EMPLOYMENT TRIBUNALS

Claimant: Dr P Lee

Respondent: The University of Birmingham

FINAL HEARING

Heard at: Birmingham

On: 4 to 7, 11, 12, 15 & (deliberations in private) 18 November 2024

Before: Employment Judge Camp, Mr J Reeves, Ms S Campbell

Appearances
For the Claimant: in person
For the Respondent: Ms E Misra KC

ORDER

(1) This order replaces the privacy order made at the end of the hearing on 15 November 2024.

(2) Subject to paragraph (3), pursuant to rules 49(1) and (3)(b) of the Employment Tribunal Procedure Rules 2024 and Article 8 of the European Convention on Human Rights it is **ORDERED** that the individual referred to in the Reasons below as "BCD" must not be identified by name, or otherwise identified, as being involved with these proceedings, in any document published by anyone anywhere potentially made available to the public, including – even in a private group – posts on social media and electronic messaging services such as WhatsApp, except to the extent that she is so identified in the written Reasons below and/or in the witness statements and the redacted versions of the documents used at this final hearing.

(3) Paragraph (2) does not prevent BCD from being named or otherwise identified as being involved in these proceedings: by the parties (including their representatives) in private communications with each other and/or with the Tribunal and/or with legal advisers; or in private internal communications within the Respondent connected with these proceedings where it is reasonably necessary to do so; or as required by law; or, if reasonably necessary, to notify third parties as to the terms and effect of this order.

(4) Publication contrary to this order is a **criminal offence**.

RESERVED JUDGMENT

The Claimant's entire claim, consisting of complaints of direct sex discrimination, victimisation, and detriment for making protected disclosures, fails and is dismissed.

REASONS

Introduction & background

1. The Claimant was employed by the Respondent – the "University" – latterly as Associate[1] Professor in the School of Geography, Earth and Environmental Sciences. His employment ran from 1 October 1994 until retirement on grounds of partial [ill-health] incapacity with effect on 13 April 2023, when he was just 60 years of age. By a claim form presented on 3 May 2022, following a period of early conciliation from 4 to 27 April 2022, he made a claim of direct sex discrimination, victimisation (under the Equality Act 2010 – the "EQA"), and detriment for making a protected disclosure. Based on a Schedule of Loss of July 2023, he is seeking compensation of over half a million pounds.

2. In broad terms, the claim is ostensibly about how the University handled a written grievance the Claimant raised in September 2020 (the "2020 grievance") and a follow-up to the grievance in June 2021 (the "2021 stage 2 grievance"); and what happened after the Claimant, in August 2021, raised a formal complaint said to relate to research integrity and research ethics (the "research complaint"). The 2020 grievance was largely about alleged sexual harassment by a woman we are referring to as "BCD", who has previously been referred to as "Ms X".

3. However, the Claimant had long-standing professional dissatisfactions and has made a number of complaints and brought a number of grievances against the University over the years. In his claim form, he wrote that he had spent "*almost 10 years fighting for justice within the University of Birmingham's grievance and complaints processes*". In a grievance of July 2018 (the "2018 grievance"), which we understand centred on unsuccessful applications for promotion he made in 2016 and 2017, he had alleged the existence of a "*culture of systematic deceit, bullying and wilful neglect of* [him] *and planning staff by senior management over a decade*".

4. It is evident that the Claimant is particularly aggrieved about the subject matter and outcome of a grievance he raised in March 2019 (the "2019 grievance"). This mainly concerned a Research Fellow called Dr Hassan, who had been working on the Claimant's USE-IT! Project, applying for and obtaining a job working for one of the University's project groups called City-REDI. Dr Hassan did so when the Claimant was on sick leave after sustaining a very nasty injury in an accident in November 2018. The Claimant saw City-REDI as a competitor and during this hearing he has spoken about it 'parking its tanks on his lawn' and has referred to Dr Hassan as having been 'stolen', as if she were an item of property belonging to him.

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[1] Possibly "Associated".

5. The 2019 grievance went through all three stages of the University's grievance procedure, which is set out in its Ordinances, without success. It was dealt with at stage 3 of the procedure by a Professor Schofield. Professor Schofield also dealt with the 2018 grievance at stage 3. In his 30 April 2020 report on the 2019 grievance, he wrote: "*Whilst I appreciate it is likely that* [the Claimant] *will remain dissatisfied, the internal process has been exhausted and I do not believe it fruitful, or in either party's interest, to enter into further communications on the matters contained within the grievances raised. Accordingly, if further communications are received on these matters, then I propose that one person within the University's HR Department should read and acknowledge it, but no further action should be taken in respect of it.*" The Claimant responded 10 days later with a lengthy document addressed to the University's Vice Chancellor expressing his dissatisfaction.

6. The Claimant's perception is that City-REDI advanced at the expense of his professional projects and his academic career, particularly from 2018/2019; that City-REDI has been generously and unfairly supported by the University; that much of what City-REDI has been doing is an inferior version of work the Claimant had done and had been doing; and that funding City-REDI was a misuse of resources. BCD is closely associated with City-REDI and she has progressed professionally alongside the advance of City-REDI. The Claimant blames the University for, as he sees it, allowing BCD and City-REDI to do this; and to do this to him, to the detriment of his mental health. From his point of view, he has been driven into medical retirement. He has developed an obvious antipathy towards all three of BCD, City-REDI, and the University.

7. Before Dr Hassan moved from USE-IT! to City-REDI, the Claimant and BCD appear to us, based on their text / WhatsApp message exchanges between early 2017 and early 2019, to have been friends, or at least on friendly terms. This is something the Claimant denies. He also characterises the hundreds of messages – a handful of which, from 2017, we would say were inappropriate as between people who were not friends (although we have not seen every single message that was apparently sent) – as sexually harassing and, in a way we have found difficult to reconcile with the evidence we have, as sexual "*grooming*". In January 2019, when the Claimant was still off sick following his accident of November 2018, BCD messaged the Claimant to say, "*Stop stressing I'm looking after your interests*". In light of Dr Hassan's move and the matters connected with it that the 2019 grievance was about, the Claimant now looks on that message as disingenuous and manipulative.

8. The Claimant alleges that he was sexually assaulted by BCD at a work conference in Montreal in September 2019 in public, in full view of others. This was after, from the Claimant's perspective at least, he and BCD had entirely fallen out because of Dr Hassan and related things. According to the Claimant, the alleged assaults consisted, first, of BCD greeting him by saying something like, "*How are you chuck?*" and patting him on the bottom; and secondly of her causing her breasts to rub up against him when sitting next to him at a crowded lunch table.

9. The Claimant mentioned the first alleged assault during a meeting discussing the 2019 grievance in October 2019, at which his trade union representative was present. At the time, he said he was providing the information in confidence and

off the record and that he did not want to pursue the allegation. The individual chairing that meeting respected his wishes and reasonably so. Had she done otherwise, the Claimant would have had legitimate cause for complaint. It would anyway have been impossible in practice for her to take matters further without the Claimant's willing cooperation.

10. When the Claimant was being cross-examined on 6 November 2024 (day 3 of this hearing), he suggested that if the 2019 grievance had been upheld there would have been no Tribunal claim.

11. The Claimant was off sick from 14 May 2020, 4 days after he sent his response to the 2019 grievance stage 3 outcome, to 20 September 2020. The 2020 grievance, which is 32 pages long, was raised on 21 September 2020.

12. The 2020 grievance was on the face of it about (from its heading) alleged "*Sexual Grooming, Sexual Harassment and Sexual Assault*" of the Claimant by BCD. But in it, amongst other things, the Claimant posited some kind of link between those things on the one hand and, on the other, his professional disappointments connected with City-REDI and the subject matter of the 2019 grievance. At the end of the final hearing, the logical and evidential basis for linking the two remained obscure to us.

13. The Claimant also sought to use the 2020 grievance indirectly to challenge the outcome of the 2019 grievance by suggesting that BCD had lied when giving evidence to those dealing with the 2019 grievance. To quote from the 2020 grievance:

> *it is extremely important to understand that in* [BCD's] *testimony to my grievance (October 2019) about the transfer of a research fellow from CURS*[2] *to City REDI,* [BCD] *lied and said that I didn't want to engage in work related matters. This is not true and I have the evidence in the form of WhatsApp chats to prove it. When I did try to engage* [BCD] *just said that my interests were being taken care of, I shouldn't worry, or she was highly evasive. Subsequently, City REDI manoeuvred to take ownership of the social enterprise that I had been developing out of USE-IT! for over a year with colleagues ….; meanwhile City REDI and* [BCD] *excluded me from a £5m (£11m with match) REDF bid which referred to USE-IT! as a*[n] *exemplar project in City REDI and which was highly relevant to USE-IT! community researchers. Her evidence to my grievance was therefore an elaborate excuse to steal my research area and for City REDI to benefit from it.* [BCD] *and her colleagues in City REDI have therefore contributed to ruining everything that I have been working towards at the University of Birmingham.*

14. The 2021 stage 2 grievance is a 320 page document of 17 June 2021 by which the Claimant took the 2020 grievance to stage 2 of the University's procedure. The research complaint is a 202 page document of 4 August 2021 that is, or that includes, a research integrity and research ethics complaint. These were even more clearly, in substantial part, attempts to re-open the 2019 grievance and, in the case of the research complaint, the 2018 grievance too. By way of illustration,

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[2] The Centre for Urban and Regional Studies. The Claimant was head of CURS in 2010. It in fact effectively ceased to exist (the Claimant gave evidence that it was "*dissolved*") in 2011, something he seemingly was and is unhappy about.

the first outcome the Claimant was seeking in the research complaint was, "*Promotion to Chair as Professor of Urban Ethics and significant financial compensation for the damage to my career and the wasted time trying to defend myself and get at the truth*".

15. That brings us to the Tribunal claim. We have already, in paragraph 2 above, set out what it is about, on the face of it at least. It is not, then, concerned with the subject matter of the 2020 grievance, of the 2021 stage 2 grievance, or of the research complaint, still less with the subject matter of the 2019 grievance or that of any prior grievance or complaint. At most, those things form the background to the claim.

16. Nevertheless, as the hearing has progressed, it has become increasingly clear to us – consistent with the Claimant's evidence mentioned in paragraph 10 above about there being no claim if the 2019 grievance had been dealt with to his satisfaction – that he is trying to use the claim as a vehicle for personal vindication in relation to matters pre-dating the 2020 grievance: to prove himself under-valued and right and the University wrong (particularly in relation to the 2019 grievance), and BCD a liar and a sexual harasser, and City-REDI an inferior and unethical project, and the University an unethical institution and one neglectful of his health and wellbeing. It is an ill-adapted vehicle for that purpose.

17. Our – the Tribunal's – role is simply to adjudicate on the specific complaints that are properly before us. In particular, in circumstances where there is little or no relevant dispute in terms of what happened, we have to decide why things happened and whether the reason for any relevant detriments the Claimant was subjected to was that he is a man, or that he did protected acts, or that he submitted the research complaint. The main reason the claim has failed is that, fully taking into account the applicable legislation relating to the burden of proof (EQA section 136; section 48(2) of the Employment Rights Act 1996 – "ERA"), we are not satisfied that that was the reason; on the contrary, we are satisfied that the reason was otherwise.

The issues

18. We have dealt with the claim in accordance with a list of issues produced by Employment Judge N Clarke that formed part of the written record of a preliminary hearing that took place on 21 April 2023. A copy of that list – the "List of Issues" – is attached to these Reasons (from page 38 below) and is an integral part of them. We refer to it. We have omitted remedy issues because this final hearing was always going to be dealing with liability only.

19. As set out in the List of Issues, the 2020 grievance and the 2021 stage grievance are relied on as the protected acts for the purposes of the victimisation claim. The University accepts that they were protected acts. It is the research complaint that is relied on as being, or as containing, the protected disclosure(s) for the purposes of the protected disclosure detriment claim. The University does not accept that any relevant protected disclosure was made.

20. The List of Issues was in all relevant respects identical to an earlier list forming part of Employment Judge Wedderspoon's written record of a preliminary hearing before her of 20 October 2022. One of the case management orders she made –

and Employment Judge N Clarke made a similar order – was that: "*The claims and issues, as discussed at this preliminary hearing, are listed in the Case Summary below. This is treated as a final list (pending the amendment application).*" (The amendment application referred to was, ultimately, not pursued).

21. In accordance with almost invariable modern Employment Tribunal practice, Employment Judge Wedderspoon evidently spent some time at the preliminary hearing going through the claim with the Claimant. This is not a particular criticism of him, but in common with many litigants in person, even those as highly intelligent, accomplished and articulate in writing as the Claimant is, it is difficult to say with any certainty just from his claim form and accompanying document containing details of his claim (the "Details of Claim") precisely what complaints he was making, hence the need for Employment Judge Wedderspoon to do that. (This is not just a feature of claim forms prepared by litigants in person; it is, sadly, a rare claim form in relation to which there can be no reasonable dispute as to what complaints are being made).

22. For example, there was a need to work out which of the things mentioned in the claim form and Details of Claim the Claimant was making a Tribunal complaint about and which were mentioned merely to provide context and background. The Details of Claim begin, "*I am making a claim against the University of Birmingham for its actions in ending of my academic career partly as a result of its sexual discrimination directed towards me over the past two years and which is ongoing.*" As the claim form was presented in 2022, this indicated that the Claimant was limiting his claim to events of 2020 to 2022. However, he mentioned many things dating from before 2020. A discussion was therefore needed to make absolutely sure that he didn't want to make complaints about any of those things; and if he did what complaints he wanted to make. If he told Employment Judge Wedderspoon that he did, the University's representative might well have objected on the basis that he could not do so without successfully applying to amend the claim form and that she opposed any such application. Employment Judge Wedderspoon would then either have had to have made a decision on the point[3] herself, or directed that a decision would be made at a later hearing.

23. We are very familiar with the guidance from appellate courts about lists of issues, e.g. **Mervyn v BW Controls Ltd** [2020] EWCA Civ 393. In light of that guidance, it is often said that a list of issues is no more than a case management tool. That is no doubt right, but a list of issues can be made the subject of a case management order and its precise status depends on what orders, if any, are made in relation to it. In particular, it can, and in our experience not infrequently does, reflect an appealable judicial decision as to what complaints are, and what complaints are not, made in the claim form.

24. In the present case, Employment Judge Wedderspoon explicitly ordered that her list of issues was, without relevant qualification[4], a "*final list*". The only

[3] The point being: are the complaints the Claimant wants to make already made in the claim form and if not should he be given permission to amend so that he can make them.

[4] The only qualification being that it was subject to an amendment application, an application that was not, in the end, pursued.

interpretation of that order that we think gives it real meaning is that the Employment Judge, having read the claim form and Details of Claim and having discussed it with the parties, made a decision that the complaints that are before the Tribunal – i.e. the complaints that are made in the claim form (incorporating the Details of Claim) – are no more and no less than those set out in the list. Had she meant something different she would have written something different.[5] That is a case management decision she has made. As such, given that that decision has not been appealed, and whether we think she was right or not in her analysis of the claim form, we and the parties must abide by it, unless there has been a material change of circumstances[6], which there hasn't been and which no one has suggested there has been.

25. The List of Issues, prepared by Employment Judge N Clarke, has two additions to Employment Judge Wedderspoon's list. First, the Claimant was ordered – by an 'unless' order – to provide additional information about what emails he was referring to in his protected disclosure detriment complaint that the University did the following, "*Between September 2021 and March 2022, allege that the Claimant was not co-operating with the Respondent*". He did this in a document dated 3 May 2023, in which he identified a single sentence in a single email of 14 January 2022. Secondly, in relation to the issue relevant to the protected disclosure detriment complaints of whether he reasonably believed that the information he disclosed (said to relate to "*research funds … being used by the Respondent inappropriately and in breach of the research integrity fund (… being used for legal costs)*") tended to show breach of a legal obligation in accordance with ERA section 43B(1)(b), it was clarified that the legal obligation the Claimant apparently had in mind at the relevant time was an alleged "*obligation … on universities to submit an annual statement on research misconduct*". In his witness statement and during this hearing, he confirmed that this supposed obligation was to submit such an annual statement to Parliament.

26. Like Employment Judge Wedderspoon's list, Employment Judge N Clarke's List of Issues was specified in one of his orders to be "*final*" and that means these additional details, like the rest of the List, have to be treated by us as definitive (again absent any appeal or material change of circumstances). Employment Judge N Clarke noted that the List of Issues had been, "*clarified, by agreement*".

27. At no stage, to our knowledge, has either side challenged either Employment Judge's list of issues or order designating it final, whether by suggesting the list was wrong, or incomplete, or otherwise; and the University, at least, has prepared for the final hearing on that basis.

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[5] For example, she might have adopted the wording used in the national (England and Wales) case management preliminary hearing template: "*The claims and issues, as discussed at this preliminary hearing, are listed in the Case Summary below. If you think the list is wrong or incomplete, you must write to the Tribunal and the other side by [ ]. If you do not, the list will be treated as final unless the Tribunal decides otherwise.*" That template is a document, drafted by a national committee of Employment Judges and Regional Employment Judges, that every Employment Judge is aware of through training and has access to, although no one is obliged to use it.

[6] See **Liverpool Heart and Chest Hospital NHS Foundation Trust v Poullis** [2022] EAT 9.

28. We also note that at the start of day 2 of the hearing (day 1 having mostly been a reading day), before any witness evidence was heard, the Employment Judge explained to the parties the Tribunal's provisional view that, for the reasons given in paragraph 24 above, the complaints and issues before the Tribunal were limited to those in the List of Issues. He invited the parties to say if they disagreed with that provisional view and more generally gave an opportunity for them to say if they disagreed with the List of Issues. This was so that any disagreement could be discussed and, if necessary, formally adjudicated on. That might have included, for example, discussion about and adjudication on: whether the claim needed to be amended; whether failing to raise a point about the List of Issues until part-way through the final hearing amounted to unreasonable conduct; whether additional evidence would be needed if other complaints and issues were to be considered; and whether a fair trial of any complaints and issues not in the List of Issues was possible within the available timeslot for the hearing. Neither side expressed any disagreement, so no such discussions took place.

29. The reason we detail all this is that during the hearing, the Claimant appeared to have difficulties confining himself to what is in the List of Issues. He gave this appearance notwithstanding the fact that he clearly knew what the List of Issues consisted of and its importance, in that he diligently went through it in his witness statement; and that he had, as just mentioned, not suggested to us that he thought the List was inaccurate and that he wanted to add to it, when explicitly given an opportunity to do so. He had to be repeatedly referred by the Employment Judge to the List and reminded that the complaints and issues to be decided by the Tribunal were those in the List and not others. This happened particularly when the Claimant was cross-examining the University's witnesses, but not just then. In the first of two sets of written closing submissions, for example, he made allegations that had previously not even been hinted at, such as an allegation that the University's Vice Chancellor, "*indirectly discriminated against me on grounds of sex because he failed to recognise or act on a protected disclosure*".

30. We may be mistaken, but, at times, the Claimant seemed to be suggesting that, as a litigant in person, he did not understand and had not understood what the Tribunal was saying and had said about the List of Issues. If he is making that suggestion, we do not accept it. Given his work background and professional capabilities, his readiness to challenge things he disagrees with, and the obvious care and time he has spent on the claim and preparing for the final hearing (and notwithstanding poor mental health), we have no doubt that as soon as he received them, he would carefully have read the written records of the preliminary hearings of October 2022 and April 2023, and have noted the orders stating that the lists of issues were final and what was in those lists. Even if there had been no orders designating them final lists, we are sure he would have written to the Tribunal disputing them if he was in any way dissatisfied with them.

31. The Claimant did, on 9 November 2022, produce a 125 page document following the October 2022 preliminary hearing and in direct response to it, referring in terms to Employment Judge Wedderspoon's list of issues and pursuing an amendment application she had mentioned in her orders. Amongst other things, he dealt with time limits arguments in that document, under the heading "*Why I brought the complaints <u>set out in the list of issues</u> when I did*" (our emphasis). He did not say in it anything to the effect that he believed he had brought complaints not set out

in Employment Judge Wedderspoon's list of issues, nor did he put forward any amendment application other than one that he later withdrew.

32. The Claimant has perhaps come to realise that these proceedings cannot give him what he wants from them[7], and his attempts to broaden the scope of his claim may be born of frustration stemming from that. Be that as it may, we formally record that the issues which we potentially have to determine are those set out in the attached List of Issues that runs from page 38 below. This is something that 'cuts both ways': just as it has not been open to the Claimant to pursue complaints that are not in the List, it would not have been open to the University to argue that complaints in the List were not in the claim form and were therefore not before the Tribunal.

Relevant law

33. There does not seem to be any dispute as to the law we have to apply. It is accurately and comprehensively summarised in the closing submissions of Ms Misra KC for the University, the relevant parts of which we adopt and to which we refer. We shall nevertheless, without intending any implied criticism of those submissions, add something of our own.

34. Our first consideration is the relevant legislation, which is reflected in the wording of the List of Issues, in particular: sections 13, 23, 27, 123 and 136 of the EQA and sections 43B(1), 47B, and 48(2) & (3) of the ERA.

35. In terms of case law relevant to the discrimination and victimisation complaints, we note in particular:

    35.1 paragraph 17 (part of the speech of Lord Nicholls) of the House of Lords's decision in **Nagarajan v London Regional Transport** [1999] ICR 877 and paragraphs 9, 10 and 25 of the judgment of Sedley LJ in **Anya v University of Oxford** [2007] ICR 1451;

    35.2 the recommendation of numerous appellate courts, e.g. the EAT in **Islington Borough Council v Ladele** [2009] ICR 387 EAT at paragraph 40(5), that we should try wherever possible to identify the 'reason for the treatment';

    35.3 as to the 'reason for the treatment', we note that there is a distinction between, on the one hand, the background circumstances without which (or 'but for' which) the facts giving rise to the complaint would not have occurred – what used to be referred to as a 'causa sine qua non' – and the true, effective or activating cause of the treatment being complained about. We are far from certain about this, but, particularly in relation to the victimisation claim (also, possibly, the protected disclosure detriment claim), there are hints that the Claimant may be wanting to argue that, for example, victimisation is proved simply by the fact that the thing he is complaining about would not have occurred if he hadn't submitted the 2020 grievance;

[7] See paragraph 15 above.

35.4 in relation to the concept of detriment and to what could broadly be termed 'causation' in direct discrimination and victimisation complaints, paragraphs 48 to 51 and 61 to 74 of **Warburton v Northamptonshire Police** [2022] EAT 42;

35.5 as to the burden of proof and EQA section 136 more generally, paragraphs 36 to 54 of the decision of the Court of Appeal in **Ayodele v Citylink Ltd & Anor** [2017] EWCA Civ 1913. We are looking, first, for "*facts from which the court could decide, in the absence of any other explanation*" that unlawful discrimination or victimisation has taken place. Although the threshold to cross before the burden of proof is reversed pursuant to section 136 is a relatively low one – "*facts from which the court could decide*" – unexplained or inadequately explained unreasonable conduct and/or a difference in treatment and a difference in status and/or incompetence are not, by themselves, such "*facts*". Further, section 136 requires us to look for facts from which it could be decided not simply that discrimination is a possibility but that it has in fact occurred – see **South Wales Police Authority v Johnson** [2014] EWCA Civ 73 at paragraph 23.

36. In relation to the protected disclosure detriment complaints, in addition to what we have already mentioned, we note only the following case law, which relates to what "*on the grounds that*" in ERA section 43B means, taking ERA section 48(2) into account: **NHS Manchester v Fecitt** [2011] EWCA Civ 1190 (mentioned in leading counsel's submissions); and **Ibekwe v Sussex Partnership NHS Foundation Trust** [2014] UKEAT 0072_14_2011, in which HH Judge Peter Clark endorsed an Employment Tribunal's statement of the law relating to the burden of proof under ERA section 48(2) along these lines: where, following the making of a protected disclosure, the claimant is subjected to a detriment and there is no substantial evidence explaining the reason why they were subjected to that detriment, the claimant does not win by default; there remains an evidential burden on the claimant to establish a causal link between the making of the protected disclosure and the detriment. In the present case, the University has explained the reason for the treatment that is alleged to be a detriment and we have accepted that explanation; and that, in any event, the Claimant has come nowhere close to discharging that evidential burden.

37. We make one or two further points about the law relating to particular issues later in these Reasons, as and when they arise.

The facts

38. We have already, at the start of these Reasons, set out much of the factual background and some findings in relation to it.

39. With these Reasons, and part of them and of our findings of fact, is the "*Respondent's Chronology for Final Hearing*" (attached, from page 42). We believe this to be an agreed document; but whether it is or isn't, it is accurate in all important respects. In the circumstances, it is not necessary to, and we do not intend to, do more in this section of the Reasons than outline the basic facts from 21 September 2020, when the Claimant raised the 2020 grievance, onwards. Almost all our findings on facts in dispute are set out in the parts of these Reasons where we give our decisions on the issues, from paragraph 60 below.

40. The evidence before us consisted of:

    40.1 statements and oral evidence for the Claimant from the Claimant himself and from a Dr V Mykhnenko (a friend and former colleague of the Claimant; he left the University in 2017 and his evidence was of very little, if any, relevance to the claim) and a Dr D Bailey (another friend and former colleague; he was the Claimant's trade union representative from March 2021; his relevant evidence entirely, or almost entirely, consisted of confirmation of things that were not in dispute, such as the fact that the Claimant had access to professional advice through the Union; he also expressed his opinions about whether things the University did were reasonable and in accordance with policy). Dr Bailey's and Dr Mykhnenko's statements were appended to the Claimant's statement;

    40.2 statements / letters from various other individuals who did not give oral evidence, relied on by the Claimant and, again, appended to his own statement. These were, essentially, character witnesses and their evidence, even if we had felt able to give it any significant weight, would not have assisted us;

    40.3 the Claimant's statement (of 179 pages, including appendices) contained much information that was not relevant to the complaints and issues before us. Also included in the witness statement 'bundle', but not part of his witness evidence, were three further documents from the Claimant: a 233 page "*Response to the Respondent's Grounds of Resistance (ET3)*" dated 27 September 2022; a 126 page document dated 9 November 2022, prepared following the preliminary hearing on 22 October 2022, headed "*Demonstrating the interlinked issues of the Respondent's unaccountability, time wasting, failure to use public funds properly and failure to investigate or detect sexual harassment, which has led to victimisation and sexual discrimination of me*"; a 10 page document dated 3 May 2023 responding to case management orders made at the preliminary hearing on 21 April 2023, in particular the unless order, referred to in paragraph 25 above. The only one of these we have read is the third one. We explained to the Claimant at the start of the hearing that we did not have enough time to read the first two and would not be doing so. He did not object to this;

    40.4 statements and oral evidence for the University, from –

        40.4.1 Professor J Oldfield, at the relevant time the Claimant's Head of School. He considered the 2020 grievance at the first stage;

        40.4.2 Ms Z Oakes, who was Assistant Director of HR (Business Partnering and Advisory Services). She led from an HR perspective in relation to the 2020 grievance;

        40.4.3 Professor D Shepherd, who was Postgraduate Dean and a Professor of Biomedical Engineering. He was appointed to investigate the 2021 stage 2 grievance in July 2021;

40.4.4 Dr B Whitman, who was one of the Assistant Directors in the University's Research Strategy and Services Division. She dealt with the research complaint;

40.4.5 Mr A Hodge, at the relevant time a solicitor but no longer on the Roll. He was an external consultant appointed to deal with the 2021 stage 2 grievance in February 2022 and he produced a report on it in May 2022;

40.5 a file or 'bundle' of documents totalling 2144 pages, including the index. It was completely impracticable for us even to scan through the whole of it in the time available and we very much depended on the parties to take us to what was relevant, in a reading list (produced by the University but supplemented by the Claimant orally), witness statements, cross-examination and submissions. We were taken to a fraction of those 2144 pages.

41. We have little to say about witness credibility. The evidence of all witnesses was, to varying degrees, adversely affected by the fact that they were trying, in November 2024, to remember what happened between 2 ½ and 4-and-a-bit years' earlier. In the Claimant's case, there was the additional problem that, entirely understandably, he lacks any objectivity about and distance from the subject matter of the claim and had been mentally unwell; and we have already mentioned, in paragraphs 3 to 6 above, how he sees the University and what he feels it has done to him and to his health and career. That is the Claimant's perspective and memories are always affected by individuals' perspectives. It is almost inevitable in the circumstances that he will perceive everything the University does and has done in the worst possible light and will attribute to individuals who he blames for what has happened, such as Ms Oakes, the worst possible motives. Although some of the University's witnesses clearly were emotionally affected by, for example, being accused of sex discrimination and victimisation – accusations which, had we upheld them, could well have resulted in them being disciplined and dismissed – this appeared not to be to anything like the same extent as the Claimant was.

42. What this means is that the Claimant's uncorroborated evidence is inherently unreliable, more so than that of the University's witnesses. However, that is much less significant here than it would be in many cases. This is because there are no or almost no factual disputes in relation to which the Claimant has first-hand knowledge that are relevant to and important in relation to the complaints and issues before us. We have just used the qualifier "*almost*", but we struggle to think of a single one. For example, although there are many disputes in relation to which the Claimant has personal knowledge that concern what happened before he raised the 2020 grievance, they are not objectively relevant and important to the claim we have to decide, whatever he may think to the contrary.

43. In terms of what is relevant, what happened and when is mostly plain from contemporaneous documentation that is in the bundle and to which we refer. What is materially in dispute concerns: what was or might allegedly have been going on behind the scenes within the University, out of sight of the Claimant and undocumented, e.g. what was discussed in un-minuted meetings and conversations not involving him; what individuals other than the Claimant were thinking – what their subjective motivations (conscious or unconscious) were. In

relation to such things: the Claimant can give no evidence of fact but only express his opinions and speculations, based on the documentary evidence and the evidence of the University's witnesses; he is in no better position than we, the Tribunal, are to say what occurred and why.

44. We shall now set out the main relevant events.

45. The 2020 grievance, addressed to the Director of HR, Ms G McGrattan, was submitted on 21 September 2020 and was formally acknowledged by Ms Oakes in a letter of 25 September 2020. He was told he should discuss it with Professor Oldfield, and they had an online video meeting, via Zoom, on 1 October 2020. During that meeting, amongst other things, the Claimant showed Professor Oldfield some of the messages that had passed between him and BCD. Subsequently, the University asked the Claimant to provide it with copies of those messages. The Claimant at first refused, but eventually provided them on 22 October 2020.

46. Throughout the process from 21 September 2020 onwards, the Claimant corresponded much and often, particularly with Ms Oakes and particularly on the subject of the procedure being adopted in relation to the 2020 grievance. He also provided many pages of further documentation that he wanted Professor Oldfield to consider relating to the 2018 and 2019 grievances.

47. The allegations the Claimant was making against BCD briefly went down a disciplinary route. The individuals involved in that short disciplinary process were not involved in the Claimant's grievance. Unbeknownst to the Claimant at the time, the outcome of that disciplinary process was that no disciplinary action was taken.

48. On 27 November 2020, Ms Oakes wrote a letter to the Claimant headed "*Outcome of Investigation*" in which, amongst other things, she stated: "*I am writing to confirm that the allegations you have made and associated evidence you have provided has been considered under the relevant University process. These were allegations alleging very serious misconduct by another employee of the University, accordingly the process followed was that governing the conduct of that employee rather than the grievance process. As a result of this process I can confirm that action has been taken. Due to the confidentiality of this process it is not appropriate to share the outcome of this process directly with you*". Direct sex discrimination complaint 5.2 relates to this letter (see paragraph 97 below). The University's case is that that letter marked the end of stage 1 of the relevant grievance process.

49. Between 27 November 2020 and March 2021 there was further extensive correspondence from the Claimant querying and challenging what had happened in relation to the 2020 grievance. The University's responses included an email to the Claimant from Ms Oakes of 22 January 2021 stating: "*In terms of your grievance, you will be aware the Ordinances do allow for you to escalate any outstanding grievances to the next stage if you remain dissatisfied. If you wish to escalate these matters to stage 2, the process is clearly outlined within paragraph 3.27.9.*"

50. In the meantime, on 7 December 2020, the Claimant's former trade union representative, Mr O Thompson (copying in the Claimant's new trade union

representative Mr M Castellani) emailed Ms Oakes stating, "*Marco and I are becoming increasingly concerned about Peter's* [the Claimant's] *health and wellbeing and would appreciate an early approach to Peter with some form of settlement. … Would it be possible to advi*[s]*e Marco of any developments asap, as he is particularly concerned in respect of Peter's response to efforts to guide him towards a reasoned view of what is possible with regard to the Voluntary Severance process.*"[8] We understand that some discussions then followed, but came to nothing.

51. On 26 March 2021, the Claimant emailed Ms Oakes to say that he had made a data subject access request and "*to confirm that I will proceed to the next stage of this complaint once I have analysed the contents of that request*".

52. The 2021 stage 2 grievance was submitted on 17 June 2021. It included criticism of Ms Oakes and what had happened in relation to the 2020 grievance, so was handled from an HR perspective by someone else: one Mr A Seeley, Employee Relations Manager. Professor Shepherd was appointed to investigate it on 8 July 2021. A revised version of it, removing parts of it but adding further documentary evidence, was produced on 9 August 2021 and Professor Shepherd met with the Claimant to discuss it on 10 August 2021. Professor Shepherd interviewed other relevant witnesses during September 2021.

53. The research complaint was submitted to Dr Whitman on 4 August 2021. Before submitting it the Claimant had met with her via Zoom on 26 July 2021.

54. There was much correspondence from the Claimant during September and early October 2021, particularly with HR in relation to the 2021 stage 2 grievance and with Dr Whitman in relation to the research complaint. The Claimant was dissatisfied with what was happening in relation to both. He doubted Professor Shepherd's and Mr Seeley's competence and asked for Mr Seeley to be removed from his role. He was unhappy with Dr Whitman's suggestions about revising the research complaint (see paragraphs 19 to 29 of her statement and paragraph 149 below).

55. On 5 October 2021, Ms McGrattan emailed the Claimant suggesting the appointment of an independent external investigator to complete stage 2 of the grievance process. The Claimant did not agree.

56. On 18 October 2021, the Claimant messaged Professor Oldfield: "*… I've been experiencing some severe dizzy spells related to stress. I really don't know what to do anymore and I feel like I'm losing my mind. My GP has diagnosed this to be work related stress and that I need to have some time out to rest my brain and get well. The research integrity office … need to pause until I'm back and can respond properly when I'm well. Please can you inform them and not to take external until I'm back …*".

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[8] There were a handful of documents in the bundle and a small amount of witness evidence to which so-called 'without prejudice privilege' might have been said to attach, but as both sides agreed to us reading them and considering that evidence – indeed actively wanted us to in some instances – no such 'privilege' survives.

57. The Claimant had a doctor's fit note which expired on 3 January 2022. From 4 January 2022 onwards, the Claimant began emailing again, including further emails to Dr Whitman and to Ms McGrattan complaining about the progress, respectively, of the research complaint and of the 2021 stage 2 grievance.

58. Dr Whitman's reply of 14 January 2022 to some of the Claimant's emails contains the sentence which protected disclosure complaint 3.1.2 is about (see from paragraph 148 below). This is the only complaint that concerns Dr Whitman or that otherwise concerns what happened with the research complaint.

59. In February 2022, Mr Hodge was appointed to finish the investigations into the 2021 stage 2 grievance. The Claimant and Dr Bailey, who had become the Claimant's trade union representative, did not accept the legitimacy of his appointment and refused to cooperate with his investigations. Those investigations included Mr Hodge interviewing BCD, on 28 February 2022. Mr Hodge produced the first draft of his report on 21 April 2022. He finalised it on 9 May 2022, by which time the Claimant had presented his Employment Tribunal claim. The report was provided to the Claimant on 13 June 2022.

Decision on the issues

60. We shall now go through each of the issues in the List of Issues in roughly chronological order, rather than in the exact order in which they appear in the List, starting with the direct sex discrimination claim and the corresponding part of the victimisation claim and ending with time limits issues.

Direct sex discrimination

5.1 Did the Respondent do the following things in respect of the formal complaint made on 20 September 2020:

5.1.1 Fail [to] *investigate it and/or fail to take it seriously by:*

5.1.1.1 Denying that sexual harassment or sexual assault took place despite Ms X admitting it.

5.1.1.2 Being poor at detail, economical with the truth and trying to deny the undeniable.

5.1.1.3 Indulging in deceitful pedantry to escape liability by denying any of the activities happened whilst Ms X was in employment.

5.1.2 Fail to follow the Respondent's policy and did not interview the alleged perpetrator.

5.2 Did the Respondent misinform the Claimant, by letter of 27 November 2020, that his complaint dated 20 September 2020 was investigated?

61. The "*complaint made on 20 September 2020*" referred to is the 2020 grievance. Ms X is BCD.

62. In relation to each of these things, we need to consider what happened and, potentially, whether there was less favourable treatment and detriment, and, if there was, what the reason for it was and in particular whether the less favourable treatment was because of the protected characteristic of sex.

Victimisation

6.2 Did the Respondent do the following things:

6.2.1 Fail to investigate the Claimant's complaint [the 2020 grievance and the 2021 stage 2 grievance] *and/or fail to take it seriously* [by]*:*

6.2.1.1 Denying that sexual harassment or sexual assault took place despite Ms X admitting it.

6.2.1.2 Being poor at detail, economical with the truth and trying to deny the undeniable.

6.2.1.3 Indulging in deceitful pedantry to escape liability by denying any of the activities happened whilst Ms X was in employment.

….

6.2.3 Fail to interview the perpetrator.

63. As it is conceded that the Claimant did a protected act, the main issues that in principle arise in relation to these victimisation complaints are similar (not, of course, identical) to those arising in relation to the corresponding direct discrimination complaints: what happened and did what happened amount to the University subjecting the Claimant to a detriment; and if so, what was the reason this was done and was because the Claimant did a protected act?

Complaints 5.1.1 & 6.2.1 (sex discrimination & victimisation)

64. Direct sex discrimination claim 5.1.1 is not a general complaint to the effect that the University failed to investigate the grievance or take it seriously, but three complaints about specific things – 5.1.1.1, 5.1.1.2 and 5.1.1.3 – that together allegedly amount to failing to investigate it or take it seriously. We can dispose of it and the corresponding victimisation complaints (6.2.1.1 to 6.2.1.3) relatively quickly and simply.

65. As the Claimant himself confirmed during the hearing, and as can be seen from his witness statement, these three complaints in fact relate to things written in the University's ET3 Grounds of Resistance. Self-evidently, such complaints were not made in the claim form[9], and the Claimant has never been given permission to amend to add them to his claim, so they are not before the Tribunal. They would anyway be barred by judicial proceedings immunity (see **Erhard-Jensen Ontological / Phenomenological Initiative Ltd v Rogerson** [2024] EAT 135 for a summary of the relevant law).

65.1 5.1.1.1 and 6.2.1.1 are: "*Denying that sexual harassment or sexual assault took place despite* [BCD] *admitting it.*" The Claimant gave evidence to the effect that the one and only denial he was relying on was that set out in paragraphs 40 to 44 of the Grounds of Resistance, referred to in paragraph 5.17 of his witness statement as follows: "*The Respondent also failed to acknowledge sexual harassment and sexual assault took place after* [BCD]

[9] Although these complaints appeared in the List of Issues which was, as above, designated "*final*", neither Employment Judge Wedderspoon nor Employment Judge N Clarke said what they were about, made a decision that they were about things in the Grounds of Resistance, or can have realised that they were about things in the Grounds of Resistance.

admitted it in April or May 2022 and continued to do so in its Grounds of Resistance (ET3) [69-70]'. In addition, it is untrue that BCD admitted sexual harassment and/or admitted that sexual assault took place. This is one of a number of examples of the Claimant reading into someone else's written or spoken words something that he wanted to see or hear that was simply not there. In this instance, the thing he wrongly suggested was an admission of assault and harassment was BCD admitting to Mr Hodge: that messages she sent the Claimant "*were jocular and contained content which could be interpreted as mildly sexual*"; that she was, "*an extrovert person and that some of this might feel intimidating to someone more introverted*"; and that, at the conference where the assaults allegedly took place, "*There was a space on the table which PL* [the Claimant] *was at and she had the choice of either sitting with her colleagues or starting a new table, which would have been uncomfortable for her and would also deliver a bad message about collegiality at the University. She therefore sat on PL's table.*"

65.2 5.1.1.2 and 6.2.1.1 are: "*Being poor at detail, economical with the truth and trying to deny the undeniable.*" This turns out to be about paragraph 41 of the Grounds of Resistance. In paragraph 5.27 of the Claimant's witness statement, that part of the Grounds of Resistance is referred to "*For example*", but during the hearing it was the beginning and the end of this complaint.

65.3 5.1.1.3 and 6.2.1.3 are: "*Indulging in deceitful pedantry to escape liability by denying any of the activities happened whilst* [BCD] *was in employment.*" This is simply – see paragraph 5.33 of the Claimant's witness statement – about the fact that the University was [it no longer is] running a technical defence in paragraph 42 of the Grounds of Resistance: "*To the extent that acts or omissions are proved or admitted, it is denied that they took place in the course of* [BCD]*'s employment.*"

66. There is a further peculiarity in 5.1.1. This is that in the List of Issues (paragraph 5.1), it concerns things the University supposedly did "*in respect of the formal complaint made on 20 September 2020* [the 2020 grievance]" and not in respect of anything else. That is a peculiarity because even if 5.1.1 were not about things written in the Grounds of Resistance, it would appear to be about things done, or allegedly done, following the submission of the 2021 stage 2 grievance, i.e. "*in respect of*" that, and not in respect of the 2020 grievance.

67. All of the complaints in 5.1.1 and 6.2.1 therefore fail.

Complaints 5.1.2, 5.2 & 6.2.3 (sex discrimination & victimisation)

68. In so far as there is a direct sex discrimination claim about an alleged general failure to investigate and take seriously the 2020 grievance that the Claimant sought to advance in his witness statement, it boils down to the complaints made in 5.1.2 and 5.2, which are the only sex discrimination complaints we have not already dealt with.

69. 5.2 is an allegation that "*the Respondent misinform*[ed] *the Claimant, by letter of 27 November 2020, that* [the 2020 grievance] *was investigated*".

70. 5.1.2 is two complaints: failure "*to follow the Respondent's policy*" and "*did not interview the alleged perpetrator*". We shall begin with these.

71. The former complaint within 5.1.2 is an allegation to the effect that one or more individuals employed by the University chose not to follow the policy that applied to the 2020 grievance; and that at least part of the reason they made that choice was the protected characteristic of sex. In particular, it is alleged that they were consciously or unconsciously influenced to a material extent by the fact that the Claimant was a man and was alleging sexual harassment by a woman. On the face of it, as with the complaints in 5.1.1 (see paragraph 66 above), this complaint concerns only what the University did "*in respect of*" the 2020 grievance and therefore does not cover any alleged failure to follow policy in relation to the 2021 stage 2 grievance.

72. The latter complaint within 5.1.2, which concerns allegedly not interviewing BCD, is closely linked to the former complaint. The Claimant suggests the failure to interview BCD as part of the grievance process during 2020 and 2021 was an aspect of the University not taking his grievance seriously because he was a male complainant and the alleged perpetrator was female.

73. "*Fail to interview the perpetrator*" is also victimisation complaint 6.2.3. Apart from one being direct discrimination and the other victimisation, the difference between this and "*did not interview the alleged perpetrator*" in 5.1.2 is that (as with the other part of 5.1.2 and as with 5.1.1) the discrimination complaint concerns what the University did in response to the 2020 grievance (i.e. only up to June 2021), whereas the victimisation complaint concerns both that and what the University did in response to the 2021 stage 2 grievance (i.e. from September 2020 up to the point when BCD was interviewed, on 28 February 2022).

74. The first question is: did the University fail to follow its applicable policy? Our answer is: no it did not.

75. The University is governed by legislation, including Ordinances. The University has to comply with these. The relevant Ordinance is the grievance procedure for members of academic staff, which runs from page 181 of the bundle. We shall refer to it as the Grievance Procedure.

76. The Claimant bases this part of the claim on his interpretation of the University's Harassment and Bullying Policy. There are different versions of this in the bundle, but the differences between them are not important for the purposes of this complaint or our decision on it. The version that applied at the relevant time, which we shall refer to as the "Harassment and Bullying Policy", runs from page 256 of the bundle. We understand that it has been updated / amended / replaced since 2022. As it said on the face of it, it had the status of a Code of Practice in the University's legislative framework. That was and is a subordinate status to the Ordinances, i.e. if there is a conflict between the two, the Ordinances take precedence.

77. The Harassment and Bullying Policy was a general policy that was applicable to everyone, including students and visitors and non-academic staff, and not just to academic staff. As such it was, understandably, something of a one-size-fits-all or 'jack of all trades' and imperfection was almost guaranteed. The scope for

imperfection was increased by the fact that Ordinances contained separate and different relevant related policies and procedures for, e.g., students and academic staff. Potentially to combat that, but for whatever reason, the structure of the Harassment and Bullying Policy was: to set out definitions and general principles; then have a section dealing with steps and procedures that might be applicable both to students and staff, including "*Informal Procedures for Addressing Harassment*" (section 12); then, under the heading "*Formal Procedures for Addressing Harassment*" (section 13) and after "*If informal methods do not resolve the matter, or if the Harassment is particularly serious, a formal allegation of Harassment should be submitted*" (paragraph 13.1), in relation to staff members, to refer directly to the "*relevant formal grievance procedure*", i.e. to the Ordinances.

78. That structure has in the present case given rise to the following problem (or what the Claimant perceives as one):

    78.1 the Grievance Procedure contains a three-stage process;

    78.2 stage 1 is, "*A grievance should in the first instance, as far as is reasonably practicable, be raised within the Principal Academic Unit for informal resolution*" (paragraph 3.27.8 of the Grievance Procedure;

    78.3 stage 1 does not necessarily involve any investigation of the grievance at all and explicitly "*may*" (and therefore implicitly may not) "*include communicating with any person(s) against whom the grievance lies*";

    78.4 the Claimant did not want "*informal resolution*" or any other informal procedure, on the basis that, in accordance with paragraph 13.1 of the Harassment and Bullying Policy, he deemed his allegations "*particularly serious*" and he had submitted "*a formal allegation of Harassment*";

    78.5 the Harassment and Bullying Policy states, at paragraph 13.3, "*Formal complaints are made under the relevant staff grievance procedure and will* [our emphasis] *involve a formal investigation into the allegations*";

    78.6 the Claimant's case is that he expected that to happen as soon as he had submitted the September 2020 grievance and that it would involve the University formally interviewing and putting all his allegations to BCD;

    78.7 the University did not undertake a formal investigation into the allegations in 2020, nor (seemingly) was there a formal interview with BCD at which all the Claimant's allegations were put to her until 2022.

79. In summary: the Claimant was wanting to start at stage 2 of the Grievance Procedure and not stage 1; he does not quite put it like this, but the gist of his case is that by starting at stage 1 and not stage 2, the University failed to follow its policy – meaning the Bullying and Harassment Policy.

80. Although we understand and have some sympathy with the Claimant's points, we do not agree that there was a relevant failure to follow policy here. There is something of an inconsistency or contradiction within the Harassment and Bullying Policy, in that: on the one hand it tells complainants that every formal complaint

will be formally investigated; on the other, it requires formal complaints about academic staff to be submitted in accordance with the Grievance Procedure and that procedure makes clear there won't necessarily be a formal investigation – indeed, given that stage 1 is concerned with "*informal resolution*", it would be odd for there to be a formal investigation at that stage.

81. However, the inconsistency or contradiction is, as we have just written, within the Harassment and Bullying Policy itself. Given that the Ordinances take precedence over Codes of Practice, we think the only way sensibly to resolve that inconsistency / contradiction is by doing something like reading into the relevant part of that Policy the words, "*subject to what is set out in that procedure*", i.e. the last sentence of paragraph 13.3 should be read as if it stated: "*Formal complaints are made under the relevant staff grievance procedure and, subject to what is set out in that procedure, will involve a formal investigation into the allegations*".

82. For those reasons, there was no breach of the Harassment and Bullying Policy, properly interpreted. In any event:

    82.1 the Harassment and Bullying Policy is not the relevant (or, at least, the most relevant) policy or procedure. The applicable policy / procedure was the Grievance Procedure. The University could not have done what the Claimant wanted it to do without breaching the Grievance Procedure, which would have been unlawful. It would have been unlawful because there was a mandatory three-stage process, including an informal stage 1. There was no discretion in the Grievance Procedure to skip a stage;

    82.2 as we shall explain later in these Reasons, even if the Claimant is correct in his interpretation of the applicable policies and procedures, the reason the University followed the procedure it followed was a genuine belief that it was required to do so.

83. In addition:

    83.1 the Claimant complains that from his point of view he instigated stage 2 of the Grievance Procedure, which involves (paragraph 3.27.9) writing to the Director of Human Resources, and that the University forced him to 'go backwards', to stage 1. But even if the University had not been required to go through stage 1, there was nothing inherently harmful or detrimental in doing so. Stage 1 could be over and done with very quickly. All it required was for the person dealing with the grievance to decide that it could not be "*resolved*" by "*informal resolution*". It would not have been a breach of the Grievance Procedure to make such a decision on paper, or after a short conversation with the Claimant;

    83.2 the Claimant seems to be suggesting that because he was complaining about bullying and harassment, it could not possibly have been appropriate to attempt to resolve his grievance by informal resolution. We take a different view. We can readily envisage a complaint or grievance identified by the complainant as one of bullying and/or harassment that could be resolved informally, without any investigation. A policy which required every single formal complaint of bullying and/or harassment to be formally investigated would be a bad policy.

84. The Claimant professes to have been confused about what was happening, but the University made clear from the outset that from its point of view it was at stage 1 of the Grievance Procedure. To quote from Ms Oakes's letter to the Claimant of 25 September 2020: "*The process outlined in the harassment and bullying procedure indicates that this formal complaint should now be dealt with under the University's grievance procedures. // Accordingly, stage 1 of the process as defined in Ordinance 3.27.8, (a copy of which is enclosed for your information), outlines that you should raise this with your Head of School, or, should you not feel this appropriate, another Head of School. I understand from your correspondence that you are willing to supply a copy of the report to your Head of School.*" This could hardly have been clearer. If at any stage the Claimant was in doubt, he had trade union support and his trade union representative ought to have known what was going on; and to the extent they didn't, they could and should have asked Ms Oakes.

85. It is relevant that the Claimant seems to have a tendency to be unable to 'agree to disagree'. He evidently took the view that the procedure adopted by the University was not right and rather than pragmatically following it and engaging with the University about the substance of his grievance – something he could have done whilst making clear he thought the procedure was the wrong one – he persistently challenged and obstructed what was being done and, subsequently, challenged and refused to move on from his complaints about process. It might well have been more productive and have worked out better for him had he behaved otherwise.

86. It would be fair to say that stage 1 informal resolution of the 2020 grievance was a practical impossibility and would not have been acceptable to the Claimant in any event. Interviewing BCD at stage 1 would therefore have been a waste of time. What the University did was to have the meeting it had on 1 October 2020 between the Claimant and Professor Oldfield. The only evidence we have is that that was the University following its standard stage 1 process; and, moreover, that it was the process the University had followed in relation to the only other complaint or grievance of sexual harassment we have any evidence about. It was a complaint / grievance by a woman about alleged sexual harassment by a man. There is no basis in the evidence for the Claimant's assertion that he was in this respect treated differently from, and less favourably than, a woman would have been treated in a comparable situation.

87. At the conclusion of his meeting with the Claimant, to quote from Professor Oldfield's witness statement: "*The Claimant's firm view was that a formal investigation should be undertaken and it was clear to me having discussed matters with the Claimant that he did not wish to explore informal resolution, and I relayed this to Ms Oakes in my subsequent email*".

88. In our view, what should ideally have happened at that point was the formal ending of stage 1. However, things got a little side-tracked and bogged down.

89. First, as mentioned above, Ms Oakes, reasonably, through Professor Oldfield, asked the Claimant for copies of the messages the Claimant had shown him during the meeting on 1 October 2020 and the Claimant initially refused to provide them. They were finally provided on 22 October 2020.

90. Secondly, from 23 October 2020, the University routed the matter through the disciplinary process and paused the grievance process in the meantime. This accorded with the Grievance Procedure (paragraph 3.27.4; bundle p. 182). We note in connection with this that the Claimant interprets paragraph 13.6 of the Bullying and Harassment Policy – "*Where an investigation finds that Harassment has taken place, this may result in disciplinary action under the relevant staff or student procedure*" – as meaning that disciplinary action could only be instigated once there had been investigation in accordance with that part of the Policy. It said no such thing; it simply provided information about one possible scenario. In other words, one thing that could have happened was the making of a complaint under the Bullying and Harassment Policy, followed by an investigation under that Policy, followed by disciplinary action under the relevant disciplinary policy. It would be regressive – and contrary to the Grievance Procedure – to require the University to wait until the completion of a formal investigation under the Bullying and Harassment Policy before starting a disciplinary process.

91. As Ms Oakes has herself subsequently conceded, her communications with the Claimant from this point were not as clear as they might have been. In fairness to her, she had, as mentioned above, been very clear at the start of the grievance process and it did not help matters that she was having to respond to the Claimant's frequent and frequently very long and opaque emails.

92. On 23 October 2020, Ms Oakes wrote: "*Following the University procedures, this matter will now be referred to the appropriate person for consideration. I will write to you again to confirm the next steps in due course.*" Then, on 29 October 2020, she responded to an email from the Claimant asking whether BCD had been "*approached … about her behaviour*" with: "*While the matter has progressed to being referred to the appropriate College, I can confirm that at this early stage nothing has yet been communicated to* [BCD]*. I note that you aim to attend Campus at a time intended to avoid any such interaction which I support.*"

93. If the Claimant were reading this in isolation, we could well understand why he might have been confused. However, Ms Oakes also spoke to the Claimant's trade union representative, Mr Thompson, to tell him that the matter was being taken down a disciplinary route. (We note that Mr Thompson told the Claimant, in an email of 3 November 2020, "*Given the serious claims included within your evidence against* [BCD]*, the investigation will merely be a formality in the process towards a full-scale disciplinary hearing*". We do not know on what possible basis Mr Thompson felt able to make that ill-advised comment). Once again, if the Claimant did not understand the process being followed, and that the grievance process was suspended pursuant to paragraph 3.27.4 of the Grievance Procedure, matters could and should have been clarified by his Union.

94. It may be helpful for us to explain a bit about how the grievance and the disciplinary processes interact, something the Claimant seems to misunderstand. Essentially, they are separate and distinct and do not impinge on each other. For example, the outcome of the disciplinary process in many (perhaps most) public sector organisations is deemed confidential to the person being subject to that process. It is commonly the case in the public sector that an individual makes a complaint about someone, that someone is then subjected to a disciplinary process, and the complainant – understandably, but incorrectly – thinks they have a right to know

what happened. A further example of something that sometimes happens in the public sector is that the grievance and disciplinary processes have different outcomes, i.e. a complainant's grievance is upheld, but the outcome of the disciplinary process is that the individual is found not guilty of some of the things that the complainant was complaining about. This is an unavoidable product of the grievance and disciplinary processes being different and being dealt with by different managers at every stage, from investigation through to conclusion. Another aspect of this is that punitive action being taken or not being taken against BCD as part of her disciplinary process is not 'treatment' of the Claimant.

95. Again as conceded by Ms Oakes with the benefit of hindsight, the letter she wrote to the Claimant on 27 November 2020 which marked the end of stage 1 of the Grievance Procedure was badly put together. The heading "*Outcome of Investigation*" was the wrong heading – it should have been headed something like "Outcome of stage 1". The letter did not say in terms that stage 1 was at an end, nor did it remind the Claimant what stage 2 consisted of and how to activate stage 2.

96. In addition, the letter dealt with three different things: the outcome of stage 1; the outcome of BCD's disciplinary process, in so far as that could be communicated to the Claimant consistently with the confidentiality of that process; the contents of an email the Claimant had sent the previous day, which it was very critical of. If Ms Oakes was going to put all three things in the same letter – and we think the third of them belonged in a separate letter – it ought at least to have had three headings.

97. This brings us on to complaint / issue 5.2: "*Did the Respondent misinform the Claimant, by letter of 27 November 2020, that his complaint dated 20 September 2020 was investigated?*". A careful reading of what the letter actually said reveals that the heading "*Outcome of Investigation*" concerned the outcome of the investigation, such as it was, that took place as part of the disciplinary process with BCD, rather than the outcome of a non-existent formal investigation into the 2020 grievance. In other words, the University did not "*misinform the Claimant … that his* [grievance] *was investigated*". In any event, there <u>was</u> an investigation into his grievance, albeit not a full, formal one of the kind that would be appropriate at stage 2 but not at stage 1. The investigation consisted of Professor Oldfield's meeting with the Claimant and subsequently the University obtaining the messages from the Claimant. Complaint 5.2 therefore fails on the facts: there was no relevant misinformation. As for the suggestions that there was misinformation which was less favourable treatment and which was because of the protected characteristic of sex, these are completely without foundation.

98. It seems to us that what the Claimant is really complaining about here is that there was not a full investigation of his grievance in September / October / November 2020. That complaint is based on his apparent misapprehension that the grievance was at stage 2, which was, as we have already indicated, a puzzling misapprehension given that he was told at the outset it was at stage 1.

99. We are unable to comment on BCD's disciplinary process because we have limited evidence about it, except to say that, based on that limited evidence, it seems to have been fairly perfunctory and it is reasonably clear that the most serious allegations – of sexual assault of the Claimant – were not put to BCD at

all. We don't know why this was, but, as we have already said, this was not part of any treatment of the Claimant, nor is there a complaint about it (unsurprising, given that the Claimant did not know what had happened until after he presented his claim). We also note that this was not necessarily the end of the road so far as concerned disciplining BCD. If stage 2 had had a different outcome, the disciplinary process could, and we think would have been, resurrected at that stage, at least in relation to the sexual assault allegations.

100. The Claimant relies heavily on an email of 22 November 2020 from the individual who dealt with BCD's disciplinary process, a Ms Hackforth Williams, to a Ms Smith from HR. This is an email he only became aware of sometime after he presented his claim. In it, amongst other things, Ms Hackforth Williams stated that she had spoken to BCD and that, "*Through that discussion it became evident that there was a relationship between them outside of work and that predated Peter Lee joining the University of Birmingham. …. What does concern me is why he is making these allegations so long after the event and what his motivation for this might be. Certainly was upset by the allegations and is concerned that this is an attempt to undermine her and/or the wider team given the other complaints that have been made. I have to say that I share that concern.*" The Claimant submits that the first sentence we have quoted proves that BCD was a liar, because – as the University agrees – the Claimant joined the University in 1994, many years before he even met BCD. He also submits that the rest of the part of the email we have quoted demonstrates that the University was sceptical about and dismissive of his allegations, in a way it would not have been had they been made by a woman about a man.

101. We agree with the Claimant that if Ms Hackforth Williams and/or, arguably, Ms Smith had had any significant involvement in his 2020 grievance or anything else he is making a Tribunal complaint about, or if, for example, Ms Oakes and/or Mr Hodge had been conscious of the email's contents at a relevant time, it might well be an important piece of evidence – one which could (arguably; potentially) reverse the burden of proof and require the University to disprove discrimination pursuant to EQA section 136. However, they had no such involvement and they were not so aware.

102. In relation to the submission that the email proved BCD a liar, we note that the only direct evidence we have as to what BCD said to the University about the Claimant's allegations is what she told Mr Hodge; and that she did not suggest to him that she had a significantly longer acquaintance with the Claimant than the Claimant agrees she did. We think the most likely explanation for what Ms Hackforth Williams wrote in her email to the effect that BCD had had a relationship with the Claimant before 1994 is that Ms Hackforth Williams misheard or misunderstood what BCD told her and/or made a mistake about how long the Claimant had been with the University.

103. Before we move on from the letter of 27 November 2020, we note that we do not share the Claimant's and Mr Thompson's (and Dr Bailey's) apparent view that the third part of it, in which the Claimant's email of 26 November 2020 was criticised, was inappropriate. We do not think there was anything wrong with the contents of that part. All we are saying about it is that it would have been better put in a separate letter.

104. We also note that during the hearing the Claimant explicitly made no allegations of discrimination or victimisation against Professor Oldfield.

105. To summarise the position up to 27 November 2020 with reference to complaints 5.1.2, 5.2 and 6.2.3:

105.1 up to that point in time, the University had followed its policy;

105.2 the University did interview BCD, albeit as part of the disciplinary process. She was not interviewed as part of the grievance process because it was only at stage 1 and there would have been no point in interviewing her at that stage;

105.3 the University had investigated the 2020 grievance to the extent appropriate to stage 1, and did not misinform the Claimant in any way in the letter of 27 November 2020.

106. We make a similar general comment in relation to the letter of 27 November 2020 and the situation at that time as we made about early and late October 2020: if the Claimant was not sure what was happening with his grievance, he could and should have asked his Union who should have known and told him, and who could and should have asked Ms Oakes if they did not know.

107. If the Claimant was unhappy with the outcome of stage 1, then it was for him to initiate stage 2. What the Claimant did instead was to write lots of very long letters and emails to Ms Oakes about the process that had been followed previously and things of that kind. He criticises her seemingly for not responding to every part of each of them straight away, but to deal with the Claimant's correspondence to the extent he appears to have expected Ms Oakes to would have been virtually a full time job for her. She, like the vast majority of people, evidently lacked the Claimant's facility for producing dense and lengthy documents in a remarkably short space of time. The following, from paragraph 36 of her witness statement, is fair: "*anything I sent to the Claimant he would pick it apart, quote and challenge various points back to me.*" In her oral evidence she described how she would get multiple replies to a single email, of increasing length, such that if she had responded immediately to the first of them, her reply would quickly have become redundant.

108. A further reason why Ms Oakes did not respond fully and quickly to all the Claimant's correspondence was Mr Thompson's email of 7 December 2020 asking for consideration to be given to "*Voluntary Severance*". In light of that email, Ms Oakes for a time focussed on that. We think she was right to do so; and she might well have faced heavy criticism for neglecting the Claimant's health had she instead focussed on producing and providing detailed responses to the Claimant's correspondence.

109. We have already explained that it was up to the Claimant to take the 2020 grievance further, into stage 2, if he wanted to pursue it. Having previously pursued multiple grievances, he must have been well aware how to do so; and if he wasn't he had access to Union advice and assistance. He shouldn't have needed telling, but in so far as he did (and in so far as it was not clear previously), he was told in Ms Oakes's email of 22 January 2021 what to do in the clearest of

terms. See paragraph 49 above. She repeated the same message in emails of 15 February and 2 March 2021.

110. The claimant has never explained why he did not instigate stage 2 in late January / early February 2021, if not before. Whatever the explanation, the answer to the question 'Why was BCD not interviewed between November 2020 and the summer of 2021?' is: the Claimant chose not to start stage 2 until the 2021 stage 2 grievance of 17 June 2021. The University could not escalate to stage 2 by itself; under the Grievance Procedure, it is for the complainant to initiate stage 2, or not, as they see fit.

111. More generally in terms of the procedure adopted between September 2020 and June 2021 in relation to the 2020 grievance, we are entirely satisfied that the University acted as it did because it, and Ms Oakes in particular, believed that that was what the Grievance Procedure required.

112. Chronologically, we have got up to the 2021 stage 2 grievance of June 2021. Given that – see paragraphs 71 and 73 above – the two direct discrimination complaints in 5.1.2 only concern things that happened "*in respect of*" the 2020 grievance (and not in respect of the 2021 stage 2 grievance), all the direct discrimination complaints fail on the basis of the findings and decisions we have already made.

113. Nevertheless, as victimisation complaint 6.2.3 overlaps with 5.1.2 and does cover the period from June 2021 onwards, as the Claimant is seemingly wanting to pursue 5.1.2 in relation to that period, and as we heard evidence and submissions that would only be relevant if there was a discrimination complaint about breach of policy relating to that period, we shall proceed as if 5.1.2 did cover that period.

114. The 2021 stage 2 grievance and what followed it is relevant only to complaint 6.2.3 (not interviewing BCD) and – in this scenario where we are proceeding as if 5.1.2 was made in respect of the period from June 2021 onwards – 5.1.2 (failing to follow policy and not interviewing BCD). There is, for example, no complaint about the decision to appoint Professor Shepherd as the stage 2 investigator. The Claimant has during the hearing, however, criticised Professor Shepherd on the basis of his lack of experience of investigating, specifically, sexual harassment allegations. All we would say about that is that, based on various things he said during this hearing, the Claimant appears to have wanted someone who almost certainly did not and never would exist, namely a senior academic at the University in social sciences with extensive experience of investigating allegations of sexual harassment.

115. In terms of who to interview, and when, and generally how to progress the stage 2 investigations, the University's uncontradicted evidence was that it was Professor Shepherd's decision. The Claimant showed a marked reluctance to put any specific allegations of discrimination or victimisation to Professor Shepherd, despite being repeatedly reminded of the need to do so if such allegations were being pursued. We were left not at all sure that in practice the Claimant was making any such allegations against him.

116. Professor Shepherd proceeded with reasonable speed up to the end of September 2021, bearing in mind the fact that he was on leave for 3 weeks over

the summer, the length of the 2021 stage 2 grievance and the quantity of the Claimant's correspondence generally, and the fact that the 2021 stage 2 grievance included complaints that were part of a previously raised and dealt-with grievance, which had to be separated from the rest of it.

117. The decision the University made in the summer of 2021 as to what parts of the 2021 stage 2 grievance it could and could not deal with, on the basis of what had previously been dealt with as part, in particular, of the 2019 grievance process, was rather odd. We say this because it was decided that Professor Shepherd could and should look at that process and, to some extent, by implication, the merits of the 2019 grievance (see the final version of the 2021 stage 2 grievance, dated 10 August 2021, from bundle p. 1163). It would have been much simpler and better all round had the University simply said that the previous grievances were not to be re-opened to any extent.

118. What in fact happened, though, was that Professor Shepherd made a decision – and it was his decision – that, initially, he would not look at the 2019 grievance or grievance process and would instead focus on the Claimant's allegations of assault and harassment by BCD. If Professor Shepherd had had a discriminatory or victimising mindset, e.g. was not taking allegations of harassment and assault seriously because they were made by a man against a female alleged perpetrator, we would have expected Professor Shepherd to have prioritised examining the 2019 grievance process at the expense of those allegations.

119. Professor Shepherd gave evidence that he wanted to and intended to interview BCD. It was not put to him that that was not genuinely his intention and we find that it was.

120. What then happened, from mid to late September 2021 onwards, was the Claimant questioning the process and, it seems to us, seeking to impose on Professor Shepherd and Mr Seeley his own preferred way of investigating things. It is one thing to make suggestions, but quite another to (as the Claimant did) demand information he was not entitled to and to challenge the good faith and competence of the people in charge of the investigations merely because they were undertaking them in their own way, as they were entitled to. If what the Claimant wanted was for the investigation to proceed and to reach a conclusion, his interventions were unhelpful and self-defeating. This correspondence culminated in an email of 1 October 2021 to Ms McGrattan in which the Claimant stated, "*I would appreciate, as a matter of urgency, acknowledgment of this rather long email and detail the process and confirmation of the replacement of Mr. Seeley who has demonstrated his bias and lack of professionalism in this case.*"

121. It may not have been the Claimant's intention, but the effect of that request was to bring the investigation to a grinding halt. As was set out in an email to him from Ms McGrattan of 5 October 2021, the University had, "*no other senior HR staff with the required level of experience of employment relations matters available who have no previous knowledge of your complaints, given the long history of those complaints and attendant processes. I am therefore in the process of appointing an independent external investigator to complete the Stage 2 grievance complaint with allegations of sexual misconduct by a member of the City-REDI team. That investigator will be someone with a history of investigating*

claims of sexual misconduct." In his response, the Claimant made clear he objected to the involvement of anyone from outside the University.

122. This is a convenient point to discuss whether it was a breach of procedure to involve anyone external in stage 2 of a grievance. We agree with the University that it was not. Paragraph 3.27.9 of the Grievance Procedure states: "*Where a member of Staff has been unable to raise or to resolve his/her grievance under paragraph 8 above, he or she should put the grievance in writing (in sufficient detail to enable the scope of the grievance to be understood) to the Director of Human Resources who, after consultation with the member of Staff bringing the grievance, shall refer it to a Head of College (or nominee) or a Pro Vice-Chancellor or a Deputy Pro-Vice-Chancellor (the "Appropriate Person") for resolution…*". There is nothing in there limiting who a "*nominee*" could be to an employee of the University, let alone to a member of academic staff, as the Claimant seems to be suggesting.

123. The Claimant was evidently unhappy about having his grievance investigated by Professor Shepherd because of his lack of experience of investigating allegations of sexual harassment. In those circumstances, it seems to us to have been eminently sensible to nominate someone like Mr Hodge – a legal professional, bound by a professional code of conduct and obligations of confidentiality, and with experience of those kinds of investigations. We also note that paragraph 3.27.9 of the Grievance Procedure does not give the complainant a right to veto the proposed grievance investigator; they merely have to be consulted with.

124. It is unfortunate, to say the least, that the Claimant, apparently with the encouragement of Dr Bailey, chose not to engage with Mr Hodge, the external investigator who was appointed. Once again, this was his choice and not something for which the University can legitimately be blamed.

125. Professor Shepherd had a meeting with Mr Seeley, referred to in paragraph 40 of his witness statement: "*After my meeting with Mr Seeley on 21 October 2021 I stepped back from the investigation process because it was my understanding that the University would appoint an external investigator to continue the investigation.*" From his oral evidence, it is clear that that is not quite right. Although he was probably aware that an external investigator had, as above, been suggested, he did not know one was definitely being appointed until it happened, in or around early February 2022. From his point of view, what was happening in October 2021 was that the investigation was being paused; and the reason for this was the lack of HR support (in light of the Claimant's objections to Mr Seeley), and the impossibility of him [Professor Shepherd] proceeding any further, for example by interviewing BCD, without that support.

126. It was around the same time, on 18 October 2021, that the Claimant sent the message to Professor Oldfield in which he stated that he was very unwell and that, "*I need to have some time out to rest my brain and get well. The research integrity office … need to pause until I'm back and can respond properly when I'm well. Please can you inform them and not to take external until I'm back …*". Although in this email he only referred (indirectly) to the research complaint and not to the 2021 stage 2 grievance, and although there had previously been some suggestion of progressing the research complaint with some external advice, this message potentially suggested that stage 2 of the grievance process should be paused too.

Certainly, it was reasonable for the University to interpret it as such and/or to take the view that it would be appropriate in the interests of Claimant's mental health to pause it.

127. We do not have direct, non-hearsay evidence on the point, but we infer that the University did indeed pause the stage 2 investigation from then until mid to late January 2022 directly or indirectly because of the Claimant's message to Professor Oldfield of 18 October 2021. That inference comes from an email sent by Ms McGrattan to the Claimant on 19 January 2022 , which is at bundle p. 1586.

128. To cut a long story short, with reference to the specific complaints being pursued about stage 2:

128.1 the University's relevant policies were followed. If we are wrong about that and appointing an external investigator was a breach of policy, the reason the University did that was as set out in Ms McGrattan's email to the Claimant of 5 October 2021, referred to above;

128.2 Professor Shepherd made all relevant decisions in terms of when to interview BCD from his appointment in July 2021 to August 2021, including a decision that he would be interviewing her, but not until October 2021;

128.3 BCD was not in fact interviewed until after Mr Hodge was appointed because the Claimant raised objections about Mr Seeley, in particular in an email of 1 October 2021, which made it impracticable for Professor Shepherd to take things further;

128.4 Mr Hodge was not appointed until early February 2022 because the Claimant had been off sick from October 2021 and asked for the research complaint to be paused in the meantime, and had, in January 2022, objected to any external appointment, meaning there was further delay even after the University was in a position to and wanted to take the stage 2 grievance process further;

128.5 there was no failure to interview BCD by Mr Hodge. BCD was interviewed by Mr Hodge on or about 28 February 2022, which was reasonably quickly and when he thought this appropriate;

128.6 there is no substantial basis in the evidence for a finding that the actions and decisions of Professor Shepherd, Mr Hodge, or of any other relevant person, were materially influenced by the Claimant being a man, or by him having done a protected act, or by anything other than them believing, in good faith, that what they were doing was the right thing to do.

129. In summary and conclusion, all of the Claimant's discrimination complaints and all of his victimisation complaints apart from complaint 6.2.2 fail.

Victimisation complaint 6.2.2

130. The only victimisation complaint that has not already been considered and decided in terms is 6.2.2: a complaint that the Claimant was subjected to a detriment by failing, "*to keep the Claimant informed about the process followed as*

regards the investigation of the complaint [the 2020 grievance]". The Claimant has not put this complaint forward as being anything to do with the 2021 stage 2 grievance or events from June 2021 onwards.

131. The specific things the Claimant referred to in connection with complaint 6.2.2 in his witness statement – paragraphs 6.13 & 6.14 – are emails of 15 February 2021 and 2 March 2021 (for some reason the Claimant persistently ignores the similar email of 22 January 2021), referred to in paragraphs 49 and 109 above, in which Ms Oakes confirmed that stage 1 of the grievance process was over, i.e. that investigations had ceased, and that if he wanted to take matters further he had to start stage 2.

132. As we have already found:

    132.1 although some of the University's correspondence, in particular Ms Oakes's letter dated 27 November 2020, could have been clearer, the Claimant should have known that in September to November 2020, he was at stage 1 of the grievance procedure because, amongst other reasons, he was told this in her letter of 25 September 2020;

    132.2 in so far as he didn't know what was going on with the 2020 grievance in late 2020 to January 2021, the Claimant could and should have found out from his trade union representative; and if his trade union representative was unsure, he [the representative] could and should have asked Ms Oakes;

    132.3 the University / Ms Oakes did not respond in detail to all of the Claimant's queries in December 2020 because they were excessive and because it / she was (rightly) focussing on the possibility of settlement / voluntary severance, at the Claimant's trade union representatives' request.

133. We think it unlikely that the Claimant was truly unclear in any relevant respect "*about the process followed as regards the investigation of the complaint*", or at least that, if he was, this was not the reason the investigation did not progress. He was told by email in January, February and March 2021 that stage 1 was at an end and what he had to do if he wanted matters to go any further. He still did nothing to advance the process until June 2021.

134. In any event, there is (as with the other victimisation complaints) no substantial basis in the evidence for us to find that the reason for the letter of 27 November 2020 not being drafted as clearly as, with hindsight, it should have been, or for anything else that could conceivably be characterised as failing properly to inform the Claimant "*about the process followed as regards the investigation of the complaint*", was anything to do with the fact that he had made allegations of sexual harassment in the 2020 grievance.

135. Like all the other victimisation complaints, complaint 6.2.2 therefore fails.

Protected disclosure detriment

136. In relation to the protected disclosure detriment complaints, we think it best in the particular circumstances of this case to start by examining the allegations of detriment rather than, as we conventionally would, starting with the question of

whether there was a protected disclosure. We shall do so as if we had decided that there was one.

137. The Claimant's public interest disclosure complaints concern two things, which form complaints 3.1.1 and 3.1.2 in the List of Issues:

Detriment (Employment Rights Act 1996 section 48)

3.1 Did the Respondent do the following things:

3.1.1 Not investigate the Claimant's complaint (dated 17 June 2021, headed, "Sexual Harassment, Deceit and Exploitation by [BCD]*") properly.*

3.1.2 Between September 2021 and March 2022, allege that the Claimant was not co-operating with the Respondent.

Complaint 3.1.1

138. In relation to 3.1.1, we have struggled to understand the Claimant's case given what he wrote about the complaint in his witness statement. The relevant section of the statement is the paragraph 3.2 that begins on internal page 30[10].

139. Both protected disclosure complaints rely as the alleged protected disclosure on the research complaint of 4 August 2021. They must therefore necessarily be about something that happened on or after that date. However, in that paragraph of his statement he refers to many things that occurred or allegedly occurred before August 2021, e.g. the failure to uphold the 2019 grievance.

140. Also, this complaint – like every complaint, given that the claim has not been amended – must necessarily be about something that happened before 3 May 2022, when the Claimant presented his claim form. This means it cannot, for example, be about Mr Hodge's conclusions, set out in his report of 9 May 2022 and which the Claimant was not made aware of until 13 June 2022. Notwithstanding this, the gist of what the Claimant seems to be complaining about in the relevant part of his witness statement is that the University / Mr Hodge should have found BCD guilty of the things the Claimant was accusing her of; and the gist of complaint 3.1.1 seems to be that the allegations made in the 2021 stage 2 grievance cannot have been investigated properly because there was no finding of guilt in Mr Hodge's report.

141. The Claimant seems to be convinced that he proved BCD's guilt in his 2020 grievance and 2021 stage 2 grievance and related documents. Suffice it to say that we disagree. (We have already commented, in paragraph 65.1 above, on his tendency to misinterpret words spoken or on the page as meaning something he would like them to mean. This was in connection with complaints 5.1.1.1 and 6.2.1.1 and the Claimant's insistence that BCD had admitted to sexually assaulting and sexually harassing him when by no stretch had she done so.). In any event, it was reasonable for Mr Hodge to conclude she was not guilty on the basis of the evidence he had before him and we are quite satisfied that he conducted his investigations and reached that conclusion in good faith and without being subject to any pressure from the University to reach it. In relation to this, see also

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[10] There is at least one other paragraph 3.2 in the statement.

paragraph 144 below. To mention just one potentially significant piece of evidence Mr Hodge had, the Claimant named a Mr Parke as a potential witness to one of the alleged sexual assaults by BCD and there was a statement from Mr Parke that had been obtained by Professor Shepherd which did not corroborate what the Claimant was alleging.

142. If complaint 3.1.1 is to any extent about what Professor Shepherd did or did not do, Professor Shepherd's unchallenged evidence, which we accept, was that he did not know the contents of the research complaint until after the Claimant started his Tribunal claim. In addition, it was not suggested or put to him that someone else who might have had that knowledge influenced him to deal with things as he did. It follows that Professor Shepherd cannot have inflicted the alleged detriment on the ground that the Claimant [allegedly] made a protected disclosure in the research complaint.

143. Complaint 3.1.1 concerns not investigating "*properly*". In so far as it is possible to discern what, in terms of specifics and consistent with the chronology, this complaint might conceivably relate to, it seems wholly or largely to be about not interviewing BCD between 17 June 2021 and 28 February 2022 (the later date being the date on which Mr Hodge interviewed her). We have already, in paragraphs 125 to 128 above, made findings as to why there was this delay; there was no improper reason.

144. Apart from the allegation about BCD not being interviewed because the Claimant made a protected disclosure, which was put by the Employment Judge on the Claimant's behalf because he seemed to have difficulty putting it himself, the Claimant did not suggest or put to Professor Shepherd or to Mr Hodge that, in terms of their investigations, they did something specific they ought not to have done or failed to do something specific they ought to have done because of the alleged protected disclosure. It was also not put to Mr Hodge that he had any ulterior motive for reaching the conclusions he reached, and his uncontradicted evidence was that he decided how to conduct his investigations and what conclusions to reach entirely by himself and that no one at the University sought to persuade or pressurise him to act or to decide anything differently.

145. This was not, as just mentioned, put to the University's witnesses, but if complaint 3.1.1 includes an allegation that, on the ground that the Claimant made a protected disclosure, Professor Shepherd and/or Mr Hodge did not look into allegations in the 2021 stage 2 grievance that concerned the subject matter or outcome of the 2019 grievance:

145.1 Professor Shepherd did not – see paragraph 142 above – know what information the Claimant disclosed in the research complaint at any relevant time so cannot have been motivated to do anything on the ground that the Claimant allegedly made a protected disclosure;

145.2 there were very good reasons for keeping anything to do with the 2019 grievance outside the scope of the University's investigations in 2021 and 2022. The 2019 grievance had been through a full process, including stage 3. What the Claimant wanted as a matter of substance was for it to be re-opened. This would have been wholly unreasonable, not least because part of the conclusion at stage 3 was (as already mentioned), "*Whilst I appreciate*

it is likely that [the Claimant] *will remain dissatisfied, the internal process has been exhausted and I do not believe it fruitful, or in either party's interest, to enter into further communications on the matters contained within the grievances raised. Accordingly, if further communications are received on these matters, then I propose that one person within the University's HR Department should read and acknowledge it, but no further action should be taken in respect of it*". This was plainly the reason why the investigations in 2021 and 2022 were limited in the way they were;

145.3 it was in fact initially proposed by Mr Seeley and agreed by Professor Shepherd that aspects of the 2019 grievance process would be considered, as mentioned in paragraph 117 above. We do not understand how this could possibly have worked in practice without, improperly, completely re-opening the 2019 grievance, but, anyway, again as already mentioned, Professor Shepherd decided to concentrate on the allegations of sexual harassment in the first instance and the Claimant did not put to him that the reason he did that was anything to do with the alleged protected disclosure (and we have already found that he did that in good faith, for his own reasons). What Mr Hodge dealt with was more circumscribed, and the reason for him not ranging further was as just set out in paragraph 145.2, immediately above;

145.4 it was not put to Mr Hodge that he had failed to investigate particular allegations because of the alleged protected disclosure and on the basis of what is in his report, he appears to us to have more than adequately investigated all of the allegations that were before him and that he could reasonably have looked into.

146. In our view, it does not lie in the Claimant's mouth to complain about an alleged failure by Mr Hodge to investigate properly given his refusal to cooperate with the investigation. It would be fair to say that Mr Hodge's investigation was not all it should have been, but that was solely because the Claimant chose not to participate in it; Mr Hodge did the best he could given that constraint.

147. In conclusion in relation to complaint 3.1.1:

147.1 the complaint fails on the facts – there was no failure to investigate properly;

147.2 consequently, the Claimant was not subjected to a detriment;

147.3 in any event, there was no connection between how the allegations in the 2021 stage 2 grievance were investigated and the fact that the Claimant had raised the research complaint.

Complaint 3.1.2

148. This complaint is an allegation that: "*Between September 2021 and March 2022,* [the Respondent alleged] *that the Claimant was not co-operating with the Respondent.*" As clarified by the Claimant in response to an unless order Employment Judge N Clarke made – see paragraph 25 above – it relates to, and only to, a single sentence in a single email of 14 January 2022. The email was from Dr Whitman and the sentence was the underlined sentence in the following (the underlining being our emphasis): "*… I do not seem to have received a*

message to indicate that you were back at work and would like to proceed with preparing a document based on the complaint that you submitted, with redaction of issue [sic] *that have already been reviewed in line with other University processes. As indicated previously, I had hoped that we would work together on this document as I have not been involved in any previous review processes. <u>However, I have noted that you do not wish to prepare this with me.</u> I will therefore finalise the redacted version and ask colleagues to check that previously reviewed material has been redacted appropriately.*"

149. The context within which Dr Whitman wrote this is explained in her witness statement, the factual accuracy of the relevant parts of which was not challenged in cross-examination. To summarise:

149.1 the Claimant had included within the research complaint matters that had been considered and dealt with as part of previous grievance processes and/or that were being dealt with as part of the then ongoing stage 2 grievance process;

149.2 the research complaint also included other allegations that in Dr Whitman's genuine and reasonable view were not issues of research integrity that she could properly deal with in accordance with the relevant Code she was operating under;

149.3 it was therefore necessary for the research complaint to be refined and revised so that (in Dr Whitman's words in an email of 24 September 2021), "*the information provided focusses on research integrity issues only and does not include any reference to issues that have been or are currently under investigation in line with other UoB* [University] *processes*";

149.4 what Dr Whitman wanted to do was what she would usually do in a similar situation and what it seems to us would have been the sensible thing to do in the actual situation that pertained, namely to meet with the Claimant and go through the research complaint with him with a view to producing a revised complaint document that only raised research integrity issues and that did not include issues that had already been or were being dealt with under other University processes;

149.5 for no good reason that we can identify, but possibly in part due to mental ill-health, the Claimant refused to agree to this and insisted that Dr Whitman produce a revised research complaint without further input from him, which he would then respond to;

149.6 on 18 October 2021, as explained above, the Claimant sent a message to Professor Oldfield saying he was ill and asking for the process relating to his research complaint to be put on hold until he returned from sickness absence;

149.7 on 4 and 6 January 2022, before he had told Dr Whitman he had returned from sickness absence, the Claimant sent her emails, one rather lengthy, in which, broadly, he complained about the fact that his research complaint had not progressed further and that she had not provided him with the revised version of the complaint he was demanding she produce.

150. In short: what Dr Whitman wrote in the offending email of 14 January 2022 was a factually accurate description of what had occurred between her and the Claimant; both in context and in any event it was a reasonable thing for her to write; that was why she wrote it (i.e. in no sense whatsoever was it on the ground that the Claimant made a disclosure – protected or otherwise – of any particular information in the research complaint); and her writing it was not a detriment to the Claimant, in that if he did believe it to be detrimental, it was an unreasonable belief for him to hold.

151. In conclusion in relation to complaint 3.1.2:

151.1 had Dr Whitman accused the Claimant of not co-operating, it would have been fair comment, but she did not in fact do so;

151.2 in all the above circumstances, the complaint fails and is dismissed.

Was there a protected disclosure?

152. We have just decided that both protected disclosure detriment complaints would fail even if the Claimant made a protected disclosure when he submitted the research complaint. For the sake of completeness, we shall now briefly consider whether he did in fact make one. In summary, he did not.

153. What we are looking at is section 2 of the List of Issues. As set out in the List and in paragraph 25 above, the Claimant is alleging that he made a qualifying disclosure – which was therefore a protected disclosure as he made it to the University, his employer – because within the research complaint he disclosed information which he reasonably believed tended to show breach of an alleged legal obligation on universities generally, and on the respondent University in particular, to submit an annual statement on research misconduct to Parliament.

154. The true situation was as follows:

154.1 there was (and is[11]) a thing called the Concordat, the full name of which is The Concordat to Support Research Integrity. It was a national framework compliance with which had become a condition of grant funding for major funders of university research;

154.2 the University was not a signatory to the Concordat, and the Concordat imposed no legal obligations on the University – nor, indeed, on anyone else – but Universities UK (which is a body representing all or most universities in the UK, including the University) was a signatory and if the University wanted to receive grant funding from any of the funder signatories, they needed to comply;

154.3 to evidence its compliance, but not pursuant to any legal obligation, the University prepared an annual statement of research integrity, which it published publicly. To our knowledge, at no relevant time did the University

[11] As we understand it, at least most of what is set out here still applies, but some things may have changed since 2021/2022.

fail to publish it. It did not submit any such thing to Parliament and was under no legal or other obligation to do so;

154.4 the published annual statement included information about the number of cases of alleged research misconduct there had been during the previous academic year and what had happened to them;

154.5 research misconduct had a particular definition. Individuals sometimes made allegations that they characterised as being of research misconduct which, however true, were not in fact cases of alleged research misconduct. To be a case of alleged research misconduct that featured in the annual statement of research integrity, the allegations had to be ones which, if accurate, would constitute research misconduct as defined. Those dealing with research integrity within the University, such as Dr Whitman, had to make a decision about what did and what did not constitute a case of alleged research misconduct. This was touched on in connection with complaint / issue 3.1.2, in paragraph 149.2 above;

154.6 Parliament might from time to time have published reports and similar using data provided by the University and other universities about the incidence of research misconduct;

154.7 based on his evidence at this hearing, what the Claimant seemed in reality to be complaining about here (in so far as it was something other than his own professional frustrations) was that in his view the University was not accurately reflecting in the figures published in its annual statements of research integrity all of the complaints of research misconduct that there truly were and thus was, supposedly, misleading Parliament. This is some way from being a coherent allegation of breach of a legal obligation, let alone breach of (issue 2.1.5.1) a "*legal obligation … on universities to submit an annual statement on research misconduct*" to Parliament.

155. The main reason we think the Claimant did not make a qualifying and protected disclosure is because we are not satisfied that he believed, and believed reasonably, that there was any such legal obligation. This is largely because of the distance between reality and what the Claimant allegedly believed. Bearing in mind in particular his experience and the length of his career in academia and the duration of his employment with the University, we do not understand how and cannot accept that he misunderstood things to that extent.

156. Given our findings and decisions, above, relating to complaints / issues 3.1.1 and 3.1.2, we do not feel the need to go further in relation to the question of whether the Claimant made a qualifying and protected disclosure, except to say that in relation to other aspects of that question, we agree with the points made in paragraphs 47 to 49 of the written closing submissions of Ms Misra KC for the University.

157. It follows that even if the protected disclosure detriment complaints were otherwise meritorious – and we have decided they are not – they would fail because the Claimant did not make a relevant protected disclosure.

Time limits

158. As with the question as to whether a protected disclosure was made, there is no need for us to deal with time limits because we have decided that all complaints anyway fail on their merits. We also note that time limits issues are intimately tied up with the merits of the complaints in terms of whether there was any relevant "*conduct extending over a period*" in accordance with EQA section 123(3)(a) or a "*a series of similar acts or failures*" under ERA section 48(3)(a) and therefore in terms of which complaints are out of time and need an extension of time on a "*just and equitable*" or "*not reasonably practicable*" basis, and if so how long for. We shall nevertheless briefly outline our views on time limits issues, once again for the sake of completeness.

159. The 'cut-off date' for time limits purposes is 5 January 2022, i.e. any complaint about something that happened before that date (unless it was part of conduct extending over a period or a series of similar acts or failures ending on or after that date) is out of time, subject to the discretion to extend time.

160. Both protected disclosure detriment complaints concern things that occurred or persisted after this cut-off date.

161. Because the complaints in 5.1.1 and 6.2.1 concern things stated in the Grounds of Resistance and are misconceived (see paragraph 65 above), we can safely, and shall, disregard them when thinking about time limits issues. Putting those complaints to one side:

    161.1 none of the direct discrimination complaints can proceed unless the Tribunal grants an extension of time, because they all relate to things that happened before June 2021, a minimum of 5 to 6 months before the cut-off date;

    161.2 the only victimisation complaint that does not have time limits problems is 6.2.3. We do not accept that even if that complaint and victimisation complaint 6.2.2 had been upheld on their merits, they would form conduct extending over a period, principally because they relate to the independent actions and decisions of different people.

162. We are not satisfied that it would be just and equitable to extend time. This is broadly because:

    162.1 the Claimant has provided no explanation, let alone evidence to support any such explanation, as to why he waited to present his claim. We can safely assume that if he had a good reason, he would have given it. It is true that (see **Concentrix CVG Intelligent Contact Ltd v Obi** [2022] EAT 149) the absence of an evidenced explanation for why the claim was presented late does not mean an extension of time must be refused under EQA section 123. In practice, though, and certainly on the facts of this case, it is very difficult for the Claimant to satisfy us that it would be just and equitable to extend time if he is not prepared to say why he didn't bring the claim sooner and have whatever he says scrutinised by cross-examination;

162.2 we are not satisfied that he was ignorant of any relevant matter, nor that his ill health prevented or significantly inhibited him from making a claim;

162.3 what could be said on his behalf in support of extending time boils down to: the University is not prejudiced by extending time. In our view, that is not enough. It amounts to saying no more than that: "you should extend time because the University isn't prejudiced by you doing that whereas I am, because I would like to bring this claim." That could be said in almost every case where the delay in bringing the claim is measured in weeks or months rather than many years; accepting it would in practice make extending time the default position and put the onus on respondents to show prejudice or some other reason why it was not just and equitable to extend time;

162.4 there has been a full trial of all out of time complaints, and had we made a decision in the Claimant's favour on the merits, subject to time limits, that would, we assume, have given him a certain amount of vindication and satisfaction even the if overall judgment was against him because of time limits.

163. It follows that if they had not failed on their merits, most of the EQA complaints would have failed because of time limits.

Employment Judge Camp

Approved on 29 January 2025

EMPLOYMENT JUDGE N CLARKE'S LIST OF ISSUES

1. Time limits

1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 5 January 2022 may not have been brought in time.

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

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

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

1.3 Was the complaint made within the time limit in section 48 of the Employment Rights Act 1996? The Tribunal will decide:

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

2. Protected disclosure

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

2.1.1 By a complaint attached to an email of 4 August 2021 at 17.05 (and 17.09 in slightly amended form) to Birgit Whitman stating that he believed that research funds were being used by the Respondent inappropriately and in breach of the research integrity fund (he said they were being used for legal costs)

2.1.2 Did he disclose information?
2.1.3 Did he believe the disclosure of information was made in the public interest? The Claimant says that he believed that public money was being misused.
2.1.4 Was that belief reasonable?
2.1.5 Did he believe it tended to show that:

2.1.5.1 a person had failed, was failing or was likely to fail to comply with any legal obligation? The Claimant states that the legal obligation was on universities to submit an annual statement on research misconduct.

2.1.6 Was that belief reasonable?

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

3. Detriment (Employment Rights Act 1996 section 48)

3.1 Did the Respondent do the following things:

3.1.1 Not investigate the Claimant's complaint (dated 17 June 2021, headed, "Sexual Harassment, Deceit and Exploitation by [Ms X]") properly.

3.1.2 *Between September 2021 and March 2022, allege that the Claimant was not co-operating with the Respondent.

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

3.3 If so, was it done on the ground that he made a protected disclosure?

4. Remedy for Protected Disclosure Detriment

5. Direct sex discrimination (Equality Act 2010 section 13)

5.1 Did the Respondent do the following things in respect of the formal complaint made on 20 September 2020:

5.1.1 Fail investigate it and/or fail to take it seriously by:

5.1.1.1 Denying that sexual harassment or sexual assault took place despite Ms X admitting it.
5.1.1.2 Being poor at detail, economical with the truth and trying to deny the undeniable.
5.1.1.3 Indulging in deceitful pedantry to escape liability by denying any of the activities happened whilst Ms X was in employment.

5.1.2 Fail to follow the Respondent's policy and did not interview the alleged perpetrator.

5.2 Did the Respondent misinform the Claimant, by letter of 27 November 2020, that his complaint dated 20 September 2020 was investigated?

5.3 Was that less favourable treatment?

The Tribunal will decide whether the Claimant was treated worse than someone else was treated. The Claimant relies on a hypothetical comparator. There must be no material difference between their circumstances and the Claimant's.

5.4 If so, was it because of sex?

5.5 Did the Respondent's treatment amount to a detriment?

6. Victimisation (Equality Act 2010 section 27)

6.1 Did the Claimant do a protected act as follows:

6.1.1 Lodge a formal complaint of sexual harassment on 20 September 2020?
6.1.2 Lodge a complaint, dated 17 June 2021, headed, "Sexual Harassment, Deceit and Exploitation by [Ms X]"?

6.2 Did the Respondent do the following things:

6.2.1 Fail to investigate the Claimant's complaint and/or fail to take it seriously;

6.2.1.1 Denying that sexual harassment or sexual assault took place despite Ms X admitting it.
6.2.1.2 Being poor at detail, economical with the truth and trying to deny the undeniable.
6.2.1.3 Indulging in deceitful pedantry to escape liability by denying any of the activities happened whilst Ms X was in employment.

6.2.2 Fail to keep the Claimant informed about the process followed as regards the investigation of the complaint;
6.2.3 Fail to interview the perpetrator.

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

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

6.5 Was it because the Respondent believed the Claimant had done, or might do, a protected act?

7. Remedy for discrimination or victimisation

Case Number: 1302171/2022

IN THE MIDLANDS WEST EMPLOYMENT TRIBUNAL

BETWEEN:

MR P LEE — **Claimant**

and

THE UNIVERSITY OF BIRMINGHAM — **Respondent**

RESPONDENT'S CHRONOLOGY FOR FINAL HEARING

Event		Date	Page Number
1	Claimant employed by the Respondent as a Research Associate in the Centre for Urban and Regional Studies ('CURS'). CURS is a department within the School of Geography, Earth and Environmental Sciences ('School')	01.10.1994	
2	Claimant raises a grievance alleging a culture of 'systemic deceit, bullying and wilful neglect of [the Claimant] and planning staff by senior management over a decade' ('Grievance A'). Stage 3 of Grievance A completed on 11.10.2019 (not upheld)	12.07.2018	
3	Claimant appointed to the position of Associated Professor in his School	01.08.2018	
4	Claimant on sick leave after surgery.	05.11.2018 – 17.02.2019	
5	Claimant raises a grievance including allegations of wilfully undermining the Claimant's area of business, discriminatory practices, governance failures ('Grievance B')	March 2019	

	Stage 3 of Grievance B completed on 30.04.2020 (not upheld)		
6	Claimant on sick leave	14.05.2020 - 20.09.2020	275-279, 285
7	Claimant makes a formal, written grievance alleging (i) sexual harassment, sexual grooming and sexual assault at a conference in September 2019 by a colleague (Ms X) (***alleged protected act***) and (ii) that the Respondent had set up a competitor department which undermined and bullied him (‘**Grievance C’**)	21.09.2020	299-330, 650
8	Ms Oakes (Assistant Director of HR) writes to Claimant to acknowledge Grievance C	25.09.2020	293-295, 331-332
9	Professor Jonathan Oldfield (Head of School and Claimant’s line manager) meets with Claimant to consider Grievance C under stage 1 of the grievance procedure	01.10.2020	429
10	Claimant provides Ms Oakes images of WhatsApp messages to support his Grievance C	22.10.2020	440-449
11	Claimant asks Ms Oakes for an update about investigation and she responds the next day.	28.10.2020	452-453
12	The evidence relating to the Claimant’s concerns was passed to Ms X’s College to carry out the initial stages of the disciplinary process	11.11.2020	487
13	Ms Yvonne Hackforth Williams (Deputy Director of Operations for the College of Social Sciences) confirms that she has discussed the Claimant’s complaint with Ms X and concludes her decision not to pursue the disciplinary process	22.11.2020	488
14	Ms Oakes sends outcome letter to the Claimant regarding Grievance C	27.11.2020	505-507

15	Claimant writes to the Respondent regarding the process followed regarding Grievance C	03.12.2020	508-559
16	Ms Oakes writes to Claimant reiterating the outcome of Grievance C and explaining it is open to the Claimant to escalate Grievance C to Stage 2	22.01.2021	592-593, 615-616, 618
17	Claimant requests that Grievance C proceed to stage 2 of the grievance procedure (***alleged protected act***)	17.06.2021	650-939 plus appendices
18	Professor Duncan Shepherd (Postgraduate Dean and Professor of Biomedical Engineering) appointed to investigate Grievance C	08.07.2021	941,943
19	Claimant submits a complaint to Dr Birgit Whitman (Assistant Director in the Research Strategy and Services Division) alleging serious research misconduct ('the Research Complaint') (***alleged protected disclosure***)	04.08.2021	947-1153
20	Claimant provides a revised version of Grievance C to be considered under Stage 2 of the grievance process, together with further documents for consideration	9.08.2021	1154 - 1265
21	Claimant meets with Professor Duncan Shepherd to discuss Grievance C	10.08.2021	1389-1392
22	Claimant raises questions about Stage 2 process, Mr Anthony Seeley's involvement as HR support and Professor Shepherd's training and approach to the investigation	September 2021	1436-1441
23	Correspondence from Ms McGrattan to Claimant regarding his communications with staff.	05.10.2021	1476-1477
24	Claimant sends a message to Professor Oldfield requesting that Dr Whitman pause the process until he is fit enough to respond as he is unwell.	18.10.2021	1489
25	Claimant on sick leave	04.11.2021-03.01.2022	

26	Ms McGrattan responds to Claimant's email to confirm process of investigating grievance with an external investigator was put on hold due to his sickness absence but if he has returned to work to let her know.	19.01.2022	1586
27	Mr Andrew Hodge is appointed as external investigator (Claimant informed on 12.02.2022 of Mr Hodge's appointment)	04.02.2022	1558-1560, 1568
28	Claimant's trade union representative (Mr David Bailey) writes to Director of HR to say the Claimant would like to apply for USS ill health retirement	13.02.2022	1569, 1621-1622, 1671-1672
29	The Director of Legal Services commissions management review by Professor Julian Bion into Claimant's the Research Complaint	24.02.2022	
30	Early conciliation started	04.04.2022	21
31	Early conciliation ended	27.04.2022	21
32	Claim form presented	03.05.2022	22-45
33	Mr Hodge completes his stage 2 investigation into Grievance C	09.05.2022	1716-1738
34	Professor Julian Bion (Professor of Intensive Care Medicine) completes management review of the Research Complaint	08.[06].2022	2122-2125
35	Letter to Claimant confirming outcome of Stage 2 of Grievance C and the Research Complaint	13.06.2022	1747-1748
36	Respondent's ET3 and Grounds of Resistance filed.	09.06.2022	48-71
37	Claimant approved by USS for partial incapacity retirement with effect from 14.10.2022	18.10.2022	2128-2130
38	Case Management Preliminary Hearing	20.10.2022	72-82
39	Open Preliminary Hearing	21.04.2023	88-97

40	Claimant's last day of employment - retirement on the basis of partial ill health	13.04.2023	2128-2130