



EMPLOYMENT TRIBUNALS

Claimant: Mrs. Olga Klein

Respondent: University of Warwick

Heard at: Birmingham

On: 15,16,17,18,19,22,23
September 2025
In chambers 24 and 25
September 2025 & 31 October
2025 & 17 November 2025

Before: Employment Judge Wedderspoon

Members : Mrs. Bannister
Mr. Spencer

Appearances

For the claimant: Mr. P. Kerfoot, counsel
For the respondent: Mr. C. Edwards, counsel

JUDGMENT

The unanimous Judgment of the Tribunal is that :

1. All complaints of direct sex discrimination are not well founded and are dismissed.
2. All complaints of direct pregnancy/maternity discrimination are not well founded and are dismissed.
3. The complaint of indirect sex discrimination is not well founded and is dismissed.

REASONS

1. By claim form dated 17 April 2024 the claimant brought complaints of direct sex and pregnancy/maternity discrimination and indirect sex discrimination. In summary the claimant complains that she was subject to a higher level of criteria in comparison to male colleagues (Dr. Kim and Dr. Ma) to pass probation. In the alternative, she argues the criteria (if the same as male colleagues) placed her at a substantial disadvantage as a woman. The claimant relies upon the protected period of 16 October 2023 to 15 May 2024.

2. The issues to be determined in the case are as follows (see the order of Judge Mensah dated 20 September 2024) :-

List of issues

Time

3. The claimant's claim was issued on 17 April 2024. Any allegations which relate to the time period three months before the presentation of the claim this may be extended to take account of the claimants participation in ACAS early conciliation are *prima facie* say out of time.

- 3.1.1 Were the complaints made within the time limit in section 123 of the Equality Act 2010? The tribunal will decide
- 3.1.2 Was the claim made to the tribunal within three months plus early conciliation extension of the act to which the complaint relates;
- 3.1.3 If not was their conduct extending over a period;
- 3.1.4 If so was the claim made to the tribunal within three months plus early conciliation extension of the end of that period;
- 3.1.5 If not were the claims made within a further period that the tribunal thinks is just and equitable. The tribunal will decide
 - 3.1.5.1 Why were the complaints not made to the tribunal in time
 - 3.1.5.2 In any event is it just and equitable in all the circumstances to extend time.

Direct sex discrimination s.13 of the Equality Act 2010

4. Did the respondent treat the claimant less favourably by doing the following things :

- (a) On 16 May 2014 it was agreed with former Dean Professor Mark Taylor the claimant needed 4 AJG3 publications to pass probation. The respondent refused to honour this agreement and changed her probation criteria to require one AJG4 publication in which she was a lead author. The probation criteria agreed with Dr Kim and Dr. Ma were not changed but were changed for the claimant;
- (b) The claimant was required to publish an AJG4 publication to avoid termination whereas Dr. Kim was only required to publish an AJG3 publication. The rescind clause given to Dr. Kim after the receipt of his adverse recommendation and finding of a failure to pass probation were therefore less stringent than the rescind clause given to the claimant;
- (c) Insofar as different criteria may have applied to Dr Kim and Dr Ma in respect of the number and ranking of publications required to pass their probation, the claimant was subject to the requirement to publish an AJG4 publication whereas Dr Kim was not.

- (d) The respondent did not follow its own processes under the academic probation guidelines and changed them in response to claimant's request to put her case to the PRG whereas the respondent did follow its own processes with Dr Kim and Dr Ma;
- (e) The claimant was given notice of termination of her employment following a failure of her probation period whereas Dr Ma was promoted to associate professor.

5. Was that less favourable treatment ? The tribunal will decide whether the claimant was treated worse than someone else was treated as set out above. There must be no material difference between their circumstances and the claimant's. Her actual male comparators are Dr Kim and Dr. Ma. If there was nobody in the same circumstances as the claimant the tribunal will decide whether she was treated worse than someone else would have been treated.

Direct pregnancy discrimination section 13 of the Equality Act 2010

6. Did the respondent treat the claimant unfavourably by doing the following things :-

- (a)On 16 May 2014 it was agreed with former Dean Professor Mark Taylor the claimant needed four AJG3 publications to pass probation. The respondent refused to honour this agreement and changed her probation criteria to require an AJG4 publication in which she was a lead author. The probation criteria agreed with Dr Kim and Dr. Ma were not changed but were changed for the claimant;
- (b)The claimant was required to publish an AJG4 publication to avoid termination whereas Dr. Kim was only required to publish an AJG3 publication. The rescind clause given to Dr Kim after the receipt of his adverse recommendation and finding of a failure to pass probation were therefore less stringent than the rescind clause given to the claimant
- (c)Insofar as different criteria may have applied to Dr. Kim and Dr. Ma in respect of the number and ranking of publications required to pass their probation the claimant was subject to the requirement to publish an AJG4 publication whereas Dr Kim was not.
- (d)The respondent did not follow its own processes under the academic probation guidelines and changed them in response to claimant's request to put her case to the PRG whereas the respondent did follow its own processes with Dr Kim and Dr Ma;
- (e)The claimant was given notice of termination of her employment following a failure of her probation period whereas Dr Ma was promoted to Associate Professor.

7. Was that unfavourable treatment ?

8. Did the unfavourable treatment take place in a protective period?
 - 8.1 The claimant alleges the protected period commenced on 16 October 2023 and ran until 15 May 2024 when the respondent agreed to pass the claimant's probation;
 - 8.2 If not, did it implement a decision taken in the protected period;
 - 8.3 Was the unfavourable treatment because of the pregnancy.

Indirect sex discrimination s19 of the Equality Act 2010

9. If the tribunal finds that the probation criteria were three AJG3 publications and one AJG4 publication did the respondent apply a PCP to all assistant professors regardless of their sex of requiring an assistant professor in the Warwick Business School finance group to publish 3 AJG3 publications and one AJG4 publications?
10. If so did this PCP in particular the requirement to publish one AJG4 publication put women at a particular disadvantage when compared with men on the basis that women have primary caring responsibility and are more likely to require time off for pregnancy maternity and or child care such that women will find achieving a publication of this ranking whilst in a junior position more difficult than men who do not have such primary caring responsibilities
11. If so did the PCP put the claimant at that disadvantage as a result of having two periods of maternity leave together with the additional childcare needed during the COVID-19 pandemic given the need to home school as the claimant was not classed as a key worker
12. Was the PCP a proportionate means of achieving a legitimate aim? What is the legitimate aim relied on?
 - 12.1 Ensuring her probationary academics who are recruited to permanent positions attained certain high academic standards;
 - 12.2 Ensuring that probationary academics finish their probationary periods in a reasonable period of time with appropriate extensions with the requisite high academic standards evidence in part through authorising published journals;
 - 12.3 Ensuring that probationary academics who are recruited to permanent positions have the necessary standing and reputation to ensure that perspective students and or staff are attracted to the Business School by its reputation and the reputation of its staff, in a competitive and international field of academia
 - 12.4 Ensuring that the respondent devotes its resources fairly and appropriately towards progressing the careers of probation academics who are more likely ultimately to succeed in their fields.

Hearing

13. The Tribunal was provided with a bundle of document of 1973 pages; a chronology; a cast list; and a reading list. The Tribunal used the first day as a reading day. The claimant did not object to the inclusion of the supplemental statement of Professor Llewellyn and additional documents referred to therein.
14. Professor Rachel Moseley, Vice Provost and Chair of the Faculty of Arts (a witness for the respondent) was interposed and heard first. The Tribunal then heard from the claimant and the witness, Danmo Lin, former Assistant Professor via video link from the United States. For the respondent the following witnesses were called : Professor Emma Flynn, former Provost at the University; Professor Nick Llewellyn, Professor of Organisation Studies and pro Dean of faculty; and Sue Horner, HR Manager.

Facts

15. The Tribunal has found the relevant facts proportionate to the list of issues to be determined by considering all the available evidence; written and oral. If a piece of evidence is not directly referred to in this Judgment it does not mean that the Tribunal has failed to consider it in its deliberations.

Background

16. The respondent is one of the top universities in the United Kingdom and it competes for students and academics from other top universities such as Oxford, LSE and St. Andrews. The Warwick Business School (“WBS”) is particularly competitive academically (nationally and internationally) and competes for academic talent as against industry and other financial institutions. A key element of WBS’s ranking is the research published by the respondent. It was therefore important for the university to publish papers of high standing in important leading academic journals. High ranking journals are those rated at 3 and 4. The respondent regarded the most effective way to rate the journals was via the AJG guide which provides for more certainty as the rating of journals. (The Tribunal notes that the distinction of 3*/3 and 4*/4 is of no relevance to AJG ratings or this case). Over time the standards of the respondent has increased and the later cohort of probationer academics have higher probationary targets. The WBS is also ranked in the Financial Times ranking for its teaching programmes and potential students are attracted by those rankings.
17. The University uses probation periods for academics as a way of ensuring that those who are recruited to permanent positions have attained high academic standards which ensures that prospective students and staff continue to be attracted to the University by its reputation. One of the ways this is evidenced is through authoring in published journals. Professor Llewellyn has oversight of probation.
18. All probationers in the school (about 50) have an annual meeting. Under the Universities Academic Process (see page 91 to 95) Assistant Professors are normally on probation for five years. If they successfully meet probation targets they are then promoted to Associate Professor. It is the responsibility of the Head of each department to set out the criteria and procedures that will be used within their department to assess the standards expected of probationary colleagues. About 1/3 of probationers do not pass and others who do not

consider they will pass often leave the university prior to the conclusion of the probationary period.

19. The Academic Probation Guidelines of the respondent assessment is based on four categories; research, teaching, administration and collegiality (page 91). This is a general document applied to 31 departments across the University and the precise interpretation of the guidelines is a matter for each department and dependent on its speciality.
20. Probationers who take maternity leave can apply to have their probation period extended to meet the probation requirements and the extension would be 1.5 times the period of maternity leave taken. Further a woman returning to work from maternity leave can apply for returners maternity fellowship which provides the returning employee for a period equivalent to the length of maternity leave to focus on research (with no teaching responsibilities).
21. WBS meets with each probationer at least annually and then reports on their progress to the probation review group PRG which is a subgroup of the academic staff committee. Following each PRG meeting a letter is sent to each probationer to confirm PRG's view as to how their probation is progressing; (see examples at pages 179,197, 217, 249, 274,346 in respect of the claimant's probation). Targets are confirmed with probationers at each meeting and they are written on the forms. Staff may raise any questions about targets at the meetings and are free to raise questions at any point across the year. Meetings are held with a probationer and their mentor a Professor from the group. The claimant's mentor was Michael Moore and when he left the school, Romano Kozhan took over. The claimant was happy with her mentors (see pages 199,200 and 323). The mentor tends to be on the side of the probationer and provides support.
22. The Probation Review Group (PRG) makes the final decision about the completion of the probation which automatically triggers promotion to Associate Professor. If the probationer has failed to meet the target there is an automatic adverse recommendation. However, the department can exercise its discretion to request leniency to the PRG for a probationer in circumstances where the department considers, despite not meeting the probationary targets, the individual has the potential and ability to publish at a high level. The PRG has a discretion to overrule or disregard the department's recommendation.
23. The probation process is outlined at page 875 to 892. The Head of Department's responsibilities are summarised in the Academic Probation Guidelines (page 92).

The claimant's (and her pleaded comparators) probation

24. On 1 August 2012 Dr. G. Kim commenced his employment with the respondent as a probationer academic. On 8 April 2013 (page 1510-4) Dr. Kim had his first probation review with the then Dean of WBS Professor Taylor and the criteria to pass his probation was set as publishing at least 4 papers in high quality journals of no less than 3* quality of which one must be of 4* quality.

25. On 1 November 2013, the claimant commenced her employment as an Assistant Professor of Finance at Warwick Business School (WBS). The claimant's contract of employment (page 146-8) was subject to a probationary period of 5 years initially scheduled to finish by 31 October 2018.
26. On 19 May 2014 the claimant had her first probation review meeting with the then Dean Professor Mark Taylor (page 172). It was noted in the document "*the Dean and Olga confirmed that she was clear on WBS's research objectives to have published since the date of the appointment and thus during the probation term at least four papers in high quality journals of no less than 3* quality one of which should be 4* quality.*" It did not expressly set a limit on the number of co-authors of a publication.
27. Following the probation meeting (page 175) the claimant was given an option in the probation report form to indicate whether she had any issues of disagreement or concern. The claimant confirmed under cross examination she had read it and signed it (retained as an important document) and did not raise any concerns or queries.
28. On 25 July 2014 (page 179) Professor Stuart Croft the Chair of the Probation Review Group informed the claimant that the probation review group was supportive of the Dean's recommendation that she should continue normally on probation.
29. On 1 August 2014 (page 1740) Dr. K. Ma commenced employment with the respondent as a probationer academic.
30. On 25 February 2015 (page 1941) the school circulated a letter. The letter stated that targets for research would increase to 2 published papers at level 4 and 2 published papers at level 3. However, the claimant and others already on probation would be subject to the 3 level 3 published papers and one level 4 published paper as previously agreed. This made clear that the level 4 paper was not aspirational or a recommendation but a mandatory requirement to pass probation. The claimant did not recall receiving the letter but on the basis that it was sent to all of the school, the Tribunal determined on the balance of probabilities the claimant did receive it.
31. On 22 April 2015 the claimant had her second probation review meeting with Professor Taylor. There was no change to her initial probation criteria (see page 183).
32. The probation review report dated 2 June 2015 (page 184-188) stated "*it was confirmed to (the claimant) that although the school's publication expectation had now been raised to 2 4* and 2 3* publications for the next REF, she was still subject to the requirement of 1 4* and 3 3* publications as a minimum to pass probation*". The requirement for the claimant to publish in a 4 rated journal was clear. The claimant was given advice as to how to increase her likelihood of acceptance into publications including guidance as to a portfolio of papers. The claimant was also encouraged to have a mixed portfolio.
33. At this stage by 19 months into her employment with the respondent, the claimant had not published any papers and had no revise and review papers.

Again the claimant signed this report and did not raise any issues of disagreement or concern (page 188).

34. By June 2015 the claimant had working papers of one single authored paper and a jointly authored paper with three people; one paper where she had a 33.3% contribution (see page 185 and 191). The claimant had noted the extent of her contribution to each paper in her CV in accordance with the University's specific instructions as to how to complete a CV. The claimant accepted under cross examination, the inclusion of the percentage of contribution was a requirement across the University.
35. In his probation review dated 2 June 2015, it was confirmed to Dr. Ma although the school's publication expectations had now been raised to 2 4* and 2 3* publications for the next REF, he was still subject to the requirement to publish 1 level 4* and 3 level 3* publications as a minimum to pass probation.
36. By letter dated 24 July 2015 (page 197) the PRG informed the claimant that it was supportive of the Dean's school recommendation that the claimant should continue normally on probation.
37. Sometime in 2016 Professor Taylor left the respondent's employment. On 6 April 2016 the claimant had her first probationary meeting with Professor Llewellyn (although the report was signed by Professor Taylor). Professor Llewellyn followed this up with an email dated 6 April 2016 to the claimant's line manager, Professor Andrea Gamba (page 200) summarising that the claimant's research profile and describing the profile as not "*hugely strong*". He said that the claimant was half way through her probationary term with nothing accepted. He described next year as a critical year and that the school should look to support her in any way they can. It was noted the claimant recognised this fact.
38. In his letter dated 27 July 2016 (page 217) Professor Tim Jones, Chair of the Probation Review Group expressed serious concerns that if the claimant continued on her current trajectory over the next two years she would not be in a strong position to complete probation. He stressed it was imperative that the claimant make significant progress in respect of research outputs. The claimant had not published a paper but had three working papers; one under submission where she was the sole author; one in review and revise and one was good to go. The claimant was aiming high for her work to be published in a 4 rated journal. The advice given was that the claimant should continue on probation normally but as Professor Llewellyn informed the Tribunal (which it accepted) it was usual to state this to probationers save in exceptional circumstances.
39. On 26 January 2017 the claimant's next probation review took place with Professor Llewellyn (page 234-5); signed on 17 February 2017. The claimant had made some progress but concerns were expressed that the claimant was behind where a probationer was expected to be at this stage (page 241). It was noted that the claimant was aware that her next probationary year was a critical year. The claimant noted that she had a paper *Trading Strategies of Corporate Insiders* accepted to a 3* journal (a jointly authored paper). The claimant had four working papers; one of which was single authored (page 236-7). At the meeting the claimant indicated that she understood it was highly likely that

these R and R would fall during her maternity leave but that she would ensure the deadlines were met.

40. The claimant took her first period of maternity leave from 10 April 2017 to 9 April 2018 (page 256). The claimant's probationary period was extended for 18 months from 31 October 2018 to 30 April 2020 (page 249).
41. The claimant's first child was born on 10 April 2017. The claimant and her husband returned to the UK. Her husband took some parental leave off, some 6 months (because his employer was based in Germany with more generous paternity leave).
42. At the PRG on 6 June 2017 it was noted that in the case of Dr. Kim (page 1711) that having considered the information provided the oral submission of Dr Kim and the three referee reports, the group resolved that Dr Kim did not meet the criteria in respect of research. Doctor Kim will therefore be informed that his employment with the university will be terminated with effect from 31 July 2018 subject to the right of appeal to an appeals committee appointed by the Senate. In order to meet the probation criteria doctor Kim would need to evidenced that a further paper is forthcoming in an ABS3 journal. If the Dean of school believes that doctor Kim has met the criteria he can recommend to the review group that the termination decision should be rescinded. This recommendation would need to be received in time for 2017/2018 Spring term meeting. On 15 June 2017 Gillian McGrattan, Director of People Group confirmed this position in writing to Dr. Kim (page 1717). On 19 June 2017 Professor Llewellyn stated that Dr. Kim has 3 good level 3 papers and had recently submitted two papers to 4* journals where the rejection rates are very high. He noted the paperwork stated that Dr. Kim needed a forthcoming paper at 3 level journal and if the working papers are rejected it will take 3 to 4 months for Dr. Kim to hear which would not provide Dr. Kim to get an accept at 3. Christine Ennew described sympathy for Dr. Kim in her email dated 21 June 2017 (page 1952) because Dr. Kim was "academically strong". She suggested that Professor Llewellyn inform Dr. Kim that the reference to a forthcoming paper at 3 level journal is that the respondent was asking for reassurance that there were other publications that will come out and that he can sustain performance; so that if he has a R & R that is relatively minor R and so is almost a certainty, this would qualify as "forthcoming".
43. The claimant made an application for researchers maternity fellowship dated 6 December 2017 (page 254-255). The maternity fellowship period equated to the same time period as the period of maternity leave so that the claimant on return to work after maternity leave would not have any teaching responsibilities and could focus on her research. The claimant stated within the application that she had one paper published in a AGJ3 rated journal and "*for this reason during my academic returners fellowship year it is crucial for me to concentrate on revising and publishing my research papers in AGJ3 and 4 rated journals.*" The fellowship period was granted and it ran from 10 April 2018 to 9 April 2019.
44. The claimant still had only one paper published and had four working papers; three of which were co-authored (page 270).
45. The claimant's next probation review meeting took place on 7 January 2019 (page 262-273) with Professor Llewellyn. At this stage the claimant had

published one paper in the journal of financial markets and received one more revise and resubmit from the same journal her single authored paper. It was noted the journal is not the top journal and only 3 level AGJ. It was recorded at (page 267) that the claimant "*understands very well the need to publish*".. in a level 4 rated journal; Professor Llewellyn commented (page 267) the claimant was actively working towards achieving this. It was stated "*Dr. Klein's probation target is 1 x AJG 4 and 3 x AJG papers*". The claimant was currently on returners fellowship and therefore had not taught that year.

46. By letter dated 16 April 2019 (page 274) the chair of the PRG stated that the Dean was happy to recommend the claimant should continue normally on probation but it was flagged to her that this was the claimant's final year and a critical year and there were challenging targets for her to meet in terms of her research.
47. On 3 June 2019 (page 1825-8) Dr. Ma's final probation review report noted two published papers in two category 4 journals with five other papers at the submission/review process. WBS Dean Professor Lockett as Head of Department provided a recommendation stating "*Dr. Ma is Chu to complete his five year probationary period at the end of July. He will not reach his research targets of one AJG 4 and three AJG 3 ranked journal publications by then. Dr Ma has one AJG4 paper and one AJG* paper. Dr. Ma's teaching is a good teacher and his taught on the Bank of England programme A cohort that are prolifically low scores and have high expectations. The meeting advised Dr. Ma that he would be going into his terminal year - so notice would be served. Whilst Dr. Ma has not met his targets the school are very keen to retain Dr. Ma who has shown great potential with high research standards. Dr. Ma is unlikely to have an accepted paper by his probation end date or even by the end of his terminal year. The process to have papers published in top finance journals is extremely long. He does not wish to lower his research profile by targeting AJG3 journals at this stage and this is something the school supports. The Dean therefore requests that doctor Maher enters his terminal year and by the end of that year July 2020 he should have attained a strong signal that he is likely to achieve another paper at AJG4 or 4* standard by having one or two papers at R & R stage.*"
48. On 26 June 2019 (p.1856-1866) Dr. Ma presented his case to the PRG in the summer 2019 PRG meeting with an oral representation by Professor Llewellyn.
49. On 1 August 2019 (p.1867) Dr. Ma was promoted to Associate Professor.
50. From 25 August 2019 to 24 August 2020 the claimant took a second period of maternity leave. Her probation should have been extended by 18 months from 30 April 2020 to 31 October 2021. However, due to an administrative error in the claimant's favour which did not come to light until the Autumn of 2023 the claimant's probation was actually extended to 31 October 2022 (page 298) that is an extension of 30 months rather than 18 months. The claimant did not draw this error (to her benefit) to the respondent's attention. Thereafter the claimant had a second period of returners fellowship from 25 August 2020 to 24 August 2021.

51. In January 2020 the claimant published a second paper (single authored) "Trading Aggressiveness and Market Efficiency" in the Journal of Financial Markets which was a level 3 journal. The paper was presented at the American Finance Association Annual Meeting Boston in 2015 which is a significant annual conference.
52. As a result of the COVID pandemic the respondent extended probation periods equally for all assistant professors for an initial 6 months and then later for a further 6 months (12 months in total). The claimant was informed about this on 10 August 2020 and 21 April 2021 (pages 307,316). The claimant's probation was extended to 31 October 2023.
53. Due to COVID there was no formal probation review meeting in 2020 but instead an informal check in with Roman Kozhan, (the claimant's mentor) by way of an annual personal development review on 24 September 2020 (page 309-313). The claimant stated in the WBS Annual review form "*I need to publish 2 more papers one of which should be in a AJG4 Journal*" (see page 309). At page 312 it was noted "*Olga understands very well the need to publish in a 4 journal.*"
54. In November 2020 the claimant was selected to join the non-standards errors project which was a crowd source paper. Prior to taking on this project, she did not discuss with Professor Llewellyn whether it would be acceptable to use this work to pass her probation.
55. On 21 June 2021 the claimant's probation review meeting was held with Professor Llewellyn (page 320,321). It was an interim academic probation review. The claimant confirmed she was happy with all the support and mentoring arrangements. It was noted that "*The claimant has published the required AJG3 level papers for her probation Olga has finalised the writing of her paper ready for submission to an AJG 4 journal during her return as fellowship Olga is aware of the tight timings to achieve this additional paper particularly in a finance journal.*"
56. In July 2021 the claimant published a co-authored paper "Commonality in intraday liquidity and multilateral trading facilities: evidence from Chi- X Europe" in a level 3 journal.
57. In February 2022 (page 1457-1508) the non-standard errors paper was at the revise and resubmit state for the Journal of Finance (a level 4 rated journal).
58. On 16 March 2022 the claimant met with Professor Llewellyn for a full probation review meeting (see the report page 329-345). The claimant's targets to pass probation were noted as publishing papers in 1 x AJG 4 and 3 x AJG rated journal publications. The claimant said she believed she was on track. The claimant informed Professor Llewellyn that she had one paper at revise and resubmit at the Journal of Finance (top finance journal) and two papers in preparation to be submitted. At page 332 of the review document the claimant described her participation in a crowd source paper, Non Standard Errors paper submitted to the Journal of Finance (page 332). The claimant described it as the first crowdsourced empirical paper in finance with more than 100 research team solicited, testing the same set of hypotheses on the same intraday transaction data from Deutsche Boerse. She described the paper being written up by project

coordinators. Professor Llewellyn did not raise any concerns about this paper at the time and whether it would not count towards the claimant's probation. He candidly informed the Tribunal under cross examination that he "*missed it*".

59. The claimant stated in the review document that she had been considerably impeded during her returners fellowship because of the ongoing COVID pandemic with the resulting increase in childcare duties. She described that although she had received along with colleagues a one year extension because of COVID, she was expected to fulfil 100% of teaching and administrative duties during the one year extension which does not fully compensate for the research time lost during the academic returners fellowship. She requested that PRG take this into account when evaluating her overall research performance. The claimant also referred that to the lack of face to face extended interaction opportunities with external senior professors in her field. The claimant stated that it had proven extremely difficult to start a new research collaboration with a senior faculty from other top Universities. The claimant referred to her probation goal of having a 4 level publication (see page 333). The claimant also referred to the period of September 2021 to February 2022 when she stated there was hardly any time for research because she had to prepare and teach three modules for the first time and pre-record the async material for 2 large undergraduate modules and develop 1/3 of the content for the new post graduate elective model ST958, Advanced Trading Strategies, taught together with 2 other colleagues from the Statistics Department. (see page 333). The claimant also stated at p.332 about her participation in the Finance Crowd Analysis Project which resulted in the new working paper "Non standard errors" paper. She described that 100 research teams were solicited testing the same set of hypotheses on the same intraday transaction data from Deutsche Boerse.
60. This meeting took place weeks after Russia's invasion of the claimant's home country, Ukraine. The claimant was securing the safe passage to the UK for her parents. Her parents were aged in their 60s and in good health but were not English speakers. The claimant was arranging accommodation, benefits and NHS healthcare for them.
61. By letter dated 1 August 2022 (page 346) PRG informed the claimant she should continue normally on probation but she should focus on publications.
62. In February 2023 the non-standard errors paper was accepted for publication in the Journal of Finance, a 4 rated journal (AJG 4). It was officially published in June 2024.
63. Between 20 March 2023 and 21 March 2023 (page 349-352) a discussion took place between the Provost Chris Ennew and Academic Processes about changes to the adverse recommendation process so that where an adverse recommendation is made , PRG would formulate an initial judgment. If PRG agree with the adverse recommendation the individual could make representations to PRG.
64. On 23 March 2023 the claimant had her final probation review with Professor Llewellyn (page 357-380). The claimant had three AJG3 publications and had one AJG4* publication (non-standard errors paper) she had contributed to in the Journal of Finance. The claimant felt she had satisfied her research targets even

under the “recommended” targets of Professor Taylor in 2014. Professor Llewellyn stated during his final probation review meeting that she would receive an adverse recommendation for the completion of her probation in the circumstances that the claimant had not published in a 4 level journal; the non-standards error paper should not contribute to the achievement of the probation target; the claimant was a contributor to a crowd sourced empirical project; the paper made a clear demarcation between those authoring the manuscript and those who merely contributed to the project. The authoring team conceptualised and designed the study, conducted the analysis and wrote the paper. The claimant was one of around 200 people, across 160 research teams that took part; she should not be given credit as an author. Professor Llewellyn stated “To date, Dr. Klein has been unable to show the capability to publish at the higher level in order to complete probation in the Finance Group at WBS. Her pipeline suggest that she will aim to complete the writing of her Blockchain paper and submit to the Journal of Finance by May 2023. She also had one paper under review at Journal of Banking and Finance (AJG3). The claimant signed the report on 12 May 2023 and did not raise any issues of disagreement or concern.

65. In the claimant’s final probation review form (page 364-5) the claimant advised WBS and the PRG of two mitigating circumstances namely that she was disproportionately affected by increased childcare duties of two small children during COVID and that from February 2022 the claimant stated she was mentally affected by the ongoing invasion of Ukraine. The Tribunal accepted that the invasion of Ukraine caused the claimant significant stress and upset.
66. On 23 March 2023 Professor Llewellyn advised the claimant about her right to present her probation case to the PRG before the PRG decided the outcome of her probation in their summer term meeting on 7 June 2023. This was incorrect advice because unbeknown to Professor Llewellyn the process had actually changed. The Academic Probation Head of Department Guidelines at page 115 to 121 dated April 2023 changed the process so that the PRG were to make a preliminary assessment of the case and where the PRG disagreed with the adverse recommendation they can confirm completion of probation. Where they consider the adverse recommendation may have justification the probationer will be informed. The probationer then can accept the recommendation or will be invited to make their own case to a subgroup of the PRG alongside a representative from their department selected by the group (see page 120 paragraph 6.3). Under cross examination the claimant accepted the policy was changed for application across the University and not just changed for her.
67. On 15 May 2023 Lisa Cartridge (page 381-2) submitted summer probation review forms for WBS to Academic Processes. The claimant was offered the chance to meet with Professor Llewellyn to discuss the process but she determined it was not necessary at this stage (page 383 to 385).
68. On 30 May 2023 the claimant contacted WBS’s HR, Lisa Cartridge, to clarify whether and where she can submit names of referees as part of her presentation to PRG (page 384); unbeknown to the claimant the process had changed.
69. On 5 June 2023 (page 384) Ms. Cartridge replied to the claimant’s enquiry stating that the University’s Academic Probation Guidelines were changing and

that the claimant could not present her case to the PRG in their 7 June 2023 meeting.

70. At the meeting on 7 June 2023 of the PRG (page 393) it was unable to confirm the claimant's successful completion of probation. They recognised the claimant's mitigating circumstances. As a result the committee recommended that a rescind clause be added so that for the claimant to pass probation, they would accept a positive revise and resubmit on a 4 star paper rather than an acceptance of the paper. The group confirmed that the notice would be 15 months from the due end date.
71. By letter dated 29 June 2023 (page 1868) the initial draft letter the rescind clause stated "*Would allow you to complete probation during the notice period provided that you secure a positive revise and resubmit on a four star paper rather than a final acceptance.*"
72. Between 5 July 2023 and 16 October 2023 there was correspondence between Academic Processes and WBS as to the precise wording of the outcome letter of the PRG. A second outcome letter was drafted dated 8 August 2024 (page 464); WBS wanted the rescind clause to be removed because it did not believe that the claimant had any chance of meeting the requirements in the timescale. Christine Ennew determined that as rescind clauses had been included in other WBS letters the rescind clause should stay and it would be unreasonable to single out the case for no rescind (p.465). Between 5 September 2023 and 6 September 2023 correspondence between the Provost WBS HR with the Provost suggesting a change to the rescind clause to R & R in an AJG4 journal in which the claimant is part of the lead authoring team. Between 15 September 2023 and 18 September 2023 pages 498-9 there was further correspondence between WBS Dean and the Provost with the Dean suggesting a change to the claimant's rescind clause to "securing the acceptance or nearing acceptance (very minor corrections or a conditional acceptance) of a paper in a AJG 4 journal" in which the claimant is part of the lead authoring team." A third version of the PRG outcome letter was drafted in accordance with this wording (page 498 and 1874). Between 9 October 2023 to 12 October 2023 there was further correspondence between Academic Processes and WBS HR regarding changing the wording in the letter from "significant mitigating circumstances" to mitigating circumstances (see page 503-4). Professor Flynn's evidence is that she believed the change may be grammatical. The letter was updated to a link on 16 of October 2023 (page 505). There were multiple reasons for the delay in providing the claimant with an outcome including WBS wishes to remove the rescind clause and it had argued for more stringent conditions and there was also annual leave issues around the rescind clause. Overall it took the respondent an inordinate amount of time to agree the PRG outcome letter.
73. On 25 October 2023 a meeting took place between the claimant and Professor Llewellyn to deliver the final version of the PRG outcome letter and notice commenced with the claimant's employment due to terminate on 31 October 2024 unless the claimant achieved publication of a paper in an AJG4 Journal "securing acceptance or nearing acceptance" (very minor corrections or a conditional acceptance) of a paper in a AJG4 rated finance journal in which you are part of the lead authoring team. This gave the claimant an additional 12 months in which to meet the requirements for passing probation. If the claimant

achieved this, the rescind clause would operate (subject to confirmation by PRG). The outcome was subject to the claimant's rights to make representations to PRG.

74. On 7 November 2023 (page 516-20) the claimant requested to present her case at the PRG and also provided a statement. In the statement the claimant complained about the delay in receiving an outcome letter from the PRG; the misinformation about her ability to present her case initially to PRG; she had fulfilled the targets set by Professor Taylor to pass probation; she contended there was no requirement on the number of co-authors; she had not been alerted until the end of March 2023 that the 4 level non-standard errors paper would not count towards her probation; the criteria meant it was sufficient to publish in 4 level 3 journals and she had been disproportionately affected by COVID because she had child care duties.
75. A meeting took place between the then Provost Professor Flynn and the Dean in November 2023 prior to the PRG hearing (dated 29 November when the claimant could make representations) see page 529.
76. At the PRG meeting on 29 November 2023 the claimant submitted a witness statement at page 547 to 550 to the PRG which raised the same concerns set out above. Professor Flynn agreed under cross examination that delay receiving the outcome was disruptive but could provide the claimant with additional time to work on papers but accepted "it was unfortunate". It was in part a result of the fact that the process for appealing for a probationer had actually changed. Professor Flynn, under cross examination, agreed that the claimant should have been told before the final probation 2023 meeting that she was not on track for publishing a level 4 paper. Further, under cross examination Professor Flynn agreed that the annual academic probation review report at page 329/332 which summarised her progress where she referred to the non-standard errors paper it did appear to give the impression that the non-standard paper would count and would be acceptable.
77. At the hearing the claimant argued that two papers published in financial markets were ranked as outstanding and the claimant attached an international rankings document at page 554. However the respondent uses the AJG criteria that is the standard which is applied across the Business School to all probationers. The claimant argued page 548 that she was bringing 4 AJG three papers. Professor Flynn noted that there was one missing published paper at level 4 and a significant contribution from the claimant to such a paper.
78. Professor Flynn's approach was to consider the claimant's progress holistically as there were a number of elements to her case. Professor Flynn did not accept the mitigating circumstances that child care had disproportionately affected the claimant as set out at page 549. Professor Flynn noted that policies are very generous at the University providing 1.5 times extension for maternity leave plus maternity returners leave. A lot of mitigation was put in place for probationers exercising maternity leave. From her own experience having had three periods of maternity leave she did not accept that maternity leave necessarily impacts on a woman's productivity at work.

79. Under cross examination it was suggested to Professor Flynn that it takes one to two years for initial acceptance of a paper so that an unrealistic timescale should not have been set for the claimant. Professor Flynn noted there were a number of things in training for the claimant. She stated as an average rule of thumb one to two years is the average but she would check with the Business School. At page 1509 the Business School stated the average time was 20.3 months so more than 12 months. Irrespective the claimant's paper namely the blockchain paper had not been submitted at that stage. Professor Flynn stated that turnarounds for some journals were between 30 to 90 days. She looked at all the options; reviewed the potential process to speed it up but this was in fact not possible. However she took into account multiple pieces of evidence.
80. The claimant had suggested three referees. The claimant accepted under cross examination she had chosen referees on the basis that she believed they would provide positive references to her. The three references were from Dr. E. Theissen (page 584-5); Professor Schneider (page 588) and Professor Malinova (page 590). Dr. Theissen stated that the non-standard errors paper should not count towards the claimant's publication record. It was noted that the collaborators (more than 100 teams pre-selected in a competitive process and working independent of each other) empirically tested a set of pre-formulated hypotheses on a given data set and documented their results in short papers which were revised in a two stage process. The papers are not equivalent to a standard publication in the Journal of Finance. Dr. Theissen was a contributor to the non-standard errors paper so felt confident making that Judgment. Professor Schneider considered that the claimant's point she had not been alerted to the fact the non-standard errors paper would not count towards probation was valid but understood WBS's concern that lead WBS not to count it. Katya Malinova described the claimant's CV as appearing thin and agreed that the non-standards paper cannot be used to assess the claimant's ability to publish in top-tier journals as her contribution did not extend to formulating the research questions or writing the manuscript. She described promise in the claimant's working papers.
81. At page 525 the close reader who was assigned to read the claimant's material and to provide its comments to the PRG provided comments at page 409 to 411. The reader comments are heavily relied upon as part of the PRG discussion but are not definitive of the decision (Professor Flynn's evidence). The comments included that the case rests on one missing level 4 journal. The close reader recommended leniency in the case because of the claimant's mitigation.
82. At the meeting on 29 November 2023 Professor Flynn gave an overview at the start of the meeting of all the key information; she had not prepared a script but picked up the relevant points and mitigating circumstances for the claimant namely that the claimant was pregnant at the time and that would be a stressful situation for her. It was noted that the targets for the claimant were four papers; 3 papers at 3 level and one paper at 4 level. The claimant had stated at page 601 that a four-star publication was not a requirement to pass probation (for the first time). Following the meeting the claimant e-mailed Dr Lyn who had accompanied her to the meeting at page 604 suggesting that she thought PRG accepted her arguments that she was just required to do 4 three star papers. Under cross examination Professor Flynn rejected this stating that the position

was clear; the very clear expectation was that there should be 4 papers of high quality and one needed to be a four level paper.

83. Professor Flynn explained that discretion can be used for a probationer because needs have to be taken into account of the individual and the department for example a probationer who had obtained a £2,000,000 grant could be a mitigating factor considered for that individual. The PRG is the ultimate deciding body.
84. It was determined that the WBS targets for probation had not been met by the claimant. Professor Flynn noted that in the overview at page 1453 the claimant was a co-author. However at page 1459 there were nine names who were the project coordinators who had conceptualised the paper "the other authors all significantly contributed to the project by participating either as a member". This flew in the face of the referee's opinion relied upon by this claimant which included one referee who had contributed themselves to the paper and said that it should not count as part of the claimant's pass for probation. Professor Flynn said it was a part of being an academic you have to achieve leading high quality research and that is demonstrated by publicly publishing in high quality journals. The claimant's contribution was at a minimum for the non standards paper and this paper did not fulfil that criteria as a leading work. Although it was suggested in cross examination at page 91 the broad criteria involves research there was no mention of leadership or conceptualising an idea and that the higher standard was being applied to the claimant, Professor Flynn disagreed. At Warwick the individual departments were allowed to interpret the broad criteria to suit the needs and standing of the department. It was suggested to Professor Flynn that the claimant had not been told she had to conceptualise. Professor Flynn stated that as a minimum the contribution should have been picked up in supervision. It was suggested that this was not communicated to the claimant. Professor Flynn said it was worrying if it needed to be. Professor Flynn agreed that you don't need to lead in all papers but the percentage of contribution does matter as to how much you are actually shaping the paper. Professor Flynn stated they were looking at a significant contribution and what was missing from the claimant's bundle of work was a level 4 paper.
85. On 5 January 2024 (page 723-6) the claimant submitted a maternity plan indicating an expected due date of 23 April 2024 and start of maternity leave on 7 February 2024.
86. On 16 January 2024 (page 742-3) the claimant submitted an appeal to the Vice Chancellor and Senate from the PRG.
87. On 6 February 2024 (page 797—803 and 809 -810) the claimant submitted a formal grievance and engaged in correspondence with Helen Grover regarding the handling of her grievance.
88. On 7 February 2024 (page 723-739; page 1069-1076) the claimant took her third period of maternity leave (entitling the claimant to a probation extension of 10.5 months) followed by the third period of returners' fellowship. The claimant's probation timeline was extended by just under six years (to 70.5 months).

89. On 8 February 2024 (page 784-5) the claimant was notified about the appeal hearing (arranged for 5 March 2024).
90. On 16 February 2024 (p.822-8; 864-5) the claimant submitted an expanded version of the grievance sent on 6 February 2024.
91. On 21 February 2024 (p.829-830) the claimant started ACAS early conciliation.
92. On 27 February 2024 the claimant submitted her final version of the appeal to the Senate (see pages 855 to 863).
93. The appeal took place on 5 March 2024 (see minutes of the meeting page 915-921 and 1876 to 1883 and page 904). The panel was provided with documents (at page 895 and 896 and 903) being answers from the Provost to some of the claimant's questions and a statement from WBS along with a timeline of the claimant's probation history (page 904). The claimant's two grounds were that there were procedural errors applied to her case and she had concerns about gender and maternity discrimination. The claimant explained her contribution to the AJG4 publication (non-standard errors) which had many co-authors and that overall she felt she had met the probation criteria. Professor Llewellyn stated he felt that the claimant had been well supported and was aware of the expectations upon her and had longer than any other Assistant Professor to achieve probation targets.
94. Professor Moseley and her panel ("the panel") found there had been some ambiguity by WBS in terms of the communication regarding the non-standard errors paper but agreed with the PRG and WBS decision that the claimant's contribution to the AJG 4 paper was not significant enough to justify passing probation (page 931). This had not been highlighted until the 2023 probation review meeting by which point it was too late for remedial action to be taken. The panel was satisfied that WBS had treated the claimant the same as it had treated Drs Kim and Ma in that they had submitted an adverse recommendation for PRG to consider. However, at the time of Professor Moseley's determination she was unaware that the claimant had been treated differently by the Business School namely that WBS did give letters of support to Drs Kim and Ma (Professor Moseley accepted this under cross examination) but not for the claimant.
95. The Panel determined there had been a procedural error that an additional year's extension should be applied to the claimant's probation and suggested that following maternity leave a meeting should be held with WBS to discuss research strategy. The claimant was in the later stages of completing an additional publication and felt that this additional extension would provide adequate time for her to successfully complete her probation target.
96. The outcome letter dated 19 March 2024 (page 931-933) stated that WBS treated her the same as the two comparators. It was stated in the light of the comparative cases that you have highlighted the committee recommended that the PRG meet again to review your case and those are the comparatives to ensure ongoing parity of treatment. To this end a date is being scheduled for PRG to meet to consider any appropriate further action and this will be communicated to you as appropriate. It further stated the panel acknowledges

that the time taken to confirm the outcome of their decision could have been improved and is sorry for this delay and any impact upon you as a result. This was due to the confirmation of factual information and annual leave of key parties involved in the preparation and approval of the letter. However the panel is comfortable that your appeal has now been given full consideration and there has been no detriment caused by this delay given the amendment to the start date of your notice.

97. Professor Moseley stated that she was unsure whether they were aware that the claimant had received an additional year by way of an administrative error but stated this would have provided the claimant with an advantage. She was aware that the claimant had periods of maternity leave. She did not see at the time that both Dr. Kim and Dr. Ma had received letters of support.
98. Professor Flynn came across Dr Kim in about April 2024. (The proposed rescind clause for Dr Kim at page 470 dated 31 August 2023 and Dr Ma is that neither had to be part of a lead author of a team). However there was a general expectation that they should make significant contributions. Contribution is a matter which should be discussed in probation and discussion should take place as to what does a good paper looks like for submission and it had not been.
99. The PRG sub-group met to discuss the claimant's case on 24 April 2024 and to consider the comparator data. The PRG consisted of a multi-disciplinary team which consisted of Professor Llewellyn as a representative from the business school. The decision was taken that the remaining probation target for the claimant should be downgraded too to ensure parity of treatment with others. Professor Flynn's evidence was that the comparators had letters of support because they had something different to the claimant.
100. On 15 May 2024 page 987 the outcome of the sub-group meeting was sent to the claimant. The claimant was given the same rescind clause and the requirements to pass probation were downgraded from a level 4 publication to secure only one further AJG 3 paper publication (or nearing acceptance of the same). The terms expressly provided that the claimant had to play a significant part of the lead authoring team because of the earlier situation of the non standard errors paper. The PRG determined to offer an additional one year extension in order for the claimant to meet the probation criteria in addition to the maternity leave extension. Since the claimant's maternity leave commenced on 7 February 2024 and is due to end on 8 September 2024 (7 months in total) the claimant would receive 10.5 months extension from 31 October 2024 which will end on 15 September 2025. With an additional one year extension the claimant's last day of employment would be 15 September 2026 which includes the terminal year. It was stated that it has been agreed that if the Dean considers that the claimant has achieved the probation criteria before the agreed end date of 15 September 2026 a recommendation can be made to the PRG to rescind their decision. If no recommendation is made to the PRG or if the PRG do not recommend completion of probation following such recommendation the claimant's last day of employment will remain as 15 September 2026.
101. On 16 May 2024 the claimant's paper was accepted in a AJG 3 journal "International Review of Financial Analysis" (page 997).

102. At the end of May 2024 the claimant advised she had a paper published (page 100) in an AJG 3 journal and asked for a recommendation to PRG to invoke the rescind clause. The university confirmed shortly after that they had submitted a recommendation to PRG for completion of her probation and requested her case be heard at the summer PRG session (p.991-994). The request was made on 23 May 2024 (p.1001-2). At the PRG meeting on 26 June 2024 (p.1018-1023) confirmation of promotion and recession of notice was given by the Provost on 24 July 2024 (page 1061).

Submissions

103. Both parties provided detailed written submissions and supplemented these with oral submissions.
104. The respondent submitted the primary focus for the Tribunal is the reason why. The claimant contends she was only ever required 3333 papers. If the Tribunal is against the claimant on the direct claim of discrimination, the Tribunal must consider her indirect claim. The claimant has identified the protected period from 23 October 2023 to May 2024.
105. In respect of the indirect sex discrimination claim, the respondent says the claimant has not established a substantial disadvantage. Alternatively, the respondent succeeds in its justification defence. The claimant has not challenged the respondent's legitimate aims.
106. In respect of earlier events, the respondent submitted the claimant is out of time to complain and must satisfy the just and equitable discretion extension test. The respondent submitted the allegation about changing the probationary requirements is out of time.
107. Factually the Tribunal must consider whether the claimant was required to publish a level 4 paper or was that changed; should her contribution to the non standard paper count towards her level 4 or not; a comparison needs to be made with Dr. Kim and Dr. Ma as their targets were changed and how they passed probations.
108. The respondent submitted that the claimant's evidence was unsatisfactory and unreliable and by reason of the continuing employment relationship the respondent does not put it higher than that. In the light of clear unambiguous contemporaneous evidence oral and written, the claimant failed to engage with the question or gave a deflecting answer. Her evidence was inconsistent in respect of her contribution to the non-standard paper; how she described her contribution to the respondent and the Tribunal and how she removed her percentage of contribution of her authorship on her CV. The claimant also changed the description of the paper from 10,000 word count at the appeal hearing on 5 March 2024 to 4,000 word count. The claimant's referees did not support the claimant's position on her contribution to the non-standards paper and she declined to address in evidence.
109. The respondent further submitted that prior to the Tribunal the claimant was not open about her domestic situation. In respect of the alleged care for her elderly parents (aged 68 and in good health and she did not provide much care for them

at all). The claimant did significant research during the first two months of maternity leave. The claimant was home schooling during covid. The claimant along with others could not attend conferences. It was submitted there was no negative impact because the claimant could attend remotely. The claimant did not have additional caring for her elderly parents. It was submitted that the level 4 paper was not aspirational; it was a mandatory requirement. Dr. Kim started one year before the claimant and his requirement was 4333 until downgraded at the end. Dr. Ma started one year later than the claimant and had a target of 4333. There could be no credible reason why the respondent would decrease the targets in the intervening year for the claimant to have 3333. The respondent had rising standards from 4333 in about 2015 to 2 level 4 publications and 2 level 3 publication.

110. On behalf of the claimant it was submitted she has done her best to assist the Tribunal about issues across 12 years. It was disputed that the claimant had failed to be clear and candid about circumstances including her domestic situation. There was a failure to alert the claimant about the non-standard paper. The claimant was critical about the respondent's evidence submitting Professor Flynn was entirely unreliable and unhelpful and only became the new Provost in September 2023. Further it was submitted Professor Llewelyn has no expertise in finance; he largely relied on what he was told about assessing academic judgment. The respondent's case relies upon the academic judgment which the claimant was unable to test. The respondent has not called any evidence from Professor Taylor. In respect of targets set for passing probation, the claimant's interpretation of "should" as an aspiration target.
111. Lead authorship was not agreed in her initial probation and should not be subsequently added. There was no guidance about % what the standard was suggests commonly understood. The claimant did not disclose that she did not write up the first paper; this is standard as the claimant did the data analysis; why would she not think it counted for non standard errors paper. The co-ordinators told her she would be a co-author; Professor Llewelyn did not say it will not count. The rescind clause for the claimant included the lead author on recommendation from WBS. Professor Flynn was unable to explain why the clause was included at the time as she was new in post; she said it was something that she could have missed. Lisa Cartridge of the respondent did not attend Tribunal to explain why this clause was included. This clause is an addition; it was never agreed in the original wording; data analysis had been accepted before and the change to reject is less favourable as this was not done to Dr. Kim or Ma.
112. The claimant submitted in respect of the less stringent rescind clause; Dr. Kim was downgraded and the claimant was not, she still had to complete a level 4 publication. Dr. Ma is passed. This amounted to unfavourable/less favourable treatment. Further, Dr Kim and Dr. Ma could present their cases. The process changed so that the claimant was not permitted to do so. The process to challenge was then changed back following the negative impact to the claimant. There are no witnesses involved in that process. In respect of the comparators it was submitted that Dr Ma was promoted although he did not meet the probation requirements at the respondent's. The respondent requested discretion to be used for Dr. Ma. No request was made for discretion to be exercised in the claimant's favour.

113. Decisions regarding the claimant's probation took place in the protected period.
114. Each decision-making body rely on information provided to it by another. Prof. Moseley and Prof Flynn they relied on what they were told by the department. Prof Llewellyn relies upon the expertise of the finance department. It was submitted that the decision makers relied upon information from someone discriminating against the claimant.
115. The claimant relies upon difference of treatment to infer discrimination. The statistics of the finance group favours males over females; males are more likely to progress to a higher level; rationale basis finance group male probationers over female probationers. Females more likely to prioritise family, work part time, take time off for care of family and disrupt the department. There is no direct evidence from the finance group. Professors unhappy with the claimant passing probation. Professor Llewellyn asserts a reason why but there is no one from the department here to be cross examined about that. It was submitted that this points to the possibility of the Finance Group not wanting more women. Professor Llewellyn mentioned time taken by the claimant to pass probation; a feeling the claimant had enough time to pass probation. She was being compared with rising standards in the department with those with higher targets. The claimant presented her case without support whereas Dr. Kim had a letter of support and an external report plus a plea of leniency. In the case of Dr. Ma there was also a request for leniency and a plea by Prof Llewellyn. The claimant had three publications in three journals like Dr. Kim and it was submitted were in as strong if not stronger journals Mr. Kim published in. The claimant's pipeline work; block chain paper positive comments by referees as strong up-coming work. Her publications require additional context to PRG performed in her particular field.
116. It was accepted by the respondent there is a PCP to publish in a 4 level journal. It was submitted that the rescind clause should have been reduced to the same level as Dr. Kim.

Law

117. Section 13 (1) of the Equality Act 2010 provides

"A person A discriminates against another B if because of a protected characteristic A treats less favourably than A treats or would treat others".
118. The critical question to ask in every case is what was the reason why the alleged discriminator acted as they did? What consciously or unconsciously was their reason? (see **Chief Constable of West Yorkshire Polie v Khan (2001) UKHL 48**).
119. The protected characteristic in question need not have been the sole reason for that conduct **Owen and Briggs v James (1982) IRLR 502**. The Tribunal will hold in mind that the critical question to ask in every case is what was the reason why the alleged discriminator acted as they did? What consciously or unconsciously was their reason? The protected characteristic in question need not have been the sole reason for that conduct; the question is whether it was the effective cause; see **O'Neill v Governors of St Thomas More Roman**

Catholic Voluntary Aided Upper School and another (1996) IRLR 372 and O'Donoughue v Redcar and Cleveland Borough Council (2001) IRLR 615.

120. All relevant circumstances between the complainant and the comparator must be the same or not materially different (see paragraph 3.23 of the EHRC Employment Code) and see **Shamoon v Chief Constable of the Royal Ulster Constabulary (2003) UKHL 11**. Lord Hope stated "*A comparison of the cases of persons of a different sex..must therefore be such that all the circumstances which are relevant to the way they were treated in the one case are the same or not materially different in the other.*" *Because the comparators chosen were not valid the fact that they had been treated less favourably than the claimant did not provide a sufficient basis for a finding that Ms. Shamoon had been treated less favourably because she was a woman.*"
121. Whether the comparison is sufficiently similar will be a question of fact and degree for the Tribunal (**Hewage v Grampian Health Board 2012 UKSC 37**).
122. Pursuant to section 18 of the Equality Act 2010 it states
 - (2) A person A discriminates against a woman if in the protected period in relation to a pregnancy of hers, A treats her unfavourably –
 - (a)because of the pregnancy or
 - (b)because of illness suffered by her as a result of it..
 - (6)The protected period in relation to a woman's pregnancy begins when the pregnancy begins and ends –
 - (a)if she has the right to ordinary and additional maternity leave at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;
 - (b)if she does not have that right at the end of the period of 2 weeks beginning with the end of the pregnancy..
123. Indirect discrimination is defined within the Equality Act by section 19. Pregnancy and maternity is not one of the protected characteristics in respect of which there may be indirect discrimination. Where an allegation arises that there has been indirect discrimination in relation to pregnancy it can not be asserted as such. If it is discrimination at all it is sex discrimination and must fit the criteria for such a claim.
124. Section 19 of the Equality Act 2010 provides
 - (1)A person (A) discriminates against another (B) if (A) applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's
 - (2)For the purposes of sub-section (1) a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if

- (a)A applies or would apply it to persons with whom B does not share the characteristic;
- (b)It puts or would put persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it.
- (c)It puts or would put B at that disadvantage and
- (d)A can not show it to be a proportionate means of achieving a legitimate aim.

126. In determining the question of disadvantage the first step must be to identify the appropriate pool of men and women for comparison. The pool of those upon the effect of the PCP is evaluated must thus be a populated by persons who apart from the protected characteristic in issue are in circumstances that are the same or not materially different. Lady Hale explained in **Essop v Home Office UK Border Agency; Naeem v Secretary of State for Justice (2017) UKSC 27** at paragraph 41 "All the workers affected by the PCP in question should be considered. Then the comparison can be made between the impact of the PCP on the group with the relevant protected characteristic and its impact upon the group without it. This makes sense. It also matches the language of section 19 (2)9B0 which requires that it i.e. the PCP in question puts or would put persons with whom B shares the characteristic at a particular disadvantage compared with persons with whom B does not share it. There is no warrant for including only some of the persons affected by the PCP for comparison purposes. In general therefore identifying the PCP will also identify the pool for comparison.

127. Pursuant to paragraph 4.19 of the EHRC code once the pool has been identified the question for the Tribunal is whether there is a particular disadvantage to people sharing the relevant protected characteristic that is a comparison must be made between the impact of the PCP on the people within the pool with and without the protected characteristic. In this regard particular disadvantage can be shown in various ways including by direct evidence the use of statistical materials or by the taking of judicial notice (see **Dobson v North Cumbria Integrated Care NHS Foundation Trust 2021 ICR 1699 and Homer v Chief Constable of West Yorkshire Police (2012) UKSC 15**).

128. The burden lies on the claimant to establish the PCP, the disadvantage and that the claimant experienced the particular disadvantage.

128. If particular disadvantages are established, the PCP will be held to be indirectly discriminatory unless the respondent is able to show it is justified; that is that it is a proportionate means of achieving a legitimate aim. The employer must identify the aim/aims that the PCP was a means of achieving; show that the aim was legitimate and show that the PCP was proportionate. The Tribunal's assessment of proportionality involves balancing the importance the aim against the discriminatory impact of the PCP on the group. The Tribunal will consider whether or not the same aim could have been achieved by less discriminatory means. The balancing exercise will involve careful consideration of the evidence including the particular business needs of the respondent (see **Hardys & Hanson plc v Lax 2005 EWCA Civ 846**).

Credibility

125. The Tribunal found Professor Moseley a credible witness who was genuinely keen to ensure that there was parity of treatment between colleagues at the respondent.
126. The Tribunal did not find the claimant to be a credible witness. The unanimous Judgment of the Tribunal is that by June 2015 the claimant's position (maintained at the final hearing of this matter) that her target of AJG4* paper was simply aspirational rather than a genuine required target was disingenuous.
127. The majority of the Tribunal did not accept the claimant's evidence about her belief about the probationary targets. On the balance of probabilities, the majority of the Tribunal determined that the claimant understood from the outset and her meeting with Professor Taylor in 2014 it was a necessary condition that she publish one AJG4 rated paper to pass probation. The target was clear and unambiguous. Professor Mark Taylor has also recently confirmed he believes this requirement was made clear to the claimant during the probation review meeting on 1 April 2014 (page 1954-7).
128. The minority of the Tribunal accepted the claimant's evidence on the balance of probabilities that at the outset and with her meeting with Professor Taylor in 2014 that she believed that the target of one publication of a AJG4 paper was aspirational as opposed to mandatory to pass probation. However from June 2015 and the claimant's second probation meeting the minority of the Tribunal determined and agreed that the claimant must have been aware of the mandatory nature of the level 4 target. In summary from 2015 the unanimous view of the Tribunal is that the claimant was aware of the need to publish a level 4 paper to pass probation.
129. The majority of the Tribunal determined that the notes of the meeting in 2014 (page 172) made it clear to the claimant that in order to obtain a positive recommendation she needed to obtain 3 level 3 papers and one level 4. The claimant argued that the words "should" was just a recommendation as opposed to a requirement. The Tribunal finds from the communication from Professor Taylor in February 2015 (page 1941) and from a number of documents and probationary reviews it was clear to the claimant that she required to publish a level 4 paper (see pages 321, 312, 299). The claimant stated that she could not recall receiving the document at page 1941. On the balance of probabilities the Tribunal finds that the claimant did receive the letter from Professor Taylor at page 1941. The tribunal determined that the assertion by the claimant that publishing a level 4 paper was an encouragement rather than a requirement to pass probation was not a genuinely held belief. Following disclosure of the Tribunal bundle the claimant noted that in Dr Kim's probation document it was stated he "must" complete a level 4 paper which differed from her wording as "should". The probationary review for Dr. Kim at page 1510 dated 1 August 2012 noted that he was required to provide four papers; "*three of three star quality and one must be of four star quality*". The first time the claimant raised with the respondent her interpretation of the "aspirational" targets was at the PRG meeting on 29 November 2023 (page 601). Further Dr. Ma in August 2014 one year after the claimant commenced her employment with the respondent at page 1740 was subject to publication of one level 4 and three level 3 papers. The

Tribunal rejected the suggestion that there were individualised targets for probationers and it was unlikely that Dr. Ma who started one year after the claimant and Dr. Kim who started a year before would have been set higher or different targets to the claimant.

130. The Tribunal also found that the claimant knew that she needed to have contributed significantly to a published paper for it to be counted as part of her probation. For the claimant to suggest otherwise was not credible. At the start of the claimant's probation she detailed in her c.v. annually the percentage of her contribution to prepared papers. She accepted in cross examination that she understood it was the policy of the department that she had to do so. Albeit that it was never expressly stated to the claimant that there was a mandatory requirement to make a significant contribution for it to count, the Tribunal found that it was an implicit understanding within the academia that significant contribution was essential for a paper to be used to support high academic ability and publishing ability and the claimant well knew it; that is why she understood she should include her contribution in her c.v.. When the claimant began to participate in the non-standards papers where her contribution was less than 1%, she stopped sharing her contribution by way of percentage contribution. The Tribunal found this to be a cynical attempt by the claimant to avoid indicating her limited (and not significant contribution to the paper) so that she could have the paper counted towards her probation.
131. Further the claimant was dishonest. The claimant misled the Senate at the appeal hearing on 5 March 2024 when she insisted she had contributed a 10,000 word document for the non-standard papers (page 908; page 1878; she says in her witness statement at paragraph 23 it was 4,000 words). The Tribunal considered this was a deliberate attempt by the claimant to inflate her contribution to the paper to pass her probation.
132. The Tribunal found the claimant's assertion that she received no support as a woman in the department as ill-founded and untrue. The respondent provides significant support to women in the department including extensions to probation periods if on maternity leave 1.5 times the period of maternity leave plus the returners fellowship on returning from maternity leave to focus on research which is the same length of time as the maternity leave period. The claimant also benefitted (by a miscalculation of the respondent) to one additional years' probation which she did not bring to the respondent's attention at any time. The claimant failed to adequately explain why she had failed to raise this with the respondent.
133. The Tribunal acknowledged that the claimant was deeply upset about the invasion of Ukraine in February 2022 and this would have impacted on her well-being. The Tribunal was not satisfied from the evidence of the claimant that she was unduly impacted by COVID as a carer of her children. She had significant support from her husband. She received additional extensions to complete her research. Her parents who moved from Ukraine were in good health save for one parent who had a minor accident. They too provided her with child care and support.
134. The Tribunal considered of some evidential importance that even before the claimant took maternity leave for the first time in April 2017 concerns were

expressed to the claimant by the respondent in February 2017 that she was behind where a probationer was expected to be (see page 241).

135. The Tribunal did not find Dr. Lin's evidence particularly helpful in determining the issues.
136. The Tribunal found Professor Flynn to be an honest witness but she had a poor memory and recall for relevant details. Her recall for general matters was satisfactory.
137. The Tribunal found Professor Llewellyn to be an impressive witness who was credible and honest and gave thoughtful, cogent and detailed evidence to the Tribunal. He was willing to make concessions where he felt appropriate including that he had initially missed that the claimant was making a very insignificant contribution to the multi-authored paper (non standard errors paper).

Conclusions

138. The respondent provided a significant amount of support for women taking maternity leave. Professor Flynn who has had three periods of maternity leave gave evidence to that effect. A woman having taken maternity leave may apply for a maternity fellowship for her return to the respondent this was a period where a woman can focus on her research (without any teaching responsibilities) and the period granted to the woman by the university is the same time as the period of maternity leave. This meant if a woman took one year of maternity leave she could return to the University on maternity fellowship for one year focusing on research and not teaching. In addition women who take maternity leave are granted an extension to their probationary period of 1.5 times the period; this meant a woman taking one year of maternity leave had her probation extended by 18 months.
139. The claimant benefitted from the support offered to women at the University. The claimant applied for and received three periods of maternity academic returners fellowship immediately following each period of maternity leave between 10 April 2018 to 9 April 2019, 26 August 2020 to 25 August 2021 and 9 September 2024 to 9 February 2025. During periods of fellowship, the claimant along with other staff had no teaching or other duties and she had the opportunity to concentrate solely on her research to support career progression. The claimant received 2.5 years of study leave via the fellowship scheme with a reduced teaching load across the first four years of her employment equivalent to a year of leave.
140. Further by reason of a miscalculation of maternity periods/extensions by the respondent the claimant benefitted from one extra year of probation. In summary the claimant had 8 years to pass probation (the usual period is 5 years); this is calculated by five years of the usual probation period; plus one year extension by reason of COVID; one year extension by reason of a miscalculation and the Senate provided the claimant with one additional year to complete her probation.
141. The unanimous finding of the Tribunal is that the claimant's targets were to publish four papers; three in AJG guide ranks journals (level 3) and one in an AJG4 ranked journals (level 4) summarised as targets of 3,3,3,4. The minority view was that in 2014 the claimant had misunderstood the discussion with

Professor Taylor as one level 4 paper publication being aspirational (as opposed to mandatory). The majority view is that from the start and with her discussion with Professor Taylor the claimant was well aware that her target was to achieve one level 4 publication. The unanimous view is that from 2015 the publication target of 3,3,3,4 was clear to the claimant and transparent and there was no ambiguity.

142. Although the claimant sought to argue at the Tribunal and in the processes of the respondent that a publication at level 4 was just a target and aspirational as opposed to a requirement and mandatory; the Tribunal found this to be disingenuous; the minority forming this view from 2015; the majority of the Tribunal finding this from the outset in 2014. The Tribunal determined that the claimant was well aware of the requirements to publish four papers; three of level 3 quality and one of level 4 quality because this was repeated in numerous probationary meetings. The claimant was highly intelligent with an excellent command of English. Furthermore the claimant only raised the suggestion that a level 4 publication was aspirational opposed to a mandatory requirement when she knew she may fail her probation and raised it for the first time at the meeting in November 2023. The Tribunal determined that this was cynical and disingenuous.
143. Further the Tribunal rejected the claimant's case that she was unaware that there was a requirement for her to make a significant contribution as an author to a published paper. Although this was not explicitly specified in the criteria to pass probation in 2014 the Tribunal determined that on the balance of probabilities the claimant knew this was a requirement because (a)a probationer professor is being assessed as to whether they have potential to write at a very high level so that there was a general expectation that this would be evidenced by playing a significant contribution to a publication in a highly rated journal; (b)the instructions given to the claimant to prepare her CV was to include the percentage of her contribution in any publication and the claimant accepts she was aware of this; to set out the percentage of contribution was indicative that contribution was an important factor (c)the claimant completed her initial CVs including her contribution to publications (see pages 270) (d)when the claimant participated in the non-standard paper where she was a contributor to the extent of less than 1% the claimant stopped including her contributions to papers on her CV in 2022 page 340 and in 2023 page 375 (d)when asked in cross examination why she had stopped including her contributions on her CV the claimant's evidence was evasive and unpersuasive; the claimant stated she could not remember why she stopped noting her contribution; the Tribunal reached the conclusion that the claimant failed to include her contributions because she knew that contributing less than 1% did not evidence that she could author a paper to high level (e)the claimant at no time discussed the non-standard paper with the respondent prior to engaging in it or checked with her manager as to whether it would be suitable for her probation. The Tribunal finds that the claimant was aware of the expectation to contribute to a significant extent as an author to a paper for it to count towards passing her probation.
144. The Tribunal found that the claimant exaggerated to the respondent her contribution to the non-standard errors papers which consisted of approximately 329 authors. At the appeal meeting on 5 March 2024 the claimant stated she had written a paper of 10,000 words namely two authors work; her witness

statement directly contrasted with this stating her contribution was a paper of 4,000 words. In summary the Tribunal found the claimant's evidence to be unsatisfactory and unreliable.

145. The assessment of a probationer by the respondent is based on targets set at the beginning of the probation. Some probationers adopt a strategy to focus on high level rated journals; others attempt to publish in quantity hoping that a paper may be accepted by the highest rated journals.
146. The respondent has to make an assessment of the potential of the probationer at the end of the probation period if they fail the minimum targets set. If a probationer fails the minimum target set, the probationer receives an adverse recommendation by the department to the PRG but the department may in individual cases seek leniency from the PRG if the department exercising its discretion determines that the individual has potential to publish in highly rated journals. It is in the department's interests to attempt to identify individuals with such potential who in the future can reflect positively on the ranking of the department nationally and internationally. The department is able to carry out its assessment of potential by reason of its experience and expertise and working with the individual probationers for at least 5 years. The assessment of a probationer's potential in such cases is not a precise science.
147. The respondent has not been assisted by the passage of time. The claimant has sought to compare herself with Dr. Kim who joined the department one year before her and Dr. Ma who joined one year later ("the comparators"). When the respondent considered the claimant's case in the summer of 2024 the department and HR did not have any detail of the decision making process concerning Dr. Ma and Dr. Kim and *prima facie* it appeared there had been a difference of treatment of the claimant for no cogent reason. However by the time of the Tribunal hearing the respondent had in fact obtained evidence providing the reasoning for the difference of treatment referred to in the supplemental witness statement of Professor Llewellyn.
148. By reason of the lateness of this evidence the Tribunal has been very careful in its consideration and scrutiny of that material. Professor Llewellyn who the Tribunal found to be an entirely genuine and very impressive witness has been candid that at the time of the PRG in 2024 he did not recall the comparator cases. He has reflected on his emails written at the time (dating back to 2017) and the department's support of Dr. Kim and concludes the reason for the treatment was that Dr. Kim was academically stronger than the claimant. The department chose to seek leniency for Dr. Kim because he was perceived to have the potential to publish in highly rated journals. He stated at the Tribunal hearing that he was uncomfortable giving this evidence in front of the claimant who he respected and was a competent academic but the perception of the claimant within the department is that the claimant was not so academically strong nor was she perceived to have the potential to publish in highly rated journals.
149. The Tribunal carefully considered the submissions of the claimant's counsel who asserted that the best evidence would be from the actual decision makers and not Professor Llewellyn. The Tribunal took this into account but found the evidence of Professor Llewellyn along with the contemporaneous documentation

to be cogent and persuasive. Professor Llewellyn has extensive experience and has worked very closely with the Finance Department for a significant period of time. The Tribunal accepted his evidence that Dr. Kim and the claimant were not comparators as set out below.

150. Dr. Ma had outstanding academic potential. He lacked the quantity of papers but had been able to publish in one 4 rated and one 4* rated journals. The claimant was simply not in his academic publishing league.
151. The claimant was not entirely candid about her domestic situation under cross examined. It transpired in evidence that during the first lockdown period between March and June 2020 the claimant was actually on the second period of maternity leave until August 2020. During the second lockdown from November 2020 and the third lockdown in December 2020 to early 2021 nurseries (where the claimant's children were) did not close. The claimant stated under cross examination that her children were in full time nursery for the whole year between 8 am to 6 pm. Factually the claimant could not establish her contention that she was home schooling over COVID. The claimant gave limited evidence about occasional illness off a child and that the nursery flooded but this was not asserted to be related to COVID. Further the claimant was well supported by her partner and parents with child care. The Tribunal rejected on the evidence that the claimant had additional caring responsibilities for elderly parents. Factually the claimant's parents were in their 60s with good health save for one minor accident. The claimant stated by reason of COVID she could not attend conferences and make international conferences for research. That predicament affected all academics and if anything assisted the claimant because she was not required to fly internationally to meet others and have the stress and anxiety about worrying about a young family at home. Of some significance is that the claimant by reason of the respondent's mistake gained a further year to pass her probation due to a miscalculation of the claimant's maternity leave.

152. The Tribunal concluded as follows :-

Direct sex discrimination s.13 of the Equality Act 2010

153. Did the respondent treat the claimant less favourably by doing the following things :

- (a) On 16 May 2014 it was agreed with former Dean Professor Mark Taylor the claimant needed 4 AJG3 publications to pass probation. The respondent refused to honour this agreement and changed her probation criteria to require one AJG4 publication in which she was a lead author. The probation criteria agreed with Dr Kim and Dr. Ma were not changed but were changed for the claimant;

The majority of the Tribunal concluded on the balance of probabilities that the claimant initially agreed with former Professor Mark Taylor the need to publish 3 AJG3 and 1 AJG4 papers to obtain a positive recommendation for a probation pass. The unanimous view of the Tribunal is that from 2015 the claimant's assertion of an initial agreement of 4 AJG3 papers as incredible and unsustainable in the light of all of the evidence. The Tribunal has set out its reasons fully on this point. In summary the claimant's targets were

transparent and clear. The minority view is that she misunderstood her target initially in 2014 but there was no sustainable argument that her targets were anything other than 3 level 3 papers and 1 level 4 paper with the clarity of the 2015 probation meeting and thereafter. In summary the claimant's targets to achieve this level of work (3 level 3 papers and 1 level 4 paper; namely 3,3,3,4) were not changed.

Further, the claimant was aware for the reasons set out above that in order to pass probation she (along with other probationers) was required to be lead author in a paper. The Tribunal set out above that on the balance of probabilities the claimant knew this was a requirement. The Tribunal found the insertion of the words "lead author" by the respondent at page 503 on 9 October 2023 was a direct result of the claimant's participation in the non-standards paper which was published in a level 4 rated journal but the claimant's contribution was less than 1%. This provided clarity but did not represent a change in targets for the claimant. It was always the case (and the Tribunal finds, as the claimant well knew) she should contribute as a lead author on a paper for it to be counted towards her targets.

The targets of Dr. Kim and Dr. Ma were the same as the claimant namely 3,3,3,4 as evidenced by their initial probation letters (see pages 1510 and 1740). In conclusion there was no less favourable treatment of the claimant.

(b) The claimant was required to publish one AJG4 publication to avoid termination whereas Dr. Kim was only required to publish an AJG3 publication. The rescind clause given to Dr. Kim after the receipt of his adverse recommendation and finding of a failure to pass probation were therefore less stringent than the rescind clause given to the claimant.

The Tribunal finds the claimant was required to publish 3334 (namely one AJG4 paper) in order to pass probation. This target was clearly set out in the claimant's initial probation document at page 172 dated May 2014. Due to the fact that the claimant did not publish one AJG4 she was subject to an adverse recommendation by her department in the usual way because she had failed to meet the targets. The claimant was subject to a rescind clause of 3334 (page 503-4).

Dr. Kim had initially been required to publish at the same level of the claimant namely 3334 to pass probation (namely one AJG4 paper). Due to the fact that Dr. Kim did not publish one AJG4 he was subject to an adverse recommendation by the department in the usual way because he had failed to meet the targets. However the respondent did give him a less stringent rescind clause of 3333 by letter dated 15 June 2017 (page 1716).

After careful consideration of all of the evidence the Tribunal concluded that Dr. Kim was not an actual comparator. The Tribunal took into account that Dr. Kim was viewed as stronger academically with potential to publish in highly rated journals; Professor Lockett in fact supported Dr. Kim (unlike the claimant) stating at page 1670 "*Currently Dr. Kim's research outputs during his probationary period comprise of 3 x 3 AJG and one paper submitted to an AJG4* ...however he has been working extremely hard to amass a pipeline of articles to submit in the next 6 months that could lead to a*

significant improvement in his achievements. Which has been the case for doctor Kim in no less than three and at least one in four rank journals the standard we have applied to probationers in Warwick Business School is that they should have published at least four papers accordingly I do not recommend completion of probation at this time I should like to request that the group consider allowing a further review of this position at a suitable point during the 12 month notice. In the hope that sufficient progress will have been made for the termination decision to be revoked.”

Dr. Kim had a paper in progress with three other authors submitted to the Review of Financial Studies (a 4* publication) at the end of March 2017 with a contribution of 25% .

In contrast Professor Gamba did not support the claimant's extension of probation; at page 325 on 23 December 2021 Professor Gamba stated “*and most likely will produce going forward is sub-par and to change this she should produce at least one high quality publication.*” Further Professor Gamba commented on the non-standard errors paper which the claimant participated in stating on 7 November 2023 page 527-8 “*are listed non alphabetic order at the beginning of the paperand all the other 300+ contributors those who executed the individual independent experiments that there is a clear difference between them contributors as peers in this project.*” The claimant did not receive the same department support as Dr. Kim because she was not perceived as academically strong or with the potential to publish in 4 rated journals.

The claimant and Dr. Kim received different references. The reference for Dr. Kim dated 24 May 2017 was “glowing” (see page 1701-2) namely “*I believe the time and resource is you invest in him will be paid off*; . The claimant received references which were positive in some respects; but not “glowing” and in fact were negative in others in particular in respect of her assertion that the non-errors paper should be counted as her one level 4 rated paper. Professor Theissen in respect of the non-standard errors paper states on 22 November 2023 at page 585 “*the collaborators more than 100 teams pre-selected in a competitive process and working independent of each other. While these short papers are academic achievements in their own right they are not the equivalent of a standard publication in the journal of finance. I am also a contributor to the non-standard errors paper so I feel confident in making that judgement. The probation committee decided not to count Dr. Klein's co-authorship of the paper and AJG4 publication and I do not object to that decision as such*” . Christoph Schneider states at page 589 that the claimant is capable of independent high quality research and had contributed tremendously to their joint paper. Associate Professor Malinova stated at page 591 stated that the claimant's paper Trading Aggressiveness and Market Efficiency may have been under placed; noting it was presented at the highly selective AFA meeting in 2015 which signals its high quality. She described the claimant's CV as appearing thin which could be attributed to in part inherent challenges of writing and publishing in the market microstructure field. She noted that the claimant could not be considered to be an author of the non-standard errors paper. However she gave a positive view about the claimant's working papers underscores, her ability to apply

skills and knowledge to new areas and the expectation that the claimant will continue to publish and develop as a researcher.

Professor Llewellyn's evidence was that from his conversations over many years with Professors Gamba and Robotti and others in the finance group the claimant was not held in particularly high esteem as an academic.

The respondent did not pay for an external expedited review for the claimant, although it did consider it (page 611) because this was no longer a practice and the respondent did not view the claimant as highly as an academic to Dr. Kim.

The Tribunal determined that there was no less favourable treatment compared to Dr. Kim because Dr. Kim was regarded as a superior academic; he had received supportive references and the department was not prepared to seek leniency for the claimant because it did not consider that the claimant had the same potential to publish in highly rated journals.

In respect of a hypothetical comparator who the Tribunal considers would be a man who had time off from work, taken 8 years to pass probation and had a publishing record similar to the claimant, the Tribunal determined that on the balance of probabilities the claimant was not treated less favourably. "The reason why" for the treatment is that the claimant was not a highly regarded academic.

(c) Insofar as different criteria may have applied to Dr. Kim and Dr. Ma in respect of the number and ranking of publications required to pass their probation the claimant was subject to the requirement to publish an AJG4 publication whereas Dr. Kim was not.

The Tribunal has already determined that the claimant, Dr. Kim and Dr. Ma were set the same initial targets of publication 3,3,3,4. Dr. Kim (as set out above and in accordance with the evidence of Professor Llewellyn) was in a materially different position to the claimant because the Business School was supportive of his academic potential and not of the claimant's. The Business School wished to retain Dr. Kim. He had published 3 papers by 2016 (page 1670) some 4 years into his probation. Consequently for the reasons set out above the criteria for Dr. Kim to pass probation was reduced to 333.

Dr. Ma had published less papers but had published in highly rated journals. Dr. Ma had published in a 4 * rated journal approximately two years after the start of his probation (January 2016 page 1760 and 1763). By June 2019 Dr. Ma had published two papers; one in a 4 level journal and another in a 4* level journal. He had five papers in submission/ review process and two working papers. The Head of Department advised at page 1827 Dr Ma that he would be going into his terminal year so notice would be served. Whilst Dr. Ma had not met his targets the school were very keen to retain Dr. Ma who has shown great potential of publishing in highly rated journals; with high research standards at 4 or 4* standard by having one or two papers at R and R stage.

Professor Ennew in her letter dated 15 July 2019 page 1867 stated "*The group noted that you are a valued member of Warwick Business School a good colleague and a good teacher however due to an ambitious strategy of concentrating on only submitting publications to the highest quality journals that you had been unable to reach the targets initially set at the outset move your probationary period in terms of quantity of publications. The group acknowledged and as detailed by you and confirmed by Professor Llewellyn that you're ambitious publication strategy had been undertaken in discussion with and by agreement of the Business School. The group also noted that recently WBS had amended their publication targets for new probationers to introduce more flexibility in exceptional cases whereby the school would be flexible on the quantity of publications if the quality was high. The group was satisfied that you had met the administrative teaching and collegiality requirements of probation. In respect of the research requirements and for the reasons outlined above namely that school had recently introduced more flexibility for new probationers in terms of quality versus quantity requirements with the agreement of the school the group agreed that on an exceptional basis you be allowed to pass probation.*"

The Tribunal concluded that Dr. Ma was in a materially different situation to the claimant who had not achieved any publications at the highly ranked 4 level journals. Dr. Ma was not a comparator.

In respect of a hypothetical comparator who the Tribunal considers would be a man who had time off from work, taken 8 years to pass probation and had a publishing record similar to the claimant, the Tribunal determined that on the balance of probabilities the claimant was not treated less favourably than a hypothetical comparator. The reason why for the treatment is that the claimant was not a highly regarded academic and had not published in a 4 rated journal where she could evidence she had made a significant contribution.

Ultimately the claimant was permitted to pass probation herself without publishing in a 4 rated journal. There was no less favourable treatment.

(d) The respondent did not follow its own processes under the academic probation guidelines and changed them in response to the claimant's request to put her case to the PRG whereas the respondent did follow its own processes with Dr. Kim and Dr. Ma

The Tribunal found that this allegation was unsustainable as an allegation of direct discrimination following the claimant's concession under cross examination that the process was changed across the whole of the University and not just for her (therefore had nothing to do with her sex or pregnancy/maternity leave). This allegation fails. The change of policy occurred in about April 2023 and was communicated to the claimant outside her protected period in any event.

However the Tribunal notes that the claimant was given incorrect information by Professor Llewellyn that she would have an opportunity to present to the

PRG in June 2023 (unbeknown to the Professor the process had changed) and the claimant had to chase as to whether she would be able to make a presentation in June 2023 at the PRG. The communication by the respondent to the claimant as to the change in process and the procedure she needed to follow to present to PRG was poor and inept and indicated a lack of organisational professionalism on the part of the University. Undoubtedly this was a very stressful time for the claimant. However it was not discrimination.

(e) The claimant was given notice of termination of her employment following a failure of her probation period whereas Dr Ma was promoted to associate professor.

The Tribunal found that the claimant was given notice of termination of her employment following a failure of her probation. Dr. Ma was promoted to Associate Professor. For the reasons already set out; Dr. Ma was not a comparator. The reason for the treatment was that the claimant was not regarded as highly as Dr. Ma. Dr. Ma had not met his targets but the school was very keen to retain Dr. Ma who has shown great potential of publishing in highly rated journals; with high research standards at 4 or 4* standard by having one or two papers at R and R stage. The claimant had not published papers in 4 rated journals (where she made a significant contribution.)

154. Was that less favourable treatment ? The tribunal will decide whether the claimant was treated worse than someone else was treated to set out above. There must be no material difference between their circumstances and the claimants. Her actual male comparators are Dr Kim and Dr ma. If there was nobody in the same circumstances as the claimant the tribunal would decide whether she was treated worse than someone else would have been treated.
155. The Tribunal has set out above : Dr. Ma is not a comparator and is in different academic/ publishing league than the claimant. Dr. Kim referees were very supportive and the Finance department requested that the PRG act with leniency because Dr. Kim was more highly regarded as an academic.
156. The Tribunal found that a hypothetical comparator of the same perceived academic ability as the claimant would have been treated in exactly the same way.

Direct pregnancy discrimination section 18 of the Equality Act 2010

157. The claimant makes the same allegations under the protected characteristic of pregnancy namely did the respondent treat the claimant unfavourably by doing the following things :

- (a)On 16 May 2014 it was agreed with former Dean Professor Mark Taylor the claimant needed four AJG3 publications to pass probation. The respondent refused to honour this agreement and changed her probation criteria to require an AJG4 publication in which she was a lead author. The probation criteria agreed with Dr Kim and Dr. Ma were not changed but were changed for the claimant;

(b)the claimant was required to publish an AJG4 publication to avoid termination whereas doctor king was only required to publish an AJG3 publication. The rescind clause given to doctor Kim after the receipt of his adverse recommendation and finding of a failure to pass probation were therefore less stringent than the rescind clause given to the claimant

(c)insofar as different criteria may have applied to doctor Kim and doctor Ma in respect of the number and ranking of publications required to pass their probation the claimant was subject to the requirement to publish an AJG4 publication whereas doctor Kim was not.

(d)The respondent did not follow its own processes under the academic probation guidelines and changed them in response to claimants request to put her case to the PRG whereas the respondent did follow its own processes with doctor Kim and doctor Ma;

(e)The claimant was given notice of termination offer employment following a failure of her probation period whereas Dr Marr was promoted to associate professor.

158. Was that unfavourable treatment ?

159. Did the unfavourable treatment take place in a protective period?

159.1 The claimant alleges the protected. Commenced on 16 October 2023 and ran until 15 May 2024 when the responded agreed to pass the claimants probation;

159.2 If not did it implement a decision taken in the protected period;

159.3 Was the unfavourable treatment because of the pregnancy.

160. For the reasons already explained and detailed above, the claimant's treatment was nothing whatsoever to do with the fact she was pregnant or took maternity leave. As already explained the reason for the treatment was not a discriminatory reason; the reason for the treatment was because the claimant was not as well regarded academically as her pleaded comparators.

Indirect sex discrimination s19 of the Equality Act 2010

161. If the tribunal finds that the probation criteria were three AJG3 publications and one AJG4 publication did the respondent apply a PCP to all assistant professors regardless of their sex of requiring an assistant professor in the Warwick Business School finance group to publish 3 AJG3 publications and one AJG4 publications?

The Tribunal has found that the respondent set out its requirements to all probationers at the material time so requiring the claimant along with Dr. Kim and Dr. Ma and others to pass probation by publishing papers in three AJG3 publication and one AJG4 publication. It was changed in the exceptional

circumstances of Dr. Kim and Dr. Ma on the basis that they were more highly regarded academically than the claimant.

162. If so did this PCP in particular the requirement to publish one AJG4 publication put women at a particular disadvantage when compared with men on the basis that women have primary caring responsibility and are more likely to require time off for pregnancy maternity and or child care such that women will find achieving a publication of this ranking whilst in a junior position more difficult than men who do not have such primary caring responsibilities.

The respondent's maternity provisions for academic staff are both supportive and generous. The respondent provisions for extending probation for those on maternity leave were generous. Returners from maternity were permitted to focus on purely research on return from maternity leave. The Tribunal rejected on the evidence that women therefore find achieving a publication of this ranking more difficult than a man who does not have primary caring responsibilities.

163. If so did the PCP put the claimant at that disadvantage as a result of having two periods of maternity leave together with the additional childcare needed during the COVID-19 pandemic given the need to home school as the claimant was not classed as a key worker.

The Tribunal did not find this allegation substantiated on the evidence. The claimant conducted a significant amount of research during her first period of maternity leave (approximately two months of research). The claimant then had one years' returner's fellowship which meant she did not need to teach or conduct administrative tasks after her first period of maternity leave.

Furthermore, during the first lockdown period between March and June 2020 the claimant was actually on the second period of maternity leave until August 2020. During the second lockdown from November 2020 and the third lockdown in December 2020 to early 2021 nurseries (where the claimant's children were) did not close. The claimant stated under cross examination that her children were in full time nursery for the whole year between 8 am to 6 pm. Factually the claimant could not establish her contention that she was home schooling over COVID. The claimant gave limited evidence about occasional illness off a child and that the nursery flooded but this was not asserted to be related to COVID. Further the claimant was well supported by her partner and parents with child care. The Tribunal rejected on the evidence that the claimant had additional caring responsibilities for elderly parents. Factually the claimant's parents were in their 60s with good health save for one minor accident. The claimant stated by reason of COVID she could not attend conferences and make international conferences for research. That predicament affected all academics and if anything assisted the claimant because she was not required to fly internationally to meet others and have the stress and anxiety about worrying about a young family at home. Of some significance is that the claimant by reason of the respondent's mistake gained a further year to pass her probation due to a miscalculation of the claimant's maternity leave.

The Tribunal concluded on the evidence that this claimant was not placed at any disadvantage. Ultimately the respondent did downgrade the claimants requirements to 3333 although it did not have the same confidence as it had in

Dr Kim because of poor institutional and human memory about what actually occurred to Dr Kim and why.

164. Was the PCP a proportionate means of achieving a legitimate aim? What is the legitimate aim relied on?

164.1 Ensuring her probationary academics who are recruited to permanent positions attained certain high academic standards;

164.2 Ensuring that probationary academics finish their probationary periods in a reasonable period of time with appropriate extensions with the requisite high academic standards evidence in part through authorising published journals;

164.3 Ensuring that probationary academics who are recruited to permanent positions have the necessary standing and reputation to ensure that prospective students and or staff are attracted to the Business School by its reputation and the reputation of its staff, in a competitive and international field of academia

164.4 Ensuring that the respondent devotes its resources fairly and appropriately towards progressing the careers of probation academics who are more likely ultimately to succeed in their fields.

The respondent has the burden of establishing a justification defence. The Tribunal found on the balance of probabilities that all aims relied upon by the respondent were legitimate aims. The respondent wished to recruit the very best academics to its business school taking into account the significant competition in this speciality to recruit academics and students and maintain its outstanding reputation. It was therefore proportionate for it to maintain its standard of requiring probationers to achieve 3334 publications unless the school was satisfied that the probationer had potential to work at high level publishing of academic work. The claimant was not viewed as academically talented so that the respondent did maintain its requirement for 3334 publications to pass probation. In the circumstances that was proportionate taking account of its need to maintain its highly valued academic reputation. However as set out above, ultimately the respondent did downgrade the claimants requirements to 3333 although it did not have the same confidence as it had in Dr Kim because of poor institutional and human memory about what actually occurred to Dr Kim and why.

Time

164.4.1 Were the complaints made within the time limit in section 123 of the Equality Act 2010? The tribunal will decide

164.4.2 Was the claim made to the tribunal within three months Plus early conciliation extension of the act to which the complaint relates;

164.4.3 if not was their conduct extending over a period;

164.4.4 if so was the claim made to the tribunal within three months plus early conciliation extension of the end of that period;

164.4.5 if not were the claims made within a further period that the tribunal thinks is just and equitable. The tribunal will decide

164.4.6 why were the complaints not made to the tribunal in time

165. In any event is it just and equitable in all the circumstances to extend time.

166. The Tribunal determined that taking account of the date of the claim form (17 April 2024) and the ACAS EC notification of 21 February 2024 and certificate of 3 April 2024, the claimant's complaints following the PRG outcome letter dated 21 December 2024 (page 702) are within time. The Tribunal determined that it was just and equitable to extend time for more historical events in the circumstances that the respondent has been able to provide evidence from Professor Llewelyn and written evidence of Professor Taylor and there is a considerable amount of documentary material to assist in this case. There was no significant prejudice to the respondent. The claimant would be at a greater prejudice if she was denied the ability to rely upon the historical matters.

Date: 21 November 2025

Employment Judge Wedderspoon