the finished text must be sent to the NOMS HQ HR policy group for approval in good time before it is published. If the publication is likely to interest the media or is political, staff must also contact the press office or media relations for advice".*

22. The claimant states her reason for contacting Ms Carter was out of courtesy, and that a colleague, Andy Hewitt, suggested that she did so. Further, having worked with the press office she knew that she would have to inform them in case there was public interest. She also felt it would be good practise to allow HR to read the manuscript as they may be able to learn something from her concepts to improve HR practises for non-white staff. The claimant is categoric in her assertion that she did not contact Ms Carter or the press office because of the requirements of PSI 28/2013.

23. With regard to the book relating to the official business of the MoJ, whilst the claimant accepted that the book related to the HMPPS, she did not accept that it related to the official business of the MoJ. In her oral evidence the claimant stated that staff experiences and feelings were not the official business of the MoJ as they did not belong to them. Further, the book did not relate to processes, procedures and the running of prisons and therefore was not the official business of the MoJ.

24. We prefer the respondent's evidence in relation to this matter and we find that the claimant was fully aware of the requirements of PSI 28/2013, indeed she references the PSI both in her email to Ms Carter and the press office.

25. The claimant's words in the email to Ms Carter are *"reading through PSI 28/2013 it states I have to inform someone from HR"*. Similarly, to press office she states, *"the purpose of me informing you is because PSI 28/2013 states that press office should be informed".* We conclude that this is clear and incontrovertible evidence that prior to sending the emails, the claimant read PSI 28/2013. We do not accept her evidence that she was not seeking approval and was simply informing Ms Carter. The word approval is not used, however, the context of the approach, including the attaching of the manuscript with an indication of when it is to go the publishers supports our conclusion that the claimant's approach to Ms Carter was to seek approval in line with PSI 28/2013.

26. We find the fact the claimant approaches Ms Carter and the press office in the first place, is evidence in itself that she was aware that the policy required these people to be contacted. Even if we accept that she was unsure at the point of contacting Ms Carter, we find the response from Ms Carter was categorically clear in that permission was required from her before the book was published. We find the claimant cannot have been left in any doubt regarding permission following Ms Carter's response to her on 9 October 2018.

27. We are also in no doubt that the book in setting out the experiences of black female prison staff in prisons clearly related to the official business of the MoJ and as such approval for publication was required under PSI 28/2013. In her oral evidence to the Tribunal, the claimant advised that she was very familiar with PSI 28/2013 having engaged in a number of outside activities previously. In light of this, we also find that she was aware that breach of the policy may result in disciplinary or legal action.

28. The claimant published her book with Edward Mellen publishers in or around November 2018, without waiting for the decision as to whether HR permission would be granted. The claimant did not inform Ms Carter of this fact when she contacted her to chase up her comments on the manuscript in March 2019.

Other events/communications relating to the claimant's book

29. On 28 November 2018, the claimant sent an email to Richard Heaton, Permanent Secretary, seeking a meeting with him to discuss the possibility of launching her book at the MoJ and stating that the book would be published in January 2019. Mr Heaton as Permanent Secretary was the most senior civil servant in the Department.

30. On 4 December 2018, the claimant sent an email regarding publication of her book to a number of individuals including Marion Mahoney, Head of Reconfiguration, Prison Estates, Transformation Programme 'PETP' and Stacey Tasker, Deputy Director, Prison Supply Directorate.

31. On 5 December 2018, one of the individuals copied into the claimant's email of 4 December 2018, Mr Abdur Rahmaan Anderson, Senior Equality Advisor, contacts the claimant congratulating her on the publication of her book and requests an interview with her for the HMPPS Equalities newsletter. The claimant is subsequently

interviewed for the purposes of the newsletter; however, it appears her article was never published. We heard no evidence as to why this was.

32. Ms Tasker also responds to the claimant and congratulates her on the publication of her book.

33. On 6 December 2018 the claimant informs Mr Digby Griffith, Executive Director, Safety & Rehabilitation, HMPPS, of the publication of her thesis as an academic book and seeks a meeting to discuss how her research may assist Mr Griffith and his team. The claimant also shares a link to the publication. On 11 December 2018 Mr Griffith refers the claimant to Ms Tanya Robinson, Head of Equalities and Lammy Delivery, and invites her to an event with the executive management committee to help them to understand the experiences of BAME staff.

34. On 24 January 2019, Abdul Huson, Business Manager to the Chief Executive Officer contacts Ms Tasker, querying whether it was suitable for the claimant to meet with the Permanent Secretary. In his email, Mr Huson states that the claimant is writing a PhD about BAME female prison staff, no mention is made of the claimant's book. In later communication as part of the disciplinary investigation, Mr Huson confirms his understanding was that the claimant was writing a PhD, he was not aware of a book.

35. Ms Tasker responds to Mr Huson stating, "no flashing lights" and commenting that the PhD thesis was a very interesting piece of research. Ms Tasker's evidence to the Tribunal was that her response to Mr Huson was about the claimant's thesis. We find Ms Tasker's evidence plausible, as the email from Mr Huson only referred to the claimant's PhD and the response equally limits itself to the same.

36. Mr Heaton subsequently meets with the claimant on 25 January 2019 and agrees to endorse her book by having his picture taken with a copy. The claimant meets with Mr Heaton on 15 March 2019, and he has his picture taken with the book.

37. On 15 March 2019, the claimant makes contact with the Corporate Communications Office and seeks to promote her book on the MoJ/HMPPS Intranet, including with the photograph of Mr Heaton's endorsement. She is advised that this is not considered appropriate for the intranet but a book club is suggested in the alternative.

38. On 17 April 2019, the claimant sends an email to Dr Jo Farrar, Chief Executive Officer HMPPS and 2nd respondent, requesting a meeting with her to discuss the diversity and inclusion agenda and how her research and theoretical concept may support this area of work. The claimant mentions her book in the email stating that it is available to purchase and sends a link to Edward Mellen press. A meeting is arranged for 21 May and on 16 May the claimant sends Dr Farrar a summary of the chapters in her book as well as a press release. The meeting is subsequently cancelled due to Dr Farrar's commitments with Ministerial meetings and is not rescheduled.

39. On 16 May 2019, Sarah McKnight, Head of Executive Management office, HMPPS sends an email to Mr Scott stating, "as discussed it would be useful to get a view on this after you've discussed with Julie". This email in part of a chain starting with the claimant's email to Dr Farrar requesting a meeting.

40. On 17 May 2019, Dr Whatmore sends an email to the claimant advising her that it would not be appropriate for her to meet with Dr Farrar to discuss her book due to the ongoing formal disciplinary investigation. The claimant disputes that she was seeking to meet with Dr Farrar to discuss her book and in her evidence stated that she wished to meet with her to discuss diversity and inclusion matters. We find that the claimant was seeking to publicise and discuss her book; this was clear, firstly by the initial reference and sending of the link to her book and latterly the sending of the summary of chapters and press release.

Disciplinary Investigation/Proceedings

41. The sequence of events leading to the enquiries which eventually led to the disciplinary proceedings start with an email from Mr Griffith. On 22 March 2019, Mr Griffith sends an e-mail to Mr Simon Boddis, Executive Director, Senior responsible owner 'PETP', and others about what he refers to as *'the slightly odd request'* to use the MoJ atrium for a book launch. Mr Griffith explained he declined use of the atrium on the basis that it was not appropriate to use government property for a personal business venture and neither he nor anyone in his equalities had seen the book. Mr Griffith copies in Ruth Duffin at the Permanent Secretary's office suggesting that they would be the most appropriate source of approval, if appropriate.

42. On 24 March 2019, copying the same individuals, Ms Duffin responds to Mr Griffith stating *"Richard is aware of the book (and has been assured by Marcia that it has been*

cleared within HMPPS). I believe that when I was on leave last week Richard had his photograph taken with the book (and possibly Marcia, too)".

43. Mr Boddis then forwards on the email chain to Dr Elizabeth Whatmore, Programme Director of PETP, asking whether anyone in PETP had cleared the book. Ms Whatmore subsequently forwards on to Ms Tasker, asking if she was involved in endorsement of the claimant's book. Ms Tasker responds in the negative, then approaches Ms Mahoney, and asks her if she is aware who authorised the claimant's book for publication.

44. On 25 March 2019, Ms Mahoney responds to Ms Tasker stating that she had no idea who authorised the claimant's book. She offers to call the claimant to ask her about this. At the time, Ms Mahoney was the manager of the claimant's line manager. Ms Tasker was Ms Mahoney's line manager.

45. Ms Mahoney speaks to the claimant on 25 March 2019 and asks her about authorisation for publication of the book. The claimant informs Ms Mahoney that the PhD was part funded by HMPPS' training and development group and also that she had contacted the NRC back in 2010 informing them about her research. With regard to the manuscript for the book she advises that she sent this to Ms Carter in 2018.

46. On the same date Ms Tasker sends an email to Ms Mahoney stating that "*it appeared that the Claimant had permission for her PhD but that separate permission was needed for publishing the PhD as a book*". Ms Tasker then sends an email to Ms Carter checking whether she had given the claimant permission to publish her book.

47. Ms Carter responds to Ms Tasker on the same day to advise that she had been contacted by the claimant about publication and that she had advised her that approval was required before publication. Ms Carter stated that due to pressure of work she had not managed to consider for approval and was also not aware whether Press Office had given approval.

48. Ms Mahoney responds to Ms Carter seeking clarification regarding the process of clearing the manuscript for publication. At the same time Ms Mahoney sends an email to Ms Tasker providing her with an update and referring her to PSI 22/2014, 'Research Applications'. Ms Mahoney also advises that the policy lead for the instruction was no longer in the role so she had asked Jo Bailey, Head of Psychology to contact her.

49. Ms Bailey responds to Ms Mahoney confirming that Ms Carter is still the person to go to for clearance and advises to check the NRC form, if there was one, to see what was agreed for dissemination.

50. On 26 March 2019, Ms Tasker follows up with an email to Ms Mahoney, copying in Ms Carter, stating;

"Thanks Marian, I think we need to get approval asap. Whilst we're waiting for Jo to kindly get back to us, Lynne – pls can you advise who you think this responsibility no w lies with, is it still HR?
I note this PSI has expired, also this PSI is very much about the publication of research which is slightly different?
Is there other advice you can refer us to about approval for books".

51. On the same date Ms Carter responds to Ms Tasker and Ms Mahoney confirming PSI 28/2013 was the right policy and advising that the paragraphs in the policy relating to memoirs would also be relevant as the claimant appears to discuss personal experiences as part of her work.

52. Paragraph 2.36 of the PSI 28/2013 states, "Staff must not publish or broadcast their personal experiences (memoirs) in government or enter into commitments to do so while they are employed". Paragraph 2.37 goes on to state, *"The proposed memoirs must be sent to the NOMS HR Policy Group in good time before any proposed publication date. In reviewing information, NOMS, and where appropriate other government departments, will take account of whether the information could damage internal relations, national security or the confidential relationships between ministers, and between ministers and civil servants".*

53. Ms Tasker responds to Ms Carter advising a view on the book was really urgent as Mr Heaton had already endorsed the book, undoubtedly in good faith and also stating that her belief was that the claimant had also acted in good faith.

54. On the same day the claimant also emails Ms Carter to chase up comments on her manuscript. Ms Carter responds apologising for the delay and stating that she would try to get back to her by the end of the week. Ms Carter advises the claimant to speak to her line manager and press office if she had not already done so as well as referring her to PSI 28/ 2013 for guidance.

55. On 27 March 2019, Lydia Baxter on behalf of NRC writes to Ms Bailey in respect of the claimant's application to the NRC. Ms Baxter advises that it appears that in 2009 after two requests for further information, the claimant's application was rejected. Ms Mahoney queries with Ms Bailey what this would mean in respect of the claimant proceeding with her research. Ms Bailey advises that the claimant should not have proceeded her with research.

56. On the same day, Ms Mahoney forwards Ms Bailey's email to Ms Tasker commenting that there was *"a letter declining that the claimant do the research at all. She has followed up with an appeal, so clearly understood. Now this is a pickle! I have never come across anything like this before. But it definitely feels all wrong."*

57. On 27 March 2019, Ms Tasker sends an email to Mr Griffith providing him with an update and advising that Ms Carter's approval was being awaited.

58. On 28 March 2019, Ms Carter sends an email to the claimant advising her that she could not provide clearance at that stage. In her email to the claimant Ms Carter explains that her role was to look at *"the proposed content from an organisational point of view, particularly around factual accuracy, contentious comments or conclusions that are not supported by clear evidence that are critical of the organisation or criticism of Government policy".*

59. Ms Carter goes on to state, "*the manuscript is a mixture of research references, personal testimony, interpretation and your own experience. It is not always completely clear where you have interpreted information to draw conclusions or where it is purely evidential. Given some of the conclusions you reach (racially motivated use of C&R, abuse under the guise of C&R) this would need to be made clear and the relevant evidence referenced. If it is from a single interview, I think you will need to get clearance from the appropriate directorate before including".* Ms Carter also addresses the age of the research stating *"a key theme throughout the manuscript is the age of the research I know that you were working on your PhD part-time over a number of years but the manuscript is not clear when the research or examples you cite were. HMPS has been through significant change over the last few years but some parts of your work appear to use old terminology or situations that are no longer accurate".*

60. Ms Carter also advises the claimant that as she talks *"in some detail (given the subject matter, absolutely appropriately) about equality, gender and race so you will need to ensure also that Equalities Group have had the opportunity to consider your manuscript".*

61. The Claimant does not respond or provide any further clarification to Ms Carter.

62. On the same date, Ms Carter forwards a copy of her email declining permission to publish the book, to Ms Tasker, Ms Mahoney, Mr Griffith and Mr Boddis.

63. On the same date, Mr Griffith forwards the email to Ms Robinson the Equalities lead and Ms Duffin. In response, Ms Robinson requests a copy of the manuscript from Ms Carter so that she can review from an equalities perspective.

64. On 8 April 2019, Ms Robinson responds directly to Ms Carter setting out her feedback on the manuscript. Ms Robinson cites a number of concerns including amongst other things a lack of reference to when the research was done, to external drivers and to staff support that was available.

65. With regard to Ms Carter's role in considering and approving publications by MoJ staff, her evidence to the Tribunal was that this is usually academic research, speeches or articles for conferences and occasionally books. Ms Carter's evidence was that she did not receive many books to review due to the restrictions on civil servants publishing books while employed. The NRC are aware of Ms Carter's role and direct staff to her if they wish to publish. Ms Carter's evidence was that her role requires consideration prior to publication once the relevant research and specialist approvals are in place. In giving approval, Ms Carter applies three main considerations, which are factual accuracy, ministerial interest and whether the publication has the potential to embarrass. Ms Carter has undertaken this role for many years, her evidence was that she was taught the role and there are no formal criteria set in policy.

66. A significant point of contention between the parties relates to whether the enquiries carried out by Ms Mahoney amounted to a simple investigation under PSO 1300, Investigations. The claimant contends that Ms Mahoney carried out a simple investigation and in doing so did not comply with PSO 1300 in terms of procedure. Ms Mahoney and the respondent's witnesses do not accept that the enquiries carried out amounted to a simple investigation.

67. The relevant sections of PSO 1300 relating to simple investigations are as follows:

Paragraph 1.1 *"whenever an incident takes place or an allegation of misconduct is made, the circumstances of the incident or allegation must be assessed by the appropriate manager who will determine whether and how the allegation or incident will be investigated".*

Paragraph 1.2.1 "*the purpose of any investigation into an incident or allegation is to inquire into what has taken place, to establish the facts, to learn from them and to establish any accountability".*

Paragraph 1.3.2 *"Managers regularly deal with minor incidents, allegations and complaints as part of their everyday activities without recourse to an investigation and this should continue".*

Paragraph 1.5.1 a simple investigation is one *"where there is no need for a formal investigation or the need is uncertain".*

Paragraph 3A.1.1 *"there is no need to formally commission or register a simple investigation with ISS. However, it might be useful to set out basic terms of reference or guidance to make clear what the investigator is expected to do".*

3A.4.2 When a simple investigation points to the need for a more substantial management response then the case must be referred to line management, for a decision as to whether a formal investigation is required.

3A.4.3 It is advisable to make a written record of any simple investigation and subsequent action taken.

68. There is no dispute that enquiries were carried out by Ms Mahoney following the email from Mr Griffith querying whether anyone was aware of the claimant's book receiving permission for publication. The dispute arises as to whether those enquiries amounted to a simple investigation as the claimant submits or whether the enquiries were management enquiries as the respondent submits.

69. We conclude that initially the enquiry made by Ms Mahoney was simply seeking clarification as to whether the claimant had obtained permission for publication. At that stage there was no allegation or incident being investigated. However, as the initial enquiry unravelled and it started to become apparent that the claimant may not have permission for publication, the position changed.

70. We find the turning point was Ms Carter's initial email to Ms Tasker on 25 March 2019, advising that she had received an email from the claimant attaching her manuscript but she had not managed to reply. Ms Tasker and Ms Mahoney were aware at that point that PSI 28/2013 required permission from HR and on the facts available at that time, the person authorised with providing approval had confirmed that she had not given permission. We conclude from that point onwards matters moved to a fact-finding investigation, which in our opinion was a 'simple investigation' as per PSO 1300. In light of this, we conclude that the respondent at some stage did ultimately carry out a 'simple investigation' into the claimant during March-April 2019. We will comment on this further in our conclusion section.

71. We find there was no breach of PSO 1300 in respect of the matter moving to a simple investigation. We will comment on this further in our conclusions section.

Disciplinary proceedings/Events March-October 2019

72. We have read and considered PSI 06/2010, Conduct and Discipline, and will comment specifically on certain paragraphs in other parts of this judgment, for clarity, we set out below the main relevant sections we will refer to in our judgment:

2.12 All disciplinary matters must be treated in the strictest confidence.

3.6 If there is an issue to be addressed the line manager must decide whether to:

• deal with the matter informally (e.g. the line manager may consider mediation, training, coaching, etc.);
……..
• arrange for it to be investigated formally under the procedure set out in this Instruction; or

3.7 Whichever course of action is taken, the line manager must make brief notes of what is said and record their decision. The line manager must keep a copy of this locally. Records must not be kept on a member of staff's personnel file.

4.1 If the line manager decides the matter should be handled formally and a disciplinary investigation is necessary they must commission an investigation or, if they do not have the authority to commission an investigation themselves, refer it to another manager as appropriate.

4.6 ……..... The Commissioning Manager must also:

• set terms of reference;
……...

• appoint an Investigating Officer (normally in the line) and ensure they will not be a probable witness at any disciplinary hearing which may result from the investigation;

4.10 Where a member of staff is alleged to have breached the established standards of behaviour, the investigation can normally be conducted by their line manager unless the line manager:

• was directly involved in the events leading to the investigation;
• is the Commissioning Manager;
• is not a substantive grade/rank higher than the member of staff under investigation.

4.15 The purpose of the investigation is to establish the facts of a case and to report them to the Commissioning Manager.

4.16 The level of investigation into an incident, allegation or complaint must be decided on by the Commissioning Manager and must be based on a judgement of its nature, seriousness and how much is known about its circumstances. The investigation must be proportionate to the matter under investigation.

4.17 It is important to remember that it is the purpose of any subsequent disciplinary hearing to make a judgement on the facts presented. The investigation must focus on facts relevant to the terms of reference. It will not, unless the terms of reference are specifically amended, go any further.

4.20 Any member of staff to be interviewed in connection with an investigation must be:

……...
• told before questioning that the interview is part of a disciplinary investigation and the reasons for it;

4.21 A record must be taken of all interviews conducted as part of an investigation (the record need not be verbatim or taped). A typed version of the note must be provided to the member of staff concerned and any comments which they make must be recorded as part of the investigation report.

5.5 If the Commissioning Manager decides to proceed to formal disciplinary action, they must firstly determine whether the alleged misconduct constitutes misconduct or gross misconduct.

5.14 In addition, the member of staff must be given a copy of the investigation report, including all supporting documentation. A copy of the complete report (including all supporting documentation) must also be made available for the member of staff's nominated trade union representative or work colleague if requested.

73. On 29 March 2019, following Ms Carter's email declining permission and at Ms Tasker's request, Ms Mahoney sends an email attaching a timeline of *'events that she had uncovered that week'.* Ms Mahoney sends this email to Ms Carter and Ms Tasker copying in Mr Griffith, Mr Boddis, Ms Whatmore and Ms Bailey.

74. On the same date, Mr Griffith sends an email to Mr Adrian Scott, Executive Director, Strategy, change and planning Directorate, suggesting that he may wish to satisfy himself that correct permissions had been obtained for the claimant's book, not least because the Permanent Secretary has had a direct involvement, based on assurances which appear to have been given by the Claimant and HMPPS. Mr Griffith explains his involvement came about as a result of him having the Equalities team under his portfolio and being forwarded the claimant's request to use the MoJ atrium to promote her book.

75. On 2 April 2019, Ms Mahoney sends an email to Ms Whatmore regarding facts found and recommending an investigation. Ms Mahoney states that she has *"undertaken*

actions that amount to a management inquiry, a step that would generally be taken to establish the facts of an incident and make recommendation on whether on the balance of probability a case of misconduct or gross misconduct could be proved via a disciplinary inquiry". Ms Mahoney goes on to state that it would be inappropriate for her to undertake a disciplinary inquiry having undertaken the steps she had to date.

76. On the same date, Ms Whatmore replies to Ms Mahoney agreeing "*on the face of it, it looks like an investigation is required".* Ms Whatmore also highlights that the other issue that needs to be considered is the Permanent Secretary's endorsement of the book. Ms Whatmore advises that the Permanent Secretary needs to be notified that permission to publish the book has not been given, with a recommendation that his endorsement be rescinded. She also advises that the claimant needs to be notified that she cannot use the endorsement.

77. On 3 April 2019, Ms Mahoney sends an email to Ms Whatmore, Mr Scott and Ms Bailey, including confirmation that she had informed the claimant that morning that an investigation was to be launched. Ms Mahoney states that to speed things along, she is happy to draft the terms of reference, however, she suggests that an independent person be appointed as hearing officer as it would not be appropriate for her to undertake that role having conducted the initial fact finding. Ms Mahoney also sets out the need for an investigator to be appointed and suggests that this is someone outside of PETP.

78. On 4 April 2019, Ms Tasker sends Ms Whatmore and Ms Mahoney an email advising that she has spoken to Mr Scott and it was agreed that Ms Whatmore should be the Commissioning Authority so that Mr Scott could be the Appeal Authority. It was also agreed that the Investigator would be someone from outside PETP as it was likely that Ms Tasker and Ms Mahoney would be interviewed.

79. On 5 April 2019, Ms Whatmore sends an email to Louise Derry, business and portfolio manager to Mr Scott, requesting an investigating officer be identified from outside the directorate and advises that she would need support from HR. Ms Derry responds on the same day to advise that Mr Scott has identified Ms Julie Grugel, Change Planning and Strategy Directorate and has asked Ms Whatmore to speak with her about the investigating officer role.

80. In or around 5 April 2019, Ms Julie Grugel is appointed as the investigation officer and she commences the discipline investigation. On or around the same time, Ms Sarah Noble, HR Case Manager, MoJ case work team, is appointed to assist Ms Grugel with the investigation.

81. We find the appointment of Ms Whatmore as Commissioning Authority and Ms Grugle as investigating officer was not a breach of PSI 06/2010. We will comment on this further in the conclusion section.

82. On 5 April, Ms Mahoney sends the draft terms of reference 'ToR' to Ms Whatmore, which she reviews and agrees, these are subsequently provided to Ms Grugel.

83. The ToR covers 3 main allegations, which are broken down into specific areas for investigation :

    1) Has the claimant published a book based upon research undertaken in HMPPS contrary to the instructions contained within PSI Outside Activities 28/2014?
    2) Has the claimant conducted research in HMPPS, without NRC research permissions? and
    3) the Private Office were under the impression that her book had received HMPPS approval, what assurance on approval did the claimant provide?

84. On 11 April, Ms Noble updates her line manager and colleague, Rawat Habibi and Tricia Davies that she has been allocated an investigation case to support, where it is alleged that the claimant has published a book without permission. We accept Ms Noble's evidence that when she was allocated the case, details were already populated on the HR case management system and the information in her email was based on this information.

85. On 16 April 2019, the claimant requests the ToR for the investigation. Ms Grugel responds to the claimant on 17 April, notifying the claimant of the investigation and the allegations but does not provide a full copy of the ToR. The reason for this was the ToR had not been put onto the appropriate form by Ms Whatmore and as a result Ms Grugel was advised by HR that it would not be advisable to share the ToR in its current format. Ms Grugel sets out that the allegations that she will be investigating are whether the claimant had the necessary permissions regarding publication of the book

and what assurances she had provided to the Permanent Secretary's office around permission.

86. On 18 April Ms Grugel notifies Ms Whatmore of a Linkedin post showing the claimant with her book and Mr John Manzoni, Permanent Secretary for the Cabinet Office, August 2015 to April 2020. Ms Whatmore contacts the claimant on the same day and asks her to remove the photograph from her Linkedin page, as the circumstances around her research and the publication of her book are subject of a formal investigation.

87. At this point, to try and keep matters in a chronological order, we address facts relating to the allegation that Ms Tasker inappropriately disclosed information to Ms Whatmore on 5 April 2019 in relation to potential reputational damage and by sharing information. No message from 5 April was put to Ms Tasker, she was however asked about an email to Ms Whatmore on 18 April. We find that this was a date error by the claimant, as the email of 18 April does contain reference to reputational damage.

88. The claimant's cross-examination of Ms Tasker on this point queried whether Ms Tasker had made an assumption that the book had caused reputational damage to HMPPS. Ms Tasker responded that is not what she meant, she wanted to flag to Ms Whatmore that that in asking for the endorsement to be taken down *"whilst we were doing it because of the lack of permission others might perceive that we were asking for it being taken down because we did not want to raise awareness of inequality and the challenges for black staff working in our prisons".* Ms Tasker further clarified that she was referring to getting endorsements for the book when the current PSI said the book had to be approved, was the behaviour that she was referring to as not acceptable. We will set out our conclusions in relation to the complaint of inappropriate disclosure of information in the conclusion section of this judgment.

89. On 23 April 2019, the claimant again requests a copy of the investigation ToR from Ms Grugel. Ms Grugel responds on 26 April 2019 confirming permissions regarding publication of the book and assurances to the Permanent Secretary's office are the allegations that she is looking at.

90. We find there was no breach of PSI 06/2010 in relation to the provision of the ToR . There is no specific reference in PSI 06/2010 to the formal ToR being provided to an individual at the investigation stage, the requirement to provide a copy of the

investigation report and all supporting documents arises where a decision has been made to proceed to formal disciplinary action. Paragraph 4.20 states that a member of staff being interviewed must be told before questioning that the interview is part of a disciplinary investigation and the reasons for it. The claimant was provided this information and therefore we find no breach of policy in respect of this allegation.

91. On 30 April 2019, Ms Noble sends an email to Dr Neil Wooding, Chief People Officer, MoJ People Group, copying in her line managers and Ms Carter. The subject heading of the email is 'High Profile Potential Public Interest'. Ms Noble states that as per the HMPPS Escalation process for high profile cases, she was notifying Mr Wooding of her involvement in the case which involved allegations that the Private Secretary's Office had been misled.

92. On 29 May 2019, Ms Grugel holds the first formal disciplinary investigation meeting with the claimant, also in attendance was Mr Haughton, Equality, Strategy & Lammy Programme Manager & claimant's McKenzie friend, Ms Noble and a note taker. Ms Grugel refuses the claimant's request to have the meeting recorded. There was a formal note taker and Ms Grugel explained that the claimant would have access to the full notes. We find the refusal to record the meeting was not a breach of PSI 06/2010, Paragraph 4.21 states that the interview record need not be verbatim or taped.

93. During this meeting, Ms Grugel confirms again the allegations that were being considered and clarified that the investigation was about the book published in 2018 not the PhD or the thesis. The claimant maintained that her book was an easy read version of her thesis and that she had permission from the Governing Governor at the time to research and publish her PhD. She did not approach the NRC for permission in 2009 as she already had this from the Governing Governor as well as ethical approval from the Open University. Her approach to the NRC was to seek support to access prisons.

94. Ms Grugel referred to documents from the NRC, reiterating that the claimant was seeking permission from the NRC and they refused the application. Ms Grugel stated that the NRC had set out a number of issues with the research proposal including the proposed sample size not being considered large enough. As a result of these issues, the NRC did not give permission.

95. In her oral evidence to the Tribunal, the claimant states that following her communications with the NRC, she changed her methodology regarding access to prisons. Rather than speak to staff whilst they were at work, she contacted people to ask them whether they were prepared to speak to her outside of work, which is how she then proceeded.

96. During the investigatory meeting, the claimant referred to a discussion with Andy Hewitt, Senior employee relations manager, reward and employee relations about her book. The claimant stated they did not discuss the PSI, but rather Mr Hewitt had told her to make Ms Carter aware of her publication as she reads all manuscripts. Ms Grugel's note of her discussion with Mr Hewitt state that he only had limited contact with the claimant. They met in the kitchen at work where the claimant mentioned she was writing a book and asked who she should speak to. Mr Hewitt referred her to Ms Carter. The claimant suggests that this evidence is fabricated as it is not signed and is based on hearsay.

97. In cross-examination the claimant accepted that she spoke to Mr Hewitt about her book and that he referred her to Ms Carter. The documentary evidence shows that the Claimant contacted Ms Carter with regard to publication of her book which supports the contention that Mr Hewitt made her aware of this during their conversation. There is no evidence to support the contention that Mr Hewitt's evidence is fabricated; we accept that was his account of events that he provided to Ms Grugel.

98. On 12 June 2019, Ms Noble records an entry on the Civil Service HR case management system, marked high profile case summary recording her involvement and summarising the position to date. Ms Noble's written evidence to the Tribunal was that she recorded this and other entries as this was a requirement of the duties of her role as a HR caseworker.

99. On 25 June 2019, Sarah Walcott, on behalf of Mr Wooding sends an email to Ms Noble requesting background information and an update on the investigation. Ms Noble responds on the same day to advise the investigation was ongoing and also advised that the claimant had lodged a grievance with Mr Copple in relation to the investigation, for which she has recommended HR casework support.

100. On 30 July 2019, Ms Grugel sends the claimant an email attaching a note setting out further areas for discussion at a second investigatory interview. This included clarification on which PSO the claimant states she was following, permission from the

Governing Governor at the time, NRC approvals, private office conversations, prison officer uniform and lectures/money earned from book.

101. On 29 August 2019, a second investigatory interview with the claimant was held by Ms Grugel. This interview was recorded on Ms Grugel's mobile phone. Ms Grugel explained that the purpose of the interview was so that she could explore matters which had required clarification following the last interview.

102. Ms Grugel confirmed that she had spoken to the Governing Governor, Mr McLennan Murray, who the claimant states had provided her with permission to carry out her research and publish this.

103. In his conversation with Ms Grugel on 5 July 2019, Mr McLennan-Murray advised that he could not recall any conversations about permission with the claimant but that he would have followed the relevant PSI or guidance, if that conversation had taken place. He advised that he definitely would not have given permission for the claimant to do research in any other prison, as he would have had no authority to do so, and he would not have given permission to publish as that would have been outside the PSO.

104. The claimant advises Ms Grugel that she had provided a letter to her at the interview on 29 May 2019 from her then line manager Mr Clive Windsor which confirmed that he was present at a Senior Management Team meeting where the claimant had given a presentation about her PhD and at which Mr McLennan Murray was present. Mr Windsor in his written witness statement to the Tribunal stated as he did at the disciplinary hearing, that the claimant had permission to conduct her research. Mr Windsor stated that the claimant had given a presentation to the senior management team at HMP Lewes regarding her proposed research and there was a discussion regarding the research methodology between Mr Windsor, Mr. McLennan Murray, and the claimant.

105. Ms Grugel confirmed that she had also spoken to Ms Duffin who had advised that she had spoken to the claimant over the phone to check if the book had been approved and authorised. Whilst Ms Duffin could not recall exactly what was said, the claimant had satisfied her that she had appropriate approvals. Additionally, the conversation was overheard by a colleague of Ms Duffin who corroborated her account. In light of this, a meeting was arranged for the claimant to meet with the Permanent Secretary.

106. Following the initial meeting, the claimant then got in touch to request a photo with Mr Heaton, at which point he asked to check whether the book was properly approved. Mr Huson then got in touch with Ms Tasker to ask about this but he asked about the PhD rather than book. Ms Tasker replied to say there were no issues. Ms Duffin advised that the claimant had informed Mr Heaton that she had permission for her PhD and did not mention the book, she did not believe that the claimant was deliberately misleading rather she did not understand the process.

107. The claimant advised Ms Grugel that she did not recall any conversation with Ms Duffin and she did not have any conversation with anyone at the Permanent Secretary's Office about permissions.

108. One of the claimant's complaints is that Ms Grugel inappropriately disclosed information to Edward Mellen publishers and the Open University. The respondent denies that the publishers were contacted. We find that Edwin Mellen publishers were not interviewed or contacted by Ms Grugel, this is supported by the fact that no evidence from the publisher is cited in Ms Google's investigation report. In or around June 2019, Ms Grugel was considering contacting the publishers but acknowledged that might be 'overkill'. Ms Noble did carry out a google search on Edwin Mellen to see what information she could find on their approval policy and subsequently sent Ms Grugel an extract of information that she obtained.

109. With regard to contact with the Open University, Ms Grugel confirms that contact was made to establish whether correct permission was in place for research. The Open University were unable to provide any information relating to the claimant's application as their records did not go that far back. Ms Grugel was unable to recall the specifics of her conversation with the Open University and we heard no other evidence in relation to this.

110. On 2 October 2019 Ms Grugel sends the investigation report to Ms Whatmore who suggests some amendments, these are; an incorrect reference to the number of PSI 28/2013, referring to prison uniform rather than prison officers uniform and lastly clarifying that PSO 7305 does refer to publication in Appendix C. Ms Grugel makes the changes and sends an updated version of the report to Ms Whatmore on 8 October 2019.

111. Ms Grugel breaks down the areas set out in the ToR into 8 separate allegations and recommends testing 7 out of 8 allegations at a disciplinary hearing. With regard to the

8th allegation, relating to breaches of Crown Copyright, Ms Grugel recommends obtaining specialist advice.

112. Ms Grugel highlights in the report that the claimant's behaviour has been extremely difficult and at times hostile. She describes the claimant as 'aggressive and confrontational' at the first interview, which she states prevented a constructive and open dialogue. Ms Grugel sets out that the claimant refused to answer questions which she states were not set out in the F2, invite to investigation letter. Ms Grugel also sets out difficulties in agreeing the minutes of the first meeting, which were not recorded as a result of which she advised that the claimant's version of the minutes would also be included in the investigation report.

Disciplinary Hearings & Outcome

113. On 14 October 2019, Mr Burton completes a Civil Service HR Casework/High profile summary update stating 'Reason for case escalation: Potential significant financial consequences, Potential reputational damage, Potential adverse press interest.

114. On 16 October 2019, Ms Whatmore writes to the claimant inviting her to a disciplinary hearing on 13 November 2019. Ms Whatmore also sends the claimant a copy of the investigation report and all the information collated during the investigation including witness statements. As per paragraph 5.20 of PSI 06/2010, Ms Whatmore informs the claimant that if the allegations are found proven this would constitute gross misconduct.

115. On 23 October 2019, the claimant writes to Ms Whatmore requesting information regarding who made the initial allegation and who commissioned the disciplinary investigation. The claimant also requests copies of all witness statements and evidence. Ms Whatmore responds on 29 October advising that the initial allegation arose following an enquiry from the permanent secretary around permissions for the book, Ms Whatmore commissioned the investigation following Ms Mahoney's report and that all evidence had been provided to the claimant.

116. Following her email of 23 October 2019, Ms Whatmore makes some further enquiries with Ms Grugel and ask her to review the documents to ensure that everything has been sent. Ms Grugel responds to advise that having re-checked, she had inadvertently not sent the most up to date version of the minutes that had been agreed with witnesses. Ms Grugel states that the minutes were almost exactly the same.

117. On 24 October 2019, Diane Caddle, Executive Director, Diversity, Inclusion and well-being team, sends an email to Ms Robinson requesting a chat about a research project the claimant has contacted her about. Ms Caddle states that she is aware of some of the background but asks that Ms Robinson "fill her in on the rest". We were taken to no further evidence in relation to any discussion between Ms Caddle and Ms Robinson relating to this email.

118. On 7 November 2019, Ms Whatmore sends a further email to the claimant attaching the agreed minutes of Ms Grugel's interviews with 5 witnesses. Ms Whatmore advises these are substantially the same as the minutes already sent to the claimant but that these are the agreed minutes. Ms Whatmore also confirms that the evidence of Mr Clive Windsor will be heard first at the disciplinary hearing as requested by the claimant.

119. The first disciplinary hearing takes place on 13 November 2019. The majority of this hearing was taken up by the claimant questioning Ms Grugel on her report and her conduct of the disciplinary investigation. The hearing was adjourned part heard as there was insufficient time to continue with the hearing on that day.

120. Following the meeting Ms Whatmore made further enquiries with Ms Grugel and Ms Mahoney, about missing emails which the claimant had referred to in the hearing, these related to the claimant's contact with the press office and Ms Mahoney's fact-finding investigation. On 22 November, Ms Whatmore provides these documents to the claimant.

121. The second disciplinary hearing takes place on 9 January 2020. Again, a significant part of this hearing was taken up going through the allegations and the claimant asking Ms Grugel questions. Mr Windsor attended and gave his evidence, which effectively contradicted the evidence of the Governing Governor who had previously stated to Ms Grugel that he did not recall giving permission. Mr Windsor's unchallenged evidence confirming this, was provided in a written statement to the Tribunal. Once again there was insufficient time to conclude the disciplinary hearing and it was adjourned part heard.

122. A third disciplinary hearing took place on 10 February 2020, at this meeting the claimant read out and submitted a written statement. The claimant set out that the investigation and disciplinary had been a "witch hunt" against her and that it had been completed in a prejudicial and biased manner. The claimant set out a number of

complaints against Ms Grugel and Ms Whatmore alleging corruption, collusion and lack of impartiality. The claimant agreed to continue with the hearing on the basis that her complaints would be put on the formal record of the hearing. Again, the hearing was unable to be concluded and was adjourned part heard.

123. On 24 February 2020, Ms Whatmore sends an email to the claimant setting out a summary review of the evidence and copies of the evidence she will be referring to at the next hearing. The claimant responds on 25 February requesting further information on the allegations and stating that there is still missing evidence in the investigation pack. The claimant references PSO 06/2010 and requests the evidence in accordance with this policy. On 5 March 2020, Ms Whatmore responds setting out the process for the next hearing and advising that the Claimant already has all the evidence documents being used at the hearing.

124. On 17 March 2020, Ms Whatmore contacts her allocated HR caseworker, Mr Richard Burton for advice on the use of a SKYPE/video hearing due to the COVID-19 pandemic. Richard Burton advises that it is appropriate to proceed with a video final hearing due to the exceptional circumstances. Ms Whatmore contacts the claimant to see if this could be arranged, however, both the claimant and Mr Haughton respond to advise that they were unable to and not content to proceed with a video hearing. As a result, the hearing was postponed.

125. On 7 April 2020, Ms Whatmore contacts the claimant asking whether she was willing to reconsider her position on the suitability of a video hearing. Ms Whatmore advised the claimant that if she did not hear from her, then she would look to conclude the hearing on paper. Ms Whatmore advised in such circumstances, the claimant would have until 17 April 2020 to provide her final written representations, following which written findings would be sent to her by 21 April. There was no response from the claimant and shortly after this on 30 April, Ms Whatmore left the Department.

126. Prior to her departure, Ms Whatmore sought advice from Mr Burton as to concluding the hearing on paper, however, she was advised that the policy in relation to conducting disciplinary cases during the pandemic was pending approval. Given the limited time that was remaining prior to her departure, Ms Whatmore concluded that she would be unable to finalise matters, as a result of which on 27 April 2020, she contacted Mr Ian Blakeman, Executive Director for Strategy, Planning and Performance, HMPPS, requesting a replacement hearing officer be allocated so that she could hand over the papers. Mr Blakeman had taken on some of the roles of Mr

Scott upon his departure from the department. Ms Whatmore advised Mr Blakeman that the hearing officer should be someone from outside of Ms Tasker's team. On the same date, Ms Sue Cole, deputy director, HMPPS team was identified as a suitable replacement hearing officer and she subsequently made contact with Ms Whatmore to arrange a handover of documents.

127. On 28 April Ms Whatmore emails Mr Burton to advise that she will be handing over to Ms Cole but due to the issues that had been raised by the claimant around undue influence and leading questions, she would only provide Ms Cole documents and explain where she had got into the process. Ms Whatmore stated that she would not share any documents linked to her thinking on findings or decisions and would not share her views or opinions with Ms Cole. Mr Burton advised Ms Whatmore that he was in agreement with her approach, he advised that she could provide a summary of the evidence as long as this was factual and did not include her views. Ms Whatmore followed this advice and only shared factual evidence with Ms Cole.

128. On 30 April Ms Whatmore advises the claimant that she is leaving the department and would be handing the case over to Ms Cole.

129. On 1 May 2020, Ms Cole sends the claimant an email introducing herself as the new hearing officer. Ms Cole makes it clear that she will not be re-hearing the case, however she will review all of the evidence that has been submitted and reach her own assessment of the information. Ms Cole advised that it would take her in the region of 3 weeks to complete her review and she would then make further contact regrading final submissions and seek clarification of any questions the claimant may have.

130. The IT department arranged the transfer of all documents from Ms Whatmore to Ms Cole including the audio and transcripts from the previous 3 disciplinary hearings. Ms Cole reviewed the evidence in chronological order; the collated evidence first, then the hearing transcripts and Ms Whatmore's summary of the evidence. We accept Ms Cole's evidence that she was very conscious of not being influenced by someone else's opinion or perception of the evidence, particularly in light of Ms Whatmore's emails regarding the claimants concerns about undue influence.

131. On 6 July 2020, Ms Cole sends the claimant an email containing the disciplinary investigation outcome letter. Ms Cole distilled the allegations into 3 allegations, namely, whether the claimant had permission to conduct her research, whether she

had permission to publish her book and whether she had intended to mislead the permanent secretary's private office. In relation to the allegation relating to permission to conduct her research, Ms Cole concluded that the claimant had sought and was given the necessary permission from the Governing Governor. With regard to permission to publish her book, Ms Cole concluded that the claimant had breached PSI 28/2013, against the express instructions of the person given authority to approve publication. Finally, Ms Cole concluded that the claimant had not intended to mislead the permanent secretary's office.

132. Whilst Ms Cole concluded that there had been a breach of PSI 28/2013, she decided against sanction on the basis that the claimant may have reasonably inferred from permission to undertake the research that publication would be approved and that there was an unreasonable delay in providing clearance, which in itself presented difficulties.

133. Ms Cole met with the claimant on 31 July to discuss her report and the outcome letter. At the meeting the claimant requested a complete exoneration of any wrongdoing and an apology for everything she had been through. Ms Cole agreed to review her report and outcome letter and on 20 August 2020, she issued a revised letter making it explicitly clear in this letter that she did not find evidence of gross misconduct, that no further action was required and that no sanction would be applied. Ms Cole clarified her wording regarding the delay with Ms Carter stating that the claimant might have reasonably inferred approval for publication due to the unreasonable delay in providing clearance. However, express permission was required, there was no evidence of any other approval that would supersede the instruction from Ms Carter.

134. Ms Cole forwards a copy of her decision to Shared Services Connected Limited 'SSCL' in accordance with policy PSI 06/2010, para 7.22 which states that *"a record of the hearing and any comments must also be forwarded to Shared Services, even where no further action has been taken".*

Disciplinary Outcome Appeal – August-December 2020

135. On 26 August 2020, the claimant notifies Ms Cole that she wishes to appeal her decision. Ms Cole seeks advice from HR casework as to the appropriate person to hear the appeal and is advised that it should be her line manager, Ms Kate Morris, Deputy Director strategic development group. The claimant is notified of the appointment of Ms Morris on 8 September 2020.

136. On 22 September 2020, the claimant sends a complaint to Ms Cole and Mr Phil Copple, Director General of Prisons, against the appointment of Ms Morris on the basis that she was not independent or of the requisite seniority. The Claimant also set out that neither Ms Mahoney or Ms Tasker had been consulted about Ms Morris' appointment and that there were many directors and deputy directors in her 'home' department who could have been appointed.

137. On 29 September 2020, Ms Morris contacts her line manager, Mr Blakeman seeking advice as to the appropriate appeal authority. The subject of the email chain between Mr Blakeman and Ms Morris is 'Investigation appeal'. Ms Morris advises Mr Blakeman that the appeal is in relation to the Marcia Morgan investigation that he had allocated to Ms Cole. Mr Blakeman asks for further details to jog his memory and Ms Morris responds to advise *"it relates to her thesis/book and whether she had the right permissions for publication"*.

138. Ms Morris consults Ms Alison Hamer, Divisional Director of HR, HMPPS, as to whether she was the correct person to deal with the claimant's appeal and on 29 September 2020, Ms Hamer advises that she has spoken with the high profile and complex case team who confirmed that Ms Morris was the appropriate person to deal as she was Ms Cole's line manager. At that time, the high profile and complex case team had recently been set up in June 2020, Ms Carter Ms Noble and 1 other member of staff were part of the team.

139. On 30 September 2020, the claimant submits her grounds of appeal regarding the disciplinary investigation. The grounds of appeal include allegations that the investigation report and outcome letter contain fabricated evidence and that the disciplinary proceedings were unfair and breached the rules of natural justice.

140. On 1 October, Ms Hamer sends an email to Ms Morris asking her to remove Ms Cole and Ms Carter from any further communications as they were part of the previous process. This follows an email to Ms Hamer from Ms Noble where she advises that Ms Carter should be removed from further email chains as she has been mentioned in a complaint letter.

141. On 5 October 2020, Mr Peter Bell, HR Caseworker is appointed as the HR support officer to Ms Morris for the purpose of the appeal. Mr Bell advises Ms Morris in relation to PSI 06/2010 and her appointment as the Appeal authority.

142. Following Mr Bell's advice, on 7 October 2020, Ms Morris responds to the claimant stating that her appointment was in accordance with PSI 06/2010. Section 9.8 of PSI 06/2010 sets out that the manager of the decision maker should be the appeal authority. In the circumstances we find there was no breach policy of policy in relation to Ms Morris' appointment. In line with Mr Bell's advice, Ms Morris also advised the claimant that she would need access to the appeal documentation in order for her to be able to progress the appeal.

143. On 16 November 2020 Ms Cole responds to Ms Morris' email seeking clarification on a number of issues the claimant had raised in her appeal. In response specifically to Ms Morris question about how she came to the conclusion that the book and thesis were two different things, Ms Cole stated that she looked at an article that drew out the main differences and reviewed the claimant's personal internet presence and how the publication was referred to, which was almost always as a book. Ms Cole did state that she did not think Ms Morris would be able to rely on this information, as it was not part of the initial investigation.

144. On 2 December 2020, Ms Noble responds to an email from Ms Hamer who appears to be seeking an update on the claimant's case before a conversation with Mr Blakeman. Ms Noble states that she is not sure where Ms Morris is up to with the appeal, however, but the present position was that the claimant did not have permission for the first book. A second book is highlighted as having been referenced in the black history month slides and Ms Noble states it is believed that permission may not have been obtained but that enquiries would be made with the claimant. We were not taken to any further evidence in relation to the second book and what transpired.

145. On 9 December 2020, Ms Morris wrote to the claimant to advise that her appeal was not upheld. As part of the appeal response Ms Morris stated, *"you open your appeal letter by referring to a finding of guilt in relation to gross misconduct I can confirm that there is no finding of guilt in relation to gross misconduct"*. Ms Morris also states that the outcome letter dated the 16th of August 2020 should be seen as a final and conclusive position for the hearing. Ms Morris goes on to state *"your research and academic studies provide valuable insights for our organisation and I hope these conclusions will allow you to move forward in a more positive vein and to consider how your knowledge and expertise can be best put can we put the best impact within the organisation. I would personally be interested to talk to you about this should you be open to that".*

SPDR Grading – June-August 2019

146. On 12 June 2019, Ms Mahoney sends the claimant a copy of her Staff Performance and Development Report, 'SPDR' which covers the period April 2018 to March 2019. There were 3 potential ratings, outstanding, good and must improve. The claimant received a 'good' rating, which was agreed by her line manager, Rob Bissell, Head of Capital Reconfiguration, HMPPS, and his line manager Ms Mahoney. In his evidence to the Tribunal, Mr Bissell advised that he had taken over the claimant's line management part way through the SPDR period and his input was focused on the last 6 months, when the claimant was under his direct line management. He stated that he believed it would have been difficult to achieve an outstanding rating in a new role within 6 months. The claimant had previously been assessed by Sean Clack in her mid-year review as good and was told that she was on track for an outstanding grade, this was in her role at that time as Design and Delivery lead. When Mr Bissel took over the Claimant's line management she was in a new role.

147. The SPDR process is moderated by a separate panel to ensure the review process is equitable, consistent and fair. The moderating panel is made up of a number of individuals from various grades and roles within the organisation. The moderation process involves the line manager presenting their grading and rationale to a group of other supervisors, an independent chair, an independent reviewer, and a HR business partner. Once moderated, the agreed mark is sent to the employee. The claimant's SPDR was presented to the moderating panel and it was collectively agreed that the claimant's grading was 'good'.

148. Moderation grades provided to the Tribunal evidence that only 1 out of 28 in the claimant's band 8 peer group achieved an outstanding at that particular moderation. The claimant's comparator Lauren Mallon was moderated alongside band 9 peers but at the time was a substantive band 8 and Cheryl Moore was moderated as a band 8 but at the time she was a substantive band 7 on temporary promotion. Ms Mallon achieved an 'outstanding' grade and Ms Moore a 'good' rating.

149. The claimant spoke with Mr Bissel and challenged her 'good' grade on the basis her extra-curricular activities justified an outstanding grade. Mr Bissell invited the claimant to provide evidence of any activities that he may not have been aware of which the claimant believed justified an outstanding grade. The evidence provided by the

claimant relied on the number of hours she worked and the number of extra-curricular voluntary roles she undertook. Mr Bissel did not feel that this warranted a change to the SPDR grading. Ms Mallon and Ms Moore did not challenge their SPDR ratings.

150. On 21 August 2019, the claimant raises a grievance about her SPDR grading. This is dealt with by Ms Mahoney who did not uphold the claimant's grievance. Ms Mahoney was satisfied that the claimants SPDR marking was appropriate.

151. In his oral evidence, in relation to Ms Mallen's 'outstanding' grading, Mr Bissell explained that Ms Mallen had notably been leading a complex difficult project and the SPDR ratings recognised this. In contrast the Claimant had areas for improvement, which included *"developing relationships, transparency and visibility and tone and behaviours".*

152. Mr Bissell was aware that the Claimant was subject of a disciplinary investigation, however, he was not aware of the nature of the disciplinary proceedings, the allegations or the outcome.

Reward and Recognition Award – July/August 2019

153. With regard to the reward and recognition award there is no dispute that 2 of the claimant's colleagues received these awards, Louise Collins and Cheryl Moore, both of whom are white, females. The claimant's evidence is that she along with her 2 colleagues was nominated for this award by Mr Bissell but in the end only her 2 colleagues received the award. The claimant's evidence is that she was present at the Teams meeting, where her 2 colleagues were rewarded. In his first statement to the Tribunal, Mr Bissell stated he could not recollect what happened regarding the claimant's nomination, however, he provided a supplementary statement having heard the evidence of Ms Maloney leading him to check his emails and discover via IT, some further documents relating to this matter. Mr Bissell's supplementary statement and documents were permitted to be included as evidence

154. On 29 July 2019, Mr Bissell sent Ms Mahoney 4 Reward and Recognition nominations for consideration; one of these related to the claimant. Ms Mahoney responded on 30 July confirming her approval for 2 of the 4 nominations, however, in respect of the claimant and 1 other (Lauren Mallen, white, female). Ms Mahoney stated, *"feels like they were just doing their job so is there something special to draw out?"* She goes on

to state that *"just think C and Marcia might be vulnerable, especially as we have already rated C as outstanding."* Mr Bissell replied stating that he was content with that approach and asks Ms Mahoney to countersign the nominations for A and B, these are subsequently submitted to Alison Fryer, Head of Capital Delivery on 4 August 2019. Ms Fryer confirms receipt of both nominations and advises that Mr Bissell has just missed a reward committee meeting on 30 July, as such these nominations would be submitted at the meeting on 26 September.

155. The claimant applied for and was granted a temporary promotion from band 8 to band 9 on loan to probation reform within six months of her SPDR review. On 8 November 2021 the claimant sent an email to Ms Tasker and Ms Mahoney informing them of her temporary promotion and move to health and care partnership.

Compressed Hours Application – Aug/Sept 2019

156. In August 2019 the claimant sent Mr Bissell an application to work compressed hours, this would involve her working her same contracted hours over four days rather than five.

157. Mr Bissell sought HR advice and spoke to Ms Mahoney regarding the claimant's request. HR advised Mr Bissell to speak to the claimant to clarify the justification set out in the application, which stated, "to work with other sectors" and to ensure compliance with the outside activities policy as well as the working hours directive. On 19 August, Mr Bissell spoke with the claimant to discuss her application. The claimant advised him that the rationale for her application was so that she could develop her academic skills, her mentoring skills and be more involved with diversity and inclusion projects at the MoJ. The claimant did not inform Mr Bissell that she intended to provide lectures to university students. In fact, at that time the claimant informed Mr Bissell that she did not intend to pursue any outside activities.

158. On 9 September 2019, Mr Bissell sent an email to Ms Tasker who had requested an update, to advise that he had sought advice and discussed with Ms Mahoney. It was agreed that as the claimant had clarified that she would be utilising the time to complete a programme of study, the outside activities policy was less relevant and having reviewed the impact of the claimant's proposed working pattern on the team, Mr Bissell and Ms Mahoney agreed to support the claimant's application. Mr Bissell suggested

a 3-month review to assess how the working pattern for both the claimant and the team.

159. On 11 September 2019, Mr Bissell became aware that the claimant had submitted an 'other' employment form directly to Ms Tasker for approval and that she in fact intended to spend her non-working day providing lectures to students. Ms Tasker informed the claimant that she would seek HR advice and revert to her.

160. On 13 September 2019, the claimant challenges Ms Tasker as to why she was seeking HR advice and advises that she had not required permission before when she had provided teaching outside of work. Ms Tasker was not aware of the previous lecturing and queries this with Mr Bissell and Ms Mahoney. Mr Bissell advised Ms Tasker that in February 2019 it had been agreed informally that the claimant could provide lecturing over 6 consecutive Fridays at the University of East London 'UEL', this was due to the short term nature of the commitment and the fact that the claimant could use accrued time towards fulfilling her teaching support. In contrast the role the claimant was now seeking to undertake was permanent and would require 5 hours a week. Mr Bissell expressed his concerns as to whether the claimant would have enough time for the current commitment alongside her core work and the study programme, she had advised she was undertaking.

161. Lucy Burns, HR caseworker, refers Ms Tasker to the outside activities policy and advises that she would need to consider the ongoing disciplinary and whether the proposed subject matter of the lecturing work related to the publication. Ms Tasker subsequently asked the claimant for further detail of the curriculum that she would be teaching and was provided with a link to the teaching material.

162. On 16 September 2019, Ms Tasker responds to the claimant providing her approval, subject to the additional employment not having a negative effect on the claimant's official work and that informing her of her obligation to ensure that the content of her lectures/seminars did not damage public confidence in HMPPS or bring the Service into disrepute

<u>Black History Month Event – October 2020</u>

163. On 21 October 2020 Ms Morris contacts Mr Tajinder Singh-Matharu, deputy director, Head of Assurance, Risk Management & Governance, HMPPS, to ask whether he

could step in as chair for the Black History Month event taking place on 23 October 2020. Ms Morris advises that she has been asked by Dr Farrar to do some work with the Senior leadership team. Mr Singh-Matharu agrees to host the Black History Month Event and is subsequently sent copies of the slides of all guest presenters for review.

164. On 22 October 2020, Ms Morris sends an email to Ms Hamer attaching slides relating to the Black History Month event. As Ms Morris was due to chair the event, she had been sent the slides for the guest presenters so that these could be circulated in advance. The claimant was scheduled as a guest presenter at the event and one of her slides included reference to her book and where it could be purchased. Ms Morris sought advice from Ms Hamer about whether inclusion of the slide in the presentation was appropriate because the book subject of an ongoing disciplinary appeal process.

165. Ms Hamer took advice from Ms Noble, who at that point was part of the High profile and Complex Casework Team. Ms Noble advised that the slide should be removed because there was an ongoing appeal and the book was the subject of that appeal. Ms Hamer confirmed this advice to Ms Morris.

166. On 23 October 2020 Mr Bell informs Mr Tajinder Singh-Matharu that there were concerns about a slide in the Claimant's presentation as it was an inappropriate forum to market her book and that it was unclear whether approval had been granted by the HMPPS for her book. Mr Bell advises Mr Singh-Matharu that he will need to instruct the claimant to remove the slide referencing her book. On the same day Mr Singh-Matharu contacts the claimant asking her to remove the slide from her PowerPoint presentation, which she duly does.

167. The claimant subsequently queries with Mr Singh-Matharu where the request to remove the slide came from. Mr Singh-Matharu in turn queries this with Mr Bell who in turn queries with Ms Noble. Ms Noble advises that People Group made the decision to instruct the claimant to remove the slide because there was an appeal outstanding. Mr Bell confirms this to Mr Singh-Matharu who subsequently informs the claimant of this.

Other Events/Publications on Intersectionality

168. The claimant is not included on the panel for HMPPS 'Let's talk intersectionality' Panel Event held on 11 May 2021. In her evidence to the Tribunal, the claimant accepted that she did not request to be included on the panel.

169. On 11 May 2021 the Prison Service Journal published a review on the Claimant's book. Shortly after on 13 May 2021, HMPPS launched its Intersectionality Toolkit citing other works on intersectionality but not referencing the Claimant's book.

Grievances'

June 2019 – Grievance sent to Mr Copple

170. On 3 June 2019, the claimant sent an email to Mr Copple, setting out a grievance alleging gender and racial discrimination, victimisation and harassment by a number of Directors, Deputy Directors and Executive Directors. The grievance related to various aspects of the investigation and disciplinary process.

171. As a result of the content of the grievance relating to the disciplinary investigation, Mr Copple contacted Mr Scott to ascertain whether the investigation was ongoing. On or around 17 June 2019, Ms Grugel on behalf of Mr Scott subsequently informed Mr Copple that the investigation was ongoing.

172. The timeline of events thereafter is unclear, however, what is apparent is that there is a significant delay in responding to the claimant. On 23 October 2019, the claimant sends an email to Mr Copple stating that he had dismissed her grievance but asks him to look into it. This prompted Yasmin Miah, Mr Copple's PA to seek further instruction from Mr Scott. Mr Scott advised that the grievance be sent to Mr Mark Adam, People Group Director for MoJ, which it was on the same day. Nothing further happens until 6 March 2020 when Ms Miah contacts Mr Adam seeking an update on behalf of Mr Copple following an approach to him by the claimant at a championing woman in the workplace event.

173. Mr Adam replies to Ms Miah advising that he had had understood the grievance was going to be sent to him and someone was going to inform the claimant but he had not heard anything. As a result, on 9 March 2020, Ms Miah sends an email to Mr Steve

Gill, Head of Office to Director General Prisons informing him that there had been a miscommunication and asking him to liaise with the claimant.

174. On 17 March 2020, Ms Miah sends an email to the claimant apologising for the delay in responding to the grievance and explaining that there had been some confusion as to who was dealing with next steps. Ms Miah advises that Jo Hicks, Director of change and development will hear the grievance. The claimant seeks assurances regarding the appointment of Ms Hicks as grievance hearing officer and around confidentiality and Ms Miah provides these. On 26 March 2020 the claimant advises that she is content to proceed with Ms Hicks.

175. On 7 April 2020 the claimant is sent an email from Ms Miah advising her that her grievance will need to be paused until the outcome of the disciplinary process and should be there be any outstanding grievance following the outcome of the disciplinary legal advice would be sought on how best to proceed. At this point in time the claimant's disciplinary had also been paused because of the Covid-19 pandemic and being unable to progress this remotely. Whilst the disciplinary process was paused there were no further developments with the grievance.

176. The ACAS disciplinary and grievance procedures during Covid-19 states that 'Employers should try to find a safe, fair and reasonable way to go ahead with procedures and that grievances must be carried out in a way that follow public health guidelines.

177. As part of her complaints, the claimant alleges that because there were HR caseworkers involved with her disciplinary that there was a conflict of interest which amounted to harassment and/or victimisation. Mr Copple's evidence was that the involvement of HR caseworkers is customary and standard practice when dealing with grievances. He stated that it allowed the person managing the grievance to ensure the correct procedure is followed and a decision is reached fairly. He did not believe this was detrimental or prejudicial to the claimant in any way, rather it benefitted the claimant by ensuring that the grievance was dealt with properly.

June 2019 – Lynne Carter grievance to Ms Tasker/Appeal to Mr Scott

178. On 3 June 2019, the claimant also sent a grievance to Ms Tasker, regarding Ms Carter's email refusing permission for publication of her book. The claimant referred

to Ms Carter's 'criticisms' about her research, methodology and approach. She requested that a comprehensive review of PSI 28/2013 be undertaken and that an academic expert be appointed to carry out reviews of academic books.

179. On 19 July Ms Tasker sent an email to the claimant referencing their meeting the day before. Ms Tasker set out that they had agreed to park the matter surrounding PSI 28/2013 until the outcome of the investigation as it wasn't considered appropriate to deal with that separately and Ms Tasker's understanding was that this would be covered as part of the disciplinary. Ms Tasker also set out that it would be valuable for the department to consider and learn from the claimant's research and a meeting would be set up to inform a piece of work that Dr Farrar was undertaking.

180. On 2 July 2019, Ms Tasker contacted Ms Grugel to clarify the terms of the disciplinary investigation to establish whether the investigation covered any of the issues which the claimant had raised in her grievance of 3 June 2019.

181. On 19 July Ms Tasker wrote to the claimant and advised that she did not uphold her grievance as she did not consider that Ms Carter had treated her unfairly. Ms Tasker set out her opinion, that Ms Carter had reviewed the manuscript in keeping with PSI 28/2013 and in keeping with the approach that she adopts with all other manuscripts, the vast majority being academic journals. With regard to PSI 28/2013, Ms Tasker advised the claimant that her decision did not mean that she could not propose a change to the PSI and she could pursue this by writing to HR with a proposal to change.

182. In response to this on 26 July 2019, the claimant sent Neil Wooding, Chief People Officer a grievance letter regarding PSI 28/2013, Outside Activities. The claimant complained that the PSI has been used to discredit her academic and professional reputation. The claimant forwarded Mr Scott a copy of the grievance relating to PSI 28/2013. The grievance letter was subsequently forwarded to Mr Anthony Reeve, Head of HR Services, Strategy, HMPPS, as the policy lead for PSI 28/2013.

183. On 3 August 2019, the claimant appealed Ms Tasker's decision not to uphold her grievance to Mr Scott. Mr Scott decided that as the grievance referred to the same subject matter as the disciplinary proceedings it was inappropriate for him to deal with the grievance. Mr Scott also took HR advice at the time and it was their recommendation that the issues raised in the grievance should be covered within the ongoing disciplinary process.

184. On 8 August 2019, Mr Reeve responds to the claimant clarifying PSO 28/2013 explaining that the policy was underpinned by the Civil Service Management Code and as such there was limited scope to deviate from this. Mr Reeve also informed the claimant that there was an ongoing review in relation to PS0 28/2013 and whilst this would not look at the review process it would afford an opportunity to consider where that best sat within the organisation.

June 2019 – NRC

185. On 3 June 2019, the claimant also sent a complaint to the NRC. This complaint requested the NRC to remove comments from her file, which the claimant alleged were being used by HMPPS directors as justification to criticise her research. Specific reference is made relating to comments made by Ms Grugel in a disciplinary meeting. The comments were taken from a letter sent by the NRC to Ms Grugel stating that the claimant's methodology was weak, the sample size was too small and that the research had not been given ethical approval. We were not taken to any evidence relating to any response from the NRC and what the outcome of the grievance was.

August 2019 – SPDR grading grievance to Marion Mahoney

186. On 19 August 2019, the claimant sent a formal grievance to SSCL and Ms Mahoney regarding the SPDR evaluation she received in June 2019 from Mr Bissell. The claimant sets out information outlining additional work that she has undertaken during 2018/2019 and requests Ms Mahoney to carry out a secondary review as she believed that she should have been graded outstanding.

187. On 5 September 2019, Ms Mahoney responds to the claimant's grievance and advises that she carefully considered the valuable work the claimant is doing outside of the programme, however, she was not persuaded that her overall performance last year was outstanding.

January 2021 – Grievance to Dr Farrar

188. On 11 January 2021 the claimant sends an email to Dr Farrar attaching a copy of her grievance, which related to various aspects of the disciplinary investigation and an allegation arising from in event in October 2020 to celebrate Black History Month.

189. The grievance set out that Ms Morris had already heard an appeal against the outcome of the disciplinary proceedings. As a result on the instruction of Dr Farrar, Ms Debi Rotherforth in the CEO's office, contacted Ms Morris and shared the grievance with her. Ms Morris subsequently confirmed that she had already addressed the allegations relating to the claimant's disciplinary investigation during the appeal process.

190. On 5 March 2021, Ms Rotherforth requests copies of the disciplinary appeal outcome. Ms Morris responds on the same day to advise that she would need to take advice before sharing as there were ongoing proceedings with the ICO regarding the case. On 9 March 2021, Ms Morris advises Ms Rotherforth to contact the claimant directly for a copy of the outcome letter as it was a confidential document not be shared outside of the process.

191. On 24 March 2021, Dr Farrar's office responded to the claimant regarding the administration of her grievance. The claimant is advised that all points other than 2 were dealt within the previous disciplinary process and that the internal appeal process has been exhausted. With regard to the 2 remaining matters, the complaint relating to Ms Carter relates to matters that arose over 2 years ago, no action was taken to prevent the claimant from distributing her book and as such her grievance in relation to this matter would not be taken any further forward. The remaining matter related to an instruction on 23 October 2020 for the claimant to remove all reference to her book from a PowerPoint slide. This matter was passed to Ms Hamer for response as she was the individual who took the initial decision.

April 2021 – Black history month slides – grievance to Ms Hamer

192. On 19 April 2021, Ms Hamer was sent a copy of the claimant's grievance by Dr Farrar's office, this only included the grievance relating to the matter that Ms Hamer had been asked to consider. Ms Hamer attempted to lodge the grievance form with SSCL but it was returned as parts of the form were incomplete. Ms Hamer agreed to complete the form as part of her meeting with the claimant.

193. As the grievance was about Ms Hamer's advice to Ms Morris and Ms Hamer was outside the claimant's line management, this was in accordance with PSO 8550, staff grievance and it was appropriate for Ms Hamer to deal with it.

194. A grievance meeting took place on 9 June 2021 at which the claimant's desired outcomes were that the full complaints in the January 2021 grievance to Dr Farrar

should be investigated and clarification from Mr Hamer as to whether it was appropriate for those involved in an investigation to start speaking to individuals who were not involved with the investigation.

195. Ms Hamer concluded that it was appropriate for Ms Morris to seek HR advice when conducting the disciplinary process and to share relevant information in the course of obtaining that advice. In response to the claimant's questions Ms Hamer also clarified that Ms Morris had requested to see all presenter slides before the black history month event took place.

196. Ms Hamer concluded that the claimant's desire for the full list of complaints to be investigated was outside of her remit and as she was not seeking any other remedy the grievance was not upheld.

197. On 24 March 2021, the claimant submitted a complaint to the Information Commissioner's Office 'ICO' about multiple Data Protection Act 'DPA' breaches and what she alleged was HMPPS Information Security Group's refusal to investigate.

198. On 26 March 2021, John Winter, Information Security Manager, HMPPS responds to the claimant's complaint to the ICO and the various data breaches reported to his department. Mr Winter concludes that there were no data breaches relating to four out of five of the alleged breaches. This included Ms Morris being sent the Appeal invite letter and Ms Sandra Stevens being included in correspondence as she was Ms Morris' business manager and was engaged in arranging the appeal. Mr Winter did conclude that there had been a breach in the disclosure of the Appeal invite letter (F12a) to Mr Blakeman, however, this was a misunderstanding in that Ms Morris had incorrectly understood an instruction on the form to send to the line manager of the subject of the hearing, rather than her own line manager, Mr Blakeman. Mr Winter confirmed that Mr Blakeman had deleted the relevant information.

June 2021 – Alison Hamer grievance to Mr Mann

199. On 28 June 2021, the claimant submits an appeal against Ms Hamer's grievance decision, which is picked up by Mr David Mann, Deputy Director of HR. In her appeal the claimant states that Ms Hamer has subjected her to racial and gender discrimination, harassment and victimisation, both in the decision to remove her slide on 23 October 2020 and during the Stage 1 grievance process. Ms Sarah William, HR Caseworker is allocated as the HR support.

200. On 8 July 2021, Ms Sarah Williams, HR caseworker escalates the case under the Civil Service HR high profile case escalation policy on the criteria of potential political Interest, potential reputational damage and potential adverse press interest.

201. A stage 1 grievance appeal hearing takes place on 27 July 2021 and Mr Mann decides to commission an informal investigation into Ms Hamer's conduct given the serious allegations of discrimination that had been made. Michael Lowe, Interim Divisional Director, HR Services, is appointed as the investigator.

202. At the hearing on 27 July 2021, the claimant objects to the presence of 2 HR representatives. It is explained to the claimant that Sarah Williams, HR caseworker was present to assist Mr Mann and Clare Scotcher was an independent HR representative, this was as a result of a new HR casework process introduced to ensure independence and impartiality. It had previously been explained to the claimant that a note taker would be present and that Mr Mann did not consent to the recording of the hearing. Mr Mann explained it was only standard practice for disciplinary hearings to be recorded not grievance hearings and that paragraph 2.4 of PSO 8550, Staff Grievance, which states that grievance records must be kept confidential and there was a danger if recorded it could be viewed by other people.

203. Mr Mann reduces the claimant's allegation into 3 main allegations, these being, the decision to have the slide removed and the rational for this, the appropriateness of Ms Hamer hearing the grievance and accusations of bullying, harassment and discrimination against Ms Hamer.

204. On 17 August 2021, a meeting invite is sent to Ms Hamer for an interview, the letter contains no detail of the allegations that the investigation relates to. Ms Hamer responds to ask what the allegations are about and Mr Lowe provides her with the extract from Mr Mann's letter setting out the allegations from the claimant's grievance.

205. On the same day, Mr Lowe follows up with a number of questions to Ms Hamer to establish facts; this is in advance of an interview with her the next day. Ms Hamer submits her responses in writing.

206. Ms Hamer is interviewed on 18 August 2021 and on 19 August 2021, requests a further interview with Mr Lowe as upon reflection she felt she had not been explicit enough

with her responses to the inclusion of the slides. Mr Lowe agrees and a further interview is conducted.

207. On 9 September 2021, Mr Lowe sends his investigation report to Mr Mann which concludes that none of the allegations were supported by the evidence and there was no evidence that Ms Hamer had subjected the claimant to racial and/or racial victimisation, harassment or discrimination.

208. On 12 September 2021 an investigation summary form is completed recommending no further action against Ms Hamer. The investigation report and outcome letter are sent to Ms Hamer and the claimant on 13 September 2021. In the outcome letter, Mr Mann sets out that he agrees with Ms Hamer's decision regarding removal of the slides citing considerations around breaches of the Civil Service Code and PSI 28/2013. With regard to Ms Hamer's appointment, Mr Mann advises that whilst he concludes that Ms Hamer was the best person to hold the stage 1 meeting, he agreed there was some ambiguity with the wording in PS0 8550 and as a result he would commission a review of the policy. Finally, with regard to the allegations of discrimination, Mr Mann concludes that Ms Hamer's behaviour was professional and there was no evidence of gender or racial discrimination.

Time Limits

209. The Claimant contacted ACAS on 15 March 2021 and the Early Conciliation period ended on 26 April 2021. The Claimant submitted her Claim Form to the Tribunal on 6 May 2021. The Respondent therefore avers that any alleged act or omission occurring before 16 December 2020 is prima facie out of time.

210. It also emerged during the course of evidence that the claimant had previously brought employment tribunal proceedings in around 2017, at which she had also represented herself. The respondent submitted that this supported its contention that the claimant was well aware of the process including time limits.

211. The claimant made brief submissions that the complaints are a continuing act of what happened stemming from 24 March 2019. She submitted that it would be just and equitable for the tribunal to extend time as the internal process was long and protracted and the respondent had refused to hear her grievances. Mr Mann had also advised

her that any issues should be dealt with at the Employment Tribunal and the respondent would not deal with these matters.

212. The respondent does not accept that any of the pleaded allegations occurring before 16 December 2020 were part of any continuing act or series of acts, or that it would be just and equitable to permit the claimant to pursue her claim in relation to those allegations. The respondent therefore submits that the majority of claims are out of time and should be struck out.

Relevant Law

Direct discrimination

213. Section 13 of the Equality Act 2010 provides as follows;

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".

Race and disability are protected characteristics as per section 4 of the Equality Act 2010.

Burden of Proof

214. Section 136 of the Equality Act 2010 provides**;**

(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.

215. In ***Islington Borough Council v Ladele [2009] ICR 387*** Mr Justice Elias explained the essence of direct discrimination as follows: *"The concept of direct discrimination is fundamentally a simple one. The Claimant suffers some form of detriment (using that term very broadly) and the reason for that detriment or treatment is the prohibited ground. There is implicit in that analysis the fact that someone in a similar position to whom that ground did not apply (the comparator) would not have suffered the detriment. By establishing that the reason for the detrimental treatment is the prohibited*

reason, the Claimant necessarily establishes at one and the same time that he or she is less favourably treated than the comparator who did not share the prohibited characteristic."

216. ***Burrett v West Birmingham Health Authority 1994 IRLR 7, EAT*** is an example of the proposition that it is for the tribunal to decide as a matter of fact what is less favourable treatment and the test posed by the legislation is an objective one. The fact that a Claimant believes that he or she has been treated less favourably does not of itself establish that there has been less favourable treatment, although the Claimant's perception of the effect of treatment is likely to be relevant as to whether, objectively, that treatment was less favourable.

217. In order for a disadvantage to qualify as a "detriment", it must arise in the employment field, in that ET must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work. An unjustified sense of grievance cannot amount to *"detriment".* However, to establish a detriment, it is not necessary to demonstrate some physical or economic consequence, ***Shamoon v Chief Constable of RUC [2003] UKHL 11****.*

218. ***Igen v Wong and Others [2005] IRLR 258*** *and* ***Madarassy v Nomura International PLC [2007] IRLR 246****.* The employment tribunal should go through a two-stage process, the first stage of which requires the Claimant to prove facts which could establish that the Respondent has committed an act of discrimination, after which, and only if the Claimant has proved such facts, the Respondent is required to establish on the balance of probabilities that it did not commit the unlawful act of discrimination. In concluding as to whether the Claimant had established a prima facie case, the tribunal is to examine all the evidence provided by the Respondent and the Claimant.

219. ***Madarrassy v Nomura International Ltd 2007 IRLR 246*** - The burden of proof does not shift to the employer simply on the Claimant establishing a difference in status (eg sex) and a difference in treatment. Those bare facts only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that on the balance of probabilities, the respondent had committed an unlawful act of discrimination. "Could conclude" in s63A(2) must mean that "a reasonable tribunal could properly conclude" from all the evidence before it. This would include evidence adduced by the Claimant in support of the allegations of sex

discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint.

220. ***Nagarajan v London Regional Transport [1999] IRLR 572, HL,***-"The crucial question in every case was, 'why the complainant received less favourable treatment … Was it on grounds of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job?'"

221. ***Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48, [2001] IRLR 830, [2001] ICR 1065, HL,*** - The test is what was the reason why the alleged discriminator acted as they did? What, consciously or unconsciously was their reason? Looked at as a question of causation ('but for …'), it was an objective test. The anti-discrimination legislation required something different; the test should be subjective: 'Causation is a legal conclusion. The reason why a person acted as he did is a question of fact.'

Harassment

222. Section 26 of the Equality Act 2010 provides;

(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."

223. ***Richmond Pharmacology V Miss A Dhaliwal [2009] ICR 724.*** There are two alternative bases of liability in the harassment provisions, that of purpose and effect, which means that the Respondent may be held liable on the basis that the effect of his conduct has been to produce the prescribed consequences even if that was not a purpose, and conversely that he may be liable if he acted for the purposes of producing the prescribed consequences but did not, in fact, do so.

224. ***Grant v HM Land Registry & EHRC [2011] IRLR 748 CA*** emphasised the importance of giving full weight to the words of the section when deciding whether the Claimant's dignity was violated or whether a hostile, degrading, humiliating or offensive environment was created: "Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."

225. ***Pemberton v Inwood [2018] EWCA Civ 564*****.** Underhill J "In order to decide whether any conduct falling within sub-paragraph (1)(a) of section 26 EqA has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section 4(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances (subsection 4(b)).

Victimisation

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

(1) A person (A) victimises another person (B) if A subjects B to a detriment because-- (a) B does a protected act, or (b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act - (a) bringing proceedings under this Act; (b) giving evidence or information in connection with proceedings under this Act; (c) doing any other thing for the purposes of or in connection with this Act; (d) making an allegation (whether or not express) that A or another person has contravened this Act.

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

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

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

227. In a victimisation claim there is no need for a comparator. The Act requires the tribunal to determine whether the Claimant had been subject to a detriment because of doing a protected act. As Lord Nicholls said in ***Chief Constable of the West Yorkshire Police v Khan [2001] IRLR 830:-*** "*The primary objective of the victimisation provisions ... is to ensure that persons are not penalised or prejudiced because they have taken steps to exercise their statutory right or are intending to do so".* The Tribunal has to consider (1) the protected act being relied on; (2) the detriment suffered; (3) the reason for the detriment; (4) any defence; and (5) the burden of proof.

228. To get protection under the section the Claimant must have done or intended to or be suspected of doing or intending to do one of the four kinds of protected acts set out in the section. The allegation relied on by the Claimant must be made in good faith. It is not necessary for the Claimant to show that he or she has a particular protected characteristic but the Claimant must show that he or she has done a protected act. The question to be asked by the tribunal is whether the Claimant has been subjected to a detriment. There is no definition of detriment except to a very limited extent in Section 212 of the Act which says "Detriment does not ... include conduct which amounts to harassment". The judgment in ***Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285*** is applicable.

229. The protected act must be the reason for the treatment which the Claimant complains of, and the detriment must be because of the protected act. There must be a causative link between the protected act and the victimisation and accordingly the Claimant must show that the respondent knew or suspected that the protected act had been carried out by the Claimant, see ***South London Healthcare NHS Trust v Al-Rubeyi EAT0269/09.***

230. Once the tribunal has been able to identify the existence of the protected act and the detriment the tribunal has to examine the reason for the treatment of the Claimant. This requires an examination of the respondent's state of mind. In the case of ***St Helen's Metropolitan Borough Council v Derbyshire [2007] IRLR 540*** the House of Lords said there must be a link in the mind of the respondent between the doing of the acts and the less favourable treatment. It is not necessary to examine the motive of the respondent see ***R (on the application of E) v Governing Body of JFS and Others [2010] IRLR 136.***

231. In establishing the causative link between the protected act and the less favourable treatment the Tribunal must understand the motivation behind the act of the employer which is said to amount to the victimisation. It is not necessary for the Claimant to show that the respondent was wholly motivated to act as he did because of the protected acts, see ***Nagarajan*** above.

232. In ***Owen and Briggs v James [1982] IRLR 502*** Knox J said:- *"Where an employment tribunal finds that there are mixed motives for the doing of an act, one or some but not all of which constitute unlawful discrimination, it is highly desirable for there to be an assessment of the importance from the causative point of view of the unlawful motive or motives. If the employment tribunal finds that the unlawful motive or motives were of sufficient weight in the decision-making process to be treated as a cause, not the sole cause but as a cause, of the act thus motivated, there will be unlawful discrimination."*

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

Time limits

234. Section 123 of the Equality Act 2010 provides as follows;

(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.

235. ***British Coal Corporation v Keeble [1997] IRLR 336***, it was held that the Tribunal's power to extend time was similarly as broad under the 'just and equitable' formula. However, it is unnecessary for a tribunal to go through the above list in every case, 'provided of course that no significant factor has been left out of account by the employment tribunal in exercising its discretion'

236. ***(Southwark London Borough v Afolabi [2003] IRLR 220). Robertson and Bexley Community Centre (trading as Leisure Link) 2003 IRLR 434CA*** - there is no presumption that time should be extended to validate an out of time claim unless the Claimant can justify the failure to issue the claim in time. The Tribunal cannot hear a claim unless the Claimant convinces the Tribunal that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule.

237. ***Abertawe Bro Morgannwg University v Morgan [2018] EWCA Civ 640*** - the "such other period as the employment tribunal thinks just and equitable" extension indicates that Parliament chose to give the tribunal the widest possible discretion. Although there is no prescribed list of factors for the tribunal to consider, "factors which are almost always relevant to consider are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the Respondent".

238. The Court of Appeal made it clear in ***Hendricks v Metropolitan Police Commissioner [2002] EWCA Civ 1686***, that in cases involving a number of allegations of discriminatory acts or omissions, it is not necessary for an applicant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken'. Rather, what she has to prove, in order to establish 'an act extending over a period', is that (a) the incidents are linked to each other, and (b) that they are evidence of a *'continuing discriminatory state of affairs'*. The focus of the enquiry should be on whether there was an *"ongoing situation or continuing state of affairs" as oppose to "a succession of unconnected or isolated specific acts".* It will be a relevant, but not conclusive, factor whether the same or different individuals were involved in the alleged incidents of discrimination over the period. An employer may be responsible for a state of affairs that involves a number of different individuals.

239. ***South Western Ambulance service NHS Foundation Trust v King 2020 IRLR 168*** *"non-discriminatory acts alleged to be part of a course of conduct extending over a period cannot form part of a continuing act".*

DISCUSSION & CONCLUSIONS

240. In terms of approach, we decided to determine if there had been breaches of the Equality Act before moving on to determine the time limits question. We noted the dicta in ***South Western Ambulance service NHS Foundation Trust v King 2020***

IRLR 168 prohibited non-discriminatory acts from being part of a "conduct extending over a period" of time.

241. The claimant set out 13 complaints in the list of issues, each complaint is broken down into a number of different complaints. We dealt with this by considering each individual complaint and then reaching a conclusion on the overall general complaint. The majority of the direct discrimination complaints are repeated as harassment complaints; therefore, we considered our conclusions for both of these heads of claim at the same time. Where, a complaint only relates to one head of claim, we have made this clear in our conclusion section.

242. At the outset of our conclusions, we felt it important to set out our views on the witness evidence of the claimant's witness, Ms Olivia Ebanks. Ms Ebanks, written evidence is 12 pages and the vast majority of this relates to matters concerning her own employment history with the respondent. Ms Ebanks provides no direct evidence in relation to the claimant's claims. Ms Ebanks was briefly cross-examined in relation to an employment tribunal claim that she brought against the MoJ in or around 2011. The claim related to complaints of discrimination following the publication of a book without permission. Her claim was ultimately dismissed and the final written warning that had been imposed against her in respect of the publication was found not to have been because of race.

243. The claimant seeks to draw comparisons between her claim and that of Ms Ebanks in what she describes as the discriminatory treatment of black women by the first respondent. However, other than the fact that disciplinary proceedings were brought against Ms Ebanks for the same reasons as the claimant, and the involvement of Ms Carter in reviewing the book, no specific detail was put forward to allow the Tribunal to draw any meaningful comparisons. In light of this we, we agree with the respondents' submissions that Ms Ebanks evidence is largely irrelevant to the claimant's claim.

Direct sex and/or race discrimination (s13, Equality Act 2010)
Harassment related to sex and/or race (s26, Equality Act 2010)

Complaint 1 – Simple Investigation (March/April 2019)

244. The Claimant is a black woman. For the purposes of her race discrimination/harassment claim, she relies on her colour and African-Caribbean ethnicity.

245. We found earlier that whilst the enquiries carried out by Ms Mahoney did not start as a simple investigation, they did ultimately develop into a simple investigation. We repeat paragraphs 66-70 in this regard.

246. From the outset the claimant was informed by Ms Mahoney that the respondent was seeking to clarify whether she had obtained permission for publication of her book. We conclude that it would have made no difference as to whether the claimant was subject to a management enquiry or whether she was subject to a simple investigation, she was ultimately provided the information that was the reason for the enquiry or the fact finding. She would not have been informed at the beginning that there was an allegation against her, that she did not have the requisite permission, as this had not been established. The question initially was who had granted permission. Had the respondent followed the procedure for a simple investigation under PSO 1300, the claimant would not have been entitled to any more information than she was in actual fact provided.

247. We also found earlier that the claimant's book concerned the experiences of black female prison staff and related to the official business of the MOJ, as such in accordance with PSI 28/2013, the claimant required permission to publish.

248. We conclude that the claimant did not have permission to publish her book by virtue of having been giving permission by Governor McLellan-Murray to do her PhD. That permission did not extend to publication of a book, even where that book is accepted to be an easy-read version of her thesis. Furthermore, there was a period of approximately ten years from the start of the claimant's PhD and the Governor's approval before her book was published. PSI 28/2013 came into force 5 years before publication of the book and we do not accept it is reasonable or credible for the claimant to argue that she was reliant on an earlier policy in respect of publication, particularly where such publication was not even contemplated at the time of the Governor's approval

249. The respondent's policy on publications is explicitly clear, on two things, firstly the reference to publications includes books and secondly that the finished text must be sent to the HR policy group for approval.

250. We found earlier that the claimant was fully aware that internal permission was required from HR pursuant to PSI 28/2013 and we repeat our conclusions in paragraphs 24-27 in this regard.

251. The Claimant relies on Dr Bennet, a white male, and Ms Hamer, a white female as named comparators for this complaint. We do not find that Dr Bennet is a materially similar comparator as he obtained permission before publishing his book. In those circumstances, he would not have been subject to a simple investigation or management enquiry. Our conclusions in respect of Dr Bennet apply equally to Complaints 5,6,8,11 and 12.

252. With regard to Ms Hamer, we conclude that the claimant was treated no differently to Ms Hamer. The investigation into Ms Hamer commenced in different circumstances in that the claimant made an allegation of misconduct against Ms Hamer, therefore there would have been no need for any preliminary enquiries prior to the decision as to whether an investigation should be launched. In some respects, the claimant can be said to have been treated more favourably in that preliminary enquiries were carried out before a decision was made to initiate a disciplinary, whereas in Ms Hamer's case Mr Mann's decision was to move straight to a disciplinary investigation based on the seriousness of the allegations that had been made. Our conclusions in respect of Ms Hamer apply equally to complaint 8.

253. During the course of the proceedings, the claimant referred to Mr Simon Shepherd as a white male comparator stating that his book was included on the HMPPS intranet. In response the respondents' submitted that Mr Shepherd was not an appropriate comparator as he was never employed by the respondent and therefore HMPPS policies would not apply to him. We are in agreement with the respondent that based on these facts, Mr Shepherd was not a materially similar comparator.

254. With regard to a hypothetical comparator, we were provided no evidence that someone in the same material circumstances minus the claimant's protected characteristics was treated differently i.e. that they had published a book a book without permission but had not been subject to any enquiry or simple investigation.

255. We conclude that the claimant has not proven facts from which a tribunal could conclude that discrimination has occurred.

256. With regard to harassment, the enquiry/simple investigation was unwanted conduct but there is no evidence that it related to the claimant's sex or race. The claimant may have felt that by carrying out the management enquiry/simple investigation the first respondent had violated her dignity, bullied her, and created an intimidating, hostile and offensive environment, but we find that in all of the circumstances this was unreasonable. We conclude that a reasonable line of enquiry arose relating to whether or not the claimant had permission to publish her book. The enquiry came about as the Permanent Secretary, the most senior civil servant in the Department had endorsed the book and it was a reasonable view to hold that should it transpire that permission for publication had not been obtained this could have the potential to embarrass the Permanent Secretary.

Complaint 2 - Criticise Research (Ms Carter and Ms Grugel)

257. The allegation is that Ms Carter and Ms Grugel criticised the claimant's research in March and May 2019 respectively.

258. Starting with Ms Carter, we do not find that Ms Carter criticised the claimant's research, she simply set out her concerns as to why she felt she could not clear the book for publication. The concerns raised by Ms Carter were not about the research per se but more about clarity of how certain conclusions were reached as well the age of the research and whether as a result the conclusions reached were still present or relevant. We accept Ms Carter's review was not based on the methodology of the book or indeed the subject matter. This is supported by the fact that Ms Carter informed the claimant that she would need to clear the manuscript with the Equalities group given the subject matter.

259. With regard to Ms Grugel criticising the claimant's research, this is essentially that she repeated Ms Carter's concerns and added further criticism citing comments from the NRC. We do not find that in repeating comments Ms Grugel criticised the claimant's research. Ms Grugel was the investigating officer and she was simply putting to the claimant for comment, evidence that she had obtained as part of her investigation.

260. In the list of issues, the claimant relies on a hypothetical comparator for this complaint although in her evidence and submissions she refers to the review of Dr Bennett's book by Ms Carter and contends that she was treated less favourably by Ms Carter. As such we considered both Dr Bennet and a hypothetical comparator for the purposes of this complaint.

261. It is for the Claimant to prove that she was treated less favourably because of her protected characteristics and she presented no evidence that she was treated any differently to Dr Bennett. In respect of Dr Bennet, we repeat our earlier conclusions regarding his suitability as a comparator. No evidence was produced in relation to Ms Carter's review of Dr Bennett's manuscript or whether or not he was referred to the Equalities Team. Equally no evidence was produced that Ms Carter had any concerns in respect of Dr Bennett's manuscript. The fact that permission was granted would suggest that Ms Carter did not have any concerns about Dr Bennett's book. Ultimately, we accept her evidence that she followed the same process that she had been taught in respect of any review of manuscripts and this had nothing to do with race or gender.

262. With regard to a hypothetical comparator, there is simply no evidence to suggest that the claimant was treated worse than anyone not sharing her protected characteristics and in the same material circumstances.

263. We conclude that the claimant has not proven facts from which a tribunal could conclude that discrimination has occurred.

264. With regard to harassment, the concerns set out by Ms Carter and repeated by Ms Grugel could arguably be unwanted conduct as the claimant saw this as criticism but there is no evidence that it related to the claimant's sex or race. The claimant may have felt that Ms Carter and Ms Grugel had violated her dignity, bullied her, and created an intimidating, hostile and offensive environment humiliated or offended but we find that in all of the circumstances this was unreasonable. We conclude that Ms Carter's review and concerns that she set out were reasonable opinions for her to form. The process that she followed was reasonable and she applied this consistently over many years. It is of note that Ms Robinson also shared some of Ms Carter's concerns. We conclude that this supports the reasonableness of Ms Carter's concerns.

Complaint 3 – Inappropriate disclosure of information (various)

2.2.3.1. Ms Morris to Mr Singh-Matharu, Executive Director ("ExD") Ian Blakeman and Ms Stevens regarding the disciplinary investigation into alleged gross misconduct;

265. As a general comment applicable to all specific allegations, we found it difficult to ascertain exactly which information the claimant was referring to in respect of these complaints. These allegations are not set out in sufficient detail in the list of issues and in many instances the claimant failed to put relevant matters to the respondents' witnesses. We note the respondents' equally appears to have had similar issues in addressing such matters in their submissions. In the circumstances, we have done our utmost to cross-reference matters to which we believe the claimant is referring. Where we have been unable to reconcile specific allegations to the evidence, we sought to address this by a general finding in respect of the complaint in question.

266. With regard to Mr Blakeman, it appears that this is reference to correspondence between Ms Morris and Mr Blakeman as to the appropriate appeal authority. Sandra Stevens was Ms Morris' business manager at the time and she was copied into correspondence relating to the arranging of the appeal hearing. During this correspondence Ms Morris appears to be seeking instruction from Mr Blakeman as to the appropriate appeal authority when the suggestion is made that she should deal with the Appeal as Ms Cole's Line Manager. Upon questioning by Mr Blakeman as to what the matter relates to, Ms Morris advises him that it relates to the disciplinary investigation around whether the claimant had the correct permission in place to publish her book. Mr Blakeman and Ms Stevens are copied into Ms Morris' subsequent correspondence to the Claimant confirming Ms Morris would be dealing with the Appeal.

267. We do not find that this was an inappropriate disclosure, Mr Blakeman was the Executive Director in charge of strategy, planning and performance and was in the line management chain of Ms Morris who was a deputy director in Mr Blakeman's directorate. Ms Stevens was Ms Morris' business manager and it is clear from the communication that she was copied in to manage the communications and assist in fixing a date for the appeal hearing. Ms Morris approached Mr Blakeman with a legitimate query regarding the appropriate appeal authority and it was a reasonable and legitimate query from Mr Blakeman as to what the matter related to. The response

from Ms Morris was proportionate, she did not seek to set out any detail from the disciplinary investigation and provided some basic detail. There is nothing to suggest that Ms Morris' disclosure in these circumstances was because of the claimant's sex or race.

268. The disclosure of the F12a Appeal form to Mr Blakeman was deemed to be a breach of data protection by the Information Security team. It was acknowledged and we accept that Ms Morris made a mistake in believing that the form was required to be sent to her line manager rather than the claimants. Mr Blakeman deleted the information upon being advised that this had been sent to him in error. There is nothing to suggest that Ms Morris' disclosure in these circumstances was because of the claimant's sex or race.

269. With regard to Mr Singh- Matharu, this appears to relate to communications relating to the Black History Month and slides that the claimant was asked to remove from her presentation. Mr Singh- Matharu had replaced Ms Morris as Chair for the Event. Prior to handing over to Mr Singh-Matharu, Ms Morris had requested advice from HR relating to the claimant's presentation slides including reference to her book. Mr Singh-Matharu was made aware of the slides by Ms Morris and he was subsequently advised by Mr Bell, the HR case manager to ask the claimant to remove the slides. Mr Bell informed Mr Singh-Matharu that *"it is not clear if HMPPS approval has been given for the claimant's book".*

270. We do not find this to be an inappropriate disclosure, Mr Singh-Matharu was chairing the event and it was reasonable for him to be made aware of the concerns in respect of the claimant's slides. At that time the disciplinary appeal hearing was still ongoing and therefore the concerns relating to the claimant's referencing of her book were legitimate and reasonable.

271. Ultimately, we were not presented with any evidence that the disclosure to Mr Singh-Matharu was made because of the claimant's sex or race.

272. We agree with the respondents' submissions that it is extraordinary that the claimant sought to publicise and reference her book at an event being chaired by the manager dealing with her disciplinary appeal. This action and a number of others, including publicising Mr Manzoni's endorsement and approaching Dr Farrar in an effort to publicise her book, whilst being subject to disciplinary proceedings, show the

claimant's complete lack of insight and a failure to recognise the consequences of her actions. It is a feature of this case throughout that instead of the claimant reflecting on her own actions, she has sought to accuse the respondents' of discriminatory treatment, each time they have sought to challenge her inappropriate behaviour.

2.2.3.2. Ms Tasker to Ms Whatmore on 5 April 2019 in relation to potential reputational damage and by sharing information;

273. No email of 5 April was put to Ms Tasker; however, she was referred to an email of 18 April to Ms Whatmore. The email relates to communication to the claimant asking her to remove a photograph of Mr Manzoni endorsing her book. Ms Whatmore queries with Ms Tasker as to who sent the previous communication to the claimant regarding removal of Mr Heaton's photograph; Ms Tasker confirms it was Ms Mahoney.

274. We do not find this to be an inappropriate disclosure or sharing of information. Ms Tasker was already aware of the disciplinary investigation and Ms Whatmore was simply checking the position re: previous actions around a request to remove Mr Heaton's photograph from social media. The comments around HMPPS being caused reputational damage was not because of the claimant's action or her book but related to Ms Tasker's concerns around the perception of unfairness by others. We were not presented with any evidence that the sharing of information and reputational damage concerns was because of the claimant's sex or race.

2.2. 3.3. Ms Grugel disclosing information to The Open University and to Edward Mellen publishers on or around 4 June 2019;

275. We found earlier that Ms Grugel did not contact Edward Mellen Publishers at any stage, therefore the allegation of discrimination relating to sharing information with them is not proven. With regard to the Open University, there is no evidence that any information was disclosed to them. Ms Grugel did make contact them with as part of the investigation. That was a perfectly legitimate and reasonable enquiry for her to make.

276. We do not find this to be an inappropriate disclosure or sharing of information. Ms Grugel was trying to establish whether the claimant had previously indicated that she was intending to publish a book. We were not presented with any evidence that

contacting the Open University or sharing information with them was because of the claimant's sex or race.

2.2.3.4. Ms Noble disclosing content of C's appeal to Ms Carter;

2.2.3.5. Ms Noble making entries into Case Summary for the Complex and High Profile Case Team on various dates;

2.2.3.6. Ms Noble disclosing C's grievance to DD Wooding on 25 June 2019;

277. We deal with these 3 allegations together as there is commonality in our reasons as to why we dismiss these claims.

278. Ms Noble was a HR caseworker, she provided advice and support and helped facilitate processes. Ms Noble's entries onto the Civil Service HR casework and the escalation of the case as high profile was in line with HR processes and a requirement of her role. Mr Wooding was the Chief People Officer, this was a case that involved allegations that could potentially embarrass the Permanent Secretary, it was more than appropriate and justified for Ms Noble to provide him with updates in respect of the investigation. There was no evidence that Ms Noble shared the content of the grievance with Mr Wooding, she simply appraised him of the fact that a grievance had been submitted relating to the disciplinary.

279. In respect of the disclosure of the contents of the appeal to Ms Carter, we were not taken to the email evidencing this, however, at that time Ms Noble had joined Ms Carter in the High Profile and Complex Case team, Ms Carter was her line manager and even if she had disclosed the contents of the appeal to her this was not an inappropriate disclosure. The team were being asked for advice at that time regarding the suitability of Ms Morris as the appeals officer. It was perfectly legitimate and reasonable for information to be shared by HR professionals, managers and other professionals in such circumstances.

280. In respect of all allegations of inappropriate disclosure of information, we find that all were reasonable management actions and appropriate disclosures. There is nothing to suggest that any of the disclosures were made because of the claimant's sex or race. With regard to a hypothetical comparator, there is simply no evidence to suggest that the claimant was treated worse than anyone not sharing her protected characteristics and in the same material circumstances.

281. We therefore conclude that the Claimant has not proven facts from which a tribunal could conclude that discrimination has occurred in respect of these claims.

6.1.3.3. DD Morris to Ms Rotherforth on 5 March 2021 (harassment)

282. As part of the harassment allegations there were a further 2 complaints of inappropriate disclosure of information. Firstly, in relation to Ms Morris disclosing details of the appeal to Ms Rotherforth. The email of 5 March 2021 is simply Ms Morris advising Ms Rotherforth there is an ICO complaint being pursued by the claimant. Ultimately, Ms Morris advises Ms Rotherforth to seek the appeal outcome letter directly from the claimant due to confidentiality reasons.

283. Ms Rotherforth in her actions was simply acting on the instructions of the CEO, Dr Farrar, who had been sent a grievance predominantly relating to the disciplinary investigation. This was a perfectly legitimate instruction from Dr Farrar to Ms Rotherforth as she was trying to establish whether the grievance was a repeat of matters that had been dealt with on appeal. Ms Morris's response was equally legitimate and appropriate and ultimately the outcome letter was not sent to Ms Rotherforth, showing proportionality in the respondents' approach. We repeat paragraph 279 of our conclusions and dismiss this harassment complaint,

6.1.3.3. DD McKnight to ExD Scott on 16 May 2019 (harassment)

284. Other than Ms McKnight requesting Mr Scott to contact her to discuss the claimant's approach to Dr Farrar requesting a meeting, we were not taken to any evidence as to what if anything was disclosed. We therefore do not find the factual element of this complaint proven and the harassment claim is dismissed as a result.

285. With regard to harassment, the disclosures, where proven, could arguably be unwanted conduct as the claimant did not want these disclosures to me made, but there is no evidence that that these related to the claimant's sex or race. The claimant may have felt that the disclosures violated her dignity and/or created an intimidating, hostile and offensive environment, but we find that in all of the circumstances this was unreasonable. We conclude that the claimant's harassment complaint in respect of inappropriate disclosure of information fails.

Complaint 4 – Making defamatory comments by Ms Grugel.

286. This complaint is only in respect of harassment, it does not include direct sex and race discrimination. The tribunal has no jurisdiction to deal with any defamation complaint, however, we considered whether the comments made by Ms Grugel were discriminatory.

287. We repeat our earlier findings in respect of Ms Grugel's contact in respect of Edward Mellen publishers and the Open University. We do not find her contact with the Open University objectively unreasonable. We do not find that her actions in contacting the open university fell beyond the remit of the ToR. In contacting the University, she was seeking to establish whether reference had been made to the publication of any book. If this had transpired to be the case, this may have been seen as something positive for the claimant's case and her position that permission had already been obtained and was not required. We conclude there was nothing defamatory in asking the Open University questions about the claimant's research application. There is no evidence to suggest that Ms Grugel's actions related to the claimant's sex or race.

288. With regard to Ms Grugel's comment that *"there is significant evidence that approval was denied retrospectively, partly due to the negative impact on HMPPS" before she had interviewed Dr Morgan*", we can see nothing defamatory or untrue in this comment. We agree with the respondents' submissions that this is clunkily worded; however, we conclude Ms Grugel is referencing Ms Carter's comments as to why permission for publication was denied retrospectively. The concerns raised by Ms Carter about the out-of-date sections of the book show the potential for a negative reputational impact on HMPPS as the book did not acknowledge changes or advances as identified by both Ms Carter and Ms Robinson.

289. With regard to harassment, the claimant clearly did not want Ms Grugel to contact the Open University and ask questions about her research application neither did she welcome Ms Grugel's comments about the retrospective refusal of permission. The claimant may have felt that Ms Grugel had violated her dignity, bullied her, and created an intimidating, hostile and offensive environment, but for all of the reasons we set out above, we find that in all of the circumstances this was unreasonable. There is no evidence that that any of these complaints related to the claimant's sex or race and as such the claim of harassment is also dismissed.

Complaint 5 – False Accusations (various)

2.2.5. Make false accusations about the Claimant (**Complaint 5**), in particular;

2.2.5.1. on 5 April 2019 by person unknown;
2.2.5.2. by Ms Noble and Mr Burton;
2.2.5.3. DD Grugel to Director General ("DG") DG Copple and ExD Scott;
2.2.5.4. Ms Noble to Ms Davies and Mr Rawat on 11 April 2019;
2.2.5.5. Ms Noble to DD Hamer on 2 December 2020;
2.2.5.6. Entries into Case Summary for the Complex and High Profile Case Team on various dates;

290. This complaint lacks specificity as to the precise detail of the false accusations; however, we have attempted to reconcile these complaints to the evidence that we heard.

2.2.5.1. on 5 April 2019 by person unknown

291. We were not taken to the relevant email of 5 April 2019 by person unknown and/or it was not put to any of the respondents' witnesses. The factual element of this claim is not proven.

2.2.5.3. DD Grugel to Director General ("DG") DG Copple and ExD Scott;

292. This allegation lacks specific detail; however, we understand that this relates to characterisations in Ms Grugel's investigation report about the claimant being aggressive and confrontational. We do not find that these characterisations were stereotypical or misinformation. Ms Grugel considered the claimant was aggressive and confrontational and this was as a result of the claimant's behaviour in interview. On our reading of the disciplinary interview notes we conclude that the claimant repeatedly challenged Ms Grugel in a confrontational and hostile manner. Whilst Mr Haughton and the claimant do not accept that the claimant was aggressive or confrontational, Ms Grugel clearly did. There is no evidence that Ms Grugel made these comments because of the claimant's race. We accept Ms Grugel's evidence that she would equally have described a white member of staff in the same way had they behaved like that in similar circumstances.

2.2.5.2. by Ms Noble and Mr Burton;

2.2.5.4. Ms Noble to Ms Davies and Mr Rawat on 11 April 2019;

2.2.5.5. Ms Noble to DD Hamer on 2 December 2020;

2.2.5.6. Entries into Case Summary for the Complex and High Profile Case Team on various dates;

293. We deal with these allegations together as there is commonality in our conclusions as to why we dismiss these claims. It is not clear what the false accusations are that Ms Noble and Mr Burton are alleged to have made, however, we repeat paragraphs 274 to 278 in respect of the allegations relating to Ms Noble and Mr Burton who was also a HR caseworker, therefore our general conclusions are equally applicable to him.

294. In relation to Ms Burton, it could be the allegation is that he falsely accused the claimant of refusing to engage with the disciplinary process by suggesting that the claimant was unwilling to use SKYPE to attend the hearing. We do not find that this was a false allegation, the claimant was indeed unwilling, she considered it inappropriate for the hearing to progress remotely and declined to attend on that basis. We found earlier that in addition to the claimant's decision not to proceed by way of remote hearing that her representative, Mr Haughton did not have the technology available to him to attend the hearing remotely. We conclude, Mr Haughton's difficulties and reasons for not being able to attend does not make Mr Burton's comments about the claimant being false.

295. Ms Davies and Ms Rawat were the line managers and/or senior colleagues of Ms Noble and she was keeping them informed about a case involving the Permanent Secretary and something that had been marked by her as high profile. It is perfectly reasonable that line managers are kept informed about matters that junior staff in their team are working on. The claimant did not set out which matters she felt were false accusations or what she found objectionable in these communications. There is no evidence to suggest that any of these communications or actions happened because of the claimant's sex or race.

296. Entries onto the high profile case management system were part of the HR casework system and where these entries were made, the reason for this was the involvement of the Permanent Secretary. This was not unreasonable and we fail to see why the claimant would object to her case being classed as 'high profile'.

297. We find nothing objectionable or false in the email from Ms Noble to Ms Hamer on 2 December 2020. Ms Noble simply advises that she is not sure where Ms Morris is up to with the appeal, however, the present position was, that the claimant did not have permission for the first book. A second book is highlighted as having been referenced in the black history month slides and Ms Noble states it is believed that permission may not have been obtained but that enquiries would be with the claimant.

298. We repeat paragraph 251 in respect of Dr Bennet not being a materially similar comparator and With regard to a hypothetical comparator, there is simply no evidence to suggest that the claimant was treated worse than anyone not sharing her protected characteristics and in the same material circumstances.

299. We therefore conclude that the Claimant has not proven facts from which a tribunal could conclude that discrimination has occurred.

300. With regard to harassment, we conclude that there is no evidence that false accusations were made and therefore the claim for harassment must fail. Even if the claimant did feel humiliated or that the respondent had created an intimidating, hostile and offensive environment, we find that in all of the circumstances this was unreasonable. There is no evidence that that any of these complaints related to the claimant's sex or race and as such the claim of harassment is also dismissed.

Complaint 6 – Breach Policies (various)

301. The claimant alleges the respondent breached policies, in particular: PSI 28/13 (Outside activities), PSL 1300(Investigations), PSL 8010 (Equal Opportunities), PSI 06/2010 (Conduct and Discipline) and PSL 8550 (Grievance Policy). This complaint is solely one of sex and race discrimination and not harassment.

302. We have addressed our findings in respect of the various alleged policy breaches throughout our fact finding. However, there are a number of matters that we provide further comment on.

303. At paragraph 71 we found there was no breach of PSO 1300 in respect of the matter moving to a simple investigation. The claimant was aware of the enquiries and what facts Ms Mahoney was trying to establish. There was no need for any formal Terms of Reference and whilst the policy states it is advisable to make notes, this is not

compulsory. The whole point of a simple investigation is the informal nature of it. The claimant took issue with her line manager not being the one who carried out the investigation. We find the term manager and line management are interchangeable within the policy. Ms Mahoney was the second line manager and in the claimant's line management chain, we do not find her involvement rather than the claimant's direct manager to be a breach of policy.

304. At paragraph 81 we found the appointment of Ms Whatmore as Commissioning Authority and Ms Grugle as investigating officer was not a breach of PSI 06/2010. PSI 06/2010, paragraph 4.10 does not make it mandatory for a line manager to be the commissioning authority, it states that normally a line manager can commission not that they must. In this case there was a concern that the claimant's second and third line managers may be called as witnesses to any disciplinary hearing. In those circumstances, we find it would not have been appropriate for them to be appointed as the Commissioning Authority. Further, due to the seniority of Ms Mahoney and Ms Tasker, it would also have been inappropriate to appoint Mr Robert Bissell, the claimant's line manager as either the commissioning authority or the investigating officer.

305. The respondents' accept and we have found that there may have been some minor infringements of policy, for example delays in progressing the grievances to Mr Copple and the sending of the F12a appeal letter to Mr Blakeman, however, there is simply no evidence to suggest that these infringements took place because of the claimant's sex or race.

306. We repeat paragraph 251 in respect of Dr Bennet not being a materially similar comparator and with regard to a hypothetical comparator, there is simply no evidence that a white male hypothetical comparator would not have been treated in the same way.

307. We therefore conclude that the claimant has not proven facts from which a tribunal could conclude that discrimination has occurred and we dismiss this claim for these reasons.

Complaint 7 – Invading Claimant's Social Media (Ms Mahoney, Ms Whatmore)

308. It was not established in evidence who looked at the claimant's social media. However, once the first respondent became aware of the Linkedin photo of Mr Manzoni endorsing the claimant's book, it was perfectly reasonable appropriate for Ms Whatmore to ask her to remove this, considering the circumstances. Mr Manzoni was the Permanent Secretary for the Cabinet Office at that time and the claimant was seeking to embroil him into the situation. This is another example of the complete lack of self-awareness that the claimant has shown in respect of her actions. Instead of reflecting on her own conduct, she has chosen on every occasion to make baseless and unjustified allegations of discrimination when the respondent has quite rightly challenged her behaviour.

309. There is no evidence to suggest that the claimant's Linkedin was viewed because of the claimant's sex or race. With regard to a hypothetical comparator, there is simply no evidence to suggest that the claimant was treated worse than anyone not sharing her protected characteristics and in the same material circumstances.

310. We therefore conclude that the claimant has not proven facts from which a tribunal could conclude that discrimination has occurred and we dismiss this claim for these reasons.

311. With regard to harassment, the viewing of the claimant's Linkedin was was clearly unwanted and the claimant may have felt that the respondent had created an intimidating, hostile and offensive environment for her, however, we find that in all of the circumstances this was unreasonable. There is no evidence that that any of these complaints related to the claimant's sex or race and as such the claim of harassment is also dismissed.

Complaint 8 – Commencement of the Disciplinary Investigation (May 2019)

312. The disciplinary investigation was commenced because information had come to light that the claimant may not have received permission to publish her book. Permission was required in accordance with the policy as the book related to the official business of the MoJ. Ms Carter had not given her approval at the time the book was published and when Ms Carter was asked to look at approval retrospectively, she did not provide

this. We repeat paragraphs 240 to 252 of our findings and conclusions in respect of the lead up to the disciplinary investigation.

313. Additionally, it had also transpired that the permanent secretary, the most senior civil servant in the department had become embroiled in the situation as he had endorsed the claimant's book. In light of all these factors, we conclude that the commencement of the disciplinary investigation was objectively justifiable and reasonable.

314. The claimant herself in her evidence stated that she had no issue with the disciplinary investigation being commenced but she took issue with how this was managed and conducted.

315. There is no evidence to suggest that the commencement of the disciplinary was because of the claimant's sex or race. We repeat paragraph 252 of our conclusion in respect of Ms Hamer, who the claimant relies on as a comparator for this complaint. Ms Hamer is not a materially similar comparator as she did not publish a book without the requisite permission. Ms Hamer was subject to a disciplinary investigation based on the claimant's allegations against her of discrimination. Ms Hamer was not treated more favourably than the claimant, both were made aware of the allegations in advance of the meetings, both had the opportunity to put forward their positions orally and in writing. We agree with the respondents' submissions that in the claimant's case in attending 6 meetings, she had far more opportunity to put forward her case than Ms Hamer.

316. We repeat paragraph 251 in respect of Dr Bennet not being a materially similar comparator and With regard to a hypothetical comparator, there is simply no evidence to suggest that the claimant was treated worse than anyone not sharing her protected characteristics and in the same material circumstances.

317. We therefore conclude that the Claimant has not proven facts from which a tribunal could conclude that discrimination has occurred and dismiss this claim for these reasons.

318. With regard to harassment, the commencement of the disciplinary proceedings was clearly unwanted and the claimant felt humiliated and embarrassed that she was subject to such proceedings, but we find that in all of the circumstances this was unreasonable. There is no evidence that that any of these complaints related to the claimant's sex or race and as such the claim of harassment is also dismissed.

Complaint 9 – Failure to deal with grievance and uphold grievance/appeals, namely:

2.2.9.1. on 3 June 2019 to DD Tasker, then appealed to ExD Scott;
2.2.9.2. on 3 June 2019, 3 July 2019, 23 October 2019 to DG Copple;
2.2.9.3. on 3 June 2019 to NRC ;
2.2.9.4. on 9 April 2020 to DG Copple;
2.2.9.5. on 22 September 2020 to Acting DD Cole;
2.2.9.6. on 11 January 2021 to second respondent ;

319. We address these allegations together as there is commonality in our reasons as to why we dismiss these claims.

320. The grievance sent to Ms Tasker was carefully considered and the element relating to Ms Tasker's criticism was dealt with. Upon seeking HR advice, Mr Scott decided that the appeal sent to him was more appropriately dealt with as part of the disciplinary appeal.

321. The grievances sent to Mr Copple and the second respondent were essentially matters relating to the disciplinary investigation, which were also being dealt with as part of the disciplinary appeal.

322. With regard to the grievance submitted to the 2nd respondent, the claimant refers to her protected characteristics being removed as well as 45 paragraphs of her grievance complaints. It was not clear exactly what transpired in terms of paperwork but there was no evidence that someone had deliberately removed details of the claimant's protected characteristics from the form. However, once the decision had been made that the only element of the complaint which was not being considered as part of the disciplinary was in respect of the black history month complaint that complaint was highlighted as the only one to be investigated further, the remaining complaints were matters to be addressed by the disciplinary appeal.

323. The grievance relating to the Black History month and removal of the claimant's slides was thoroughly investigated by Mr Mann.

324. The grievance to Ms Cole in relation to Ms Morris' appointment was also appropriately dealt with, HR advice was sought and a response sent to the claimant within a few weeks.

325. With regard to the NRC complaint, it is not clear what the claimant's case is here as the complaint was sent to the NRC not the respondent and the respondent would have no involvement in relation to any decision making in relation to such a complaint.

326. We conclude this was not a case where grievances were simply not dealt with, rather they were dealt with to conclusion or it was considered that the grievances raised were more appropriately dealt with as part of the disciplinary appeal. The claimant may not have agreed with the decisions to defer complaints to the disciplinary appeal or the outcomes of the appeal but that is not the same as the respondents' failing to deal with grievances. In the instances where grievances were not upheld, reasonable and proportionate enquiries/investigations had been carried out and clear justifiable grounds were set out by the respondents'.

327. The claimant has complained about a significant number of senior managers and HR professional becoming aware of the disciplinary case against her and has suggested that this is because the respondents' have shared this information inappropriately between each other. The claimant fails to acknowledge that from the initial enquiries being raised around permission for publication of her book, she has submitted countless grievances' and appeals. Whilst that is her prerogative, she must also accept that in doing so she has brought this matter to the attention of individuals who may otherwise have not been made aware.

328. Even if we accepted that the grievances were not appropriately dealt with or upheld, there is no evidence to suggest that this was because of the claimant's sex or race or that the respondents' would have dealt with these any differently if the complainant was a white male.

329. We therefore conclude that the Claimant has not proven facts from which a tribunal could conclude that discrimination has occurred and we dismiss this claim for these reasons.

330. With regard to harassment, we repeat our conclusions that the claimant's grievances and appeals were dealt with. The claimant may well have felt humiliated and

embarrassed with the outcomes but we find that in all of the circumstances this was unreasonable. There is no evidence that that any of these complaints related to the claimant's sex or race and as such the claim of harassment is also dismissed.

Complaint 10 – Failure to award appropriate 'reward and recognition'

331. There is no evidence that the claimant's SPDR grading was based on anything other than objectively justifiable reasons. Mr Bissell's evidence was detailed in relation to why Ms Mallon, a white female comparator was awarded outstanding. We conclude that Ms Mallon was not a materially similar comparator, she had been leading a complex difficult project and the SPDR rating recognised this. She was also moderated alongside band size 9 peers but at the time was a substantive band 8. In contrast the claimant had areas for improvement and had only been in her role for a period of 6 months. We accept Mr Bissel's evidence that it would be difficult to achieve an outstanding in a new role within 6 months.

332. SPDR ratings were also moderated by a separate panel made up of a number of individuals from various grades and roles. We conclude that this process ensured the review process was equitable, consistent and fair. The claimant was given full opportunity by Mr Bissell to provide further evidence, this was carefully considered and Mr Bissell set out his justification for not changing the SPDR grading. The SPDR grading was reviewed again by Ms Mahoney as part of the grievance and the decision remain unchanged. Essentially there were three separate reviews, one of which was consideration by a panel. In our view that evidences a fair and objective process and there is no evidence that the SPDR grading was because of the claimant's race or sex.

333. The evidence in relation to the claimant's nomination for a reward and recognition award was clarified in the supplementary statement of Mr Bissell and the additional emails evidencing the lodging of the nomination. The claimant along with Ms Mallon, a white female colleague was not nominated for the award in the end following a discussion between Ms Mahoney and Mr Bissell. Ms Mahoney's view, which was ultimately agreed by Mr Bissell is that the claimant and Ms Mallon were simply doing their job and there was nothing special draw out.

334. There is no evidence to suggest that the reason not to nominate was because of the claimant's sex or race. The fact that Ms Mallon, one of the claimant's identified comparators was also not nominated for the same reasons supports the contention

that this had nothing to do with the claimant's race. There is no evidence to suggest that a hypothetical white male comparator would not have also been treated in the same way.

335. Finally with regard to the claimant's application to undertake 'other' employment, the claimant states that she was required to go through the process despite previously not requiring permission. We accept Ms Tasker had not dealt with such an application previously and as a result sought HR advice. HR referred her to the outside activities policy and in light of the ongoing disciplinary advised she would need to consider the proposed subject matter of the lecturing work. Ms Tasker ultimately granted the claimant permission. There is no evidence to suggest that she would not have treated a hypothetical white male comparator in the same way.

336. Shortly after the SPDR, the claimant was granted a temporary promotion from band 8 to band 9, which counteracts her argument that she was not appropriately rewarded or recognised by the first respondent.

337. We therefore conclude that the Claimant has not proven facts from which a tribunal could conclude that discrimination has occurred and we dismiss this claim for these reasons.

338. With regard to harassment and the reward and recognition award, the claimant was not aware that Mr Bissell had completed a nomination form for her nor that ultimately this was not submitted. She could not have felt humiliated or embarrassed at the time as she sets out in her evidence. She may well have felt embarrassed and humiliated with her SPDR rating and requiring to obtain permission for lecturing, however, we find that in all of the circumstances it was unreasonable for her to feel this way. There is no evidence that that any of these complaints related to the claimant's sex or race and as such the claim of harassment is also dismissed.

Complaint 11 – Misusing Claimant's intellectual property by sharing of book

339. The tribunal does not have jurisdiction to deal with any intellectual property complaint, however, in terms of discrimination there is no evidence to suggest that the claimant's book was shared was because of the claimant's sex or race. In all instances that the book was shared, this was a justified management action relating to the permission for

publication and the resulting disciplinary investigation. There is no evidence that the book was shared for any other reason not related to these legitimate reasons.

340. We repeat paragraph 251 in respect of Dr Bennet not being a materially similar comparator and With regard to a hypothetical comparator, there is simply no evidence to suggest that the claimant was treated worse than anyone not sharing her protected characteristics and in the same material circumstances.

341. We find that this is a bare allegation of sex and race discrimination, we therefore conclude that the Claimant has not proven facts from which a tribunal could conclude that discrimination has occurred and we dismiss this claim for these reasons.

342. With regard to harassment, the claimant did not want her book to be shared, however, we fail to see how she felt that this violated her dignity or created an intimidating, hostile and offensive environment. Even if she did, we find that in all of the circumstances this was unreasonable. There is no evidence that that any of these complaints related to the claimant's sex or race and as such the claim of harassment is also dismissed.

Complaint 12 – Excluding the Claimant from the intersectionality toolkit and events

343. There is no evidence that the claimant was excluded from the intersectionality toolkit and events. The claimant accepted in evidence that she did not request to be included in the event. She also confirmed in cross examination that her complaint centres on the list of reference materials at the end of the intersectionality toolkit material. The claimant asserts that her book should have been included in the list, despite her book not being approved for publication. In such circumstances, we agree with the respondent's submissions that it would not have been appropriate to include her book on the list.

344. There is no evidence to suggest that the claimant's book not being on the list or her not being asked to be part of the intersectionality event was because of her sex or race, particularly in light of the fact that the list of authors included several black women.

345. We repeat paragraph 251 in respect of Dr Bennet not being a materially similar comparator and With regard to a hypothetical comparator, there is simply no evidence

to suggest that the claimant was treated worse than anyone not sharing her protected characteristics and in the same material circumstances.

346. We therefore conclude that the claimant has not proven facts from which a tribunal could conclude that discrimination has occurred and we dismiss this claim for these reasons.

347. With regard to harassment, we repeat our conclusions that the claimant was not excluded from the event. The claimant may well have felt humiliated and embarrassed that her book was not on the list but we find that in all of the circumstances this was unreasonable. There is no evidence that that any of these complaints related to the claimant's sex or race and as such the claim of harassment is also dismissed.

Complaint 13 – Sharing misinformation about Claimant, in particular:

13.1. emails between ExD Caddle and Ms Robinson in relation to permission for research and ancillary matters on 24 October 2019;
13.2. emails from DD Grugel to ExD Scott in relation to grievance on 23 May 2019;
13.3. stereotypical characterisations of the Claimant which have been passed to other colleagues in October 2019;
13.4. Griffiths email to ExD Scott and others in March 2019 ;
13.5. Email from Mr Bissell to DD Tasker dated 11 September 2019.

348. Based on our findings earlier, we conclude that no misinformation was shared about the claimant. In respect of the emails between Ms Caddle and Ms Robinson, these relate to an approach by the claimant to Ms Caddle in respect of sponsorship for a research project. The claimant does not point to any specific misinformation in these emails; however, she instead speculates that misinformation may have taken place as Ms Caddle was aware of the some of the background. In light of this, we do not find any misinformation was shared in relation to this particular matter.

349. With regard to Ms Grugel's email to Mr Scott on 23 May 2019, we were not taken to the relevant email and it is unclear which grievance the claimant is referring to as she did not submit her grievance to Mr Copple until 3 June 2019. The respondents' set out in their submissions that the only reference in the claimant's witness statement to Ms Grugel and misinformation relates to Ms Grugel's comments surrounding the

claimant's application to the NRC. If this is what the claimant is referring to as misinformation, then we do not find Ms Grugel's comments were misinformation.

350. The respondents' accept that in her investigation report Ms Grugel sets out that the NRC had refused the claimant's application to carry out the research, which was essentially taken from the information that had been collated from the NRC. As such we do not accept that this was misinformation. In respect of Ms Grugel's comments that the NRC was in existence at the time of the claimant's research, the respondents' accept that this was an error. We agree with the respondents' submissions that at the time there was a predecessor body in existence and to refer to that body as the NRC made no material difference to the matter being investigated, it was an error rather than misinformation. Furthermore, this incorrect reference did not result in any detriment to the claimant and nor was the error because of her race or sex.

351. With regard to stereotypical characterisation of the claimant, we repeat our conclusions in paragraph 287 above in that this allegation lacks specific detail and we conclude that there was no evidence of any stereotypical characterisations of the claimant.

352. We conclude that there is no misinformation in Mr Griffith's email to Mr Scott and others in March 2019. Mr Griffith's email follows an approach to his team regarding the claimant's request to use the MoJ atrium for a book launch. The email is followed by an email from Ms Duffin stating that the Permanent Secretary had endorsed the claimant's book having received assurances from the claimant and HMPPS regarding clearance. Whilst this position was subsequently clarified during the disciplinary investigation, in that neither the claimant nor anyone else at HMPPS had given assurances about the book, this does not equate to Mr Griffith's email containing misinformation.

353. We conclude that there was no misinformation in Mr Bissell's email to Ms Tasker when he stated that, in making her application for compressed hours, the claimant had advised him that she had no intention to pursue outside activities when applying for compressed hours. We found earlier that the claimant had indeed advised Mr Bissell of this.

354. There is no evidence to suggest that any of these actions were because of the claimant's sex or race.

355. With regard to a hypothetical comparator, there is simply no evidence to suggest that the claimant was treated worse than anyone not sharing her protected characteristics and in the same material circumstances.

356. We find that this complaint is another bare allegation of sex and race discrimination and as such we conclude that the claimant has not proven facts from which a tribunal could conclude that discrimination has occurred and we dismiss this claim for these reasons.

357. With regard to harassment, we repeat our conclusions that these complaints were not the sharing of misinformation. The claimant may have felt that the respondents' had violated her dignity, bullied her, and created an intimidating, hostile and offensive environment, but for all of the reasons we set out above, we find that in all of the circumstances this was unreasonable. There is no evidence that that any of these complaints related to the claimant's sex or race and as such the claim of harassment is also dismissed.

Victimisation

Protected Acts

358. The claimant raises 4 protected acts:

1. Did Dr Morgan do a Protected Act when she submitted grievance 1/01/2021 to CEO Dr Farrar based on gender and/or racial discrimination, harassment, victimisation?

2. Did Dr Morgan do a Protected Act when she submitted grievance – 03/06/2019 to DG Copple?

3. Did Dr Morgan do a Protected Act when she submitted grievance – 03/06/2019 to DD Tasker and grievance appeal to Exe Dir Scott?

4. Did Dr Morgan do a Protected Act when she submitted a grievance appeal 21/06/2021 to Dir Mann?

359. All protected acts are accepted by the respondent save for the date in relation to the grievance appeal to Mr Mann, which was submitted on 28 June 2021. Rectifying the date error, we find all 4 matters relied upon amount to protected acts.

360. With regard to the date of the first protected act, the claimant submits this took place on 3 June 2019, therefore any complaints that took place before this cannot be said to have happened because of the protected act. This therefore excludes complaint 1 relating to a 'simple investigation' which took place in March/April 2019, parts of complaint 7, relating to the invasion of the claimant's social media, which took place in April 2019 relating to the removal request for John Manzoni's photo and complaint 8 relating to the start of the disciplinary investigation which commenced in May 2019.

361. With regard to the remaining complaints, we went on to consider the causal link to any of the alleged protected acts.

Complaint 7

362. We repeat our conclusions in paragraphs 299 to 301 above in respect of the complaint relating to Ms Whatmore and Ms Mahoney. With regard to Ms Cole, whilst she accepts that she did look at the claimant's social media, she sets out her clear justification for doing so. Ms Cole accessed the claimant's social media as she was trying to understand if there was any difference in a thesis and/or book and was trying to understand how the claimant referenced this. Ultimately, Ms Cole decided to take no action against the claimant and one of the reasons for this was that she accepted the claimant may have reasonably inferred from permission to undertake the research that publication would be approved. There is no evidence that any detriment was suffered by the claimant as a result of Ms Cole accessing her social media in fact, she potentially benefited from this.

363. The claimant's social media was publicly accessible and the respondents' did not take any additional steps to gain access. We conclude the accessing of the claimant's social media was a reasonable management action on both occasions.

364. In any event, even had we found this, the claimant did not put forward any evidence or put to Ms Cole, Ms Whatmore or Ms Mahoney the basis on which she says that her social media was invaded because of one or more of her protected acts.

365. We conclude that the Claimant has provided no evidence with respect to a causal link with any of the alleged protected acts, for this reason this complaint is dismissed.

Complaint 9 – not dealing with grievances and appeals

366. We repeat our conclusions in paragraphs 307 to 314 above in respect of this complaint, we do not find that the respondent did not deal with grievances and appeals. In any event, even had we found this, the claimant did not put forward any evidence, or put to the respondents' witnesses, the basis on which she says that her grievances and appeals were not dealt with because of one or more of her protected acts.

367. If the claimant is suggesting that the causal link is her first grievance and that any grievance or appeal that came thereafter was because of her first protected act, she simply put forward no evidence to support this, for this reason this complaint is dismissed.

Complaint 12 – excluding from research projects

368. We repeat our conclusions in paragraphs 326-329 above in respect of this complaint, we do not find that the respondent excluded the claimant from research projects. In any event, even had we found this, the claimant did not put forward any evidence, or put to the respondents' witnesses, the basis on which she says that she was excluded from research projects because of one or more of her protected acts.

369. We conclude that the Claimant has provided no evidence with respect to a causal link with any of the alleged protected acts, for this reason this complaint is dismissed.

Complaint 13 – sharing misinformation

370. We repeat our conclusions in paragraphs 330 to 338 above in respect of this complaint, we do not find that the respondent shared misinformation. In any event, even had we found this, the claimant did not put forward any evidence, or put to the respondents' witnesses, the basis on which she says that misinformation about her was shared because of one or more of her protected acts.

371. We conclude that the Claimant has provided no evidence with respect to a causal link with any of the alleged protected acts, for this reason, this complaint is also dismissed.

Time Limits

372. As we have concluded that none of the claims were discriminatory acts, there can be no continuing course of conduct, as such all claims prior to 16 December 2020 are also out of time. This is the vast majority of claims save for the grievance in January 2021 and the actions thereafter as well as complaint 12, excluding the claimant from research projects. We have already dismissed these claims for the reasons set out above.

373. We reminded ourselves that the discretion to extend time should only be exercised in exceptional circumstances. Other than the claims being a continuing act from 24 March 2019, the claimant made brief submissions that it would be just and equitable for the tribunal to extend time as the internal process was long and protracted and the respondent had refused to hear her grievances. Mr Mann had also advised her that any issues should be dealt with at the Employment Tribunal and the respondent would not deal with these matters.

374. We considered the evidence specifically in respect of matters which may be relevant to the issue of extending time and note the claimant's submissions. We note the claimant raised a number of grievances throughout the disciplinary proceedings complaining of unfair treatment and discrimination for the same matters which she subsequently raised in an employment tribunal claim. We found no evidence suggesting that the claimant was prevented in any way or otherwise struggled to bring her claim within the time limits. Having previously brought employment tribunal proceedings she was well aware of the process. The majority of the claims are many months out of time, in some cases almost 2 years.

375. In light of all these factors, had we not dismissed all claims that took place before 16 December 2020, we conclude that it would not have been just and equitable to extend time.

Employment Judge Akhtar

23 May 2024

Sent to the parties on:

23 May 2024

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For the Tribunal Office:

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Note

Public access to employment tribunal decisions

Judgments (apart from judgments under rule 52) and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the Claimant(s) and respondent(s) in a case.