



# EMPLOYMENT TRIBUNALS

**Claimant:** Dr M R Abdi

**Respondent:** University of Bradford

**Heard at:** Leeds      **On:** 20 to 24 March 2017  
27 to 29 March 2017  
30 March 2017 (deliberations in chambers)

**Before:** Employment Judge Cox

**Members:** Mr R Stead  
Mr J Rhodes

**Representation:**

**Claimant:** Mr Abdi, Claimant's son

**Respondent:** Mr Pitt-Payne, counsel

## RESERVED JUDGMENT

1. The claim of discrimination because of religion or belief and allegations 8, 21 and 28 in the Claimant's list of allegations dated 31 July 2016 are dismissed, having been withdrawn by the Claimant.
2. The remaining claims of discrimination because of race and victimisation fail and are dismissed.

## REASONS

1. Dr Abdi is of Iranian nationality. Since 2011 he has had dual Iranian and British citizenship. He describes himself as "non-white". He is a Muslim. He works as a Lecturer at the University of Bradford ("the University") in the Operations and Information Management (OIM) Group within the School of Management. The School of Management is part of the Faculty of Management and Law which is headed by a Dean.
2. On 18 May 2016 Dr Abdi presented a claim to the Tribunal alleging that the University had discriminated against him on the grounds of race and religion or belief. He attached two documents to his claim form. One, headed "human rights violation, systematic and racial discrimination

against Reza Abdi – the case outline”, ran to 16 pages. The other, headed “human rights violation and systematic and racial discrimination against Reza Abdi – formal disciplinary case”, ran to 12 pages. These documents did not refer to religion.

3. The University asked Mr Abdi to clarify the form of discrimination that he was alleging (direct, indirect, harassment or victimisation), the alleged grounds of the discrimination (race, religion or belief), and the acts that he said amounted to unlawful discrimination. At a Preliminary Hearing for case management on 12 July 2016 the Tribunal ordered Dr Abdi to provide these details. This resulted in a table of 35 allegations, the last three of which amounted to an application to amend the claim to add allegations 33 to 35.
4. At a Preliminary Hearing on 26 August 2016 the Tribunal recorded that the issue was whether the University had discriminated against Dr Abdi because of race or religion by not developing his career in comparison with two colleagues, Dr Olga Matthias and Dr Liz Breen. At a further Preliminary Hearing on 1 December 2016 the Tribunal gave Dr Abdi leave to add allegation 35 but not allegations 33 and 34.
5. At the beginning of the main Hearing, Dr Abdi confirmed that his allegations were that he had been discriminated against because of his Iranian nationality and/or his non-white colour and because of his religion. In relation to allegation 35 he alleged in addition that he had been victimised as a result of presenting this claim to the Tribunal.
6. During the Hearing, Dr Abdi confirmed that he was not pursuing allegations 8, 21 and 28. On the second day of the Hearing, he withdrew all his allegations of discrimination because of religion. He did not express at the time of withdrawing these claims a wish to reserve the right to bring a further claim raising the same, or substantially the same, complaints. The Tribunal could identify no reason why it would not be in the interests of justice to dismiss these aspects of his claim and did so.
7. There remained, therefore, 30 allegations of direct race discrimination and one allegation of victimisation for determination by the Tribunal. The Tribunal spent time at the Hearing clarifying the allegations with Mr Abdi (Dr Abdi’s son and his lay representative during the Hearing) and confirming with him the persons who were alleged to have discriminated against Dr Abdi in relation to each allegation. A finalised list of the allegations was then produced by the Tribunal and approved by Mr Abdi. During the course of this process it became apparent that the main focus of Dr Abdi’s allegations was his line managers, who he said had either failed to support him in, or positively obstructed, his career development in various ways. His sole allegation of discrimination relating directly to the decisions the University made on his promotion applications related to the application he made in 2016.

### **The law**

8. An employer directly discriminates against an employee if it treats the employee less favourably than it treats or would treat others and it does so because of race (Section 13 of the Equality Act 2010 – the EqA). In

deciding whether there has been less favourable treatment, the comparison must be between how the employer has treated this employee and how it has treated, or would treat, another individual in not materially different circumstances (Section 23(1) EqA).

9. It is unlawful for an employer to discriminate against an employee by subjecting the employee to a detriment (Section 39(2)(d) read with Section 13 EqA). An employer subjects an employee to a detriment if it puts the employee under what the employee could reasonably view as a disadvantage in his employment (Ministry of Defence v Jeremiah (1980) ICR 13).
10. It is also unlawful for an employer to victimise an employee by subjecting the individual to a detriment (Section 39(4)(d) EqA). An employer victimises an employee if it subjects the employee to a detriment because the employee has done a protected act. Bringing a claim of discrimination to the Tribunal is a protected act (Section 27(2)(a) EqA).
11. A claim of discrimination may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates or such other period as the Tribunal thinks just and equitable (Section 123(1) EqA). For these purposes, conduct extending over a period is treated as done at the end of the period (Section 123(3)(a) EqA). These time limits are extended by Section 140B EqA to allow for a period of early conciliation by the Advisory, Conciliation and Arbitration Service.
12. Dr Abdi's allegations related to a twelve-year period beginning in 2004. There was clearly an issue as to whether his claim had been presented in time. Although the Tribunal has no power to deal with claims that have been brought out of time unless it considers it just and equitable to extend time, the Tribunal needed to make findings of fact in relation to all the allegations before it could decide whether some or all of Dr Abdi's allegations involved conduct extending over a period. Therefore although the issue of time limits is strictly a preliminary issue, it is dealt with last in these reasons.
13. In summary, in order for each of the allegations that Dr Abdi made to succeed, the Tribunal needed to be satisfied of all of the following:
  - a. that the alleged act of discrimination occurred;
  - b. that it amounted to a detriment;
  - c. that it was committed because of Dr Abdi's colour or nationality or, in relation to allegation 35, because he had brought this Tribunal claim;
  - d. that it amounted to less favourable treatment than the way in which the University treated or would have treated an employee who was white or not of Iranian nationality but was otherwise in the same material circumstances as Dr Abdi; and

- e. if the claim to the Tribunal had been made outside the time limit that applied to the allegation, that it would be just and equitable to extend time.

### **The evidence**

14. At the Hearing of the claim, the Tribunal heard oral evidence from Dr Abdi, who submitted a 146-page witness statement.
15. On behalf of the University, the Tribunal heard oral evidence from six of the seven individuals alleged to have discriminated against and/or victimised Dr Abdi:
- Dr Kevin Barber has retired from the University since the events that are the subject of this claim. At the relevant time he was Professor Barber. He was Dr Abdi's research mentor from June 2004 until November 2007. He was Head of the OIM Group, and thereby Dr Abdi's line manager, from September 2008 to September 2012, and then again from November 2015 to May 2016 when covering for Dr Matthias's sick leave.
  - Dr Elizabeth Breen was Head of Group, and thereby Dr Abdi's line manager, from September 2012 to December 2013.
  - Dr Olga Matthias was Head of Group, and thereby Dr Abdi's line manager, from December 2013 to November 2015.
  - Professor David Spicer was Interim Dean of the Faculty of Management and Law from July 2015 to February 2016.
  - Mrs Joanne Marshall has been the University's Director of Human Resources and Organisational Development since December 2013.
  - Professor Carole Howorth was Associate Dean for Research and Knowledge Transfer between April 2014 and February 2016. She was Interim Dean of the Faculty of Management and Law, initially jointly with Professor Spicer in February 2016 and then as the sole postholder from March to December 2016.
16. The seventh alleged discriminator was the Director of Human Resources at the time of Dr Abdi's appeal against a regrading decision in 2013. It emerged during the course of the Hearing that this person was Ms Jan Davis, who is no longer employed at the University. She did not give evidence at the Hearing.
17. In addition, the Tribunal heard oral evidence from two other witnesses for the University who were not the subject of Dr Abdi's allegations:
- Dr Roger Beach was Head of the OIM Group, and thereby Dr Abdi's line manager, from Dr Abdi's appointment in June 2004 to September 2008.

- Professor Shirley Congdon is the Deputy Vice-Chancellor (Academic) of the University.

18. The documentation for the Hearing ran to over 4,500 pages. The Tribunal read only those documents to which the witnesses referred it.
19. On the basis of the oral and documentary evidence presented to it, the Tribunal made the findings set out below on Dr Abdi's allegations. Before setting out the detail of those findings, the Tribunal records the following findings on two issues of general application: the only evidence of explicit racial bias upon which Dr Abdi relied; and the main comparators whom Dr Abdi alleged had been treated more favourably than him in career progression because of race.

### **Direct evidence of racial bias**

20. It was apparent from Dr Abdi's evidence that his allegation that he had been discriminated against because of his Iranian nationality was based in part on his belief that the University had not taken any account of, or given proper weight to, the qualifications and experience he had acquired in Iran. As a result, he said, his career development at the University had been adversely affected from the start.
21. Dr Abdi was awarded a BSc in Industrial Engineering by Isfahan University of Technology and an MSc in Industrial Engineering by the University of Tarbiat Modares in Tehran. During his MSc he gained a qualification for "teaching at the university", but he did not explain what the exact nature of this qualification was. From 1991 to 1998 he worked at Tarbiat Modares University, Semnan University and Azad University. This involved working with various industries. He taught various courses on the undergraduate and postgraduate programmes and had various research, consultancy and administrative activities overseas.
22. In 1998 Dr Abdi moved from Iran to the UK. In 2000 he gained an MPhil in Industrial Management from Liverpool University. In late 2003 he gained a PhD in Production and Operations Management from the University of Manchester Institute of Science and Technology (UMIST). His evidence appeared to indicate that he taught on the MSc programme at UMIST, but he did not make clear what the nature and extent of this teaching was.
23. In summarising his position, Dr Abdi said that at the point when he was appointed as a Lecturer at the University in 2004 he already had more than 10 years of academic and industrial experience, including teaching at undergraduate and postgraduate level, administration and research. The Tribunal notes that there was nothing to prevent Dr Abdi drawing on the relevant parts of this experience in any promotion application he made after he joined the University.
24. In his evidence to the Tribunal, Dr Abdi said that Professor Barber, who was his research mentor during his probationary period from June 2004 to November 2007, "mocked me from the beginning". In a number of meetings, Dr Abdi said, Professor Barber expressed a "racial view"

towards Dr Abdi's academic and managerial experience in Iran and said that the experience he had acquired there had no use in the UK. Professor Barber told him, he said, that his research field was outdated and refereed to 20 years ago. Professor Barber undervalued his academic/managerial experience and consultancy expertise because of his race and his country of origin. This carried on throughout Dr Abdi's subsequent time at the University, involving Professor Barber in mocking Dr Abdi's research field, preventing his career development, rejecting his promotion and not allowing him to take any administrative roles he applied for.

25. Professor Barber's evidence was that he neither held nor expressed such views, and the Tribunal prefers his evidence to that of Dr Abdi for several reasons.
26. These alleged comments by Professor Barber are the only evidence of express and overt racial bias by any of the alleged discriminators in the whole of Dr Abdi's witness statement. As they would, if true, amount to strong evidence of a racially discriminatory attitude on the part of Professor Barber, the Tribunal considers that if they had in fact been said Dr Abdi would have mentioned them at an earlier stage, either in the extensive narrative appended to his claim form or at one of the Preliminary Hearings at which the issues in his claim were discussed or as stand-alone allegations of discrimination in the list of allegations he was ordered to prepare. He did not do so.
27. The School of Management works in a multinational environment. It has academic and business partners overseas and has staff members and students of various nationalities or national origins. Against this background it is inherently unlikely that Professor Barber would want to disregard any experience and knowledge gained by Dr Abdi that could be of assistance to the work of the School simply because of the country in which he acquired it.
28. Professor Barber joined the University from UMIST, where he had spent 20 years. He was well aware of the academic standards applied at that institution and it is inherently unlikely that he would have made derogatory comments about Dr Abdi's PhD research when it had been carried out at that same institution. As Dr Abdi's research field was the one in which he obtained his PhD relatively recently in 2003, it is also inherently unlikely that Professor Barber would have said that his research field was out of date and refereed to 20 years ago.
29. As the Tribunal found that Professor Barber had not expressed derogatory views about Dr Abdi's Iranian experience and Dr Abdi did not put forward any other evidence of express or overt racial bias, whether in relation to his nationality or his colour, by any other discriminator, there was no evidence before the Tribunal of express or overt racial bias. The Tribunal nevertheless explored the detail of Dr Abdi's allegations, in case its findings on these allegations provided some other basis from which it might be inferred that he had been less favourably treated because of race.

## Comparators

30. A second significant factor that appears to have underpinned Dr Abdi's belief that he was being discriminated against on racial grounds was the fact that two of his colleagues, Dr Breen and Dr Matthias, had made more progress in their careers than him. In relation to several of his allegations, Dr Abdi relied on these two women as comparators who, he alleged, had been treated more favourably than him. Both Dr Breen and Dr Matthias are white. (The Tribunal heard no evidence relating to their nationality, but it appeared from Dr Abdi's evidence that he believed that he had been treated less favourably than these comparators because of his colour rather than his nationality.)
31. Dr Breen began working for the University as a Lecturer in Operations Management in the OIM Group in January 2004, around four months before Dr Abdi was recruited. Before joining the University, she had worked as a Lecturer in Operations Management between August 2001 and January 2004 and been awarded a PhD. Dr Olga Matthias joined the University in November 2007 as a Foundation for Management Education Teaching Fellow, after twenty years' experience working in senior management roles in the private sector.
32. Like Dr Abdi, Dr Breen and Dr Matthias were appointed on Grade 9. Unlike him, both were promoted to Senior Lecturers at Grade 10, Dr Breen in April 2009 and Dr Matthias in August 2011. Dr Breen was appointed Head of the OIM Group and became Dr Abdi's line manager in September 2012 and Dr Matthias took over that role from December 2013 to November 2015. Dr Abdi was clearly concerned that, although these individuals were appointed only shortly before or three years after him, they had progressed further than him and had ended up line managing him. The reason why this had happened, he alleged, was that they are white and he is not.
33. In order to be relied upon as a comparator, an individual must be in the same material circumstances as the Claimant. The circumstances that are material will depend upon the nature of the allegation that is being made. In relation to promotion decisions, for example, the material circumstances are likely to include the skills and experience that an employer is assessing in deciding whether to promote. In relation to some of Dr Abdi's allegations, the Tribunal has made specific findings in relation to the comparators that Dr Abdi has relied upon. In relation to the allegations where no specific finding is made, the Tribunal was not satisfied that either Dr Breen or Dr Matthias were valid comparators because insufficient evidence was provided to establish that they were in the same material circumstances as Dr Abdi. The Tribunal heard no detailed evidence on how the abilities of Dr Breen and Dr Matthias were assessed by the University when it was considering their promotion applications and why it concluded that they met the promotion criteria. What was clear from the evidence, however, was that these individuals' work experience and achievements were different from each other and from those of Dr Abdi. It was not possible for the Tribunal to conclude that they were in the same material circumstances.

**Allegation 1: In 2004-2007 the University required the Claimant to work a three-year probation period**

34. The University required Dr Abdi to work a three-year probation period on his appointment as a Lecturer. The uncontested evidence of Dr Beach was that the person who made the decision on the length of Dr Abdi's probation period was Professor Francis, the Dean of the Faculty of Management and Law at the relevant time. In his evidence in cross-examination, Dr Abdi confirmed that he did not allege that Professor Francis had discriminated against him. This allegation therefore failed on that basis alone.
35. Even if Dr Abdi had alleged that Professor Francis had treated him less favourably because of his nationality or colour, there was no evidence before the Tribunal that the decision to give Dr Abdi a three-year probation period was because of Dr Abdi's race. Dr Beach's uncontested evidence was that three years was the normal length of a probation period. This is supported by the University's Ordinance on the conditions of service governing academic staff, including Lecturers, which states at paragraph 5(a) that the appointment of a Lecturer "will normally be subject to a period of probation of three years duration".
36. The Ordinance goes on to provide that a "shorter period of probation may be determined at the time of appointment in the light of the individual's age, qualifications and previous relevant experience." This provision was applied in Dr Breen's case and she was given a two-year probation period. According to Dr Abdi, the fact that his probation period was longer than this amounted to him being less favourably treated than her because of his nationality or colour. (In evidence, he said that he should have been given a one-year probation period.) The Tribunal was not satisfied on the evidence before it, however, that Dr Breen was in not materially different circumstances to Dr Abdi. She had substantial recent teaching experience and had undertaken formal teacher training towards membership of the Higher Education Academy during her time at UMIST, whereas the nature and extent of Dr Abdi's teacher training in Iran and his recent teaching experience at UMIST was unclear.
37. Dr Abdi alleged that he was also treated less favourably than Dr Matthias because of race, because she too was given a two-year probation period. The uncontested evidence was that she was not in fact subject to a probation period at all. Her appointment was initially on a three-year fixed-term basis. During that time her performance was assessed through twice-yearly progress reports, on the basis that if her performance were adjudged to be satisfactory at the end of the three-year fixed term, she would be offered permanent employment. The Tribunal finds that there were material differences between Dr Matthias's circumstances and those of Dr Abdi: she was employed in a different role to him and under different terms and conditions.
38. The Tribunal concluded that there was no race discrimination involved in the decision to give Dr Abdi a three-year probation period.



**Allegation 2: In the period 2004 to 2008 Professor Barber failed to allocate Dr Abdi major or minor administrative roles**

39. During 2004 to 2007 Professor Barber was Dr Abdi's research mentor; from September 2008 he was Head of Group and so Dr Abdi's line manager. The Tribunal accepted the uncontested evidence of the University's witnesses that holding a role as research mentor does not give an individual power to award administrative roles of any sort to the mentee. The Head of Group has power to award minor administrative roles but not major ones; decisions on major roles are made at a more senior level within the Faculty.
40. Dr Abdi did not identify any specific role that Professor Barber could and should have allocated him.
41. The Tribunal accepts that in the initial period of Dr Abdi's employment when Dr Beach was his line manager, he told Dr Beach that he would be interested in taking minor administrative roles from the third year of his probation (that is, from June 2006 onwards). In 2008, Dr Abdi expressed his interest in being considered for the role of Director of Studies (DoS) for the Doctor of Business Administration (DBA) programme but Professor Francis told him that this was too big a step for him to take at this stage and suggested that he might think of taking up a DoS role for a teaching programme at undergraduate or MSc level. As already mentioned, Dr Abdi confirmed in evidence that he was not alleging that Professor Francis had discriminated against him because of race.
42. The Tribunal concluded that there was no evidence that Professor Barber had discriminated against Dr Abdi in relation to the allocation of administrative roles.

**Allegation 3: In 2008 Professor Barber failed to support Dr Abdi's application for promotion.**

43. In 2008, Dr Abdi applied for promotion, by asking to be regraded from a Lecturer at Grade 9 to a Senior Lecturer at Grade 10. The application was considered first by the School of Management's promotions panel, which did not support it. The application then went forward to the University's promotions committee, which rejected it.
44. The Tribunal accepted Professor Barber's uncontested evidence that he had no involvement in this application. Dr Abdi's line manager at the relevant time was Dr Beach. Professor Barber was not a member of the School or the University panel that considered Dr Abdi's application and did not even know that Dr Abdi had applied.
45. Dr Abdi was upset by the feedback on his application from the School promotions panel, which was conveyed to him by Professor Francis. The feedback was recorded by the panel secretary as follows: "The Panel noted that the post-holder is an early career researcher and whilst undertaking good research, is not yet demonstrating research leadership . . ." Dr Abdi considered that it was wholly unfair to describe him as an "early career researcher" when he had substantial research experience from his time in Iran. He referred the Tribunal to the definition of "early

career researcher” in use for the purposes of the 2008 Research Assessment Exercise (RAE), which assessed the University’s research output. This definition covered those who became members of academic staff on or after 1 August 2003, that is, had five or few years’ experience in academia at the time of the RAE. By the time of Dr Abdi’s application for promotion in 2008 he had had substantially more experience than this, if his academic experience in Iran was taken into account.

46. The Tribunal accepted Dr Beach’s uncontested evidence that the phrase “early career researcher” is commonly understood within academic circles as meaning someone who has recently obtained his PhD, who is employed at an institution of higher education and is still building his research base. Effectively, Dr Beach’s evidence was that it was research experience at PhD level and beyond that was taken into account when deciding whether an individual was an “early career researcher”. In Dr Beach’s view, this was an appropriate description of Dr Abdi, who had only recently (in 2003) obtained his PhD and was developing his research profile. The Tribunal accepts that this was the reason why the term was used in relation to Dr Abdi, and that its use was not related to the country in which Dr Abdi carried out his earlier research.
47. In summary, the allegation that Professor Barber failed to support Dr Abdi’s promotion application failed because the Tribunal found as fact that Professor Barber was not involved in that application. Further, there was no evidence that anyone else involved in that application discriminated against Dr Abdi because of race.

**Allegation 4: In 2008 to 2010 Professor Barber delayed Dr Abdi’s application for study leave and introduced a new procedure for dealing with his study leave application, requiring him to submit his research proposal to the OIM Group meeting for approval.**

48. Dr Abdi was unable to identify in his evidence to the Tribunal what application for study leave he had made that had been delayed by Professor Barber. He eventually asserted that Professor Barber had rather failed to encourage him to make an application for study leave, but he still did not make clear what he said Professor Barber would have done and when if Dr Abdi had been of a different colour or nationality.
49. Dr Abdi did make an application for study leave in July 2009. At this time Professor Barber had recently had to deal with an acrimonious dispute between two members of staff in the Group who had each wanted to take study leave in the same semester. In the end, Professor Barber had resolved the dispute by deciding that one should take leave in Semester 1 and the other in Semester 2. In order to avoid a repetition of this incident, Professor Barber decided that study leave applications would in future need to be presented to the Group, so that there was more transparency about who was applying for leave and why, and there could be a discussion as to who would provide staffing cover during any study leave that was granted.
50. This is the process that Dr Abdi was required to follow with his application. His application was discussed at the OIM Group meeting held on 15 July 2009. The application was approved by the Dean and Dr Abdi took his

study leave in early 2011.

51. The process of submitting a study leave application to the OIM Group was not followed again, as Dr Abdi's was the last study leave application submitted while Professor Barber was Head of Group. Future Heads of Group did not use the same process, so that when Dr Breen made an application for study leave in 2014 (when Dr Matthias was Head of Group) she did not have to make a presentation to the Group. The Tribunal accepts that the presentation process was only ever applied to Dr Abdi, but there was no evidence that this was because of his colour or nationality. Rather, it was because Professor Barber had wanted a fairer and more transparent process for deciding study leave applications and Dr Matthias had not continued the practice.
52. The Tribunal therefore dismissed this allegation, on the ground that there was no evidence that Professor Barber in fact delayed Dr Abdi's study leave or that the procedure Dr Abdi was required to follow in relation to his study leave application in 2009 was because of race.

**Allegation 5: In 2008 to 2012 Professor Barber and Dr Breen failed to give Dr Abdi any major administrative roles despite his frequent requests for such roles and failed to provide Dr Abdi with career development support.**

53. The feedback from the School promotion panel on Dr Abdi's 2008 regrading application had included the comment that Dr Abdi did not have an administrative role. Likewise, when Professor Francis fed back the views of the University's Promotion Committee on Dr Abdi's 2008 application, he said that it would "clearly be helpful to your case for you to be doing some administrative work that contributed to the life of the School".
54. An academic's work can be divided into three broad areas: research, teaching and administration. Administration covers roles such as module or programme leader, Director of Studies (DoS) and Head of Group and involves planning, organising, liaising, managing budgets and human resources as well as pure administration.
55. Dr Abdi believed that his promotion depended upon him being allocated a major administrative role. This appears to have been a misapprehension on Dr Abdi's part. Dr Beach's uncontested evidence was that while a Lecturer's teaching always needed to be satisfactory if he was to gain promotion, if he had a good research profile that could compensate for a lack of administrative experience. As a result, a lack of experience in a major administrative role would not in fact prevent Dr Abdi being promoted.
56. During most of the period from 2008 to 2012, Professor Barber was Head of Group and Dr Abdi's line manager; Dr Breen did not take over that role until September 2012. In his witness statement, Dr Abdi complained that he had not been given various administrative roles in this period.
57. The role of DoS for the DBA programme is dealt with above in paragraph 41. Professor Francis had taken the view that this was too big a role for Dr

Abdi to handle at this stage.

58. In 2009, Professor Francis invited expressions of interest in relation to the DoS role for a BSc in Integrated Management Practice. In an email Dr Abdi asked for Professor Barber's advice about this, although he also said he would prefer to take a more "related" administrative job such as the DoS for a new MSc that was being launched. In his email in response Professor Barber said that he did not think that the BSc DoS role would really help Dr Abdi's career. It would be better if he took the DoS role for the new MSc, but that would not be starting until 2010. In closing, Professor Barber said "whatever you do don't sacrifice research for admin." In his evidence to the Tribunal, Dr Abdi said that this amounted to Professor Barber not letting him take the BSc DoS role. The Tribunal found as fact that it was nothing more than Professor Barber's response to Dr Abdi's request for advice. At the time, Dr Abdi's email response was: "Many thanks for your advice."
59. In 2010, Dr Abdi expressed an interest in the role of DoS of the Tashkent Programme. Professor Francis's email response was that the programme "would be better looked after by someone who already had DoS experience." Dr Abdi did not allege that Professor Francis had discriminated against him because of race.
60. Also in 2010, Dr Abdi expressed an interest in the role of DoS for EMBA Kolzminski. Professor Francis made the decision on that role and it was not given to Dr Abdi. Dr Abdi did not allege that Professor Francis had discriminated against him because of race.
61. In December 2010, Dr Abdi expressed an interest in the role of DoS for IILM India. Dr Sarah Dixon had by this time taken over from Professor Francis as Dean. At Dr Dixon's request, Dr Abdi submitted further details of why he felt he was qualified for the post but for some reason Dr Dixon overlooked receipt of this email and more or less confirmed to another employee, Andrew Coutts, that he would be offered the position. When she eventually read Dr Abdi's email, she organised interviews for both candidates. At the same time, Professor Barber confirmed in an email that he supported Dr Abdi's application but with strong reservations. He was not, Professor Barber said, the most organised of people and he had reservations because of the importance of the role and an untried DoS. Professor Barber went on: "If Reza is interviewed and considered suitable he will need mentoring and support (including monitoring). However, it could be what he needs to motivate him and make him feel more 'part of the School and valued'".
62. The decision on who should be offered this role was taken by Dr Dixon, not Professor Barber. The Tribunal heard no oral evidence from Dr Dixon and Dr Abdi did not allege that she had discriminated against him because of race. There was no evidence before the Tribunal that her decision had been affected by race in any way. Although Professor Barber expressed reservations about Dr Abdi's application, these were based on his concerns about the strength of Dr Abdi's organisational skills and his lack of DoS experience rather than race, and he did give his overall support to the application.

63. The Tribunal accepts that the recruitment exercise for this role was mishandled, and that, although an interview process was undertaken, Dr Dixon has already indicated to Mr Coutts that he would be likely to be given the role. During the course of the discovery process in this litigation, Dr Abdi saw the emails that were being exchanged at the time and the Tribunal can understand that he felt upset when he found out the circumstances in which he had been given an interview. The Tribunal does not accept, however, that there was any evidence to support Dr Abdi's assertion in his evidence that this amounted to his managers "playing with a vulnerable minority staff member like me". Rather, it amounted to administrative incompetence.
64. In March 2011 Dr Abdi expressed an interest in the DoS role for a collaborative programme with Perugia. His application was unsuccessful after interview. This decision was again taken by Dr Dixon and Dr Abdi did not allege that she had discriminated against him because of race. There was no evidence before the Tribunal to indicate that she had done so.
65. In March 2011 Dr Abdi expressed an interest in the role of DoS of the PhD Programme. He was invited to interview but was unable to attend as he was on study leave. Louise Wood, the Dean's Personal Assistant, suggested that the interview could be undertaken by conference call or possibly by an interview in person when Dr Dixon was next in the office in two weeks' time. Dr Abdi said he would prefer an interview in person as he was not confident of the quality of the telephone line to which he had access. Ms Wood said that she would follow this up with Dr Dixon but Dr Abdi was told nothing further. The interviews for the other two candidates went ahead. Dr Abdi's evidence was that he was "excluded from the process" but this is clearly not the case. Attempts were made to hold an interview with him by 'phone. Although the Tribunal heard no evidence to indicate that Dr Dixon made any attempt to interview Dr Abdi when she returned to the office, there was no evidence that this was because of his race, and he did not allege that she had discriminated against him because of his race.
66. In 2011, Claire Moxham was given the role of DoS of the Dubai Executive MBA Programme. In 2012 she left the University and Dr Abdi expressed an interest in the role. He was not shortlisted for the post. Dr Dixon made this decision. There was no evidence before the Tribunal to indicate that this was because of Dr Abdi's race and he did not allege that Dr Dixon had discriminated against him because of race. Dr Dixon's email clarifying to Dr Abdi that he had not been shortlisted confirms that the reason he was not shortlisted was because she was not confident he had the necessary skills in administration. She said: "With respect to your professional development I have repeatedly advised you to focus on your research, to ensure that you secure 4 good REF [Research Excellence Framework] returnable publications, to secure research funding and to work to develop an international partnership (Tehran) that has real outputs and is not just an MOU on a piece of paper. I do not believe your strengths lie in administration. I hope this is helpful."
67. Although Dr Abdi alleged that the Dubai post was not given to him because of his colour, nationality or religion, he accepted in cross-examination that the person who got the job in 2012 was a Muslim of

Pakistani origin.

68. In 2012, Dr Abdi was given a temporary role as Acting Director of the DBA Programme, covering for the study leave of Dr Nancy Harding.
69. The Tribunal concluded that neither Professor Barber nor Dr Breen had discriminated against Dr Abdi by refusing to give him major administrative roles. These decisions were taken by others more senior in the hierarchy and there was no evidence before the Tribunal that the decisions were related to race in any way.
70. As for the allegation that Professor Barber and Dr Breen had failed to provide Dr Abdi with career development support, the evidence before the Tribunal did not support this. The Tribunal accepted Professor Barber's unchallenged evidence that he had told Dr Abdi in performance review meetings that he should focus on his research rather than administrative roles as this was where he felt his strengths lay and would give him the best opportunities to develop his career. That was the advice he gave Dr Abdi when asked for his views on whether Dr Abdi should apply for the role of DoS for the BSc in Integrated Management Practice (see paragraph 58 above). As already noted above, Dr Dixon also told Dr Abdi that his strengths were not in administration and he should concentrate on his research.
71. Clearly, Dr Abdi was free to not take this advice and continue to apply for administrative roles, and he did so. From his evidence to the Tribunal, Dr Abdi appeared to be under the continuing impression, seemingly as a result of the feedback on his 2008 promotion application, that he would not be able to secure promotion unless and until he had secured a major administrative role. As has already been noted, this was not in fact correct, but the Tribunal is unclear whether anybody had stated this clearly and unequivocally to Dr Abdi. Dr Abdi's position was that his managers could not know administration was not his strength until they had given him a major administrative role; they in turn were reluctant to give him a major administrative role because they did not consider he had the administrative skills to manage one. No evidence was presented to the Tribunal of any steps taken to spell out to Dr Abdi the evidential basis on which his managers had concluded that his administrative skills were weak, but it is apparent from the documentation presented to the Tribunal that that was their genuine view, and there was no evidence before the Tribunal to indicate that their view was affected in any way by Dr Abdi's race. The Tribunal notes that certain of Dr Abdi's last-minute actions that were evidenced in the course of the Hearing (as described, for example, in paragraphs 77 and 200) provide some indication that his time management skills left something to be desired.
72. In any event, the Tribunal is satisfied that Professor Barber did what he could to support Dr Abdi in his applications for administrative posts. That support could not be unconditional, in that it was clearly necessary for Professor Barber to be honest in expressing his views on the strength of any application that Dr Abdi made. When Professor Barber had the chance to put opportunities Dr Abdi's way, he did so. In October 2009 Professor Barber suggested to Professor Francis that Dr Abdi could be considered for the administrative role of Chair of the School Assembly.

Professor Barber also gave Dr Abdi the role of second supervisor for OIM projects being undertaken in partnership with an institution in Kolzminski, Poland. When Dr Abdi applied for the role of DoS in relation to IILM India, Professor Barber supported that application, albeit with reservations, and offered to support him in carrying out the role if his application was successful.

73. Dr Breen was Dr Abdi's line manager for only the last three months of this period. She, like Professor Barber, had no power to give Dr Abdi a major administrative role. She could not, therefore, have discriminated against him because of race by failing to give him such a role. During this period she did deal with Dr Abdi's 2012 promotion application and, as will be apparent from the Tribunal's findings below, far from failing to support him in this aspect of his career development, she gave Dr Abdi a very generous amount of support in the way in which she dealt with this.

**Allegation 6: In 2011 Professor Barber undermined Dr Abdi's promotion application by submitting documentation without Dr Abdi's signature and approval.**

74. Dr Abdi originally alleged that Professor Barber had also included incorrect information in the documentation but he withdrew that aspect of this allegation at the Hearing.
75. In 2011, Dr Abdi again decided to apply for regrading to Grade 10. Professor Barber emailed him on 9 July 2011 to let him know that the School's regrading panel would be meeting on 26 July and asking him to put his case together and send it to Professor Barber "as soon as possible." Professor Barber gave Dr Abdi the dates he was available to meet. He said that the paperwork really needed to be completed by Wednesday 20 July by the latest. He also told Dr Abdi that Friday 22 July would be his last day in work before he was away for two weeks. As Professor Barber would not be at the regrading meeting, he explained, everything in the paperwork needed to be self-explanatory and as good as it could get.
76. Dr Abdi was in Iran at this time and had intended to fly back to the UK on 23 July. He asked Professor Barber if they could meet on Thursday 21 or Friday 22 July, if he brought his flight forward. Professor Barber replied offering to meet on 22 July at 11am but, as that was very close to the deadline, he asked Dr Abdi to send him the paperwork for his application before that so that they could use the meeting effectively.
77. Dr Abdi did not send Professor Barber the paperwork until an hour before they were due to meet. Professor Barber's role as Dr Abdi's line manager was to give him advice on preparing his case against the HERA criteria by reference to which the regrading decision would be made, and to provide a supporting statement for inclusion with the application. Professor Barber started work on the application as soon as he received the papers. Dr Abdi sent him further drafts at 5.30pm and 6.14pm. By this stage, the regrading meeting had been postponed to a later date, but Professor Barber wanted to put the paperwork into the system in case anything happened while he was away. He worked on Dr Abdi's application until late in the evening.

78. Professor Barber had no clear recollection of how the application was eventually submitted, which is unsurprising given that these events occurred nearly six years ago. The documentation confirmed, however, that on Monday 25 July, Dr Dixon wrote to Dr Abdi and Professor Barber saying that she had not seen the documentation for Dr Abdi's regrading, and that Dr Abdi sent an email in response stating that "the documents were prepared last Friday, and signed by me and put in the Louise's mail box today morning." Louise is Louise Woods, Personal Assistant to the Dr Dixon, the Dean.
79. Professor Barber later supplied various pieces of additional documentation that were requested in relation to Dr Abdi and the two other candidates whose cases he was to present at the regrading meeting, which included Dr Matthias. For Dr Abdi, Professor Barber provided an updated regrading form, an amended job description, a general job description for a Senior Lecturer in the OIM Group and an organisational chart. This required considerable further work on his part, but he prioritised this on the first day of his return from holiday, as he wanted to ensure that Dr Abdi and the two other candidates had the best possible chance of success.
80. The School regrading panel met on 22 August 2011. Professor Barber attended in order to present the promotion applications of Dr Abdi and two other employees. The panel, chaired by Dr Dixon, decided not to approve Dr Abdi's application. The panel's view, as recorded on Dr Abdi's application form, was that although Dr Abdi had potential for upgrading to Senior Lecturer, he was "not quite there yet. However the publications he has in the pipeline together with the initiatives with Tehran University, when they come to fruition, will hopefully mean that [Dr Abdi's] case can be considered again in the near future."
81. The Tribunal does not accept that Professor Barber's actions were in any way undermining of Dr Abdi's application for regrading. On the contrary, he put considerable time and effort into ensuring that Dr Abdi's application had the best possible chance of success, even though Dr Abdi's failure to get documentation to him in advance put him under considerable time pressure. Dr Abdi himself submitted his original application form. Professor Barber did supply additional documentation without Dr Abdi having seen and approved it in advance, but this was in response to requests from Louise Wood. Professor Barber played no part in the decision on whether to approve Dr Abdi's application. There is no evidence that Dr Abdi's nationality or colour affected Professor Barber's actions in any way. This allegation therefore fails.

**Allegation 7: In 2012 Professor Barber prevented the processing of Dr Abdi's appeal application.**

82. After hearing that his application for promotion had been unsuccessful, Dr Abdi went to see Professor Barber. He said that he wanted to appeal the decision on his promotion. He said that Professor Barber had discriminated against him but that he would not make a formal complaint about this if Professor Barber unconditionally supported his appeal.
83. Professor Barber found Dr Abdi's allegation of discrimination disturbing.



He sent an email to Dr Abdi saying that he would be happy to help Dr Abdi construct his appeal, but the appeal needed to be dealt with on its merits. If Dr Abdi considered that Professor Barber had discriminated against him, he should make a formal complaint so that it could be dealt with properly. Professor Barber said: "Your statement that you will not make a formal complaint against me should I strongly support your appeal and it is successful is, in my opinion, inappropriate. Therefore, let me be clear that support from me for your appeal is not conditional and will be the straightforward and honest support that I think I have always offered." Dr Abdi's response was: "Hello Kevin, I don't want to discuss the issue with you anymore."

84. In the event, Dr Abdi prepared his appeal with the support of his union representative. In the appeal document, he urged the appeal committee to compare his achievements with his white colleagues who were promoted in August 2011 and complained that he had been treated "inequitably" compared with colleagues, including "white female" colleagues who are unnamed but appear to be Dr Matthias and Dr Breen. The Tribunal accepts Professor Barber's unchallenged evidence that this appeal document was never sent to him for approval.
85. Eventually, Dr Abdi decided not to pursue this appeal but to submit a fresh application for regrading. Dr Abdi needed Professor Barber's input into this regrading application but refused to meet him to discuss this. He said that he wanted to receive his input by email instead. In the event, Professor Barber and Kamal Kaur, a Human Resources advisor, met with Dr Abdi and his union representative on 25 July. At the meeting, Dr Abdi again accused Professor Barber of discriminating against him and also accused him of lying. In an email to Ms Kaur after the meeting, Professor Barber made clear that it was very difficult and stressful for him to be living with these allegations of discrimination hanging over him but that he continued to manage Dr Abdi fairly and even handedly. He now expected Dr Abdi to make a formal complaint so that he had an opportunity to defend himself.
86. Another senior colleague, Professor Margaret Taylor, who was Dr Abdi's research mentor from 2008/9 until 2015, was at some point assigned to assist Dr Abdi in making his promotion application.
87. The Tribunal found no evidence that Professor Barber prevented the processing of Dr Abdi's appeal. The Tribunal accepted that Professor Barber offered Dr Abdi genuine and honest support in drafting his appeal, in spite of Dr Abdi's accusations that he had been discriminated against by Professor Barber (discrimination of which the Tribunal has found no evidence). Dr Abdi himself decided not to pursue his appeal. When Dr Abdi submitted an application for regrading in 2013, Professor Barber was not involved, the relationship between the two men having largely broken down due to Dr Abdi's attitude and behaviour towards Professor Barber.
88. The Tribunal was provided with no evidence to indicate that Professor Barber's actions in relation to Dr Abdi's 2011 appeal or 2012 application for regrading was related to or affected by Dr Abdi's nationality or colour in any way.

**Allegation 9: In 2012 Professor Barber subjected Dr Abdi to a false accusation of being absent from work.**

89. For a period in May to July 2012, Dr Abdi had not informed the University of his whereabouts and colleagues were finding it difficult to contact him. Since September 2011 Dr Breen had been acting as Deputy Head of Group, under Professor Barber, in preparation for taking on the role in September 2012. On 13 July Dr Breen emailed Dr Abdi and said that no-one had seen him at the University for a while and asked him if everything was okay. She asked him to let her know his whereabouts for the next two weeks and to keep in touch with the Group's administrator, Bernadette Quinn. Members of the Group are required to keep Ms Quinn informed of their whereabouts and how they can be contacted.
90. Professor Barber discussed the fact that Dr Abdi had not been keeping the Group informed of his whereabouts with the Human Resources (HR) Department and suggested that formal steps needed to be taken to address this with Dr Abdi. On 12 July 2012 Ms Kaur, Human Resources adviser, wrote to Dr Abdi as follows:
- “I have been informed by your line manager, Professor Kevin Barber that you have been absent without permission since 2<sup>nd</sup> July 2012. Your line manager has made numerous attempts to contact you but without success.
- As you have not made contact to explain the reasons for your absence it is deemed to be unauthorised and as such is also unpaid. Salaries and Wages have been notified and will adjust your salary accordingly.
- Please make contact with your line manager or myself by no later than Monday 16<sup>th</sup> July 2012 to explain the reason for your absence from work and to confirm you will attend the meeting on Wednesday 18<sup>th</sup> July 2012 to agree the appropriate course of action at 9am in Kevin Barbers office.
- I must inform you that should you fail to make contact to explain the reason for your absence then disciplinary action may be considered, the outcome of which may result in a warning being issued, or may ultimately result in your dismissal from service.”
91. The Tribunal accepts Professor Barber's unchallenged evidence that he had no input into this letter and did not see it before it was sent. In evidence to the Tribunal, he conceded that it was “a little heavy-handed”.
92. On 13 July, Ms Quinn emailed Dr Abdi informing him that she hadn't received notification of his whereabouts since week beginning 7 May 2012. She asked him to provide this information by return, and he did.
93. The Tribunal concludes from this that Professor Barber did not make a false accusation that Dr Abdi was absent from work. Rather, he raised a concern, based on the facts, that, in breach of the University's requirements of academic staff in his position, Dr Abdi had not been in contact with the University to explain where he was and how he could be

contacted. The contents of the letter from HR referring to the possibility of disciplinary action were drafted without Professor Barber's input or approval. There was no evidence before the Tribunal to indicate that Professor Barber's actions were in any way related to or affected by Dr Abdi's nationality or colour. This allegation therefore failed.

**Allegation 10:**

**(a) In the period from 2005-2012 Professor Barber forced Dr Abdi to take on a high work load, leading to him being unable to take 220 days' of his holiday entitlement in 2004-2012 and**

**(b) In 2010 Professor Barber instructed Dr Abdi to work during his holidays.**

94. The Tribunal heard no evidence that Professor Barber did anything expressly to interfere with Dr Abdi's ability to take his holidays. The timing of holidays was a matter for Dr Abdi to organise for himself.
95. Dr Abdi alleged that he could not take his holiday entitlement because Professor Barber had allocated him such a high workload that he did not have the chance to take time off. The University's standard working year for academic staff involves 1,580 hours' work, allocated by reference to a workload model allocating a specified number of hours for the activities on which staff are engaged. The Tribunal accepted the unchallenged evidence of Professor Barber that Dr Abdi's workload for the period 2005 to 2012 exceeded 1,580 only once, by 19 hours in the academic year 2005-2006. In that year, Dr Breen's workload was 200 hours less than Dr Abdi's, but in all subsequent years (other than 2007-2008, when she took maternity leave) she had a higher workload than him. Dr Matthias had a lower workload than Dr Abdi in 2009-10, but a higher workload than him in her other three years' employment falling within the period.
96. On the basis of this evidence, the Tribunal was not satisfied that Dr Abdi's workload prevented him taking his holiday entitlement in 2004 to 2012. Further, there was no evidence before the Tribunal that Professor Barber's allocation of workload to Dr Abdi, whatever it might have been, was affected or influenced in any way by Dr Abdi's colour or nationality. The Tribunal also noted that in 2013, in an endeavour to settle Dr Abdi's complaints that he could not take holidays because of his workload, the University made him an offer of six additional days' holiday over and above his legal entitlement, to be taken in 2012-13 and 2013-14. In response, Dr Abdi said that this was a "partial offer" and that he should be allocated enough leave to enable him to take a full semester off work. The University refused to increase its offer.
97. In relation to the allegation that Professor Barber required Dr Abdi to work during his holidays in 2010, this appeared to be a reference to an incident in 2010 when Dr Abdi was expected to remain in touch with a student whose dissertation he was supervising. Professor Barber had agreed to Dr Abdi taking a period of 10 to 12 weeks' extended leave in the summer of

2010, to combine a period of holiday in Iran and attendance at a work-related conference. Professor Barber was going “out on a limb” for Dr Abdi in agreeing this, as the Dean would normally need to approve a period of extended leave. Professor Barber’s only requirement was that Dr Abdi should remain in touch with his dissertation students while he was away.

98. Academic staff are expected to enter into a student learning agreement with their students, setting out the terms on which supervision will be provided. Dr Abdi had an agreement with one student, Marcus Orton, which stated that Dr Abdi would be contactable by email only from mid-July to late August 2010. On 11 August Mr Orton contacted Professor Barber for help, as he had not been able to contact Dr Abdi and had had no response to emails he had been sending since 3 June. Dr Abdi did not contact Mr Orton until 16 August, and then sent only a brief email that did not answer most of the questions Mr Orton had raised.
99. Another student, Anuj, also had difficulty in contacting Dr Abdi. As a result, Professor Barber stepped in to sort the problem out, by speaking to the student and the sponsor of the student’s research work.
100. The Tribunal finds that Professor Barber did no more than require Dr Abdi to honour his student learning agreements during a period of extended leave that Professor Barber had gone out of his way to arrange. In the circumstances, the Tribunal does not accept that this treatment can be characterised as subjecting Dr Abdi to a detriment, in that no reasonable employee would regard this as being put under a disadvantage in employment. Further, there was no evidence before the Tribunal that Professor Barber’s expectation that Dr Abdi would meet his obligations to his students during that leave, was affected or influenced by Dr Abdi’s nationality or colour in any way. Rather, it was Professor Barber requiring Dr Abdi to meet the duties of his post.

**Allegation 11: In 2012 (a) Professor Barber interfered with Dr Abdi’s module descriptor for an MSc in Decision support for sustainability without Dr Abdi’s knowledge; and  
(b) Dr Breen then instructed Claimant to deliver the module as designed by Professor Barber.**

101. As part of the process of designing a new course, those involved in the design draw up a description of the course content and how it will be delivered. Once finalised, this course descriptor is submitted for central University approval and loaded onto a computer-based Module Catalogue (known as “Modcat”). In order to meet quality assurance requirements, it is important that the course as delivered follows the course descriptor in Modcat. Students can consult the Modcat course descriptor and academic staff are expected to use it as the basis for their course delivery.
102. Dr Abdi was initially involved in the design of the MSc in Decision Support for Sustainability. On 8 December 2008, a few days before the course descriptor needed to be finalised for submission for approval, he emailed Dr Beach saying: “Unfortunately, I have found it too difficult, at least at this stage, to design and deliver such module within the foreseen context of the programme for the following reasons:...” He then went on list the

problems he perceived and continued: "In overall, the module delivery will be very challenging, and I think we need much more time for the feasibility study regarding the design and delivery of such module in a consistent way reflecting the nature of the whole programme. Please let me know of your views and possible thinking of the module design along with the programme modification in the next year."

103. From this email it is apparent that Dr Abdi does not feel able to provide a course descriptor. As a result, Professor Barber and a colleague, Joao Quariguassi, took on the task. The finalised descriptor was submitted for approval and loaded onto Modcat.
104. In October 2012, Professor Barber became aware that Dr Abdi was teaching the module by reference to a different version of the course descriptor, which Dr Abdi had also placed in the module handbook with which students were issued. The descriptor he was using contained different learning outcomes and a different mode of assessment to that in the Modcat version, namely an examination and a piece of coursework rather than two pieces of coursework. Professor Barber took the view that Dr Abdi had deliberately used his own version of the course descriptor, knowing it not to be the official version from which he should have been working, and that this was a serious matter requiring a formal disciplinary investigation. In the event, no disciplinary action was taken against Dr Abdi in relation to this matter.
105. The Tribunal found that Professor Barber had clear and objective cause to be concerned about Dr Abdi's use of the wrong course descriptor. Professor Barber did not, as Dr Abdi alleged, "interfere with" Dr Abdi's course descriptor; rather, Dr Abdi's course descriptor was not the version that Dr Abdi should have been using. The Tribunal did not accept that Professor Barber had produced another course descriptor without Dr Abdi's knowledge. Dr Abdi knew that he was no longer involved in designing the course descriptor after his email of 8 December 2008, and that he had not produced a descriptor for approval. He must, therefore, have been aware that someone else had produced the final course descriptor. Further, given the fact that he was working in the same Group as the two individuals who authored that document, it is not credible that he was not aware that they were doing this work.
106. There was no evidence before the Tribunal to indicate that Professor Barber's actions in relation to the course descriptor were affected or influenced in any way by Dr Abdi's nationality or colour. Rather, they arose from his concern that Dr Abdi was acting in a way that compromised quality assurance standards within the University.
107. In early 2013, Dr Breen worked with Dr Abdi to ensure that he understood the need to adhere to quality assurance requirements in the future. She was clearly justified in expecting Dr Abdi to deliver the course he was teaching in accordance with the official course descriptor on Modcat. There was no evidence before the Tribunal that her requirement that Dr Abdi should do so was affected or influenced in any way by his nationality or colour.
108. The allegations of discrimination in relation to the course descriptor

therefore failed.

**Allegation 12: In 2012 to 2013 Professor Barber and Dr Breen refused to give Dr Abdi teaching buyout.**

109. The University has a system whereby staff who need to concentrate on research may be given a buyout of their teaching obligations to free up time for research. Buyout will be considered, in particular, for any staff member who has a prospect of completing a piece of research in time for it to be submitted for consideration in an upcoming RAE.
110. The Tribunal accepted the unchallenged evidence of Professor Barber that the decision as to who should be allocated teaching buyout was taken by Dr Dixon, the Dean, and Professor Nelarine Cornelius, the Associate Dean. Dr Abdi did not allege that either of these individuals had discriminated against him. This allegation, which was of discrimination by Professor Barber and Dr Breen, therefore failed on this basis alone.
111. The Tribunal also found, however, on the basis of the evidence it heard, that Dr Abdi was in fact made an offer of teaching buyout. The offer was decided upon by Dr Dixon and Professor Cornelius and conveyed to Dr Abdi in an email from Professor Barber on 23 May 2012. Dr Abdi had sought relief from marking in Semester 2 of 2011/12 and time off from teaching in Semester 1 of 2012/13. He was offered buy out of his project supervision over the summer of 2012 and the marking of his Semester 2 modules. He would also be offered buy out of his Semester 1 marking if he made another application and had the support of Professor Taylor as his research cluster head.
112. Although Dr Breen was not involved in the decisions as to whether Dr Abdi should be offered teaching buy out, in January 2013 she agreed to remove a teaching module from Dr Abdi as part of his phased return to work after a period of sickness absence due to "stress". This was not a teaching buyout to assist him with research, but rather an initiative to promote his occupational health. The Tribunal considered this to be evidence of Dr Breen's supportive approach to the management of Dr Abdi.

**Allegation 13: In 2012 to 2014 Professor Barber, Dr Breen and Dr Matthias refused to give Dr Abdi any major administrative duties. In particular, Professor Barber twice failed to give Dr Abdi the role of Director of Studies for the Dubai Executive MBA Programme.**

113. As has already been mentioned, the Tribunal accepted the unchallenged evidence of the University's witnesses that the allocation of major administrative roles was not within the power of the Head of Group. These allegations of discrimination by Professor Barber, Dr Breen and Dr Matthias in relation to the allocation of major administrative roles therefore failed on this basis. The Tribunal's findings in relation to the specific allegations about the Dubai MBA are set out in paragraph 66 above.
114. On 20 March 2014, Dr Abdi was offered the role of Programme Leader for two MSc programmes, Applied Management and Enterprise and Applied Management and Sustainability. On 20 March 2014, Dr Matthias sent Dr

Abdi an email congratulating him on his appointment.

115. A decision was subsequently made to suspend these programmes. As part of this allegation, Dr Abdi said that the University had allocated him the Programme Leader role at a time when it knew the programmes were to be suspended, in order to humiliate him. There was no evidence before the Tribunal to support this allegation. The Tribunal accepted Dr Matthias's unchallenged evidence that these two programmes had been under her supervision but she had not been involved in any discussions as to whether they should be suspended as the Head of Group would not be involved in such a decision. At the time when she offered Dr Abdi her congratulations on being appointed to these roles, Dr Matthias did not know that the programmes might be suspended. From the documentary evidence, it appears that the application to suspend the programmes was not submitted until 24 July 2014, four months after the offer to Dr Abdi was made.

**Allegation 14: In 2013 Dr Breen failed to support Dr Abdi's application for promotion. The issue in relation to the module descriptor (see allegation 11 above) was referred to and relied on in the decision on his application.**

116. Dr Abdi applied again for promotion at the beginning of 2013, at which time Dr Breen was Head of Group and his line manager. On the basis of Dr Breen's evidence and the emails sent between herself and Dr Abdi at the time, the Tribunal finds as fact that, far from failing to support Dr Abdi in his application for promotion, Dr Breen put a substantial amount of effort into assisting him with his application and suggesting areas in which it might be strengthened. On one occasion, she emailed Dr Abdi with some comments and suggestions while she was off work on sick leave. In oral evidence, Dr Abdi was asked why Dr Breen would have been contacting him whilst ill if she did not intend to be supportive; his position was that she was "pretending" to support him.
117. An email from Dr Abdi to Dr Breen relating to her comments on his promotion application provides evidence of his hostile and disrespectful response to her input:
- "I just had a chance to read your comments which are mostly unconstructive. I am surprised with your comments which some are not true. I can discuss this with you tomorrow if possible. Please frankly let me know whether you want to support my application or not. Unfortunately, your comments show that you are not willing or not allowed to support me. In this case, there is no point to submit it. However [sic], if you decide to support me and modify the negative comments I may sign it."
118. Dr Breen was taken aback by the tone and content of Dr Abdi's response to her input, to the extent that she sought advice from Professor Barber, who was more experienced in the role of Head of Group, on how to deal with it.
119. The Tribunal accepted from Dr Breen's evidence and the documentary evidence that her line manager's statement in Dr Abdi's application form

was based on her knowledge of Dr Abdi's performance and her views on his strengths and weaknesses. In relation to his teaching, for example, she stated that student feedback highlighted some positive and some negative attributes with module teaching and assessment.

120. Dr Abdi took exception to Dr Breen's reference in her statement to his performance as acting Director of the DBA Programme during the study leave of Nancy Harding, the substantive postholder. Ms Harding had given Dr Breen feedback on Dr Abdi's performance in that role. She found on her return that Dr Abdi had left a number of urgent things not attended to or very delayed, and he had not turned up for some pre-arranged transfer meetings early in his period as acting Director. In her statement in Dr Abdi's application form, Dr Breen recorded that some concerns had been raised about his performance in the acting Director role. At Dr Abdi's suggestion, Dr Breen contacted Professor Nelarine Cornelius, who provided a supporting statement saying that in her view Dr Abdi had executed his duties as Acting Director well. Dr Breen included Professor Cornelius's statement as part of the documents submitted in the application process. Dr Abdi's position in his evidence to the Tribunal was that only Professor Cornelius's statement should have been taken into account; Ms Harding's feedback should not have been referred to. He did not explain why. The Tribunal found that Dr Breen's decision to include adverse comments on Dr Abdi's performance in the acting Director role was because she took the reasonable and professional position that an accurate, fact-based and balanced picture needed to be provided.
121. Dr Breen also mentioned in her statement on Dr Abdi's application form that the HR Department was investigating an apparent discrepancy between Dr Abdi's teaching and assessment of the Decision Support for Sustainability and the approved module descriptor. The Tribunal's reasons for concluding that the treatment of Dr Abdi in relation to the module descriptor did not involve any discrimination are set out in paragraphs 101 to 108 above. The Tribunal found that Dr Breen mentioned this issue in her statement in Dr Abdi's application because she needed to provide a balanced picture, not because of his race.
122. In summary, there was no evidence before the Tribunal to establish that Dr Breen did not support Dr Abdi's application for regrading. On the contrary, the evidence established that she put time and effort into assisting him in drafting his application and the line manager statement she provided was balanced and based on fact. There was no evidence that Dr Breen's actions in relation to Dr Abdi's promotion application were affected or influenced in any way by his nationality or colour.
123. Dr Breen presented Dr Abdi's application at a Faculty regrading panel meeting on 23 January 2013. She took no part in the decision-making on whether his application should be supported. The panel decided not to support his application. Professor Jon Reast, Acting Dean, gave Dr Abdi the panel's feedback on his application. He needed to make further progress with his research, in order to achieve a 3\* average or more. He also needed to achieve good feedback on his modules without any administrative or quality assurance issues (that presumably being a reference to the DBA programme feedback and the course descriptor discrepancy). Dr Abdi's application was considered by the University's



promotions committee on 11 March 2013 and rejected.

**Allegation 15: In 2013 the Director of Human Resources processed Dr Abdi's appeal in a way that breached University regulations by the same person (namely, the Deputy Vice Chancellor) attending both appeal hearings.**

124. Dr Abdi's appeal against the rejection of his application for promotion in 2013 was on the agenda at three meetings of the appeal panel on 2 and 22 July and 22 August 2013. At this time, the Director of Human Resources was Ms Jan Davis.
125. Professor Barry Winn, the Deputy Vice Chancellor, had chaired the University promotion committee that had considered Dr Abdi's promotion application. He was present at all three meetings of the appeal panel. His role was limited to presenting the original decision and the reasons for it. The Tribunal saw no evidence to establish that Professor Winn's presence at the appeal meetings in this role was contrary to the University's regulations, and accepted Ms Marshall's uncontested evidence that his attendance to present the promotion committee's decision was necessary to comply with the University's normal procedures. There was no evidence before the Tribunal that the presence of Professor Winn was because of race.
126. For those reasons, this allegation failed.

**Allegation 16:**

- (a) **At a meeting with Dr Abdi on 14 October 2014 Dr Matthias changed the subject for discussion from a gap analysis to other irrelevant matters and inappropriate requests.**
- (b) **A person unknown took a decision to refer Dr Abdi for formal disciplinary action as a result of the meeting.**
127. Dr Matthias took over from Dr Breen as Head of Group and Dr Abdi's line manager in December 2013. At a meeting with Dr Abdi in July 2014 she conducted his annual performance review. Dr Matthias noted that Dr Abdi had not achieved all the objectives set at his previous review. Dr Abdi said that he felt his previous applications for promotion had failed because he had not had the support of the Head of Group. Dr Matthias and Dr Abdi identified four objectives for Dr Abdi, the first of which was for him to carry out a gap analysis in which he would set out the aspects of his performance relevant to the job description of a Grade 10 Senior Lecturer in order to identify what he needed to achieve in order to secure promotion. This needed to be completed as soon as possible so that they could start working on the areas of work he needed to develop to achieve promotion.
128. On 1 October 2014, Dr Matthias emailed Dr Abdi asking him to arrange a meeting with her to discuss the gap analysis which he was due to have prepared by that date. The meeting was arranged for 14 October, but Dr Abdi had not provided Dr Matthias with his gap analysis. In order to make productive use of the meeting, therefore, Dr Matthias carried out her own gap analysis by reference to the role descriptor for a Grade 10 post and the 14 HERA criteria, and identified the areas that Dr Abdi was not

currently meeting. In her oral evidence, she confirmed that, in her view, there were weaknesses that Dr Abdi needed to address in his performance in his current Grade 9 role before he could move on to developing into a Grade 10 post. Having taken advice from David Cummings, Senior Human Resources Adviser, she felt that the best way to provide Dr Abdi with a structure for his development was to adopt a performance management process.

129. From the “improving performance action plan” (IPAP) form that Dr Matthias ended up using in her conversation with Dr Abdi at their meeting on 14 October, it appears that the University has a procedure for monitoring employees’ performance that involves a staged approach of identifying unsatisfactory performance and setting a period for the employee to improve. If there is no adequate improvement, this can lead to warnings and eventually dismissal. The first stage of the procedure appears to be for the manager and employee to complete an IPAP form. The Tribunal heard no evidence to confirm that this procedure was used in the performance management of academic staff at the relevant time. The documents contained in the hearing bundle related to a University process and ordinance that did not appear to reference the process reflected in the IPAP form.
130. At the meeting on 14 October, Dr Matthias explained that, as Dr Abdi had not provided her with his own gap analysis, she would be using her own analysis as a basis for their discussion. On Dr Matthias going through the first point on her analysis with Dr Abdi, he said that her view was totally subjective. She responded that that was why she needed his views, so that they could agree a document that he could work with, which would provide the basis for a plan to work towards him making a successful promotion application. She proposed that they should go through her document and develop a joint version that he was happy with, but Dr Abdi refused to do so and would not engage with the discussion.
131. Dr Matthias then told Dr Abdi that she intended to complete the IPAP form, because that would be the best way of providing a structure for the steps that needed to be taken to develop Dr Abdi’s performance. In that document, she recorded that she considered improvement was required in several areas, including a backlog in research publications, mixed reviews from students on his teaching and a lack of focus in the areas in which he was offering doctoral supervision. Dr Abdi’s response at the meeting, as recorded by Dr Matthias on the form, was that Dr Matthias’s assessment was biased and inaccurate and not geared to provide a positive work environment.
132. At the foot of the IPAP form was a box containing this statement: “I confirm that the issues recorded on this form have been discussed with me at a formal meeting held with the line manager named above, in accordance with the Improving Performance Policy and Procedure and that I am being given a copy of this completed document”. Dr Matthias asked Dr Abdi to sign this form but he refused to do so. Dr Matthias warned him that this amounted to him refusing to obey a reasonable management discussion and might lead to a disciplinary process. He maintained his refusal to sign and left the meeting.

133. During the course of the meeting, Dr Abdi had made various disrespectful comments towards Dr Matthias. He told her that he had been in academia longer than she had and told her that it was shameful that she had created such an environment in the School. He said that she ignored him, and that the issues she was raising with his performance were basic issues that were relevant to an “early career academic” like her but not to him. Dr Matthias did not respond to these comments, but they left her feeling upset and shaken. Although she had worked for many years in business, she had not previously had any encounters in her professional life that had left her feeling quite as traumatised as this meeting with Dr Abdi. She found his conduct aggressive, threatening and frightening.
134. Dr Matthias was concerned with Dr Abdi’s failure to prepare his own gap analysis and his refusal to sign the IPAP form when requested to do so, but also with his generally insubordinate tone and inappropriate behaviour towards her in the meeting. Dr Matthias discussed the matter with Professor Spicer, Associate Dean, who supported a disciplinary approach being adopted as this was a repeated pattern of behaviour that Dr Abdi had also displayed with Professor Barber and Dr Breen. Dr Matthias wrote to Dr Abdi inviting him to attend a disciplinary hearing with her on 13 November to answer allegations of insubordination and refusing to carry out a reasonable management request.
135. The hearing began but was immediately adjourned, as Dr Abdi wanted further detail of the allegations against him and his union representative considered that the hearing should be conducted by an independent manager rather than Dr Matthias. Dr Matthias wrote to Dr Abdi giving him details of the conduct that was to be the subject of the disciplinary hearing. Professor Spicer, as Dr Matthias’s line manager, was asked to take on the role of disciplinary manager and he wrote to Dr Abdi to invite him to a rescheduled disciplinary hearing on 3 February 2015.
136. Turning to the allegations that relate to these events, the Tribunal found that Dr Matthias’s discussion with Dr Abdi about his performance in his current role was not irrelevant. The subject of the meeting was the development of Dr Abdi’s performance, with the aim of ensuring that he could eventually make a successful application for promotion. The shortcomings in Dr Abdi’s performance in his current role were a necessary part of the process of identifying what he needed to do to bridge the gap to Grade 10. Dr Matthias attempted to discuss her own gap analysis document because Dr Abdi had not provided her with one of his own. After he refused to engage in a constructive discussion on that document, she turned to completing the IPAP form.
137. The Tribunal understands Dr Abdi’s concern that Dr Matthias was using a form that was appropriate for management of unsatisfactory performance, which could potentially lead to warnings or even dismissal for poor performance. From the evidence presented to the Tribunal, it appears that Dr Matthias was the first of Dr Abdi’s line managers to raise concerns with him about his performance at Grade 9, rather than providing him with their views about areas of weakness in his applications to be regraded at Grade 10. Since Dr Abdi was not aware that his performance as a Lecturer was considered unsatisfactory, it was not surprising that he was upset when Dr Matthias completed the IPAP form and that he was not willing to sign it.

138. The Tribunal nevertheless accepted that it was part of Dr Matthias's legitimate role as Dr Abdi's line manager to address any shortcomings in his performance. The Tribunal accepts that the reason why Dr Matthias asked Dr Abdi to sign the IPAP form was because she wanted him to acknowledge that they had discussed the shortcomings in his performance. There was no evidence before the Tribunal to establish that any of Dr Matthias's actions at the meeting on 14 October were related to or affected by Dr Abdi's nationality or colour in any way. She was a line manager taking steps to manage the performance of a member of staff, both in order to address shortcomings in his performance in his current role and with the longer-term aim of putting him in a better position to apply for promotion.
139. It was Dr Matthias, in consultation with Professor Spicer and the HR Department, who decided to invite Dr Abdi to a formal disciplinary meeting as a result of his conduct at the meeting on 14 October. While one of the reasons for instigating the disciplinary process, his refusal to sign the IPAP form, was unreasonable given the lack of advance notice that a performance management process was to be used, there was no evidence that it was related to race. The other reason, namely Dr Abdi's general tone and behaviour towards Dr Matthias in the meeting, was clearly unrelated to his colour or nationality.

**Allegation 17:**

- (a) **Dr Matthias took three roles in Dr Abdi's disciplinary case (accuser, HR administrator and panel member of his disciplinary hearing panel).**
- (b) **Dr Matthias forced Dr Abdi to sign an unread document, which contained sections completed by her that he should have completed, and threatened him with disciplinary action if he did not sign it.**
140. There was no evidence before the Tribunal that Dr Matthias acted as a Human Resources administrator. She wrote the letter inviting Dr Abdi to attend a disciplinary hearing, but that was because at that time it was her intention to conduct that hearing. It does not make her role that of an administrator.
141. The Tribunal accepts that it was not good practice or in accordance with the principles of natural justice for Dr Matthias to be chairing the disciplinary hearing on 13 November, because she was directly involved in the allegations of misconduct that were to be explored at that meeting. The hearing was immediately adjourned when Dr Abdi sought details of the allegations against him and objected to Dr Matthias chairing the hearing. Whilst it was not appropriate for Dr Matthias to chair the hearing, the Tribunal was provided with no evidence that the decision that she should take that role was because of Dr Abdi's colour or nationality. Rather, the Tribunal accepted Dr Matthias's evidence that she was acting on the basis of advice from the HR Department in doing so.
142. The Tribunal finds that Dr Matthias did not force Dr Abdi to sign the IPAP form. She asked him to do so and he refused. She told him that he faced disciplinary proceedings if he refused to sign as she considered that he

was refusing a reasonable management instruction. The Tribunal accepts, as already recorded above, that there was no evidence that Dr Matthias's instruction to Dr Abdi to sign the form, or her indication to him that if he refused to sign he could be the subject of disciplinary proceedings, was in any way affected by or related to Dr Abdi's nationality or colour.

143. These allegations therefore failed.

**Allegation 18: In 2014 to 2015 Professor Spicer pursued an investigation for more than a year and failed to follow the University's Dignity and Respect Policy and Procedure.**

144. When Dr Matthias provided details of the allegations against him, Dr Abdi responded in writing and stated that Dr Matthias had presented him with performance review documentation when he had expected the meeting to be about promotion. Professor Spicer decided that it would be better to investigate what had happened at the meeting on 14 October by interviewing Dr Abdi and Dr Matthias before deciding whether disciplinary proceedings or some other action was appropriate.

145. On 2 February 2015 Rachael Rowson, a Human Resources adviser, wrote to Dr Abdi to tell him that the disciplinary meeting would be postponed and that the meeting with Professor Spicer the following day would be a "fact finding meeting". She went on: "following this meeting and the gathering of any other related information I cannot guarantee disciplinary and/or performance procedures won't be invoked."

146. Professor Spicer conducted a fact-finding meeting with Dr Abdi on 3 February 2015. He met Dr Matthias to obtain her version of events on 17 March 2015. Professor Spicer did not complete his investigation report until 20 August 2015. His evidence to the Tribunal was that the delay in producing the report was due to his work commitments and sickness absence. On examination, the report, which was intended to complete a fact-finding investigation, contains no clear findings on what Professor Spicer concluded had been said at the meeting. It records what Dr Matthias and Dr Abdi alleged the other had said. In its conclusions and recommendations, the report states: "The evidence regarding the discussion that took place on 14 October has equal weight."

147. In answer to questions from the Tribunal, Professor Spicer confirmed that he accepted that Dr Abdi had made the following comments to Dr Matthias at the meeting:

"these minor issues are not relevant ... to performance"

"I am humiliated that you are judging my performance"

"I have been in academia much longer than you"

"it is shameful that we have this environment at the School"

"you should see how other [Heads of Group] use positive language to support people"

"you ignore everything and try to highlight basic issues which may be relevant for early career people like you"

148. Professor Spicer also accepted that Dr Matthias had made a comment relating to children during the performance review meeting in July 2014. In the context of their discussion of the need for a gap analysis, Dr Abdi

wanted Dr Matthias to assure him that he had her unconditional support for his promotion application. Dr Matthias's response was that the only unconditional support any of us show is to our children. From Professor Spicer's report and the evidence he gave to the Tribunal, it appeared that Professor Spicer did not find as fact that any specific comment made by Dr Matthias at the meeting on 14 October had been inappropriate.

149. Professor Spicer decided that, as the meeting on 14 October had been arranged to discuss Dr Abdi's shortfalls in experience and skills in relation to a Grade 10 role, not to discuss his performance in his current Grade 9 role, the use of the IPAP form had not been appropriate. Although it was possible for a development plan to be agreed with an employee with a view to securing regrading, there was no obligation on an employee to agree to such a plan. Professor Spicer recommended that the allegation of failure to follow a reasonable management request should be withdrawn. He also recommended that the disciplinary hearing postponed from 13 November 2014 should not be reconvened and that the disciplinary process should cease. He went on: "however it should be clarified for both parties the expectation regarding communicating in a professional, respectful and courteous manner".
150. The Tribunal accepted that the investigation into Dr Abdi's conduct at the meeting on 14 October 2014 effectively extended until Professor Spicer's report was finalised in August 2015, ten months later. This was highly regrettable, given the very limited amount of investigation that Professor Spicer was required to carry out, involving just two interviews, and his failure to make any clear findings of fact about what was said at the meeting. Dr Abdi was therefore left in a state of uncertainty for 10 months as to whether the disciplinary process against him was to be pursued. No evidence was presented to the Tribunal; however, to indicate that this delay was because of Dr Abdi's colour or nationality, rather, it was due to Professor Spicer having spent time on other work commitments and his sickness absence.
151. The University has a Dignity and Respect Policy that aims to ensure that all staff are treated with dignity and respect and a linked procedure to deal with allegations of bullying, harassment related to the characteristics covered in the Equality Act 2010 and victimisation. Professor Spicer did not follow this policy and procedure in his investigation because the allegations he was examining related to failure to follow a management instruction and insubordinate behaviour. Although Dr Matthias could have made a complaint under the dignity and respect procedure about Dr Abdi's behaviour, she had not done so.

**Allegation 19: Joanne Marshall appointed Professor Spicer as investigator even though he had a conflict of interest**

152. Dr Abdi believed that Professor Spicer had a conflict of interest when conducting the investigation as he was Dr Matthias's "friend" and he had a close working relationship with her.
153. The Tribunal accepted the unchallenged evidence of Professor Spicer and Dr Matthias that although they had a relatively close working relationship, because Professor Spicer was Dr Matthias's line manager, they were not

friends. The Tribunal found that there was in fact no conflict of interest for Professor Spicer in conducting the investigation. Further, the Tribunal accepted the unchallenged evidence of Mrs Marshall that she had no role in the appointment of Professor Spicer to his role in the investigation. Finally, the Tribunal heard no evidence to indicate that the appointment of Professor Spicer to the role was in any way because of Dr Abdi's nationality or colour.

**Allegation 20: Professor Spicer and Mrs Marshall gave Dr Abdi no timeframe for the investigation, contrary to the University's procedure, and provided no information to him on how the investigation was processed.**

154. Dr Abdi did not explain what University procedure was breached in not giving him a timeframe for the investigation. Professor Spicer was not operating within the disciplinary procedure when he was carrying out his investigation. At the end of his fact-finding process, he planned to make recommendations on whether the disciplinary process should be resumed. If it was, his understanding was that an entirely fresh investigation would be necessary under the auspices of the disciplinary procedure if it was decided that the disciplinary process should continue.
155. It became apparent during the course of the Hearing that Dr Abdi's allegation was that Professor Spicer had not given him any information on how the investigation was progressing, not that he did not give him any information on the manner in which the investigation was to be processed. The Tribunal did not accept that Professor Spicer did not give Dr Abdi any information about how the investigation was progressing. On 1 April 2015 he emailed Dr Abdi to tell him that he would be meeting Rachael Rowson of Human Resources to go through his findings in the week beginning 13 April 2015. On 14 May he emailed Dr Abdi to apologise for the delay in the investigation outcome. On 11 June he again emailed Dr Abdi to apologise for the delay. The report was eventually produced in August. Professor Spicer did give Dr Abdi information about the progress of the report, albeit only to confirm that there would be a further delay. Although, as already recorded, the Tribunal found this delay to be highly regrettable, there was no evidence that it was in any way because of Dr Abdi's colour or nationality.

**Allegation 22: Professor Spicer suspended Dr Abdi's MSc Applied Management Programmes during the course of his investigation and allocated one of them to Caroline Parkinson, without Dr Abdi's knowledge.**

156. Dr Mai-Na Liao was the Director of Studies for the MSc in Applied Management and Sustainability and the MSc in Applied Management and Enterprise. Dr Abdi had been appointed as programme leader for these courses in March 2014. In April 2014, Dr Liao began preparing proposals for the courses to be suspended. The application for the MSc in Applied Management and Enterprise to be suspended was submitted in July 2014. The application for the MSc in Applied Management and Sustainability to be suspended was submitted in September 2014. It appeared from the documentary evidence that the decision to suspend the programmes was taken by Professor Congdon, Deputy Vice Chancellor (Academic). There

was no evidence before the Tribunal that Professor Spicer suspended these programmes or that any input he had into the discussion of their suspension was because of Dr Abdi's colour or nationality or related in any way to his investigation into Dr Abdi's conduct at the meeting on 14 October.

157. In September 2015, Dr Liao submitted a proposal for a new MSc in Applied Management and Entrepreneurship for approval. The programme leader was Dr Caroline Parkinson. Professor Spicer signed the proposal in his role as Acting Dean and so he knew of Dr Parkinson's appointment, but he did not make the decision to appoint her, Dr Liao did. There was no evidence before the Tribunal that the appointment of Dr Parkinson was because of race.

**Allegation 23: In 2015, during the course of the investigation, Dr Matthias excluded Dr Abdi (a) from the BSc programme in Operations and Supply Chain Management and (b) from being involved in the recruitment of two new staff members in the area of Operations Management and Information Management and Decision Support.**

158. The Tribunal found that these allegations had no basis in fact. Dr Abdi was present at an OIM Group meeting on 11 June 2015 when the BSc in Operations and Supply Chain Management was discussed. He subsequently took part in an email discussion in July about the programme, along with other members of the Group.
159. The recruitment of two new staff in the area of Operations Management was also discussed at the Group meeting on 11 June 2015, when Dr Abdi was present. Staff in the Group, including Dr Abdi, were invited to contribute to the recruitment process by attending the candidates' presentations and providing feedback. Dr Abdi thought that he should be on the selection panel. The Tribunal accepted Dr Matthias's evidence that the University had a set procedure as to who should be on a recruitment panel and this was followed in this case.
160. There was no evidence before the Tribunal that the involvement of Dr Abdi in the new BSc or the recruitment of new staff members was limited in any way because of his colour or nationality.

**Allegation 24: Dr Matthias and Professor Barber increased Dr Abdi's workload during the disciplinary investigation with two new modules for 2015-2016 without advance notice.**

161. On 15 September 2015 Bernadette Quinn emailed Dr Abdi and others with details of the allocation of undergraduate teaching for the academic year 2015/2016. She apologised for the late notification, which was due to her having forgotten to send the information before she went on leave. Dr Abdi had been allocated a module in e-commerce. He emailed Dr Matthias to say that this was a new topic to him and that it was very difficult to handle the teaching materials for tutoring the course with such short notice. Dr Matthias in reply told Dr Abdi that the workload had been available on the computer shared drive for a significant time.
162. The Tribunal accepted Dr Matthias's evidence that she had decided to



allocate the module to Dr Abdi because she was satisfied he had the necessary experience to teach it. In her email, she pointed out to Dr Abdi that he was supervising doctoral research in the topic, which required significantly more advanced knowledge than he needed to teach the undergraduate module. Dr Matthias was also satisfied that Dr Abdi had the capacity to teach the module in terms of his workload. There was no evidence before the Tribunal that Dr Matthias's decision was in any way because of Dr Abdi's colour or nationality.

163. On 15 January 2016 Dr Abdi was informed that he was to be the tutor on an MSc in Research Methods. He emailed Professor Barber, who at this time was acting Head of Group in Dr Matthias's absence on sick leave, and told him that "this late workload allocation reflects poor management" and that "the lack of communication in the group has been the main cause of the problem in this case". Professor Barber replied that he was sorry about the short notice but he had only been told himself the previous week that someone from the Group was needed to cover the tutorials. Professor Barber confirmed in the email and in his unchallenged evidence to the Tribunal that he had allocated these tutorials to Dr Abdi because Dr Abdi had done them before and he had space in his workload to do them. There was no evidence before the Tribunal that Professor Barber's decision was because of Dr Abdi's colour or nationality.

**Allegation 25 In 2016 Professor Barber threatened Dr Abdi with disciplinary action after he asked for advice about the clashes of his new teaching allocation with his other commitments.**

164. Dr Abdi did not consider himself free to deliver the MSc tutorials in Research Methods because of other commitments. He asked Rachael Welch, the Timetabling Co-ordinator, for the tutorials to be rescheduled but she was unable to do so because there were too many clashes for students with other modules already scheduled. On Friday 22 January 2016 he asked Dr Rana Tassabehji, the module leader, to cover the tutorials for him the following Monday because "the tutorials arranged for Monday make significant impacts on the other activities already arranged". Dr Tassabehji felt unable to cover the tutorials herself as that would mean she would be teaching back-to-back sessions from 1pm to 5pm. At this point she asked Professor Barber to intervene to sort the situation out.
165. Dr Abdi had never made clear to Professor Barber why he could not cover the tutorials, and nor had he contacted Professor Barber to discuss the issue and what possible alternatives there might be. On Saturday 23 January, Professor Barber emailed Dr Abdi to tell him that it was not practical for Dr Tassabehji to run all the tutorials, adding: "Please attend on Monday and take the tutorials as allocated." Dr Abdi's response was to email Dr Tassabehji to say that one of his colleagues might run the tutorials and he would let her know once that had been confirmed. She asked Dr Abdi to discuss this with Professor Barber. At 9am on Monday 25 January, Dr Abdi emailed Dr Tassabehji to say that his colleague Zahid Hussain had agreed to cover the tutorial. He copied Professor Barber in on this email.
166. On 2 February 2016, Dr Abdi emailed Bharti Mistry, administrative assistant, to say that he could not attend a review meeting scheduled for 8

February because of his new teaching role. Celia Moran, Director of Academic Quality and Partnerships, replied that she expected him to honour his commitment to attend as they were unable to find an alternative at this late stage. Dr Abdi then emailed Professor Barber to say that the allocation of the MSc tutorials clashed with this review meeting. "I cannot attend both the tutorials and the PART meeting with clashes on the day. Please let me know what I need to do."

167. Professor Barber in response said that Dr Abdi had been allocated the MSc tutorials on 15 January and had had plenty of time to inform the relevant people of his unavailability to attend the review meeting or to discuss with Professor Barber how to cover his teaching on 8 February. "You chose to do nothing until yesterday and by doing so you have caused disruption to the Universities [sic] core activities of teaching and quality accreditation." In a subsequent email, Professor Barber stated: "I consider that you have been uncooperative since this teaching allocation was made and your actions in this instance will inevitably cause disruption to university core activities. I will therefore be discussing this matter further with the Dean and our HR advisor as I consider your behaviour unacceptable."
168. The Tribunal accepts that Professor Barber was clearly indicating in his email correspondence with Dr Abdi that he believed his behaviour to be unacceptable and that it might merit disciplinary action. The Tribunal also accepts, however, that Professor Barber had objective grounds for that belief. Dr Abdi had at no point contacted Professor Barber himself to make clear what his timetabling problems were on Mondays nor made any attempt to discuss with him how they could be resolved. As a result of Dr Abdi leaving it so late to raise his unavailability to attend the review meeting, Professor Barber had to attend in his place. There was no evidence before the Tribunal to indicate that Professor Barber's actions were in way because of Dr Abdi's colour or nationality.

**Allegation 26: Professor Barber delayed processing Dr Abdi's application for study leave for four years.**

169. Dr Abdi applied for study leave on 8 February 2016. He was not prepared to meet with Professor Barber to discuss the arrangements for cover for any study leave he might be granted. Professor Barber nevertheless confirmed to the Research Programme Administrator that he approved the request in principle, subject to cover arrangements being made. The Research and Knowledge Transfer Strategy (RKTS) Committee considered Dr Abdi's application on 17 February 2016 but decided that further information was needed. Professor Barber in the meantime asked Dr Abdi to meet with him to discuss cover arrangements but Dr Abdi did not respond. On 20 April 2014, the RKTS Committee approved Dr Abdi's application. Professor Barber played no part in the Committee's deliberations. The Faculty Board also subsequently confirmed that the application had been approved.
170. There was no evidence before the Tribunal to indicate that Professor Barber had delayed Dr Abdi's application for study leave in any way. On the contrary, he had signed off the application at Group level without even having had the opportunity to discuss the necessary cover arrangements,

as would be his normal practice, because Dr Abdi refused to respond to his requests to meet. There was nothing to indicate that Professor Barber's actions were in any way because of Dr Abdi's colour or nationality.

**Allegation 27: Professor Spicer and Mrs Marshall issued Dr Abdi with a "letter of concern" requiring him to follow the University's Dignity and Respect Policy, despite no documented evidence being found against him during the investigation of the October 2014 meeting, whereas Dr Matthias did not have a letter of concern issued to her.**

171. The Tribunal accepted Mrs Marshall's uncontested evidence that she had no involvement in these matters. The claim against her therefore failed.
172. As set out in paragraph 149 above, in the report of his investigation into the meeting in October 2014 between Dr Abdi and Dr Matthias, Professor Spicer recommended that both parties should have it clarified that they were expected to communicate in a professional, courteous and respectful manner.
173. As a result, on 13 October 2015 Professor Spicer sent Dr Abdi a letter headed "letter of concern". The section of the University's Statutes relating to disciplinary procedures contains no reference to letters of concern, but it does state "minor faults shall be dealt with informally". The Tribunal accepts that the letter of concern to Dr Abdi did not amount to a formal disciplinary warning, but was used by Professor Spicer as an informal tool to ensure that Dr Abdi understood what the University considered inappropriate behaviour.
174. In the letter, Professor Spicer stated that he had concluded that there was no case to answer through a formal disciplinary process for two reasons. The first was that it had not been appropriate for Dr Matthias to be using the IPAP as the meeting had not been called to discuss performance or capability issues. The second was that, as he had two different versions of the conversation presented to him, he could "only conclude that language allegedly used on both sides could be perceived as inappropriate when looked at independently". However, the letter went on:

"I do find it unacceptable that you responded to what should have been a supportive management conversation in this way you did. Therefore, I am issuing you with this letter of concern, which will be placed on your personal file, to document and record that the behaviour and language/approach used by you in this meeting was not acceptable. In the future you must interact with all colleagues in a professional, respectful and courteous manner at all times. A copy of the University's Dignity and Respect Procedure is enclosed for your information. If there is any further reported evidence of you interacting with colleagues in a way that is not deemed to be appropriate or acceptable this letter may be referred to, to demonstrate a pattern of behaviour and the matter may be dealt with through formal disciplinary measures."

175. The letter of concern did not confirm that Professor Spicer considered that Dr Abdi had said to Dr Matthias the things that are set out in paragraph 147 above. The letter made reference only to language “allegedly” used on both sides. As has already been stated, the Tribunal considered it regrettable that Professor Spicer failed to make clear to Dr Abdi and Dr Matthias what his findings of fact actually were. Nevertheless, the Tribunal was satisfied that Professor Spicer had clear and objective grounds, entirely unrelated to Dr Abdi’s colour or nationality, for wishing to confirm in writing to Dr Abdi that his conduct at the meeting with Dr Matthias had been unacceptable.
176. Professor Spicer also wrote to Dr Matthias. This letter was not headed “letter of concern” but it too contained the sentence: “I can only conclude that language allegedly used on both sides could be perceived as inappropriate when looked at independently.” It also included this passage:
- “Dr Abdi alleges that the language/approach you used during the meeting was inappropriate. I must stress that all staff interactions must be professional and respectful at all times. This is a critical factor; if the matter was progressed to formal procedures it would potentially provide a forum in which your behaviour would also be open to scrutiny.”
177. Dr Matthias was extremely upset to receive this letter. As Professor Spicer confirmed in his evidence to the Tribunal, he accepted that Dr Abdi had made comments to Dr Matthias at their meeting that were clearly disrespectful; he had not found as fact that Dr Matthias had made any inappropriate comments or acted unprofessionally in any way. Unsurprisingly, she felt shocked, distressed and undermined. She asked to be removed from her role as Dr Abdi’s line manager but Professor Spicer did not agree.
178. On 3 November 2015, Dr Matthias began a period of sickness absence due to stress and did not return to work until 3 May 2016.

**Allegation 29: In 2015 Professor Carole Howorth rejected Claimant’s application for funding to visit his international DBA student, in breach of the University regulation.**

179. In 2015 Dr Abdi was supervising a student studying for a Doctorate in Business Administration (DBA) who lived in Dubai. In November 2015 he applied for funding to cover the cost of visiting the student for a supervision meeting. Professor Howorth was the budget holder in respect of this funding. On 4 November she had received an email from the University’s Strategic Planning Team stating that only business-critical expenditure could be funded. She had also been asked by the Finance Manager to make cuts to her budget. She emailed Dr Abdi saying that the University could not justify the cost in the current financial climate and asked him to look at combining the visit with other work. She suggested he contact a colleague, Shahid Rasul, who was looking for someone to visit Dubai in January 2016 to carry out invigilation work. In response, Dr Abdi said: “No problem” and that Mr Rasul was going to let him know whether he was needed for invigilation.

180. There was no evidence before the Tribunal that Professor Howorth's decision was in any way because of Dr Abdi's colour or nationality. As she explained to him in her email, her decision was due to the budgetary constraints under which she was working.

**Allegation 30: In 2015-2016 Professor Spicer and Professor Howorth rejected Dr Abdi's requests for relocation to a bigger office and Professor Howorth required Dr Abdi to justify his request for relocation.**

181. Larger offices at the University are allocated to professors and anyone else whose role requires them to hold large meetings.
182. In December 2015, Dr Abdi emailed Professor Spicer asking for his permission to move to a larger office. At this time, some individuals had left the University but Professor Spicer did not know whether they would be replaced and, if they were, at what seniority they would be replaced. He emailed Dr Abdi to say that he would be reviewing the situation after the implementation of this administrative review and would prefer to avoid unnecessary office moves at this stage. He would only want to support a change of office if it was critical in some respect.
183. From March 2016, Professor Howorth had ongoing discussions with Dr Abdi about his wish to move offices. Initially, he indicated that he wanted to move in order to move away from other members of the OIM Group against whom he had raised a grievance. Professor Howorth went to considerable trouble to facilitate this move. She asked Louise Wood, her Personal Assistant, to find another office for Dr Abdi, and on 4 May 2016 Ms Wood informed Dr Abdi that she had found a vacant office for him. In response, Dr Abdi said that this was the same size as his current office and he wanted a larger one. He asked to be moved to the offices of Professor Kishore. Professor Howorth informed Dr Abdi that Professor Kishore's office was not available as it was required for his replacement. Dr Abdi's response was that Martin Owens, a Lecturer like Dr Abdi, had been given a professorial office. His email concluded: "Unfortunately, discrimination against me is not something new and is not limited to the office relocation."
184. Professor Howorth said that she had agreed to an office move for Dr Abdi because of his wish to move away from those against whom he had a grievance, not so that he could have a bigger office. Nevertheless, she invited Dr Abdi to meet her to explain why he needed a larger office and discuss the matter further. He refused to meet her.
185. Professor Howorth had not authorised Mr Owens's office move and was not aware he had relocated. She therefore emailed all staff to make clear that if individuals wished to move offices they must seek permission to do so through the Dean's office.
186. In August 2016, Professor Howorth offered Dr Abdi two other offices that she had identified, both of which were larger than his current office, but Dr Abdi declined both of them.
187. Dr Breen was allocated a larger office in 2012 when she was appointed

Head of Group. She was not relocated from that office when she stepped down from that role in December 2013.

188. There was no evidence before the Tribunal that the responses of Professor Spicer and Professor Howorth to Dr Abdi's request to relocate were because of his colour or nationality. Indeed, the Tribunal is satisfied that, in the light of the seniority of her position, Professor Howorth went above and beyond what could reasonably be expected of her to accommodate Dr Abdi's desire to relocate to a larger office.

**Allegation 31: In 2015 and 2016 Joanne Marshall appointed biased investigators in relation to Dr Abdi's case, namely Professor Spicer and Sue Maymon.**

189. Dr Abdi believed that Professor Spicer was biased against him when investigating the meeting between himself and Dr Matthias on 14 October 2014 because he was Dr Matthias's "friend". The Tribunal's findings in relation to the appointment of Professor Spicer are set out in paragraphs 137 to 138 above. In summary, Mrs Marshall was not involved in his appointment, Professor Spicer was not Dr Matthias's friend and there was no evidence that his appointment was in any way because of Dr Abdi's race.
190. Mrs Marshall did appoint Sue Maymon to carry out an investigation into Dr Abdi's case. The background to that appointment is as follows.
191. On 7 December 2015, Dr Abdi wrote to the Vice Chancellor, Professor Brian Cantor, saying that he was "submitting a letter of Discrimination Case" for his attention. In the letter, Dr Abdi made various complaints about the investigation and disciplinary process that had arisen from his meeting with Dr Matthias on 14 October 2014. He also complained that specific members of management had systematically prevented his career development. Joanne Marshall and Professor Shirley Congdon, Deputy Vice Chancellor (Academic), met Dr Abdi and Mr Abdi his son on 25 January 2016 to discuss his concerns.
192. As a result of that meeting, Julie Acton, an external Human Resources consultant, carried out a review of the papers in Dr Abdi's case and concluded that there was no evidence that Dr Abdi had been the subject of discrimination. Mrs Marshall and Professor Congdon met Dr Abdi and Mr Abdi again on 22 March 2016 to provide them with the results of Ms Acton's review. After the meeting, Dr Abdi alleged that the review might have been biased and said that he strongly disagreed with its conclusions. In the light of this, the University decided that a full independent investigation of the case by an external person would be a better approach.
193. Ms Sue Maymon is an independent contractor who provides services to, amongst other bodies, higher education institutions, National Health Services bodies and private sector organisations through the vehicle of a company, Workplace Matters Limited. Ms Maymon is one of five external investigators whom the University uses when required, each having been subjected to a competitive tendering process. Mrs Marshall knew Ms Maymon because she had commissioned her to conduct an investigation

when she worked within the NHS in previous employment. The Tribunal accepted Mrs Marshall's unchallenged evidence that on this occasion she chose Ms Maymon to carry out the investigation of Dr Abdi's complaint because Ms Maymon was available to do the work. There was no evidence before the Tribunal to indicate that Ms Maymon was biased in any way, or that Mrs Marshall's decision to appoint her was in any way because of Dr Abdi's colour or nationality.

**Allegation 32: Mrs Marshall changed her view between two meetings, from identifying problems with Professor Spicer's investigation at a meeting in January 2016 to saying there was no problem with it at a meeting in March 2016. Further, Mrs Marshall said at the March meeting that the University knew about all issues Dr Abdi had raised in his discrimination case and nothing was new.**

194. This allegation relates to the comments that Dr Abdi said Mrs Marshall made in the meetings on 25 January and 22 March 2016. In his evidence to the Tribunal, Dr Abdi said that at the meeting in January Mrs Marshall had said that there were problems in launching the disciplinary against him and in the investigation by the University. Mrs Marshall's evidence was that she may have said that there were things that she would have done differently in relation to the investigation, but she did not say that there were problems with the investigation. The Tribunal finds it more likely than not that Mrs Marshall did say that she would have done things differently in relation to the investigation, given the shortcomings that the Tribunal has found in the investigation and Mrs Marshall's presumed expertise as the senior HR professional within the University. The Tribunal accepts her evidence, however, that she did not say that there were problems with the investigation. At that stage, the University was considering conducting an independent review into that very matter, and it is inherently unlikely that Mrs Marshall would have expressed a concluded view in this way.
195. In his evidence Dr Abdi said that at the January meeting Mrs Marshall said that the subject of the allegations against Dr Abdi had been changed during the investigation and that as a result one of the HR people was dismissed over it. The Tribunal prefers the evidence of Mrs Marshall, which was that she in fact said that Lisa Birtles of HR had been involved in the investigation but was no longer with the University. It is inherently unlikely that the Director of HR would have shared confidential information with Dr Abdi about the reason for another employee leaving the University's employment.
196. Dr Abdi's evidence was that at the meeting on 22 March, Mrs Marshall said that there was no problem in the investigation, Professor Spicer was right all along and Dr Abdi deserved to receive the letter of concern. Mrs Marshall's evidence was that she said none of these things, and the Tribunal finds her evidence more credible. At the meeting on 22 March, Professor Congdon and Mrs Marshall offered Dr Abdi a full independent investigation into his concerns. It is inherently unlikely that Mrs Marshall, a senior HR professional, would have expressed her concluded view on these issues when the University was offering Dr Abdi an external investigation into them.
197. In summary, the Tribunal finds as fact that Mrs Marshall did not change

her position between the meetings in January and March 2016.

198. Dr Abdi's evidence was that Mrs Marshall also said at the March meeting that "the University had knowledge of all the issues outlined in my discrimination case submitted to the University and what I said in my case was nothing new to her and the University." Again, the Tribunal prefers Mrs Marshall's evidence that she did not express any personal view in relation to Dr Abdi's allegations. It is inherently unlikely that an HR professional would express her concluded view on issues that she was actively considering make the subject of an external investigation.
199. There was no evidence before the Tribunal to indicate that anything Mrs Marshall said at either meeting was because of Dr Abdi's colour or nationality.

**Allegation 35: In 2016 Professor Howorth, Dr Matthias and Mrs Marshall refused to approve Dr Abdi's application for promotion to Reader.**

200. Professor Nelarine Cornelius had been appointed Dr Abdi's line manager in May 2016 following the breakdown in his relationship with Professor Barber. In 2016, the deadline for the submission of applications for Reader grades was 8 August 2016. On 17 August, after the deadline had already passed, Professor Cornelius asked whether the deadline could be extended for Dr Abdi's application to be regraded as a Reader. An extension was granted to 2 September. Dr Abdi submitted the final mandatory documents completing his application on 6 September, after the extended deadline. The University made an exception for Dr Abdi and considered his application. His final relevant document, namely his CV, was not submitted until 13 September.
201. On 21 September 2016, the Faculty Management Committee (FMC), chaired by Professor Howorth, considered Dr Abdi's application. Dr Matthias was also in attendance as an FMC member. The role of the FMC was to review an application and decide whether they could support the application progressing to the next stage, which was consideration by the University's Professor and Reader Re-grading Committee (PRRC). Since the FMC provided feedback on an application, that gave the applicant the opportunity to improve the application before it was submitted to the PRRC.
202. As Professor Howorth had by this time been named in these Tribunal proceedings, she did not comment on Dr Abdi's application at the FMC meeting, due to her conflict of interest. She did not tell the meeting why she had a conflict of interest. Dr Matthias did make a limited number of comments at the meeting. She made manuscript notes on Dr Abdi's application, which she gave to Professor Howorth after the meeting, in which she queried whether various statements Dr Abdi was making in his application were accurate and/or supported by evidence. The Tribunal considers it more likely than not that Dr Matthias's comments to the meeting related to these queries.
203. The FMC's discussion of Dr Abdi's application was led by Professor Roper and Aydin Azkan. The minutes of the meeting, which Professor Howorth



confirmed in evidence were a fair reflection of what was said, show that the FMC concluded that Dr Abdi's application was weak. Their comments included:

- The evidence provided did not indicate that the applicant was working at Reader level.
- The evidence of research activity was not strong relative to the standard expected for a Reader.
- There may be some inaccuracies in the evidence which needed checking.
- The FMC was concerned that the applicant needed to demonstrate that he was fulfilling the requirements in his current role. Strong performance in current role, particular in relation to leadership was key to being a Reader.

204. There was no evidence before the Tribunal that the FMC's decision was based on anything other than its assessment of the strength of Dr Abdi's application. Academic grading within the University, from the most junior to the most senior, runs from Lecturer to Senior Lecturer to Reader to Professor. Professor Howorth's evidence, which the Tribunal accepted, was that it was very unusual for a Lecturer to apply directly for regrading as a Reader, and she had never come across such an application before. There was no evidence before the Tribunal that the FMC's decision not to support Dr Abdi's application was in any way because of his colour or nationality.
205. The minutes of the FMC meeting record that there was an employment tribunal taking place that involved some staff within the Faculty, and that staff should be allowed the support and time to gather information when requested to do so. No mention is made of who the claim was being brought by, and Professor Howorth and Dr Matthias confirmed in their evidence that this was not mentioned at the meeting. There was no evidence before the Tribunal that the fact that Dr Abdi had brought this Tribunal claim affected the FMC's decision not to support Dr Abdi's application in any way.
206. The PRRC met on 29 September 2016. The Committee did not consider Dr Abdi's application as it had not received his papers, but Mrs Marshall had decided by this point that it would not be appropriate for the usual Committee to consider Dr Abdi's application, as he had made allegations against three of its members, namely Mrs Marshall, Professor Congdon and Professor Howorth. On 13 October 2016, Professor Howorth wrote to Dr Abdi saying that if he wished to progress his application for regrading, the University would be willing to convene a specially constituted regrade panel for this purpose, made up of people with no previous involvement in his case, which would meet before the next PRRC in December. Dr Abdi did not take up this offer.
207. In summary, the Tribunal is satisfied that the decision not to support Dr Abdi's application for regrading was based on the FMC's view of the merits of his application and was not because of his colour or nationality or these Tribunal proceedings. Indeed, the University had gone so far as to offer special arrangements to ensure that Dr Abdi's application would be considered by an entirely independent panel of people against whom he

had made no allegations but Dr Abdi decided not to take up that option.

208. In relation to this allegation, Dr Abdi claims that he was less favourably treated than Dr Jannine Williams, who was regraded from lecturer to senior lecturer in the 2016 regrading exercise. The Tribunal was satisfied that Dr Williams was materially different circumstances to those of Dr Abdi. She was applying for promotion from Lecturer to Senior Lecturer, not from Lecturer to Reader. Further, her application was not considered at the FMC on 21 September 2016 and was considered by the University's Re-grading Committee for Grades 9 and 10, not the PRRC.

### **An overview**

209. Before reaching any final conclusion on Dr Abdi's allegations, the Tribunal reviewed its findings in their totality, to see whether any discriminatory pattern of behaviour might emerge when the University's actions were viewed as a whole.
210. From the Tribunal's findings, it is apparent that there were shortcomings in some of the University's actions in managing Dr Abdi:
- When Dr Abdi could not be contacted, a letter was sent by HR that had not been cleared with Professor Barber and was premature, in that the circumstances had not yet been investigated.
  - It fell short of best practice for Dr Matthias to use a performance management approach at her October 2014 meeting with Dr Abdi without giving him advance notice that she wanted to discuss the adequacy of his performance in his current role.
  - It was unfair for Dr Matthias to conduct the disciplinary hearing that was held to discuss Dr Abdi's behaviour towards her in the October meeting, because of her conflict of interest.
  - There was a substantial and unreasonable delay in the production of Professor Spicer's report into what happened at the October meeting.
  - The report failed to set out clear findings of fact on what had been said at the meeting.
211. The Tribunal did not accept, however, that these shortcomings were in themselves sufficient to establish that this treatment was because of Dr Abdi's colour or nationality. The overall picture from the evidence that the Tribunal heard was that those managing or interacting with Dr Abdi have in fact taken substantial steps to accommodate and support him. Notable examples of this referred to in these Reasons are Professor Barber going "out on a limb" to secure Dr Abdi extended leave in the summer of 2010; Professor Barber's clear and unconditional offer to continue to support Dr Abdi's application for regrading even though Dr Abdi was making unsubstantiated allegations of discrimination against him; Dr Breen's attempts to give Dr Abdi constructive feedback on his regrading application; Professor Howorth's attempts to find Dr Abdi a new office; and Mrs Marshall's arrangements for Dr Abdi's application for regrading as a Reader to be considered by an

independent panel.

212. Dr Abdi clearly has a profound sense of grievance that his career has not developed as he expected it to. His response has been to make unsubstantiated allegations of discrimination against his line managers and other decision makers whom he considers to be implicated, presumably on the basis that he can identify no good reason why his career has not progressed, so it must be because of his colour, nationality or this Tribunal claim.
213. The Tribunal itself was not in a position to make any findings on the adequacy of Dr Abdi's performance as a Lecturer nor on whether the University's various decisions not to promote him were objectively justified or fair, nor was that the Tribunal's role in these proceedings. The Tribunal's role was limited to deciding whether the reason Dr Abdi's career has not progressed within the University was because of his race or this Tribunal claim. The Tribunal was satisfied that it was not.
214. From the evidence the Tribunal heard, it was apparent that Dr Abdi's line managers considered that there were shortfalls in his performance, but these appear only to have been raised with him in the context of assisting him with his applications for regrading. It is possible that Dr Abdi would have been more open to addressing any perceived shortcomings had they been addressed with him earlier and by way of an express performance management process. Dr Matthias appears to have been the first of Dr Abdi's line managers to expressly articulate concerns with his performance as a Lecturer, but the fact that this was ten years into Dr Abdi's employment with the University and he had been given no notice that his performance was to be addressed made it inevitable that this initiative would be unproductive.
215. Whatever the standard of Dr Abdi's performance as a Lecturer, the Tribunal is satisfied from the evidence it has heard that there are several ways in which he has not helped himself in developing his career. He has considered himself entitled to the unconditional support of his line managers for his regrading applications and reacted in a hostile manner to anything short of this, even though his managers' professional obligations clearly require them to base their support on the evidence as they see it. He has at times refused to co-operate with, and on occasions even to speak to, his line managers. He has been unwilling to take up various offers of help in identifying how he might improve his chances of promotion. He has refused to accept even constructive criticism.

#### **Professor Barber's email**

216. During the course of cross-examination, Mr Abdi took Professor Barber to an email that had been obtained by Dr Abdi by way of a subject access request under Section 7 of the Data Protection Act 1998. He suggested that this indicated Professor Barber had a hostile and disrespectful attitude towards Dr Abdi.
217. The email in question was part of an email chain that began with one from Dr Abdi to various colleagues dated 30 November 2014, in which he said that he had been asked by Professor Liao to redesign the MSc in Applied

Management and Sustainability, of which he was Programme Leader. He did not copy Professor Liao into that email. Professor Barber, as acting Head of Group, said in his email response (copied to Professor Liao) that, in his view, there was little point in redesigning this MSc programme as it would be competing directly with the existing MSc in Sustainable Operations, with which there was a substantial overlap, and it would be better to withdraw it. Dr Abdi responded by saying that reasonable similarities with the existing MSc should not be a reason not to continue with the redesign and asked for colleagues' input into a strategic review of the programme.

218. At this point Professor Liao joined the email conversation to confirm that she had not asked Dr Abdi to redesign the programme and that she shared Professor Barber's view that the focus should be on the existing MSc programme. Dr Abdi replied saying again that both programmes should be delivered and redesigned. Dr Beach then entered the conversation to say that reintroduction of the MSc in Applied Management and Sustainability would need to be included in a forthcoming review of the School's "MBM portfolio" and until then "we will not be considering any proposals to reintroduce or redevelop programmes". Dr Beach copied this email to Professors Liao and Barber. Professor Barber's response was "Cheers Rog, He is a f\*\*\*\*\*g muppet that just wastes time."
219. Professor Barber accepted that he should not have sent this email, which was clearly unprofessional and very disrespectful towards Dr Abdi. In the context in which it was sent, however, the Tribunal was satisfied that it was an expression of Professor Barber's deep frustration with Dr Abdi's seeming unwillingness to accept, in spite of input into the email conversation from several colleagues, that there was no management support for the redesign and re-launch of the MSc. There was nothing in the content or context of this email that indicated that Professor Barber's attitude towards or treatment of Dr Abdi was because of his colour or nationality.

### **Time limit issues**

220. From the Tribunal's findings, it will be apparent that Dr Abdi's allegations of direct race discrimination and victimisation were examined by the Tribunal on their merits and found to be unsubstantiated on the evidence. On the issue of whether the Tribunal had jurisdiction to deal with these claims at all in the light of the date on which the claim was presented, the Tribunal made the following findings.
221. There was no evidence before the Tribunal to establish that any or all of the allegedly discriminatory acts or omissions that formed the subject of Dr Abdi's claim amounted to conduct extending over a period. There was no evidence that any or all of the alleged discriminators had, individually or in collaboration with each other, decided on a course of discriminatory treatment of Dr Abdi or adopted any form of ongoing discriminatory practice towards him.
222. The Tribunal therefore went on to identify which of the allegations had been brought outside the statutory time limit for presenting a claim. Dr Abdi contacted ACAS under the Early Conciliation procedure on 22 March

2016. The Early Conciliation period ended on 22 April 2016. As a result of the application of Section 140B EqA, the earliest date of an act or omission for which Dr Abdi's claim had been presented in time was 24 December 2015. That meant that Dr Abdi's claim had been presented out of time in relation to all his allegations other than these: allegation 31 as it related to the appointment of Sue Maymon; allegation 32 as it related to the March 2016 meeting; and allegation 35. The Tribunal therefore went on to consider whether the claim had been presented within such other period as the Tribunal thought just and equitable.

223. Dr Abdi gave evidence on the circumstances surrounding the timing of his claim. On the basis of that evidence, the Tribunal found that he had been a union member from 2011 and so had access to advice and support in relation to his employment rights from that time. Dr Abdi alleged that he was not aware until 2015 that race discrimination was unlawful and that he was not aware until early 2016 that a claim of discrimination could be made to an Employment Tribunal. The Tribunal found that evidence unconvincing. Dr Abdi is an intelligent and articulate man whose job involves research. It is more likely than not that he researched his rights and how to enforce them, or he was given that information by his union, at the latest soon after he began to make allegations of discrimination in 2011. Even if he did not in fact take steps at that time to establish his legal position, the Tribunal considers that he could reasonably have been expected to do so.
224. Dr Abdi put great emphasis in his evidence on his desire not to make a claim to the Tribunal in case it made his situation within the University worse. The Tribunal notes, however, that he started making allegations of discrimination against Professor Barber as early as 2011. It is difficult to see why making a claim to the Tribunal would have had a worse effect on his situation than making an allegation direct to his line manager.
225. In relation to the allegations dating from 2011 onwards, the Tribunal could not identify any reason why Dr Abdi could not have brought his claim to the Tribunal within the statutory time limit. Any claim relating to the allegations in the period before 2011 could and should have been brought promptly once Dr Abdi was or should have been aware of his rights and how they were enforced.
226. In summary, the Tribunal did not accept that Dr Abdi had brought the aspects of his claim that were outside the statutory time limit within a just and equitable period. For that reason also, all the allegations that had been brought of time failed and were dismissed.

Employment Judge Cox

Date: 11 May 2017