EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4104310/2023

Held in Glasgow on 29, 30 & 31 July 2024 and 1, 2, 5, 6, 7 & 8 August 2024

Employment Judge McCluskey

Members A Matheson and P O'Hagan

Mr D Karadaglic	**Claimant** **Represented by:** **Mr P Ward - Counsel**
Glasgow Caledonian University	**Respondent** **Represented by:** **Mr M Briggs - Counsel**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous judgment of the Tribunal is that:

1. The complaint of unfair dismissal is not well founded and is dismissed.

2. The complaint of automatic unfair dismissal for making protected disclosures is not well founded and is dismissed.

3. The complaint of discrimination arising from disability is not well founded and is dismissed.

4. The complaints of failure to comply with the duty to make reasonable adjustments are not well founded and are dismissed.

5. The complaint of indirect disability discrimination is not well founded and is dismissed.

6. The complaint of direct sex discrimination is not well founded and is dismissed.

7. The complaint of failure to pay equal pay is not well founded and is dismissed.

8. The complaints of victimisation are not well founded and are dismissed.

REASONS

Introduction

1. The claimant brings complaints of ordinary unfair dismissal, automatic unfair dismissal for making what he says are protected disclosures, discrimination arising from disability, failure to comply with the duty to make reasonable adjustments, indirect disability discrimination, direct sex discrimination, equal pay and victimisation. These are resisted by the respondent.

2. At a public preliminary hearing on 30 January 2024, the claimant was found to be a disabled person by reason of the impairment of vertigo.

3. At a previous case management hearing it had been decided that this final hearing would determine liability only. The claimant is seeking reinstatement or re-engagement. The respondent requested that the Tribunal also hear evidence and make findings in fact about reinstatement or re-engagement. The claimant had no objection, and we agreed to this course of action.

4. The claimant gave evidence on his own behalf. For the respondent we heard evidence from Ms Lindsey Smith - Senior People Services Adviser; Professor Scott McMeekin – Vice Dean, School of Computing, Engineering and Bulit Environment; Ms Susan Mitchell – Chief Operating Officer; Ms Fiona Campbell – Vice Principal People and Student Wellbeing (the dismissing manager); Professor Andrea Nelson- Pro Vice Chancellor for Research, (dismissal appeal manager) and Professor Sheila Smith - Head of Applied Science (line manager).

5. There was a joint bundle of productions extending to 1573 pages. We were invited by parties to pre-read some key documents in the bundle before hearing evidence. We did so during the first morning of the hearing. We reminded parties at the outset of the hearing that we would only consider the parts of documents to which we were taken during evidence by the parties.

Issues

6. The parties had agreed a list of issues in advance of the final hearing. They confirmed at the outset of the hearing that these were the final list of issues for determination by the Tribunal. The agreed final list of issues is as follows:

7. *Ordinary unfair dismissal.* The agreed issues identify two questions: whether the claimant was dismissed for a potentially fair reason namely "sosr" and if a potentially fair reason is established, whether the dismissal is fair or unfair having regard to the test set out in section 98(4) Employment Rights Act 1996 (ERA). It was also agreed that we would make findings in fact to deal with the issue of whether it would be reasonably practicable to reinstate or reengage the claimant's employment if his dismissal is determined unfair.

8. *Automatic unfair dismissal under section 103A ERA.* In the agreed issues the claimant relies on a number of what he says are protected disclosures namely (a) his email on 13 June 2019; (b) his complaint to the Scottish Public Services Ombudsman on 11 June 2020; (c) his comments at the meeting on 14 July 2020; (d) his complaint on 8 September 2020; and (e) his appeal on 1 September 2022. At a case management hearing on 10 October 2023, Mr Ward confirmed that the claimant makes no complaint of detriment, and the complaint is confined to automatic unfair dismissal. This was reflected in the final list of issues.

9. *Discrimination arising from disability.* At the public preliminary hearing on 30 January 2024, the claimant was found to be a disabled person by reason of the impairment of vertigo. The relevant period was found to be from 17 January 2023 to 13 March 2023. In closing submissions at this final hearing, the respondent confirmed that knowledge of the claimant's disability of vertigo at the relevant time was not disputed. The "something arising" in consequence of the claimant's vertigo was identified in the final list of issues as the claimant's "conduct". The unfavourable treatment relied upon in the final list of issues is (a) the claimant's dismissal; and (b) inviting the claimant to a formal meeting via the letter dated 1 September 2022.

10. *Failure to comply with the duty to make reasonable adjustments.* The final list of issues identifies the provision, criterion or practice (PCP) for this complaint as "the respondent's activation of the process in its letter dated 1 September 2022". In closing submissions at this final hearing, the respondent confirmed that it was not disputed that this amounted to a PCP for the purposes of this complaint. The substantial disadvantage identified in the final list of issues is that the claimant "was less able to deal with pressures such as the increased workload and disciplinary or quasi disciplinary procedures". The question of knowledge of this substantial disadvantage was not conceded.

11. The adjustments proposed by the claimant in the final list of issues are (a) moving him to another department; (b) changing his duties to include less stressful tasks such as research and/or administration; (c) reducing his workload; (d) providing additional support; and (e) reducing his working hours.

12. *Indirect disability discrimination.* The PCP identified in the final list of issues is the same as for the reasonable adjustments' complaint, namely "the respondent's activation of the process in its letter dated 1 September 2022". No particular disadvantage was identified by the claimant in the final list of issues.

13. *Direct sex discrimination.* The less favourable treatment identified in the final list of issues is the claimant "having to work increased hours and have more duties imposed on him by the respondent". The claimant relies on an actual comparator, Kate McAulay.

14. *Equal pay.* The final list of issues narrated: Does the sex equality clause (Equality Act 2010 s.66(2)) apply? (in other words, was there a term of the claimant's less favourable to him than a corresponding term of his comparator, Kate McAulay?). If so, was the difference due to a material factor.

15. *Victimisation.* The protected acts relied upon by the claimant are the same as those relied upon as protected disclosures for the automatic unfair dismissal complaint. The incidences of detrimental treatment relied upon by the claimant in the final list of issues are (a) he was instructed to attend a formal

hearing on 1 September 2022; (b) there were no adjustments to attend that hearing; (c) the hearing proceeded in his absence; (d) he was dismissed.

Findings in fact

Background

16. The claimant commenced employment with the respondent on 2 July 2012 as a Lecturer in Electronics/Instrumentation Engineering. Latterly, the claimant was employed as a Lecturer (Grade 7) working full-time (35 hours per week). His salary was £52,841 per annum. The claimant is male.

17. The claimant worked in the School of Computing, Engineering and Built Environment (SCEBE). There are three schools within the respondent. SCEBE is one of the three schools. Each school has its own School Management Group (SMG). The claimant's employment ended on 13 March 2023.

18. The claimant's comparator Ms Kate McAulay was also employed as a Lecturer (Grade 7) in SCEBE, working full-time (35 hours per week). Her salary was also £52,841 per annum.

19. Workload and class allocation for academic staff in SCEBE was done by Professor Sheila Smith in her capacity as Head. The workload and class allocation for individual staff members each year depended on any additional duties carried out by the individual staff member, any research grant work carried out by the individual staff member and the teaching needs of the respondent.

20. In the last academic year of the claimant's employment, the claimant had around 205 teaching hours and Ms McAulay had around 159 teaching hours. Ms McAulay's teaching hours were less than the claimant because she had taken on an additional role as project coordinator for the forensic investigations' degree and because of the amount of research grant work she was doing. Her teaching allocation had been adjusted accordingly.

21. In the last academic year of the claimant's employment, the claimant and Ms McAulay had the same script marking workload.

22. The claimant was a disabled person during the relevant period (17 January 2023 – 13 March 2023) because of his vertigo. The claimant's attacks of vertigo usually last approximately 6 weeks. During that time, he experiences feelings of sickness. He has problems in keeping balance while walking. He also has attacks of claustrophobia and agoraphobia. He cannot drive his car. He cannot travel on the underground as he cannot cope with the confined noisy spaces. (judgment of EJ Doherty promulgated on 26 February 2024).

13 June 2019 email

23. On and around 31 May 2019 the respondent hosted an event organised by a third party, which the claimant attended. The event was stated to be to mark 'White Armband Day', a supposed event in the Bosnian town of Prijedor on 31 May 1992.

24. The claimant made a complaint to the respondent about its hosting of the event. He emailed the respondent on 13 June 2019. The claimant wrote *"The incident which is supposed to be commemorated by White Armband Day almost certainly never happened".* He went on to explain how he had reached that conclusion. The claimant said that the hosting of the event breached the respondent's Dignity at Work and Study policy (page 455), He referred to the aims of the policy to ensure there was no discrimination against *"all potential and current staff, students and other stakeholders"* on the grounds of any protected characteristics. He wrote *"I strongly believe that by publishing and spreading these false claims about the ethnic group to whom I belong, you are in breach of the Dignity at Work and Study policy particularly point 4.7 which says; 'All staff.... others using the University's premises.....have a responsibility to promote equality and value diversity, to eliminate unlawful discrimination and promote good relations between different groups'".* He referred to a section of the policy which said that the respondent was committed to ensuring; *"an inclusive and supportive environment which promotes good relations between different groups".* He said *that "Even if the*

White armband story were true, I do not believe it would promote good relations between groups. Nevertheless, as a scientist I would always defend the right of individuals to tell the truth. If it is untrue, I cannot see how spreading it can possibly promote good relations between different ethnic groups" (page 458). The claimant wrote that *"... this seems to me a very important issue and I am committed to resolving it by establishing the truth of the matter".*

25. The claimant's complaint was investigated by the respondent under its Complaints Handling Process.

26. On 13 February 2020 Jan Hulme, University Secretary and Vice Principal Governance reported to the claimant that his complaint about the White Armband Day had not been upheld. She provided reasons in her response.

Promotion application

27. On or around 1 August 2019 the claimant applied for promotion to Senior Lecturer. The outcome of his application was confirmed in a letter from the School Management Group (SMG) of SCEBE dated 4 October 2019. His promotion application was unsuccessful. The outcome letter said the claimant needed to work on building an independent research profile and improving his interaction with students in lectures, to support his promotion application.

28. Applicants for promotion are entitled to apply directly to the University's Academic Promotions Panel (UAPP), even when their application is not supported by the SMG. The claimant applied to the UAPP. In a letter dated 2 December 2019 he was notified that his promotion application was unsuccessful. The outcome letter dated 2 December 2019 set out where further work was required to support promotion, including in research output. The claimant appealed that decision on 20 December 2019.

29. The outcome to the claimant's appeal on 20 December 2019, against the UAPP decision, was provided 15 June 2020. His appeal was unsuccessful. The respondent upheld the decision of the UAPP.

30. The claimant made a further application for promotion in a subsequent promotion round. His application was unsuccessful for the same reasons as is his August 2019 application. The claimant appealed against the decision. The promotions policy directed that any appeals be sent to Ms Susan Mitchell. Her name was listed as the addressee on the promotions policy in her (then) capacity as a member of the respondent's HR team. Ms Mitchell played no part in the decision making about the promotions process or appeals for any applicants. She cannot do so as she is not an academic.

11 June 2020 complaint to SPSO

31. On around 11 June 2020 the claimant escalated his concerns about the White Armband Day event by making a formal complaint to the Scottish Public Services Ombudsman (SPSO). He repeated the complaints he made to the respondent on 13 June 2019.

32. The claimant asked the SPSO to review the decision of the respondent, recommend disciplinary action against the organisers of the event and for the respondent to issue a public apology. On 23 June 2020 the SPSO wrote to the claimant. The SPSO said it did not consider that they could prevent such events from being held and for that reason would not investigate the complaint further.

14 July 2020 meeting

33. On 14 July 2020 the Claimant met with Professor Scott McMeekin and Professor Sheila Smith. In the meeting the clamant said he believed the School Management Group (SMG) were biased against him in refusing his application for promotion to Senior Lecturer and that the SMG was racist; he believed he had been discriminated against in his application for promotion as he was a "white male Christian"; and that he believed staff were promoted based on their gender, being female, or for being from an African ethnic background.

34. Professor McMeekin emailed the claimant on 13 August 2020 setting out what the claimant had said in the meeting and the procedure if the claimant wished to make a formal complaint.

8 September 2020 complaint

35. On 8 September 2020 the claimant made a formal written complaint about his unsuccessful promotion application. His grounds of complaint extended to three pages and covered eight matters. He asserted that (i) the promotion process was conducted in a non-transparent fashion and was racially biased; (ii) his line manager, Professor Sheila Smith refused to discuss promotion with him; (iii) at his Personal Development Annual Review (PDAR) meetings his line manager made accusations about his feedback from anonymous student surveys which he could not address effectively; (iv) his application was not seriously considered, with the promotion panel putting all the weight on what was missing from his application; (v) the respondent led a racist campaign against the ethnic group to which he belongs (the White Armband Day event organised by the charity Remembering Srebrenica) which has had negative consequences on him at a personal and professional level; (vi) the student surveys are the main problem in the promotion process; (vii) he had been told he is unlikely to meet the promotion criteria in the next promotion round; and (viii) he received no recognition in his promotion application for the work he had done on updating teaching modules. In his written complaint he provided details which he said supported each of the allegations which he was making.

36. The complaint was investigated under the respondent's Staff Conflict and Complaints Resolution Policy. An investigation report was prepared dated 24 November 2021.

37. On 8 August 2022 the panel met to consider the complaint. The panel was chaired by Ms Susan Mitchell (who was now the Chief Operating Officer). There were two other panel members. The claimant attended the meeting with his trade union representative.

38. The claimant's complaint about his unsuccessful promotion application was not upheld. The claimant was notified by letter dated 25 August 2022. The

complaints panel wrote the following in the concluding summary to the letter *"The Panel observed your clear distress in relation to your perception that the British society, at large, is racist and specifically anti- Serbian. It was apparent from your interactions at the Hearing and confirmed by participants that these feelings are deeply held and appear to be materially influencing your judgment on a range of matters, including your unsuccessful promotion application and perception of management failings at the University. The Panel searched very carefully to identify any specific examples of racism, however from the evidence presented at the Hearing, the Panel found no evidence to support your allegations and inferences of racism or racially motivated behaviour towards you".*

39. The complaint panel also made the following recommendations in their letter *"The Panel is very concerned by your perception and strong belief that the University is racially biased against you. It appears likely that the relationship of trust and confidence between you and the University has been seriously damaged and could well have broken down irretrievably. As such, the Panel will now refer this conclusion back to People Services Management for review and consideration".*

1 September 2022 appeal

40. On 1 September 2022 the claimant appealed the outcome of his complaint about his unsuccessful promotion application. The claimant reiterated the points he had made in in his complaint of 8 September 2020 about his unsuccessful promotion. He did not refer to the White Armband Day event in his appeal.

41. The respondent advised the claimant that they had decided to pause his appeal until the formal process about his continued employment was completed.

Dismissal process

42. By letter dated 1 September 2022 the respondent invited the claimant to attend a formal hearing. The letter set out an allegation that the relationship

of trust and confidence between the claimant and the respondent had been seriously damaged and could well have broken down irretrievably due to the language and behaviours of the claimant. The respondent viewed the claimant's language and behaviours as wider than a conduct issue.

43. The invite letter set out the following communications written by the claimant which caused the respondent concern that the relationship had broken down irretrievably: (i) *"I am finding the statement of Promotion Panel, not only cynical, but also racist, as it is too close to the claim of the architect of the Holocaust Heinrich Himmler, who in his platform for the nazi "Drang Nach Osten!" move wrote that Slavs are "leaderless work force . . . and be called upon the strict, consistent, and fair direction of the German people, to help in the construction of its eternal cultural deeds and monuments…"* (email from the claimant on 10 March 2022 submitting his appeal against his unsuccessful promotion application); (ii) *"…Sheila Smith, since she is lacking managerial skills…I worked in the past with bad managers, but never under so bad. I have never met so untalented scientist, as she is…that is absolutely idiotic…It beggars belief that she is a professor"* (email on 11 March 2022 from the claimant to Professor Mike Mannion); (iii) *"She [Professor Smith] is under extreme influence of sociopath Professor Scott McMeekin"* (email from the claimant on 11 March 2022 to Professor Mannion); (iv) *"Professor McMeekin has tendencies to abuse people for his own benefit, and that was clear in the case of [the former colleague], who after long history of abuse left university"* (email from the claimant on 11 March 2022 to Professor Mannion); (v) *"It looks like it was easier for a Jewish person in Nazi Germany to get academic institutional legal help…"* (email from the claimant on 4 July 2022 to Ms Natalie Moyes).

44. The invite letter set out the communications written by the claimant about the former colleague and the respondent's concern about the claimant's continued assertions of nefarious practices by the respondent, despite an explanation that the matter was confidential, and the individual chose to resign: (i*) "In the process [the former colleague] was called as a witness after which he disappeared without saying a word, and the only thing we know is*

that he does not work at the university any more" (email from the claimant on 10 March 2022); (ii) *"In late February 2022 we were informed that [the former colleague] retired from the university due to ill health. [the former colleague] is too young to be retired, he was known to be of extremely good health, and this is all very suspicious and needs to be investigated. In normal societies people do not disappear like that"* (claimant's written submission to the complaints panel); (iii) *"Immediately after the interview of a witness in the case, whom I proposed, he disappeared and went completely incommunicado"* (email from the claimant to Ms Moyes on 4 July 2022); (iv) *"[the former colleague] mysteriously disappeared from the university, shortly after giving very precious evidence in this case"* (email from the claimant on 4 August 2022 to Ms Moyes).

45. The invite letter also set out as follows: *"In addition you sent an inappropriate email to a student on 9 May 2022 when you had been specifically instructed by Professor Mannion at a meeting not to contact the student. Of particular concern was your statement 'I am finding that personally disgusting and very cowardly, and since I am not coming from the same culture, very racist'. Your action has negatively impacted GCU's reputation with Howdens and is potentially a reputational risk for the University. On 26 August 2022 you sent a follow up email to Professor Mannion on this matter making comments about the student's email as follows 'malicious, full of half truths and obvious lies' ".*

46. The invite letter stated that the fact of the claimant *"raising allegations of racial bias has had no bearing whatsoever on the decision to progress to a formal hearing".*

47. The invite letter stated that one outcome of the hearing could be his dismissal. The hearing was scheduled to take place on 9 September 2022. The claimant was notified of his right to be accompanied at the hearing and provided with copies of the documentation that would be referred to at the hearing, including the claimant's emails referred to in the invite letter.

48. The claimant asked for the hearing to be rescheduled as he would be abroad on 9 September 2022. The hearing was re-scheduled for 29 September 2022. The claimant reported unfit for work on 27 September 2022 and said he was unable to attend the hearing on 29 September 2022 due to sickness. The hearing did not go ahead.

49. The claimant was referred to the respondent's Occupational Health (OH). The claimant met with OH (via telephone) on 12 October 2022. The report noted that the claimant was currently unfit for work and had received a letter that day confirming his diagnosis of type 2 diabetes The claimant's GP produced a medical report to the respondent confirming the type 2 diabetes diagnosis.

50. The claimant returned to work on 18 December 2022.

51. The claimant met with OH again (via telephone) on 17 January 2023. OH said the claimant was fit to remain at work, having returned on 18 December 2022. OH said the claimant was fit to attend a hearing to consider whether there had been an irretrievable breakdown in trust and confidence in the claimant's employment relationship with the respondent, the outcome of which could be the claimant's dismissal.

52. In a letter dated 9 February 2023 the respondent invited the claimant to a rescheduled hearing on 13 February 2023. The claimant had previously confirmed he was available to attend a hearing on that date. The claimant went on sick leave on 10 February 2023. He provided a fit note from his GP for a three-week period. The respondent told the claimant that the hearing would go ahead, as arranged with him, on 13 February 2023. The claimant was told that the hearing had been postponed since September 2022 and the respondent wished to make progress. The claimant had been back at work, had been certified by OH as fit to be at work and attend the hearing and the claimant had confirmed his availability to attend on 13 February 2023.

53. The claimant was told that if he was unable to attend the hearing on 13 February 2023 in person, he could attend by way of Microsoft Teams or make a written statement. The claimant was encouraged to seek support from his trade union representative.

54. The hearing took place on 13 February 2023, as notified to the claimant. The claimant did not attend or make a written statement. The hearing was chaired by Ms Fiona Campbell, Vice Principal People and Student Wellbeing. There were two other panel members. The panel discussed the claimant's language and behaviours as set out in in the invitation letter. No outcome decision was reached at the hearing. The respondent decided to give the claimant a further opportunity to provide a written statement before the respondent reached its decision.

55. The claimant provided a written statement with supporting documentation (21 appendices) on 1 March 2023. The panel reconvened on 10 March 2023 to deliberate on the allegations against the claimant and his response in his written statement and supporting documentation.

Dismissal outcome

56. On 13 March 2023 the respondent wrote to the claimant with the outcome of the reconvened hearing on 10 March 2023. The letter set out the panel's *"key points to note from the panel's deliberations"* as follows: (i) *"they [the panel] concluded that the examples of your language and behaviour demonstrated throughout the academic promotions process, the complaints process and on other occasions with your line management were extreme, highly inappropriate and distressing to other staff; (ii) they were deeply concerned that you remained unaware that the content of your email to the student on 9 May 2022 was highly inappropriate and that your actions could have had a negative impact on the relationship with Howdens; (iii) your continued assertions around the wellbeing of a former colleague and the University's alleged nefarious involvement regarding that individual were deeply worrying. This was despite being provided with an explanation that the former staff member had chosen to resign, you did not believe the information you were given and continued to state that the circumstances were suspicious and required investigation; (iv) the Complaints Panel's observations around your clear distress in relation to your perception that the British society, at large, is racist and specifically anti-Serbian, and how these deeply held views have influenced your perception of GCU management; (v) they were not convinced*

that your diagnosis of type 2 diabetes was mitigation in relation to your above behaviours / language, which the panel found to be extreme. The panel referred to the OH report dated 17 January 2023. The OH doctor was asked how this medical condition could have impacted on your physical or mental health (including mood, thinking and behaviour. The report details symptoms of reduction of energy levels (fatigue), feeling more agitated and lack of sleep may impact on mood and work performance at time. They were of the view that there was no clinical evidence that your behaviours / language were due to your untreated diabetes and/or your mental health at the time. They also noted that these behaviours and language extended over a significant period of time; (vi) they acknowledged the personal difficulties (eg your mother's health, Ukraine conflict) you have experienced and the impact on your mental health during 2022. They did not find, however, that this accounted for or explained the above behaviours/language given these concerns have been prolonged and commenced prior to your personal circumstances in 2022".

57. The outcome letter stated, *"The Panel did note your response that you do have trust and confidence in GCU but they found this statement to be incompatible with your previous actions and the rest of your statement."*

58. The panel concluded, given the above, that there had been an irretrievable breakdown of trust and confidence in the claimant's employment relationship with the respondent. The outcome was dismissal with immediate effect from 13 March 2023, with pay in lieu of 3 months' notice

Appeal against dismissal

59. On 20 March 2023, the claimant appealed the decision to dismiss him. He was invited to an appeal hearing which took place on 2 June 2023. The appeal hearing was chaired by Professor Andrea Nelson, Deputy Vice Chancellor, with two other panel members who had not previously been involved in the case. The claimant attended with his trade union representative. The claimant made representations about the dismissal procedure orally and in written submissions. He said there had been no investigation meeting with him prior to the letter he received on 1 September 2022 inviting him to a formal hearing.

He said that Ms Campbell was conflicted from being the panel chair. He said he was stressed and had diabetes which impacted on his language and behaviour. He said some of the language used stemmed from his cultural background. He said he had personal issues going on in his life which accounted for some of the language and behaviour. He said the hearing on 13 February 2023 ought to have been postponed due to his mental ill health. After the appeal hearing, and before reaching a decision, the appeal panel spoke to various members of staff. This was for further information and clarification, having heard from the claimant.

60. On 26 June 2023 the respondent wrote to the claimant with the outcome of his appeal. The decision to dismiss was upheld. The appeal panel concluded that no investigation meeting was required with the claimant prior to inviting him by letter on 1 September 2022 to the 'sosr' hearing. This was not a disciplinary hearing. A report had been prepared by Professor Schaske summarisng the concerns and he had received a copy of this. The allegation of a breakdown in trust and confidence stemmed from concerns about the claimant's emails to various staff members. He was provided with copies of those emails and supporting documents. The appeal panel found no conflict of interest with Ms Campbell as she had not been involved in any decisions about the claimant's unsuccessful promotion application. The appeal panel concluded that that the OH report indicated that the claimant was fit to attend work and to attend the hearing on Monday 13 February 2023. He had been at work until Friday 10 February 2023, the working day before the hearing. He had made detailed written representations to Ms Campbell and the panel, which were considered fully before they reached their decision. The appeal panel noted that at the appeal hearing the claimant said his health was improved. The OH report, prepared after a consultation with the claimant, did not identify any health or personal issues as impacting on his language and behaviours. At the appeal hearing the claimant was unable to give reassurances that the mitigating factors presented which he said had affected his behaviour and language would not recur in the future. The appeal panel noted the claimant's explanation that some of the language used stemmed from his cultural background. The appeal panel concluded that this did not

make his inappropriate language / behaviour acceptable in the workplace or mean that the respondent should tolerate it. He had been told about the inappropriateness of his language, but this had persisted.

Reinstatement or reengagement

61. The respondent was unable to move the claimant to a different role as an alternative to dismissal. The language which the claimant used was about staff in a number of different senior management roles across the respondent's organisation. It was not limited to the claimant's line manager. The claimant's expertise was such that he could not be moved to one of the two other Schools within the respondent's organisation. The claimant's lack of insight into what he had written to the student meant the respondent had a real concern about putting the claimant back into a teaching environment in case the same behaviours happened again. The claimant had very limited research work as an alternative to teaching.

Observations on the evidence

62. This judgment does not seek to address every point upon which the parties gave evidence. It only deals with the points which are relevant to the issues we must consider, to decide if the claim succeeds or fails. If we have not mentioned a particular point, it does not mean that we have overlooked it. It is not included simply because it is not relevant to the question of whether the claim succeeds or fails. Any references to page numbers are to the paginated bundle of productions.

63. The standard of proof is on a balance of probabilities. This means that if we consider that, on the evidence, an event's occurrence was more likely than not, then we are satisfied that it occurred. Likewise, if we consider that, on the evidence, an event's occurrence was more likely not to have occurred, then we are satisfied that it did not occur.

64. We found the respondent's witnesses to be credible and reliable. There were several conflicts in the evidence. We have largely resolved these in favour of the respondent. We did not regard the fact that we preferred the evidence of

the respondent as tainting the claimant's overall credibility. These were differences in recollection and differences in perception.

Relevant law

Unfair dismissal

65. Section 94 ERA provides that an employee has the right not to be unfairly dismissed. It provides that for a dismissal to be fair, the employer must show the reason for the dismissal and that it is one of the potentially fair reasons set out in section 98 (1) or (2) ERA. The respondent relies on section 98 (1)(b) ERA "some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held", specifically an irretrievable breakdown in the employment relationship between the claimant and the respondent.

66. The reason for dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee (**Abernethy v Mott, Hay and Anderson 1974 ICR 323**)

67. In terms of section 98(4) ERA, if the Tribunal is satisfied that the respondent has established a potentially fair reason for dismissal, it must then determine the question of whether the dismissal was fair or unfair having regard to the matters set out in section 98(4) (a) and (b): whether in the circumstances (including the size and administrative resources of the employer), it acted reasonably or unreasonably in treating the reason as a sufficient reason for dismissing the employee, and the equity and substantial merits of the case.

68. The test in determining the application of section 98(4) ERA is whether the dismissal fell within the "band of reasonable responses", a test which reflects the fact that inevitably there may be different decisions reached by different employers in the same circumstances (**British Leyland (UK Limited) v Swift 1981 IRLR 91**).

69. In applying section 98(4) ERA, the Tribunal must not substitute its own view of the matter for that of the employer but must apply an objective test of whether the dismissal was, in the circumstances, within the range of

reasonable responses open to a reasonable employer (**Iceland Frozen Foods Limited v Jones [1982] IRLR 439; HSBC Bank plc (formerly Midland Bank plc) v Madden [2000] IRLR 827CA**).

70. Where dismissal is due to a breakdown in a working relationship it is necessary, before deciding whether or not the dismissal was fair, to ascertain whether the employer had taken reasonable steps to try to improve the relationship; and to establish the dismissal was not unfair, the employer has to show not only that there has been a breakdown but that the breakdown was irremediable (**Turner v Vestric Ltd [1980] ICR 528**).

Automatic unfair dismissal

71. *Protected disclosure.* Under section 43A ERA a protected disclosure is a qualifying disclosure made by a worker to their employer (section 43C) or to a prescribed person (section 43F). The burden of proving a protected disclosure rests upon the claimant.

72. Under section 43B ERA a qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show relevant wrongdoing. In the final list of issues, the claimant relies on section 43B(1) "(b)that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject" and "(c)that a miscarriage of justice has occurred, is occurring or is likely to occur".

73. Section 43C ERA provides *"Disclosure to employer or other responsible person.(1)A qualifying disclosure is made in accordance with this section if the worker makes the disclosure (a)to his employer.....(2).....".*

74. Section 43F ERA provides *"Disclosure to prescribed person.(1) A qualifying disclosure is made in accordance with this section if the worker—(a)makes the disclosure to a person prescribed by an order made by the Secretary of State for the purposes of this section, and (b)reasonably believes—(i)that the relevant failure falls within any description of matters in respect of which that*

person is so prescribed, and (ii)that the information disclosed, and any allegation contained in it, are substantially true.(2) .....".

75. *Disclosure of information.* The disclosure must be an effective communication of information, but it does not require to be in writing. The disclosure must convey information or facts, and not merely amount to a statement of position or an allegation (**Cavendish Munro Professional Risks Management Ltd v Geduld 2010 IRLR 38, EAT**). However, an allegation may contain sufficient information depending upon the circumstances (**Kilraine v Wandsworth London Borough Council [2018] ICR 1850, CA**).

76. *Reasonable belief.* The worker must genuinely believe that the disclosure tended to show relevant wrongdoing and was in the public interest. This does not have to be their predominant motivation for making the disclosure (**Chesterton Global Ltd v Nurmohamed [2018] ICR 731, Court of Appeal**). Their genuine belief must be based upon reasonable grounds. This depends upon the facts reasonably understood by the worker at the time.

77. *Automatic unfair dismissal.* Under section 103A ERA an employee who is dismissed shall be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

Time limits – EqA

78. Section 123 (1) EqA provides*: "Subject to section 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".* For the purposes of subsection (a), conduct extending over a period is to be treated as done at the end of the period.

Disability discrimination

79. Section 15 EqA provides: *"15 Discrimination arising from disability (1) A person (A) discriminates against a disabled person (B) if—(a)A treats B unfavourably because of something arising in consequence of B's disability,*

and (b)A cannot show that the treatment is a proportionate means of achieving a legitimate aim".

80. Section 19 EqA provides: *"19 (1)A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.(2)For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—(a)A applies, or would apply, it to persons with whom B does not share the characteristic,(b)it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,(c)it puts, or would put, B at that disadvantage, and (d)A cannot show it to be a proportionate means of achieving a legitimate aim".*

81. Sections 20 and 21 EqA provide: *"20 Duty to make adjustments(1)Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.(2)The duty comprises the following three requirements.(3)The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage...."*

82. *"21 Failure to comply with duty (1)A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.(2)A discriminates against a disabled person if A fails to comply with that duty in relation to that person...."*

83. 'Arising in consequence of' can describe a range of causal links and there may be more than one link. It is a question of fact whether something can properly be said to arise in consequence of disability. The 'something' that causes the unfavourable treatment need not be the main or sole reason but must have at least a significant (or more than trivial) influence (**Pnaiser v NHS England [2016] IRLR 170, EAT**).

84. The EAT held in **Sheikholeslami v University of Edinburgh [2018] IRLR 1090** that: 'the approach to s 15 Equality Act 2010 is now well established,,,,. In short, this provision requires an investigation of two distinct causative issues: (i) did A treat B unfavourably because of an (identified) something? and (ii) did that something arise in consequence of B's disability? The first issue involves an examination of the putative discriminator's state of mind to determine what consciously or unconsciously was the reason for any unfavourable treatment found. If the "something" was a more than trivial part of the reason for unfavourable treatment, then stage (i) is satisfied. The second issue is a question of objective fact for an employment tribunal to decide, in light of the evidence.'

85. In order to make a finding of failure to make reasonable adjustments there must be identification of, relevant for the present case: (a) the provision, criteria or practice applied by or on behalf of the respondent; and (b) the nature and extent of the substantial disadvantage suffered by the claimant (**Environment Agency v Rowan [2008] IRLR 20**).

Direct sex discrimination

86. Section 13 EqA provides: *"Direct Discrimination (1) A person (A) discriminates against another (B) if, because of a protected characteristic, (A) treats (B) less favourably than (A) treats or would treat others".*

87. The burden of proof in claims under EqA is set out in section 136 EqA.

88. Section 23(1) EqA provides that on a comparison for the purpose of establishing direct discrimination there must be 'no material difference between the circumstances relating to each case'. The comparator required for the purpose of this statutory definition must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class (**Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL**).

89. The circumstances of the claimant and the comparator need not be identical in every way. What matters is that the circumstances which are relevant to

the claimant's treatment are the same or nearly the same for the claimant and the comparator — para 3.23 EHRC Employment Code.

Equal pay

90. Section 64(1) EqA provides: *"Relevant types of work (1) Sections 66 to 70 apply where—(a)a person (A) is employed on work that is equal to the work that a comparator of the opposite sex (B) does".* Section 65 (1) EqA provides *"Equal work (1) For the purposes of this Chapter, A's work is equal to that of B if it is—(a)like B's work, (b)rated as equivalent to B's work, or(c)of equal value to B's work".* Section 66(1) EqA provides: *"Sex equality clause (1) If the terms of A's work do not (by whatever means) include a sex equality clause, they are to be treated as including one".*

Victimisation

91. Section 27 EqA provides *"Victimisation (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".*

92. If a reasonable worker (even if not all reasonable workers) might take the view that the conduct in question was detrimental then the test of detriment is satisfied (**Warburton v Chief Constable of Northamptonshire Police 2022 EAT 42**).

93. There must be a causal link between the protected act and the detriment. The causal standard required is 'because of'. The claimant must show that the reason why he was subjected to the detriment was 'because of' the protected act. It is insufficient to show that 'but for' the protected act he would not have

suffered the detriment (**Chief Constable of Greater Manchester Police v Bailey 2017 EWCA Civ 425, CA**).

Burden of proof

94. Section 136 EqA states: *"Burden of proof (2) If there are facts from which the tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned the tribunal must hold that the contravention occurred. (3) But this provision does not apply if A shows that A did not contravene the provision."*

95. The burden of proving the facts referred to in section 136(2) EqA lies with the claimant. If this subsection is satisfied, then the burden shifts to the respondent to satisfy subsection 136(3) EqA.

96. This is described in case law as a two-stage process. The claimant must first establish a first base or prima facie case by reference to the facts made out. If he does so, the burden of proof shifts to the respondent at the second stage. If the second stage is reached and the respondent's explanation is inadequate, it is necessary for the Tribunal to conclude that the claimant's allegation is to be upheld. If the explanation is adequate, that conclusion is not reached (**Igen v Wong [2005] IRLR 258; Madarassy v Nomura International Plc [2007] IRLR 246**).

97. For there to be less favourable treatment, the claimant must be subjected to some form of detriment. The question of whether there is a detriment requires the Tribunal to determine whether "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" (**Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 HL**).

98. A claimant can rely on an actual or hypothetical comparator for the purposes of establishing less favourable treatment. There must be no material difference in the circumstances of the claimant and comparator (section 23 EqA). In deciding how a hypothetical comparator would have been treated,

the Tribunal is entitled to have regard to the treatment of real individuals (**Chief Constable of West Yorkshire Police v Vento [2001 IRLR 124**).

99. However, a difference in treatment and a difference in protected characteristic is not enough to establish that the difference in treatment was caused by the difference in protected characteristic; "something more" is required (**Madarassy v Nomura International [2007] IRLR 246**). The Tribunal needs evidence from which it could draw an inference that the protected characteristic was the reason for the difference in treatment.

100. Tribunals are entitled to draw an inference of discrimination from the facts of the case. The position is set out by the Court of Appeal in **Igen v Wong [2005] ICR 931** (as approved by the Supreme Court in **Hewage v Grampian Health Board [2012] IRLR 870**).

Submissions

101. Mr Ward made oral submissions. Mr Briggs provided the Tribunal and Mr Ward with a skeleton argument and made oral submissions with reference to these. We carefully considered the submissions of both parties during our deliberations. We have dealt with the points made in submissions, where relevant, when setting out the facts, the law and the application of the law to those facts in reaching our decision. It should not be taken that a submission was not considered because it is not part of the discussion and decision recorded.

Discussion and decision

Time bar

102. The effective date of termination is 13 March 2023. The claimant participated in ACAS early conciliation from 9 June 2023 to 21 July 2023. The claim was presented on 15 August 2023. The complaints of ordinary unfair dismissal and automatically unfair dismissal are in time.

103. Any events which occurred on or before 9 March 2023 are potentially out of time, early conciliation having commenced on 9 June 2023.

104. The acts of unfavourable treatment relied upon for the section 15 EqA discrimination arising from disability complaints are the claimant's dismissal; and inviting the claimant to a formal meeting via the letter dated 1 September 2022. Section 123 (1) EqA provides: "Subject to section 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". For the purposes of section 123 (3) EqA, conduct extending over a period is to be treated as done at the end of the period. The alleged unfavourable treatment of inviting the claimant to a formal meeting on 1 September 2022 is out of time. The last date on which the claimant was invited to the formal meeting was 9 February 2023 which is also out of time. The alleged unfavourable treatment of dismissal on 13 March 2023 is in time.

105. In relation to the section 20/21 EqA complaints the claimant asserts that various steps ought to have been taken on 13 March 2023 as an alternative to dismissal, to comply with the duty to make reasonable adjustments. These complaints are in time.

106. In relation to the section 19 EqA complaint (indirect disability discrimination) the claimant relies on the same PCP as in the section 20/21 EqA complaint. The claimant does not identify a date when he asserts discrimination for this complaint occurred. We have however dealt with the substance of the complaint in the relevant section below.

107. In relation to section 13 EqA (direct sex discrimination) the claimant asserts the less favourable treatment is having to work increased hours and have more duties imposed on him by the respondent. In evidence the claimant asserted that this was throughout the academic year up to his dismissal. This complaint is in time.

108. In relation to section 27 EqA (victimisation) the detrimental acts relied upon by the claimant are being instructed to attend a formal hearing on 1 September 2022; there were no adjustments to attend that hearing; the hearing proceeded in his absence (on 13 February 2023); and he was

dismissed on 13 March 2023. Some of these complaints may be out of time. We have, however, dealt with the substance of the complaints in the relevant section below.

Ordinary unfair dismissal

The reason for dismissal

109. In considering the complaint of unfair dismissal we had regard to the terms of section 98 ERA which sets out how we should approach the question of whether a dismissal is fair. There are two stages: first, the respondent must show the reason for the dismissal and that it is one of the potentially fair reasons set out in section 98(1) and (2) ERA. If the respondent is successful at the first stage, we must then determine whether the dismissal was fair or unfair under section 98(4) ERA. This requires us to consider whether the respondent acted reasonably in dismissing the claimant for the reason given.

110. The respondent admitted dismissing the claimant and asserted the reason for dismissal was some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the claimant held: namely an irretrievable breakdown of the employment relationship.

111. We considered the case of **Abernethy v Mott, Hay and Anderson 1974 ICR 323** where it was stated that "A reason for dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee."

112. We noted that the burden of proof on the respondent at this stage is not a heavy one. The respondent does not have to prove the reason actually did justify the dismissal. If on the face of it the reason could justify the dismissal, then it passes as a substantial reason, and the inquiry moves on to section 98(4) ERA and the question of reasonableness (**Mercia Rubber Mouldings Ltd v Lingwood [1974] ICR 256**; **Willow Oak Developments Ltd v Silverwood [2006] EWCA Civ 660**; **Gilham v Kent County Council (No 2) 1985 IR 233**).

113. With these authorities in mind, we turned to consider the reason for dismissal. We had regard to the letter of dismissal where it was stated that the panel, chaired by Ms Campbell, concluded that the relationship with the respondent had broken down irretrievably. The panel's reasons for reaching this conclusion were set out clearly.

114. We were satisfied that the panel, chaired by Ms Campbell, believed that the relationship had broken down irretrievably and that this was the reason for the claimant's dismissal. The reasons for the irretrievable breakdown in the relationship were because of the claimant's communications to the respondent and, importantly, the impact of those on staff; because the claimant remained unaware that the contents of his email to a student on 9 May 2022 were highly inappropriate; and because of the claimant's continued assertions around the wellbeing of a former colleague and the respondent's alleged nefarious involvement regarding that individual.

115. We were satisfied that the respondent had shown that the reason for dismissal was some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the claimant held. The substantial reason was the breakdown in the relationship between the claimant and the respondent, including members of the senior management team. This is a potentially fair reason falling within section 98(1) ERA, which could justify dismissal.

116. We were not referred to any authorities by the claimant in support of his submission that where the claimant considers that the relationship has not broken down irretrievably, there can be no such breakdown and the reason for dismissal cannot be some other substantial reason. We did not agree. For the reasons already given we concluded that the respondent had shown that the reason for dismissal was some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the claimant held.

Fairness of the dismissal

117. Next, we went on to consider whether dismissal for the reason given by the respondent was fair or unfair. We must decide the fairness of the dismissal by asking whether the decision to dismiss fell within the band of reasonable responses which a reasonable employer might adopt.

118. The claimant was invited to a formal hearing to consider his continued employment by letter dated 1 September 2022. The letter advised the claimant that considering his language and behaviours, the purpose of the meeting was to consider whether the relationship of trust and confidence between the claimant and the respondent had broken down irretrievably. The claimant was given a copy of his emails and the other documents to be referred to by the respondent at the hearing. The claimant was given the opportunity to be accompanied by a colleague or trade union representative.

119. The hearing scheduled for 9 September 2022, then rearranged to 29 September 2022, was put on hold by the respondent as the claimant was signed off sick on 27 September 2022. The respondent referred the claimant to OH on two occasions to ascertain if he was fit to attend the hearing. On the second occasion, OH confirmed in their report dated 17 January 2023 that the claimant was fit to be at work (he had returned on 18 December 2022) and was fit to attend the hearing. The hearing was scheduled for 13 February 2023 when the claimant said he was able to attend. On 10 February 2023 the claimant was signed off sick again. Given the passage of time and the OH report which said the claimant was fit to attend the hearing, the respondent decided to proceed with the hearing. The claimant did not attend. The claimant was given an opportunity to provide a written statement before any decision was reached on his employment. He did so on 1 March 2023. The panel reconvened to discuss the claimant's written statement and supporting documentation before reaching a decision. We were satisfied that the claimant had been given an opportunity to make full representations to the panel.

120. We were satisfied that Ms Campbell and the panel approached the question of whether trust and been broken down irretrievably with an open mind. Ms Campbell's evidence was that the panel wanted to understand in particular

whether the claimant was able to reflect on his actions and understand the impact of his actions on staff, students and the wider commercial interests of the respondent. Ms Campbell's focus was on the current situation. Ms Campbell said in evidence that she was looking for some understanding from the claimant that his language and behaviours were extreme and some reassurances that this would change. We were satisfied that Ms Campbell and the panel were looking at whether the relationship could be repaired. Ms Campbell's evidence was that the panel considered the claimant's written statement and supporting documents. Ms Campbell's evidence was that the panel were concerned that there would be a repeat of the language and behaviours towards staff and students. The claimant still did not recognise the impact and distress of his language on staff and students or the wider commercial implications for the respondent of what he had written to the student. The claimant continued to repeat his allegation about the former colleague having "disappeared" in language which the panel considered suggested nefarious means by the respondent. This was despite reassurances from the respondent that the former colleague had resigned.

121. Ms Campbell's evidence was that the panel considered the claimant's explanation that his recent type 2 diabetes was mitigation in relation to his behaviours and language. The panel referred to the OH report dated 17 January 2023. The OH doctor was asked how this medical condition could have impacted on the claimant's physical or mental health. OH were of the view that there was no clinical evidence that the claimant's behaviours / language was due to his type 2 diabetes.

122. Having considered what was said by the claimant in his written statement and supporting documents, and what was said by Ms Campbell in evidence, we were satisfied that the belief of Ms Campbell and the panel that the relationship had broken down irretrievably was genuinely held. For the same reasons we were also satisfied that the belief of Ms Campbell and the panel, that the relationship had broken down irretrievably was a reasonable one. The claimant had not demonstrated an understanding of the impact of his language and behaviours on others and the respondent could not be confident

that it would not happen again. The OH medical evidence did not support that that his language and behaviours were due to his health.

123. We were satisfied that the dismissal fell within the range of reasonable responses open to the respondent. The respondent had engaged with the claimant to understand the claimant's concerns about the promotion process, to explain the impact of his language on other staff and students and to reassure the claimant about the former colleague having resigned from employment. The claimant has submitted a lengthy written statement and supporting documents and been given ample opportunity to demonstrate to the respondent that he would temper his language and behaviors. He had not done so. We were satisfied that it was reasonable for Ms Campbell and the panel to conclude, from the claimant's responses, that he was likely to continue with these behaviours and language.

Alternatives to dismissal

124. We were satisfied that Ms Campbell and the panel had considered moving the claimant to a different part of the respondent's organisation as an alternative to dismissal. Ms Campbell addressed this in her evidence. We were satisfied that Ms Campbell and the panel concluded that moving the claimant was not an option. The language which the claimant used was about staff in a number of different senior management roles across the respondent's organisation. It was not limited to the claimant's line manager. His expertise was such that he could not be moved to one of the two other Schools within the respondent's organisation. His lack of insight into what he had written to the student meant the respondent had a real concern about putting the claimant back into a teaching environment. The claimant had very limited research work as an alternative to teaching. We were satisfied that the respondent had considered alternatives to dismissal but that these were not viable alternatives.

Appeal

125. We were satisfied that the respondent carried out a fair appeal hearing. The claimant and his trade union representative attended the hearing. We were

satisfied that the appeal points made by the claimant in writing and at the appeal hearing were considered in full. We were satisfied that it was reasonable for Professor Nelson and the panel to uphold the dismissal decision.

Procedure generally

126. In relation to procedure generally, the claimant's representative submitted that the procedure was not within the band of reasonable responses. He submitted that Ms Campbell had previously received an email from the claimant about his unsuccessful promotion application and was therefore conflicted. We accepted Ms Campbell's evidence that she had played no part in the decision making about the claimant's unsuccessful promotion. Accordingly, we did not agree that Ms Campbell was conflicted from being a decision maker in relation to the claimant's dismissal.

127. The claimant's representative submitted that the language and behaviours of the claimant were such that the respondent ought to have treated this as a conduct matter. He submitted that the potentially fair reason for dismissal was conduct not some other substantial reason. We did not agree. We were satisfied that the respondent had shown that the reason for dismissal was some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the claimant held. The substantial reason was the breakdown in the relationship between the claimant and the respondent, including members of the senior management team. The respondent's evidence which we accepted was that the language and behaviours were wider than a conduct issue.

128. The claimant's representative submitted that as the respondent had no written policy for dealing with some other substantial reason dismissals, it had failed to follow a fair process. We did not agree with this. The respondent's evidence, which we accepted was that it had done it's best to mirror existing policies within the respondent's organisation. For example, the claimant had been told in advance of the allegations against him and provided with the documents to be relied on by the respondent, he had been given an

opportunity to bring a companion to hearings and he had been given a right of appeal against the dismissal decision. We were satisfied that although the respondent's had no 'some other substantial reason' policy in place this did not render the procedure followed outside the band of reasonable responses open to the respondent.

129. The claimant's representative submitted that in determining whether the dismissal was fair or unfair having regard to the matters set out in section 98(4)(a) and (b) ERA (including the size and administrative resources of the employer) we should determine that the dismissal was outside the band of reasonable responses. The respondent witnesses had been asked in cross examination to state the annual turnover of the respondent. Different figures had been provided and some witnesses did not know. The claimant submitted that given the different answers and no precise figure being provided, the respondent should be found to have infinite resources available to it, such that it would have been reasonable to reach a decision other than dismissal. We did not agree with this. We have found that the respondent considered alternatives to dismissal and concluded that these were not viable for the reasons already given.

130. The claimant's representative referred to the case of **Perkins v St George's Healthcare NHS Trus [2005] IRLR 93,4 CA.** He asked us to consider the judgment, in particular paragraphs 30 – 34 and paragraph 59 when reaching our decision. Having done so, we were satisfied that there was nothing in that judgment which led us reconsider the conclusions we had reached. We remained satisfied that the respondent had shown that the reason for the claimant's dismissal was an irretrievable breakdown in trust between the claimant and the respondent for the reasons already given.

131. The claimant' representative submitted that the respondent had fallen into error by not allowing the appeal hearing to be a 'de novo' hearing. We did not agree. The respondent advised the claimant at the time of the invitation to the appeal hearing that the appeal hearing was not a re-hearing of the original 'sosr' hearing. He was advised he was to be given the opportunity to present his grounds of appeal including any additional relevant information at the

appeal hearing. We were satisfied that the appeal panel carefully considered the claimant's lengthy written and oral submissions and dealt with each of the matters he raised. There was no evidence from the claimant that he was precluded from raising any matters in the appeal hearing, which if he had done so, may have affected the outcome. The claimant's representative submitted that the appeal panel decision to make further enquires after hearing the claimant's submissions at the appeal hearing, rendered the appeal process unfair. We did not agree. We were satisfied that there was nothing in the handling of the appeal process by the respondent which rendered the process outside of the band or reasonable responses open to it.

Conclusion

132. We have set out above that we were satisfied the respondent had shown the reason for the claimant's dismissal was some other substantial reason. We have also set out above our conclusion that Ms Campbell and the panel had reasonable grounds upon which to sustain their belief that there was an irretrievable breakdown in trust and confidence between the claimant and the respondent. We reminded ourselves that the question we must ask ourselves is not whether we would have dismissed the claimant. Rather we must ask whether the respondent's decision to dismiss the claimant fell within the band of reasonable responses which a reasonable employer might have adopted (**Iceland Frozen Foods Ltd v Jones 1983 ICR 17**). We decided that, in the circumstances of this case, the respondent's decision to dismiss the claimant fell within the band of reasonable responses which a reasonable employer might have adopted. The dismissal was fair.

133. Accordingly, the complaint of ordinary unfair dismissal is dismissed.

Automatically unfair dismissal

13 June 2019 email

134. On 13 June 2019 the claimant sent an email to the respondent about the White Armband Day event, organised by a third party, and which was hosted by the respondent. The claimant said that the hosting of the event breached

the respondent's Dignity at Work and Study policy (page 455) He wrote *"I strongly believe that by publishing and spreading these false claims about the ethnic group to whom I belong, you are in breach of the Dignity at Work and Study policy particularly point 4.7 which says; 'All staff.... others using the University's premises.....have a responsibility to promote equality and value diversity, to eliminate unlawful discrimination and promote good relations between different groups'".*

135. We considered whether what the claimant had written contained specific factual content (**Cavendish Munro Professional Risks Management Ltd v Geduld 2010 ICR 325, EAT**) The claimant cited information which he had obtained from a friend who lived in Prijedor (the town where the event organisers said the incident had happened), and from research he had carried out himself which he believed showed that the event marked by the White Armband Day had not happened and that the hosting of the event by the respondent was in breach of its responsibilities to promote equality and eliminate discrimination. We concluded that his lengthy email did contain specific factual content.

136. We next considered whether the information contained in this email tended to show that one of the relevant failures has occurred is occurring or is likely to occur (**Kilraine v London Borough of Wandsworth 2016 IRLR 422, EAT**). The relevant failures relied upon by the claimant in the final list of issues are that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject (the list of issues referred to the public sector equality duty) and that a miscarriage of justice has occurred, is occurring or is likely to occur.

137. The claimant did not lead evidence to identify any miscarriage of justice upon which he relied or that he had a reasonable belief that there had been one.

138. The claimant did not lead evidence to identify any specific failure to comply with the "public sector equality duty". We considered what the claimant had written in his email. He wrote that he believed that the event was in breach of the respondent's responsibilities to promote equality and eliminate

discrimination. He wrote that he believed the event was in breach of the respondent's Dignity at Work and Study policy. He referred to the aims of the policy to ensure there was no discrimination against *"all potential and current staff, students and other stakeholders"* on the grounds of any protected characteristics. He wrote that he strongly believed that the event being marked had not taken place. We were satisfied that the claimant genuinely believed that the respondent was failing to comply with equality legislation. This is a failure to comply with a legal obligation. We were satisfied that given the research he had carried out, as set out in his email, his belief was based on reasonable grounds.

139. We considered whether the claimant held a reasonable belief that the disclosure in his email was made in the public interest. We were satiisfed that he did. The disclosure was about what he believed to be a breach of the respondent's policy which sought to protect all potential and current staff, students and other stakeholders from discrimination. This was wider than the claimant's own circumstance and we were satisfied that the contents of his email were made in the public interest. Given the research he had carried out and his strength of feeling about the matter we were satisfied that he reasonably believed that the disclosure was made in the public interest. The disclosure was a qualifying disclosure. As the disclosure was made to his employer, we were satisfied that it is a protected disclosure.

11 June 2020 complaint to SPSO

140. The complaint to the SPSO reiterated the contents of the email which he had sent to the respondent on 13 June 2019.

141. The disclosure was made to the SPSO, which is a prescribed body for the purposes of disclosures. The claimant must reasonably believe that the relevant failure falls within any description of matters in respect of which that person is so prescribed, and that the information disclosed, and any allegation contained in it, are "substantially true". This is a higher threshold than for disclosures made to an employer. We were satisfied that the claimant did believe that the information disclosed, and any allegation contained in it, were

substantially true. It was clear from the research he had carried out and his strength of feeling about the matter that he reasonably believed the information and the allegations he made to be substantially true. We were satisfied that it is a protected disclosure.

14 July 2020 meeting

142. At the meeting on 14 July 2020 the claimant said he believed the School Management Group (SMG), in SCEBE. was biased against him in refusing his application for promotion to Senior Lecturer and that the SMG was racist; he believed he had been discriminated against in his application for promotion as he was a "white male Christian"; and that he believed staff were promoted based on their gender, being female, or for being from an African ethnic background.

143. We considered whether what had been said by the claimant in the meeting conveyed information or facts and not merely a statement of position or an allegation. (**Cavendish Munro Professional Risks Management Ltd v Geduld 2010 IRLR 38, EAT**).

144. We concluded that the claimant was frustrated that he had not been promoted to Senior Lecturer, He had looked at those who had been promoted some of whom were female and some of whom were from an African ethnic background. He had drawn a conclusion that the reason for their promotion was their gender or ethnicity. He had not seen the applications for promotions for these individuals or the rationale reached by the SMG when these individuals had been promoted. We concluded that what was said by the claimant in the meeting was no more than a statement of position or allegation. Accordingly, there was no qualifying disclosure made by the claimant on 14 July 2020.

8 September 2020 complaint

145. On 8 September 2020 the claimant made a formal written complaint about his unsuccessful promotion application. He asserted that (i) the promotion process was conducted in a non-transparent fashion and was racially biased;

(ii) his line manager, Professor Sheila Smith refused to discuss promotion with him; (iii) at his Personal Development Annual Review (PDAR) meetings his line manager made accusations about his feedback from anonymous student surveys which he could not address effectively; (iv) his application was not seriously considered, with the promotion panel putting all the weight on what was missing from his application; (v) the respondent led a racist campaign against the ethnic group to which he belongs (the White Armband Day event organised by the charity Remembering Srebrenica) which has had negative consequences on him at a personal and professional level; (vi) the student surveys are the main problem in the promotion process; (vii) he had been told he is unlikely to meet the promotion criteria in the next promotion round; and (viii) he received no recognition in his promotion application for the work he had done on updating teaching modules. In his written complaint he provided details which he said supported each of the allegations which he was making.

146. We considered whether what the claimant had written contained specific factual content (**Cavendish Munro Professional Risks Management Ltd v Geduld 2010 ICR 325, EAT**) We were satisfied that what he had written about the White Armband Day event contained specific factual content, particularly when read in conjunction with what he had previously written about the hosting of the event. We concluded that the rest of what he had written was about his unsuccessful promotion application. We concluded that what he had written about his unsuccessful promotion application did not contain specific factual content but was merely a statement of position or an allegation.

147. We were satisfied that what he had written about the White Armband Day event tended to show a failure to comply with a legal obligation and that the belief was based on reasonable grounds and in the public interest and that the claimant reasonably believed that to be the case for the reasons already given. The disclosure about the White Armband Day event was a qualifying disclosure. As the disclosure was made to his employer, we were satisfied that it is a protected disclosure.

1 September 2022 appeal

148. On 1 September 2022 the claimant appealed the outcome of his complaint about his unsuccessful promotion application. The claimant reiterated the points he had made in in his complaint of 8 September 2020 about his unsuccessful promotion. He did not refer to the White Armband Day event in his appeal. We concluded that what he had written about his unsuccessful promotion application did not contain specific factual content but was merely a statement of position or an allegation in the same way as his 8 September 2020 complaint. Accordingly, there was no qualifying disclosure made by the claimant on 14 July 2020.

149. Having concluded that the claimant made protected disclosures on 13 June 2019, 11 June 2020 and 8 September 2020, we next considered whether the claimant had been dismissed for making one or more of these protected disclosures. Under section 103A ERA an employee who is dismissed shall be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.

150. The reason for dismissal is a set of facts known or beliefs held which operate in the mind of the decision maker and causes them to make the decision (**Abernethy v Mott Hay and Anderson [1974] ICR 323, Court of Appeal**).

151. Ms Campbell and the two panel members were the decision makers. The claimant was dismissed on 13 March 2023. We accepted Ms Campbell's evidence that the reason for the dismissal was the irretrievable breakdown of trust and confidence in the employment relationship between the parties. Ms Mitchell, who first referred the issue of trust and confidence to the respondent's People Services, the dismissing manager Ms Campbell and the appeal manager Professor Nelson were all senior executives within the respondent. There was no evidence to suggest that they did not readily accept the policies and procedures in place for dealing with complaints and appeals. The respondent recognised that that the claimant was entitled to raise grievances. There was no evidence that Ms Mitchell, Ms Campbell or Professor Nelson had in their minds any of the protected disclosures made in

2019 and 2020 when considering the question of trust and confidence in 2023. We were satisfied that the reason for the claimant's dismissal was not because he had made protected disclosures.

152. Accordingly, the complaint of automatic unfair dismissal is dismissed.

Discrimination arising from disability

153. The claimant was found to be a disabled person by reason of the impairment of vertigo. The relevant period was found to be from 17 January 2023 to 13 March 2023. In closing submissions at this final hearing, the respondent confirmed that knowledge of the claimant's disability of vertigo at the relevant time was not disputed. The "something arising" in consequence of the claimant's vertigo was identified by the claimant in the final list of issues as the claimant's "conduct". The unfavourable treatment relied upon in the final list of issues is (a) the claimant's dismissal; and (b) inviting the claimant to a formal meeting via the letter dated 1 September 2022. The complaint of unfavourable treatment (dismissal) in time.

154. We directed ourselves to the guidance in **Sheikholeslami v University of Edinburgh [2018] IRLR 1090**. We asked ourselves whether the respondent had treated the claimant unfavourably by dismissing him because of an identified 'something' namely the claimant's conduct. We concluded that the claimant's conduct was not why he was dismissed. As already stated, the respondent dismissed the claimant because there had been an irretrievably breakdown in the working relationship. That on the face of it brings the complaint to an end as the first issue identified in **Sheikholeslami** is not satisfied. We were mindful of the further guidance in that case, namely that if the 'something' was more than a minor or trivial part of the reason for unfavourable treatment then stage (i) is satisfied. If we are wrong, for the purposes of this complaint, and the conduct was more than a minor or trivial part of the reason for the dismissal, we went on to consider the second causative issue from **Sheikholeslami.** Namely did the 'something' namely conduct arise in consequence of the claimant's disability of vertigo. On this issue we were satisfied that the claimant's conduct did not arise in

consequence of his vertigo. There was no evidence by the claimant at this final hearing to that effect. Prior to the claimant's dismissal he had said to the respondent that his type 2 diabetes had affected his actions, although this was not the conclusion reached by OH. The claimant did not say prior to his dismissal or in evidence now that his behaviours or conduct arose in consequence of his vertigo.

155. Accordingly, the complaint of discrimination arising from disability (vertigo) is dismissed.

Failure to comply with duty to make reasonable adjustments

156. The final list of issues identifies the provision, criterion or practice (PCP) for this complaint as "the respondent's activation of the process in its letter dated 1 September 2022". In closing submissions at this final hearing, the respondent confirmed that it was not disputed that this amounted to a PCP. The substantial disadvantage identified by the claimant in the final list of issues is that the claimant "was less able to deal with pressures such as the increased workload and disciplinary or quasi disciplinary procedures". The question of knowledge of this substantial disadvantage was not conceded by the respondent.

157. We asked ourselves whether the respondent's activation of the process on 1 September 2022 (the PCP) put the claimant at a substantial disadvantage compared to someone without the claimant's disability(vertigo) in that he was less able to deal with pressures such as the increased workload and disciplinary or quasi disciplinary procedures.

158. We concluded that there was no evidence led by the claimant to seek to establish that he was put to this substantial disadvantage. The claimant was asked questions about this by Mr Ward in evidence in chief but did not give any evidence in support of what was set out in the list of issues. It appears that this issue may be a vestige of the claimant's claim as originally pled, when the claimant sought to rely on other impairments as disabilities. We are unable to make any findings in fact such that the burden of proof shifts to the respondent.

159. The claimant's representative in submissions said that the substantial disadvantage relied upon is that the claimant could not attend the hearing on 13 February 2023 as he was off sick. This was not the substantial disadvantage in the final list of issues. The claimant's representative submitted that the adjustment relied upon was "providing additional support" which he submitted meant following a disciplinary process for misconduct not a 'sosr' process.

160. Notwithstanding the fact that this substantial disadvantage had not been included in the final agreed list of issues we asked ourselves whether the respondent's activation of the process on 1 September 2022 (the PCP) put the claimant at a substantial disadvantage compared to someone without the claimant's disability(vertigo) in that he could not attend the hearing on 13 February 2023 as he was off sick. We concluded that it did not. The claimant was not signed off sick on 13 February 2023 because of vertigo. There was no evidence that the reason for his absence was vertigo. We were satisfied that there was no substantial disadvantage as the claimant now sought to assert.

161. Accordingly, the complaints of failure to comply with the duty to make reasonable adjustments are dismissed.

Indirect disability discrimination

162. The PCP identified in the final list of issues for this complaint is "the respondent's activation of the process in its letter dated 1 September 2022. The respondent accepts that this was a PCP which was applied to the claimant. We asked ourselves whether the activation of the process on 1 September 2022 placed the claimant and others who share the same disability (vertigo) at a particular disadvantage when compared to those who do not have vertigo. No particular disadvantage was identified by the claimant in the final list of issues. For completeness we considered this complaint, if the particular disadvantage relied upon by the claimant was the same as the substantial disadvantage relied upon in the section 20/21 EqA complaint. In other words, whether the activation of the process on 1 September 2022

placed the claimant and others who share the same disability (vertigo) at a particular disadvantage of being less able to deal with pressures such as increased workload or disciplinary or quasi disciplinary procedures when compared to those who do not have vertigo. As already set out elsewhere, there was no evidence led by the claimant to seek to establish that the PCP put him and others with vertigo at this particular disadvantage.

163. Accordingly, the complaint of indirect disability discrimination is dismissed.

Direct sex discrimination

164. The less favourable treatment identified in the final list of issues is the claimant having to work increased hours and have more duties imposed on him by the respondent. The claimant relies on an actual comparator, Kate McAulay. We asked ourselves whether the claimant was treated worse than his comparator Kate McAulay.

165. Ms McAulay and the claimant were both employed as a Lecturer (Grade 7) in SCEBE, working full-time (35 hours per week) and with the same salary of £52,841 per annum. We were mindful that circumstances of the claimant and the comparator need not be identical in every way. What matters is that the circumstances which are relevant to the claimant's treatment are the same or nearly the same for the claimant and the comparator. Both had teaching and script marking duties, allocated by Professor Smith, in the same School. We were satisfied that there was no material difference between her circumstances and the claimant and that she was an appropriate comparator.

166. We accepted Professor Smith's evidence that the claimant and Ms McAulay had an equitable number of script marking duties to carry out. We accepted that Professor Smith would know this as she was the one who was allocating duties to both of them, including the marking of scripts. The claimant's perception was that he had many more scripts to mark than Ms McAulay. We did not accept this. We accepted Professor Smith's evidence that the claimant did not have full visibility of Ms McAulay's script marking workload. We accepted that it was more likely than not that Professor Smith would have access to accurate information about script marking duties.

167. Professor Smith, in evidence, agreed that the claimant had more teaching hours than Ms McAulay. In the last academic year of employment, the claimant had around 205 hours and Ms McAulay had around 159 hours.

168. Section 136(2) EqA provides that if there are facts from which the tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned the tribunal must hold that the contravention occurred. (3) But this provision does not apply if A shows that A did not contravene the provision."

169. The burden of proving the facts referred to in section 136(2) EqA lies with the claimant. If this subsection is satisfied, then the burden shifts to the respondent to satisfy subsection 136(3) EqA. We directed ourselves to the guidance on the shifting burden of proof set out in, for example in **Igen v Wong [2005] IRLR 258** and **Madarassy v Nomura International Plc [2007] IRLR 246**.

170. In the last academic year of employment, the claimant had more teaching hours than his comparator Ms McAulay. This is a fact from which we could decide at this first stage, and in the absence of any other explanation, that discrimination occurred. Accordingly, the burden of proof shifts to the respondent. At this second stage we considered the respondent's explanation for the difference in teaching hours. Professor Smith's explanation was that Ms McAulay's teaching hours were less than the claimant because she had taken on an additional role as project coordinator for the forensic investigations' degree and because of the amount of research grant work she was doing. Her teaching allocation had been adjusted accordingly. Professor Smith knew this because she was the Head of the department where they both worked and was their line manager. We were satisfied that this explanation by Professor Smith was adequate, and that, accordingly, the respondent had shown that it did not contravene section 13 EqA.

171. Accordingly, the complaint of direct sex discrimination is dismissed.

Equal pay

172. The claimant and Ms McAulay were both employed as Lecturers (Grade 7) in SCEBE, working full-time (35 hours per week). They both had the same salary of £52,841 per annum. The comparator was being paid the same as the claimant.

173. Accordingly, the complaint of failure to pay equal pay to the claimant is dismissed.

Victimisation

174. The protected acts relied upon by the claimant in the final list of issues are (a) his email on 13 June 2019; (b) his complaint to the Scottish Public Services Ombudsman on 11 June 2020; (c) his comments at the meeting on 14 July 2020; (d) his complaint on 8 September 2020; and (e) his appeal on 1 September 2022.

175. Firstly, we asked ourselves whether any of these were protected acts. Section 27(2)(d) EqA provides that making an allegation (whether or not express) that A or another person has contravened EqA is a protected act.

176. In the claimant's email of 13 June 2019, he said that hosting the White Armband Day event breached the respondent's Dignity at Work and Study policy. He wrote *"I strongly believe that by publishing and spreading these false claims about the ethnic group to whom I belong, you are in breach of the Dignity at Work and Study policy particularly point 4.7 which says; 'All staff.... others using the University's premises.....have a responsibility to promote equality and value diversity, to eliminate unlawful discrimination and promote good relations between different groups'"*. We were satisfied that this was an allegation that the respondent had breached EqA and accordingly is a protected act.

177. In the claimant's complaint to the Scottish Public Services Ombudsman on 11 June 2020 he repeated the allegations in his email of 13 June 2019. We were satisfied that this was an allegation that the respondent had breached EqA and accordingly is a protected act.

178. At the meeting on 14 July 2020 the claimant made allegations that the respondent was racist; he had been discriminated against in his application for promotion as he was a "white male Christian"; and that he believed staff were promoted based on their gender, being female, or for being from an African ethnic background. We were satisfied that this was an allegation that the respondent had breached EqA and accordingly is a protected act.

179. In his complaint on 8 September 2020 the claimant made allegations that the respondent's promotion process was racially biased and that the hosting of the White Armband Day event was racially biased. We were satisfied that this was an allegation that the respondent had breached EqA and accordingly is a protected act.

180. In his appeal on 1 September 2022 the claimant reiterated the points he had made in in his complaint of 8 September 2020 about his unsuccessful promotion. These included his allegations of racial bias. We were satisfied that this was an allegation that the respondent had breached EqA and accordingly is a protected act.

181. The incidences of detrimental treatment relied upon by the claimant in the final list of issues are (a) he was instructed to attend a formal hearing on 1 September 2022; (b) there were no adjustments to attend that hearing; (c) the hearing proceeded in his absence; (d) he was dismissed. We asked ourselves whether any of these asserted incidences were a detriment.

182. We reminded ourselves that if a reasonable worker (even if not all reasonable workers) might take the view that the conduct in question was detrimental then the test of detriment is satisfied (**Warburton v Chief Constable of Northamptonshire Police 2022 EAT 42**). We were satisfied that being instructed to attend a formal hearing on 1 September 2022; the hearing proceeding in the claimant's absence (albeit no decision was reached on the day) and the claimant's dismissal were all matters which a reasonable worker might view as detrimental. These are accordingly detriments.

183. We were not satisfied that the asserted detriment of 'no adjustments to attend that hearing' could be viewed as detrimental in the absence of evidence that

the claimant had asked for these adjustments to attend the hearing on 1 September 2022 or given any indication that these may be required. We concluded in the circumstances that no reasonable worker could conclude that there had been a detriment. Accordingly, we were not satisfied that this is a detriment.

184. Considering the detriments of being instructed to attend the hearing on 1 September 2022, the hearing proceeding in his absence and his dismissal, we asked ourselves whether any of those detriments were because the claimant had done any of the protected acts. There must be a causal link between the protected act and the detriment. The claimant must show that the reason why he was subjected to the detriment was 'because of' the protected act. (**Chief Constable of Greater Manchester Police v Bailey 2017 EWCA Civ 425, CA**).

185. We are satisfied that the claimant was invited to attend the hearing on 1 September 2022 due to concerns about his language and behavior and that the hearing went ahead for the same reason. The claimant was dismissed due to the irretrievable breakdown of his working relationship and the respondent's conclusion that that the relationship could not be repaired. We were satisfied that there was no causal link between any of the protected acts and any of the detriments. We were satisfied that the claimant was not subjected to any of the detriments because of any of the protected acts.

186. The protected acts were complaints about what the claimant perceived to be racism by the respondent towards him. The detriments, which are about the dismissal process and his dismissal, occurred because of a concern about a breakdown of trust and confidence, that being confirmed as irretrievable when the respondent saw no way to fix the employment relationship.

187. Ms Mitchell, who first referred the issue of trust and confidence to the respondent's People Services, the dismissing manager Ms Campbell and the appeal manager Professor Nelson were all senior executives within the respondent. There was no evidence to suggest that they did not readily accept the policies and procedures in place for dealing with complaints and appeals. Those policies and procedures permitted multiple levels of complaint and

review of the respondent's decision making, for example an application for promotion to the SMG; which unsuccessful application could be presented to the respondent's promotions committee; which if unsuccessful could be subject to appeal; which if unsuccessful could be the subject of a formal complaint, which if not upheld could be appealed. This cycle could have continued indefinitely were it not for the claimant's language and behaviours in other communications which caused the respondent concern. There was no evidence that Ms Mitchell, Ms Campbell or Professor Nelson had in their minds any of the protected acts when considering the question of trust and confidence. Accordingly, we were satisfied there was no causal link between any of the protected acts and the detriments.

188. Accordingly, the complaints of victimisation are dismissed.

Remedy

189. As all of the complaints are dismissed, there is no requirement for a remedy hearing.

J McCluskey
Employment Judge

8 October 2024
Date

Date sent to parties **8 October 2024**