EMPLOYMENT TRIBUNALS

Claimant:	**Mr D Taylor**		
Respondent:	**Sheffield Hallam University**		
Heard at:	**Sheffield**	**On:**	**21, 24, 25, 26, 27, 28 April 3 and 4 May 2017**
Before:	**Employment Judge Brain**		
Members:	**Ms B R Hodgkinson** **Mr K Smith**		
Representation			
Claimant:	In person		
Respondent:	Mr S Lewinski, Counsel		

RESERVED JUDGMENT

The Judgment of the Employment Tribunal is that:-

1. The Respondent unfairly dismissed the Claimant. The complaint of ordinary unfair dismissal succeeds.

2. The Claimant was not a disabled person for the purposes of the Equality Act 2010. Accordingly, the complaints of harassment related to disability and of disability discrimination by reason of a failure upon the part of the Respondent comply with the duty upon it make reasonable adjustments fail. In the alternative those complaints are in any event dismissed on the merits.

3. The following complaints fail:-

    3.1. That the Claimant was unfairly dismissed for having made a protected disclosure.

    3.2. That the Claimant was subjected to a detriment during his employment upon grounds related to trade union membership or activities.

    3.3. That the Claimant was unfairly dismissed by the Respondent upon grounds related to trade union membership or activities.

3.4. (For want of jurisdiction, the complaint having been presented outside the relevant time limit and it not being just and equitable to extend time) that the Respondent discriminated against the Claimant by reason of his age. In any event that complaint is dismissed on the merits.

4. Upon the Claimant's successful complaint of ordinary unfair dismissal:-

4.1. The conduct of the Claimant before the dismissal was such that it is just and equitable to reduce the amount of the basic award by 100%.

4.2. The dismissal was caused or contributed to by the actions of the Claimant to the extent that it is just and equitable to reduce any compensatory award by 100%.

REASONS

1. Following a reading day on 21 April 2017 the Tribunal heard evidence in this case between 24 and 28 April 2017 inclusive. Following the closure of the Respondent's case that day, the Tribunal adjourned the case with a direction that the parties should attend on 3 May 2017 in order to present their submissions. Unfortunately, the Claimant felt unwell that morning. He requested an adjournment to the following day. The Respondent had no objection to the Claimant's application. Accordingly, submissions were received on 4 May 2017. After receiving helpful written and oral submissions from the Claimant and from Mr Lewinski on behalf of the Respondent the Tribunal deliberated in chambers.

2. It is our judgment that all of the Claimant's claims fail save for the complaint of ordinary unfair dismissal. That complaint succeeds. However, in the Tribunal's judgment it is just and equitable to reduce the basic and compensatory awards by 100% on account of the Claimant's conduct. As judgment was reserved, we now set out our reasons.

3. This case benefited from a private Preliminary Hearing that came before the Employment Judge on 21 September 2016. The issues were identified and Case Management Orders were made. We shall come back to the issues in due course. Suffice it to say at this stage that at the outset of the hearing on the morning of 24 April the parties confirm that the issues remained as recorded in the minute of the private Preliminary Hearing. A copy of that minute is in the hearing bundle at pages 42 to 48.

4. The Tribunal heard evidence from the Claimant. He called live evidence from:-

4.1. Mark Leader. He is a senior lecturer employed by the Respondent.

4.2. Lesley Lomax. Mrs Lomax is a former employee of the Respondent who retired from her role in 2013. During the latter part of her career with the Respondent she held the position of principal lecturer and programme leader for law.

5. The Tribunal was also presented with a written witness statement from Andrew Maxfield. Mr Maxfield was employed by the Respondent as a law lecturer between August 2007 and December 2013. Mr Maxfield was present in the Tribunal but was not called to give evidence. This was because the

Respondent agreed to the admission of his witness statement but did not wish to challenge it.

6. On behalf of the Respondent, the Tribunal heard from the following witnesses:-

   6.1. Sital Dhillon. Mr Dhillon is the head of department for law, criminology and community justice (the department within which the Claimant worked), a position that he has held since 2010.

   6.2. Professor Allan Norcliffe. Professor Norcliffe worked for the Respondent between 1972 and 2007. He latterly held the position of assistant dean, academic development.

   6.3. Professor Christopher Wigginton. Professor Wigginton is employed by the Respondent as the deputy dean of the faculty of development and society.

   6.4. Hilary Hughes. Mrs Hughes is employed by the Respondent as a HR manager.

   6.5. Marie Ward. Miss Ward is employed by the Respondent as a HR manager.

7. The Claimant says that he was employed by the Respondent between 28 September 1986 and 28 April 2016. The Respondent has his continuity of service as commencing on 1 September 1992 (by reference to the contract of employment within the bundle commencing at page 56). Therefore, while it is common ground that the Claimant's contract of employment came to an end on 28 April 2016 there is an issue about the Claimant's length of service. However, given our determination that there should be a reduction of 100% to the basic award upon account of the Claimant's conduct before his dismissal, nothing turns upon the issue of continuity of employment.

8. There is nothing arising out of the Claimant's employment with the Respondent that occurred prior to October 2013 which is germane to the issues in the case. It is however necessary to make findings of fact about matters concerning Mrs Lomax and Mr Maxfield that occurred prior to that time. Before turning to the relevant events concerning Mrs Lomax and Mrs Maxfield it is, we think, convenient to make mention of several of the policy and contractual documents all of which are in the relevant section of the bundle at pages 56 to 121.

9. We shall start with the Respondent's problem resolution framework at pages 80 to 93. According to the introduction sections at page 80, this was jointly developed and agreed between the Respondent's management and the recognised trade unions with the contribution and endorsement of ACAS. It is introduced as a "structured approach to resolving people issues in the workplace and is used when normal line management actions have failed to achieve a solution". The policy applies to a range of procedures that together form the problem resolution framework (which for brevity we shall now refer to as the PRF). The range of procedures includes the Respondent's disciplinary, grievance, dignity at work and suspension/authorised absence procedures.

10. Section 3 of the PRF contains principles of general applicability. Section 3.2 says that, "no employee shall normally be dismissed for a first breach of discipline, except in the case of gross misconduct".

11. The Tribunal was taken in particular to the following passages of the disciplinary procedure in the PRF (for convenience, we shall refer to the same pagination as in the PRF itself):-

> "*3.1. Investigation prior to formal action.*
>
> *3.1.1. No disciplinary action will be taken against an employee until the case has been investigated.*
>
> *3.1.2. A review meeting will be held with the individual, trade union representative or work colleague, HR and commissioning manager before commencing with an investigation. In some cases the remit and investigation process may be confirmed in writing rather than at a meeting.*
>
> *3.1.3. In certain circumstances it may be appropriate for a member of staff to continue their normal duties whilst investigations into the alleged issues of proceeding. Please refer to the suspension procedure.*
>
> *3.1.4. Following the conclusion of an investigation, a meeting between the manager, HR, employee and their representative will normally take place within five working days to discuss the next steps. If it is decided that the alleged issue does not warrant consideration under the disciplinary procedure the individual will be invited to attend a disciplinary hearing. The hearing will determine the appropriate disciplinary sanction in the event that any allegations are upheld.*
>
> *4.1.5. If an employee has failed or refused to attend the hearing, two further dates will be offered. If they fail to attend the final meeting, a decision will be made in their absence based on the evidence available.*
>
> *5. Misconduct is the breach of rules or accepted standards of behaviour, which is not serious enough to warrant dismissal in the first instance. Examples of minor misconduct are shown below. This list is not intended to be exclusive or exhaustive. [There are then listed a number of breaches said to be examples of "minor misconduct"].*
>
> *6. Gross misconduct constitutes a fundamental breach of the contract of employment by the employee, such that the necessary bond of mutual trust and confidence between employer and employee is broken.*
>
> *6.1. Examples of gross conduct are shown below. This list is not intended to be exclusive or exhaustive, but merely gives an indication of the level of misconduct which will normally result in summary dismissal unless there are acceptable mitigating circumstances. [There are then listed a number of examples of gross misconduct].*
>
> *8. Disciplinary sanctions.*
>
> *If following the disciplinary hearing it is decided to proceed with disciplinary action, a warning may be issued according to the seriousness of the case, as follows: [there are then set out four stages short of dismissal which we will not set out here].*
>
> *8.5. Stage 4(b) – dismissal.*
>
> *8.5.1. If conduct or performance is still unsatisfactory and the employee still fails to reach the prescribed standards, the employee may be*

dismissed after a hearing with notice (misconduct and capability) and without notice (gross misconduct)".

12. The individual grievance procedure forming part of the PRF is at pages 78 and 79. The stages of the procedure are set out at paragraph three. In short, the employee is required to provide a written statement of formal grievance. Upon receipt of that, a commissioning manager will be appointed who along with a HR representative will meet to discuss whether an investigation is required. If so, then a review meeting will be held with the individual and his or her trade union representative or work colleague. At this meeting, the remit for investigation will be agreed. This will then be followed by a stage 1 grievance hearing. The employee has two levels of appeal should he or she feel the issue has not been resolved.

13. The Tribunal was taken to the following passages from the Dignity at Work Policy at pages 99 to 107. This is part of the Code of Behaviour at pages 94 to 98. Again, using the paragraph numbering in the Dignity at Work Policy (and citing from page 103):-

> "*1.1. Everyone shares a responsibility for understanding the sensitivities and feelings of others. Individual obligations go hand in hand with collective responsibility in order to create an environment of mutual support, tolerance and understanding.*
>
> *1.2. Everyone is responsible for ensuring that their conduct does not cause offence and that they should be prepared to support other employees who are being harassed, bullied, victimised or discriminated against. All employees are responsible for speaking out against any unacceptable behaviour that they may have witnessed.*
>
> *2.1. All employees need to be aware of their own conduct and behaviour and how it can impact on others within the workplace by:*
>
> *2.1.1. Treating other employees with dignity and respect.*
>
> *2.1.2. Challenging inappropriate jokes or comments.*
>
> *2.3. An employee who is approached about their behaviour or actions should not dismiss a complaint because they were 'only joking' or think that the complainant is being too sensitive. Different people find different things unacceptable and everyone has the right to decide what behaviour is acceptable to them*".

14. Examples of unacceptable behaviour are given at Appendix C of the Dignity at Work Policy (pages 105 to 106). These include:-

- Language of a sexual nature, whether oral or in writing, for example sexual or sexist remarks made in an email.
- Jokes or banter of a sexual nature.
- Coarse or vulgar humour.
- Gender based jokes or banter that may be demeaning or derogatory.

15. The aim of the Code of Behaviour is to establish a framework of expectations of professional behaviour at work. The Tribunal's attention was particularly drawn to the following passages:-

"*2.6. Dignity at work – demonstrate mutual respect for others in the university eg colleagues by:*

- *Being polite and supportive;*
- *Creating and promoting a positive working environment where colleagues feel safe to express their views.*

2.7. Equality and Diversity

All employees should act in a way that does not unfairly discriminate against an individual or group of individuals on the grounds of their gender, race, religious or philosophical belief, cultural background, disability, size, sexual orientation or status in the workplace.

2.10. Professionalism – all employees are expected to:

- *Adhere to appropriate and professional standards of conduct and university policies, procedures and guidelines."*

16. The Dignity at Work Policy (at page 99) defines harassment as being "where any form of unwanted conduct occurs with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. The key is that the recipient views the actions or comments as demeaning and unacceptable."

17. Section of 5 of the Dignity at Work Policy at page 100 gives examples of unacceptable behaviour as including verbal abuse, offensive jokes or pranks and leering and/or comments on dress or appearance or embarrassing remarks or jokes.

18. The Claimant accepted that as an employee of the Respondent he was expected to follow the standards of behaviour and adhere to the principles of the Respondent's Code of Behaviour and the Dignity at Work Policy. Having considered those policy and procedural documents we now commence our findings of fact. We shall start with findings of relevance to this case around Lesley Lomax's employment with the Respondent.

19. Mrs Lomax's scheduled retirement date was 30 June 2011. On 17 March 2011 Mr Dhillon emailed her and said that in honour of her longstanding service and dedication to the Respondent, and in particular her contribution to the mooting component of the Respondent's LLB degree, Sylvia Johnson (the faculty dean) had agreed to Mr Dhillon's request that Mrs Lomax be offered an Honorary Visiting Fellowship. We refer to page 735.

20. Mrs Lomax's evidence is that a team from the Respondent had won a prestigious national mooting competition in 2009 and had finished runners-up the following year. She says that as part of succession planning for the law of torts module for which she was module leader and for the moot module, she was permitted to continue to work on a part time basis until 2013. She was therefore given a fixed term contract of two years duration to expire on 31 August 2013. This was at senior lecturer rather than principal lecturer rates of pay.

21. She appealed against the decision not to renew her fixed term contract that was due to expire in August 2013. This appeal was refused by Professor John Leach who wrote to her on 2 July 2013 to explain why. Professor Leach said

that the purpose of the fixed term contract granted to her in the summer of 2011 had been achieved as the succession planning support for the law of torts module had been completed. There was therefore no business case, he said, for any further extension to the fixed term contract. Furthermore, she was informed that she would no longer be offered an Honorary Visiting Fellowship (page 732 and 733). Following some further correspondence Professor Leach explained in an email of 19 August 2013 (page 734) that this was because "things have moved on considerably since that time *[this being a reference of the offer referred to in Mr Dhillon's email of 17 March 2011]* – most notably the fact that LCCJ *[the law, criminology and community justice department]* is fundamentally reviewing its provision across academic areas including mooting". In her witness statement Mrs Lomax says that, "this was a huge disappointment to me as, not only was I losing my employment which I loved, but also it effectively meant the end of my research as I would no longer have access to the legal databases".

22. In the concluding paragraph of her witness statement Mrs Lomax says, "My colleague, Dennis Taylor, saw how I had been treated and this had an adverse effect on his mental health. He accompanied me to a meeting with the Pro Vice- Chancellor, John Leach. The meeting was very positive and I left with the hope that I could still benefit the university with my expertise, at least on a part time basis. Again, this was to no avail, and feeling that my past successful career had been undermined, I left in September 2013 totally devastated".

23. The Claimant accepted in cross-examination that Mr Dhillon had supported Lesley Lomax in March 2011 by requesting of Sylvia Johnson that she be offered an Honorary Visiting Fellowship. It was suggested that matters had moved on by the summer of 2013 and Professor Leach made the decision upon the basis of the business case that presented itself at that time. The Claimant said that he considered the decision not to offer Lesley Lomax an Honorary Visiting Fellowship to be unjust.

24. It was suggested to Lesley Lomax that there was no obligation upon the Respondent to offer her an Honorary Visiting Fellowship following the expiry of the two year fixed term contract. Mrs Lomax said that she felt that the Respondent had a moral obligation so to do it having been offered or suggested in the spring of 2011. It was also put to Lesley Lomax that there was no need to give her an Honorary Visiting Fellowship to which she replied, "It is not a question of need. The point is I would have access to the legal database for my research". She went on to say that in August 2013 she had been given temporary access to the database for the purposes of a lecture that she was giving in the Respondent's name. That this is the case is corroborated by the email chain between 19 and 28 August 2013 that was introduced into the bundle during the course of the hearing (inserted at pages 740 and 741).

25. Mrs Lomax accepted that Visiting Fellowships are not routinely offered to all of those that retire. That said her sense of injustice was heightened by the fact that a colleague named Kevin Williams, who retired when he reached compulsory retirement age, was awarded a Visiting Fellowship.

26. We now turn to the salient matters regarding Andrew Maxfield. His unchallenged evidence was that in August 2012 he became supervising solicitor and module leader for the law clinic. In 2013 the law clinic's work was recognised by the Law Works Attorney General Student Award for the best

contribution by a law school. Mr Maxfield was dismayed by the view taken of the law clinic by management that it was not fit for purpose.

27. Mr Maxfield says that at "a first review meeting, it was suggested that students were not happy at being able to access client files only during office hours, on week days, when the law clinic was open. It was therefore suggested by senior management that students should be able to access client files electronically outside of the law clinic. I express my concern that this could lead to a breach of the solicitor's professional conduct rules, specifically in relation to client confidentiality. I explained that by restricting students' access to client files through physically attending the law clinic office, this ensured that students, at the very start of their legal careers, and also the university, were protected from any breach of client confidentiality. However, this issue was again raised at a subsequent meeting and senior management ensured that this remained an option for the review, in spite of the concerns I expressed".

28. Mr Maxfield said that he was "not prepared to be part of a review process which appeared to consider revolutionary change with an apparent disregard for the serious risks these changes could pose". He goes on to say, "I was also concerned that my continued involvement in the law clinic could have implications for my own practising certificate if such radical changes were implemented. On 31 May 2013, I confirmed that my intention was to step down as supervising solicitor and also not to have any further involvement with the law clinic".

29. Emails corroborative of Mr Maxfield's evidence can be found in the bundle at pages 123A to 123C. On 31 May 2013 Mr Maxfield emailed Peter Charlish. Mr Charlish is employed by the Respondent as principal lecturer. (He acted as the Claimant's line manager from around September 2013 (see page 443) until September 2014 when line management passed to a Mark Edwards, principal lecturer (page 341)).

30. The email at pages 123B and 123C dated 31 May 2013 is corroborative of Mr Maxfield's evidence that he was concerned about client confidentiality issues. Mr Charlish appears to have passed Mr Maxfield's email to Elizabeth Smart. She too is a principal lecturer in the Respondent's law, criminology and community justice department. She sought to reassure Mr Maxfield about the client confidentiality issues. Her stance met with Mr Dhillon's approval (see the emails at page 123A). This notwithstanding, Mr Maxfield evidently did not feel reassured and took the steps to which he refers in his witness statement.

31. It was put to the Claimant that Andrew Maxfield's concerns had nothing to do with him. He had no involvement with the law clinic. The Claimant said that he was concerned because he shared a room with Mr Maxfield and Mr Maxfield's concerns affected him. He empathised with Mr Maxfield's position.

32. We now turn to our findings of fact about the relevant issues that occurred during the Claimant's period of employment with the Respondent. As we say, nothing of significance occurred before October 2013 (or at any rate, we were not told of anything that did cause concern).

33. On 7 October 2013, the Claimant and other members of staff were emailed about a 'hands on' Outlook session (pages 125 and 126). This concerned training in the use of emails. The Claimant accepted that the Respondent was

being supportive of staff by offering this training and also by accommodating the Claimant's request to attend the training session upon a later date.

34. On 9 October 2013 Mr Charlish referred the Claimant to occupational health. This followed the Claimant having been absent from work for a period of three months due to work related stress. Measures had been put in place to try to manage stress. At page 133 we can see that the Respondent had removed the module from the Claimant's workload that had been the cause of much of his stress: this was a module in consumer law. The Respondent had also reduced his overall teaching load and removed administrative tasks from him. The occupational health referral is at pages 129 to 134.

35. We see from the stress management action plan at page 126 a record of the steps taken to reduce the Claimant's stress (by reference to the box in section 3). The narrative at section 2 says that there were several contributory factors towards the Claimant's work related stress. The first of these was said to be an offer of early retirement. The second was issues around one of the modules upon which the Claimant was teaching. The Claimant also perceived there to be a lack of support and collegiately within the department.

36. The record of the Claimant's teaching hours at page 460A corroborates the Respondent's case that the Claimant's workload was reduced at this time. This the Claimant fairly accepted to be the case.

37. On the second page of his witness statement, the Claimant explains the circumstances giving rise to the difficulties that he had with the consumer law module. It was this module that was a contributing factor to the Claimant's stress at work and which was subsequently removed from his workload. It is unnecessary to go into the detail given by the Claimant in his witness statement about these difficulties. We accept entirely the Claimant's case that they contributed to his work related stress.

38. Mr Dhillon was asked in cross examination about the Claimant's observations in the second section of the stress management action plan at page 126 regarding the factors that contributed to his stress. Mr Dhillon said that it would not be his role to deal with such matters. He delegated the task to Mr Charlish. Nonetheless, Mr Dhillon did accept there to be stress within the department at the relevant time.

39. Mr Dhillon has, as we have said, held the position of the head of department for law and criminology since 2010. He says that, "I was recruited by the Respondent at a time of significant change in the higher education sector and I was required to lead strategic change to help improve performance and impact point in a manner that best served its students". Mr Dhillon therefore fairly accepted the Claimant's point that in general there was an increase in stress levels amongst staff during this period of change.

40. We made mention of the Claimant citing as a contributory factor to his stress levels an offer of early retirement. Mr Dhillon explains at paragraph 8 of his witness statement that the Faculty Dean informed the heads of department that an early retirement scheme was being made available to members of staff who might be interested. The heads of department were asked to identify those members of staff who might want to leave "either because they were at an age that they could take early retirement or because they might otherwise be interested in leaving. At the time there was a big change programme going on

and it was recognised that not everyone was happy with the changes that were being made".

41. Mr Dhillon goes on to say at paragraph 9 of his witness statement that, "the Claimant was 58 at the time. Individuals can take early retirement from 55 and therefore the Claimant was identified by me as someone it would be appropriate to speak to. I, along with other managers involved, was provided with a script for the meeting from HR (an example of a similar script is at page 138A of the bundle) and it was clear to me and, in turn, I made it clear to the Claimant, that it was entirely a matter for the individual as to whether they were interested or not and, if they were not, then there would be no comeback from the Respondent". Mr Dhillon also refers to details of those spoken to across the university at that time by reference to pages 139 to 143.

42. When taken to the script at page 138, the Claimant said that Mr Dhillon did not follow it. He said, "His last words to me were, 'find out what the figures are from finance'." The Claimant accepted however that nothing further happened around the retirement issue following that one discussion. He therefore accepted that as far as he was aware that was the end of the matter.

43. The Claimant accepted that he was in no position to dispute the Respondent's case that a large number of individuals across different departments had been spoken to about the early retirement scheme. The Tribunal notes in passing that some of those spoken to are of a different age and age group to the Claimant.

44. On 14 October 2013 Mr Dhillon emailed Mr Charlish. He thanked Mr Charlish for his update around his line management of the Claimant and expressed himself pleased that the Claimant was back at work. He made a suggestion about further IT support for the Claimant (page 135).

45. On 18 November 2013 an occupational health report was prepared by Ann Merrick, occupational health nurse (pages 137 and 138). She said that the Claimant had no current underlying medical conditions but reported symptoms of stress which he felt were entirely due to his work situation. She said the Claimant was fit for work. She recommended that the workplace adjustment (of the reduced workload) should continue until his work situation improves. She did not consider the Claimant to be a disabled person for the purposes of the Equality Act 2010 (while recognising that to be a legal decision and not a medical decision). She said there was no need for a further occupational health review of the case. She therefore closed the file. She commented that the Claimant's recent absence from work "seems to be more related to employee workplace concerns rather than a primary medical problem. If such employee workplace concerns can be resolved through constructive dialogue, then the prognosis for a successful return to work will be greater".

46. When taken to this occupational health report in cross-examination, the Claimant said that he had not in fact seen it at the time. He says that he only saw it a couple of years later. That said he did accept that it was reasonable for the Respondent to conclude, upon the basis of that report, that the Claimant had no underlying medical condition.

47. Nothing else of note appears to have occurred pertaining to the Claimant's employment until February 2015. It was then that the chain of events leading to the Claimant's dismissal commended.

48. On 3 February 2015 Elizabeth Smart emailed Peter Charlish and Mark Edwards. She asked to see them to discuss a number of matters one of which "inappropriate comments in lectures again" made by the Claimant. We refer to page 488. She said that all of the concerns had been raised with her by Vicky Thirlaway who is employed by the Respondent as a senior lecturer.

49. In response, Mr Edwards said that he was happy to meet with Miss Smart. He said, "on the Dennis issue, this came up last time and there were no specifics of what he actually said, or when, so although I warned him about comments he might make and how they may be perceived, it will get nowhere unless there are specific examples I can challenge him on. I'd be interested if there are any new examples after we spoke, or if these relate back to last time". In response, Miss Smart said that she had examples but she "just can't bear to type them up". Mr Edwards said that he would be "particularly disappointed if these have come up after my discussion with him on the topic". We refer to page 487. There was no evidence of any informal or formal action having been taken by the Respondent against the Claimant for inappropriate remarks prior to February 2015.

50. Vicky Thirlaway reduced the concerns that she had raised with Elizabeth Smart to writing on 4 February 2015 (pages 144 and 145). She said that she "met with students from L4 law with crim group 13 yesterday. Present were the rep, Amy Trimbell, and five or six other members of the group". The relevant concern pertaining to this case "was regarding inappropriate comments made by Dennis in lectures. Specific examples were given by the students, including discussing using a Mars bar as a sexual toy and embarrassing students by discussing news stories regarding a man with two penises, and asking student opinions on this, and finally making reference to his own sex life". Upon receipt of Vicky Thirlaway's email Miss Smart forwarded it to Mr Dhillon with the remark that "these are law/crim students. They only have contract at level 4 not criminal law so the lecture they are referring to must be a contract law one".

51. Mr Dhillon replied on 5 February 2015. He said he was seriously concerned about the Claimant's actions and that they "breach our duty of care to our students and constitute gross misconduct". It was Mr Dhillon's intention to seek advice about this from Hilary Hughes. He said he was happy to meet with Amy Trimble, the student representative, and asked that this be arranged as a matter of urgency for the following day as Mr Dhillon was on annual leave for a week from Monday 9 February 2015. The email exchanges are at pages 144 and 145.

52. On 5 February 2015 Mr Edwards emailed Mr Dhillon (page 146). He said that he had had a discussion with the Claimant in December 2014 "relating to the fact that some students had reported that they found some of his comments in lectures inappropriate". Mr Edwards said that no specific examples were given but he counselled the Claimant that "he had to be careful, in particular with crime, how his attempt at humour may not be perceived that way and he could be considered crude if not put over properly". Mr Edwards had informed the Claimant that "he had to be careful as he was exposing himself to student complaints if he got the delivery wrong.

53. Hilary Hughes' evidence (at paragraph 2 of her witness statement) is that Mr Dhillon contacted her on 5 February 2015 "to say that a complaint against the Claimant had been put on his radar". She was copied into his email to

Miss Smart (at page 144 of the bundle). She met with Mr Dhillon and Alan Dainty (who was then the assistant director of HR) on the morning of 6 February 2015. Mrs Hughes says that "at that point we had the notes from Vicky Thirlaway's meeting with the students (pages 147 and 148 of the bundle)."

54. Mrs Hughes goes on at paragraph 3 of her witness statement to say that, "As one of the students who had made the complaint was not at the meeting with Miss Thirlaway, we agreed we would meet with the Claimant and ask him to take a period of authorised absence whilst we tried to collate more information. A decision was made to cancel the Claimant's lectures. The allegations against the Claimant were serious and we were concerned about putting him back in front of students who were young and relatively new to the university". She goes on to say at paragraph 4 that, "it was agreed that we would need to meet with the Claimant as soon as possible and, as Mr Dhillon was about to go away, Simon Feasey, head of academic development, was asked to conduct the meeting". Prior to the meeting Mrs Hughes sought and was granted permission to suspend the Claimant (page 152). This permission was granted by Mr Dainty. Mrs Hughes requested permission of him to suspend the Claimant were the Claimant to be unwilling to take a period of unauthorised absence.

55. Vicky Thirlaway's note at pages 147 and 148 (referred to by Mrs Hughes at paragraphs 2 and 3 of her witness statement) is undated. The note refers to four students being present (Amy Trimble and three other female students). In so far as this note pertains to the issues concerning the Claimant it records the four students were "not personally offended" but two students not present had been. One of the two not present, Ewelina Strug had specifically asked Amy Trimble to raise the matter. The note says that the students commented that sexual comments were often made in order to get over a point, but sometimes at the beginning of a lecture when they just want to get on with the material. The specific instances referred to were:

    55.1. Reference to using a Mars bar in a sexual fashion to explain an issue with returning items under the Sale of Goods Act.

    55.2. Discussion at the start of a lecture about a story concerning about having two penises.

    55.3. Discussion of shopping at Ann Summers in Meadowhall.

    55.4. Discussing hypothetical issues of having sex with students for grades as part of the topic of consideration, including a comment it would be more expensive for males due to the "clean up being messier".

56. The notes concluded that, "students said that in lectures Dennis has once asked whether or not students would rather have a clean or graphic example, and that the students who report being offended do not say anything".

57. As we shall see, Professor Norcliffe was commissioned by the Respondent to carry out the investigation into allegations raised against the Claimant. As part of his investigation he interviewed Vicky Thirlaway. Notes of his meeting with Vicky Thirlaway are at pages 310 to 322.

58. It is unfortunate that Vicky Thirlaway's note at pages 147 and 148 is undated. It certainly gave rise to some confusion before us as to the sequence of events. Vicky Thirlaway was not called by the Respondent to give evidence. Piecing

things together as best we can it appears that Vicky Thirlaway met with six or seven students (including Amy Trimble) on 3 February 2015. There are no notes of that meeting but she reduced the substance of the meeting to writing in email form (that being the email at pages 144 and 145). There was then a second meeting that took place on Friday 6 February with the smaller group of four students. It was the latter meeting that was the subject of the note at pages 147 and 148.

59. The second meeting with the students was preceded by a meeting attended by Mr Dhillon, Miss Smart and Miss Thirlaway which also took place on the morning of 6 February 2015. Miss Thirlaway refers to this at page 315.

60. In evidence before us, Mr Dhillon referred to having a meeting with Mark Edwards in his capacity as head of law and the Claimant's line manager. It was at this meeting that it was decided that Mr Dhillon should not meet the students himself but delegate that task to "the two female lecturers". We presume this to be a reference to Vicky Thirlaway and Elizabeth Smart. It appears that only Vicky Thirlaway met with the students on 6 February 2015.

61. It is not clear from the evidence precisely how many meetings took place between 3 and 6 February 2015, much less who attended which meetings. What can safely be concluded, however, is that:-

    61.1. There were two meetings involving Vicky Thirlaway and groups of students at which concerns were raised concerning the inappropriate content of what was being said by the Claimant in lectures conducted by him.

    61.2. That Mr Dhillon was sufficiently concerned that a decision was made to remove the Claimant from his lecturing duties by way of prevailing upon the Claimant to take authorised absence or failing that by suspending him.

62. On 6 February 2015 Simon Feasey emailed the Claimant. He attached a letter asking the Claimant to meet with him on Monday 9 February at 12.30pm "to discuss some serious issues that have been raised by a number of students in relation to the content of some of your lectures". The Claimant was told that the outcome of the meeting may include escalation to formal procedures under the PRF. The Claimant was informed that he may choose to be accompanied at the meeting by a trade union representative or work colleague. The Claimant was told that the lectures he was scheduled to deliver on 9 February had been re-arranged and would not take place. We refer to pages 149 and 150.

63. The students were notified on Sunday 8 February (17.38) that that week's criminal lecture was postponed (page 151). They were notified on 9 February 2015 (at 10.46) that the criminal law seminars had also been postponed. We refer to page 153.

64. It appears that there were no notes of the meeting between Hilary Hughes, Simon Feasey and the Claimant that took place on 9 February 2015. There is a script at pages 154 and 155. As we have said, Mr Dhillon was away on annual leave for a week commencing on 9 February 2015. He therefore delegated this task (which we accept he would normally have done himself) to Mr Feasey.

65. The script required Mr Feasey to "advise Dennis that he will be invited to attend a review meeting under the problem resolution framework with Sital Dhillon

where the complaints will be discussed with Dennis. Following this meeting Sital will make a decision on how to proceed. The review meeting will take place on Tuesday 17 February at 10.30am and will be held in 1-11 Building. The details will be confirmed in writing to Dennis".

66. The script also required Mr Feasey to say that, "due to the seriousness of the matter [his] wish is for Dennis to go on authorised absence until the review meeting with Sital when this position will be reviewed; this is in the best interests of all parties". The script went on to say that if the Claimant did not agree to take authorised absence then the Respondent would be required to "formally suspend him".

67. Mrs Hughes says about the meeting that, "it had been agreed that we would not give the Claimant full details of the allegations at this stage as we were still waiting to speak to one student, the Claimant was not accompanied and Mr Dhillon was due to pick the matter up and progress it on his return to work".

68. When she was cross-examined, Mrs Hughes candidly accepted that the Respondent had not (at the meeting of 9 February) informed the Claimant of any details of the allegations that had been raised against him. She says in her witness statement that Professor Norcliffe's report had ultimately "recommended that we review the information given to employees when they are put on authorised absence and our practices have changed as a result of this. We now share whatever information we have with the individual at this meeting".

69. It was accepted by the Respondent therefore that the explanation for not sharing information with the Claimant (being that one more student had to be interviewed which was the explanation advanced both by Mr Dhillon and Mrs Hughes) could not adequately excuse the failure to share information with the Claimant at the meeting of 9 February.

70. The following points arose out of the Claimant's cross-examination around events between 3 and 9 February 2015:-

    70.1. He accepted that the Respondent was required to look into the matters that had been raised by Vicky Thirlaway in her email of 4 February 2015.

    70.2. The Claimant accepted that there was an obligation incumbent upon the Respondent so to do in fulfilment of its responsibilities to enforce its Code of Behaviour and Dignity at Work Policy and that this obligation arose regardless of the source of the information. (It was, in fact, part of the Claimant's case that the students had not been offended and that the information had been solicited or sought out by management (rather than being volunteered to the Respondent by the students)).

    70.3. That the only evidence in the Respondent's possession emanating from the student body was an account given by Amy Trimble (which we shall consider in due course).

    70.4. That the Claimant considered the meeting of 9 February 2015 to be a disciplinary meeting. The Claimant conceded that the letter at page 150 makes it plain that it was not a disciplinary meeting by reference to the possibility that matters may after 9 February then escalate to formal procedure under the PRF.

71. The following evidence about events over this time emerged from the cross-examination of Mr Dhillon:-

    71.1. That the decision to remove the Claimant from his lecturing duties was for the protection both of the students and the Claimant.

    71.2. The protection of the Claimant arose from safeguarding him from further false allegations (should that transpire to be the case) and not exposing the Claimant to the risk of further transgressions (should the allegations prove to be well founded).

    71.3. It was also felt appropriate to take this step in order to safeguard the reputation of the Respondent and in furtherance of the duty of care owed by the Respondent to the students.

    71.4. Mr Dhillon accepted that the Claimant presented no physical threat or danger to the students. The threat posed by him and towards him arose out of the Dignity at Work Policy and the Respondent's Code of Conduct.

    71.5. It would have been a dereliction of Mr Dhillon's duty not to respond positively to the issues raised.

72. On 9 February 2015 Mr Feasey sent to the Claimant a letter confirming the outcome of their meeting (pages 157 and 158). Some indication as to what the concerns were about is alluded to in the second paragraph where Mr Feasey refers to "inappropriate sexual references". The Claimant was invited to attend the review meeting with Mr Dhillon scheduled for 17 February 2015. He was notified of his right to be accompanied. The Claimant's agreement to take authorised absence was also recorded and confirmed. This was said to be "in accordance with the policy on suspension and related absence within the PRF". The Tribunal was not in fact furnished with this part of the PRF.

73. The Claimant confirmed that he suffered no financial detriment as a consequence of being on authorised absence. However, he was concerned about the damage to his reputation in particular arising from the cancellation of his lectures and seminars.

74. On 10 February 2015 Dr Rob Hunt, senior lecturer in public policy emailed Debbie Stevens who works for the Respondent in its HR department. This contained a list of trade union officers and representatives. The Claimant was included in that list (page 160B). Mrs Hughes says that she was not aware prior to 10 February 2015 that the Claimant was a trade union representative. She went on to say (in paragraph 9 of her witness statement) that even had she been aware it would not have made any difference to the decision that the Respondent took as to how to deal with matters. She says, "the decision to offer authorised absence and, if necessary, to suspend the Claimant had nothing to do with his trade union role, it was simply due to the nature and seriousness of the allegations".

75. We can see from the email of the same day at page 159 that Mrs Hughes was aware that the Claimant had contacted his trade union representative "very upset that he does not know what the complaints are about as he has not seen his letter". The Claimant, in fact, was concerned that the "inappropriate sexual references" may have related to him referring to a bestiality case that he had read about in the Sheffield Star newspaper. He refers to this in the final paragraph of page 4 of his witness statement.

76. It will be recalled that at the private Preliminary Hearing presided over by the Employment Judge on 21 September 2016 the Claimant clarified the complaint that he had been subjected to a detriment and unfairly dismissed by reason of trade union membership and activity. Paragraph 16 of the minute of that hearing records that "the trade union activity in question centred upon the Claimant's activity as a trade union representative in … representing the views of members around changes to the peer review process".

77. Emails around this issue are in the bundle at pages 163 to 166. Chronologically, it is convenient to consider them here as Mr Feasey emailed the department of law and criminology on 10 February 2015 to announce that "Faculty have introduced a revised approach to the annual Peer Supported Review process which is now referred to as the Peer Review Enhancement of Academic Practice (PRE) scheme". He goes on to say that "a new feature of the scheme is that teaching staff are expected to include peer observation of teaching each year. Sheffield Hallam has introduced annual peer observation to promote dialogue about teaching students on our courses and to spread good and innovative practice". It appeared from the Claimant's email to Robert Hunt of 11 February 2015 (page 163) that "with regard to the peer review it appears that there is general consternation amongst staff".

78. That the PRE scheme had not been well received by at least some is evidenced by Richard Lynch's email at page 165. This is dated 11 February 2015. It was sent to Mr Feasey and all at the department of law and criminology. Mr Lynch wrote, *"process – process – process … legitimacy – legitimacy – legitimacy …".*

79. Mr Dhillon was not impressed by Mr Lynch's contribution. He said that while he welcomed constructive debate Mr Lynch should desist from circulating that type of message (page 165). Mr Lynch apologised. His career appears not to have suffered as he still remains in the employment of the Respondent as a senior lecturer. There was no evidence of him having suffered any detriment. This the Claimant acknowledged during cross-examination while pointing out that it was the Claimant and not Mr Lynch who was one of the trade union representatives for the law and criminology department.

80. We now turn to the review meeting of 17 February 2015. This was attended by the Claimant, Mr Leader as his trade union representative, Mr Dhillon and Mrs Hughes. Mr Dhillon had before him the script at page 167A. Mrs Hughes says that this was "then used as the basis for the notes" (pages 168 to 174 of the bundle).

81. The salient parts of the notes of the meeting are:-

    81.1. The Claimant confirmed that he had been unable to bring anyone to the meeting held on 9 February 2015 but had been comfortable in proceeding with it.

    81.2. Mr Dhillon acknowledged that the Claimant had not had any details of the complaints. These were then relayed to the Claimant. Mr Dhillon said that the complaints had been made "relating to a lecture about contract law".

    81.3. The Claimant and Mr Leader were afforded the opportunity of discussing the allegations. There was a break for a period of 21 minutes between 10.40 and 11.01am in order for them to have a private discussion.

81.4. Mr Dhillon asked the Claimant for his reaction "and immediate response at this stage".

81.5. Mr Dhillon said that "the situation needed to be looked at because if the allegations were spurious that this would be taken further as it could potentially damage DT's reputation".

81.6. Mr Leader said that the Claimant was feeling stressed. This Mr Dhillon acknowledged.

81.7. Mr Dhillon's concern was to decide how to proceed and he had three options. The first of these was to take no further action. The second was to take action short of a formal investigation under PRF. The third was escalation under PRF at which point Mr Dhillon would step out of the process.

81.8. Mr Dhillon said that he would make a decision upon the basis of all of the information which included the Claimant's response to the allegations.

81.9. Mr Leader said on the Claimant's behalf that the Claimant did "use funny, strange or bizarre examples to illustrate the point he was making and to engage the students. He tried to give examples that were not dull, grey boring examples to make the subject more interesting and to engage the students. He said this was the approach most academic staff take".

82. The information given to the Claimant regarding the complaints is set out at page 174. These were:-

82.1. Reference to using a Mars bar in a sexual fashion to explain an issue with returning items under the Sale of Goods Act.

82.2. Discussion at the start of a lecture about a story concerning having two penises.

82.3. Discussion of shopping at Ann Summers in Meadowhall.

82.4. Discussing hypothetical issues of having sex with students for grades as part of the topic of consideration, including a comment it would be more expensive for males due to the "clean up being messier".

83. There was also reference to students saying that in lectures the Claimant had once asked whether or not they would rather have a clean or a graphic example and that the students who report being offended not saying anything. It can be seen, therefore, that at the meeting of 17 February the Claimant was informed of the matters noted at Vicky Thirlaway's record of the meeting with the four students at pages 147 and 148.

84. By way of response, the notes record the following:-

84.1. The Claimant said that he had never offered the students a "graphic example" as that was not a word he used.

84.2. He denied that he said anything along the lines of "the clean up being messier".

84.3. He accepted asking students whether "they want an example that they will remember or a run of the mill".

84.4. By reference to the first issue raised the Claimant said that section 14 of the Sale of Goods Act 1979 was complicated "and there were a number

of things to be taken into account. He said he could explain the context using ball bearings but he used the biography of one of Mick Jagger's girlfriends to make it more interesting. In the book she refers to his use of Mars bars for sexual purposes".

84.5. In relation to the second issue the note records the Claimant referring to a story in a newspaper that he referred to in order to break the ice at the beginning of a lecture.

84.6. The Claimant denied mentioning Ann Summers but did accept discussing Meadowhall (and in particular his dislike of it). Again, he said he did this at the beginning of a lecture to break the ice.

84.7. With reference to the fourth point, the note records the Claimant as saying that "he was making the point about this being for an immoral purpose and therefore the contract would be illegal".

85. Mr Dhillon asked why it was necessary for the Claimant to have made references of this kind in contract law lecture. Somewhat confusingly, the Claimant said that he didn't think he had "used the Mars bar example in this way". That does not sit easily with his apparent acceptance that he had used this example in an attempt to explain the Sale of Goods Act 1979.

86. The Claimant also said that he was contemplating using the story in the newspaper about the "man with two penises" in rape law. However, he had not done so. He said he was thinking of doing this "to keep things up to date".

87. At paragraph 25 of his witness statement Mr Dhillon says, "The meeting adjourned for me to consider what I thought the next step should be. It was open to me at that point to decide that the matter did not warrant further investigation. If the Claimant had committed to changing his ways at this meeting then I may have looked at matters in a different way but, given the Claimant's comments and the risk I considered there was to the students if this continued, I decided that there ought to be an independent investigation".

88. Mr Dhillon said that the Claimant agreed to remain on authorised absence. He acknowledged that the Claimant did not wish the authorised absence to continue but agreed that it could as the only alternative was suspension.

89. Following the meeting the Claimant was sent the letter at pages 178 to 179. This confirmed Mr Dhillon's decision to commission an independent investigation. Mr Dhillon appointed Professor Norcliffe to carry out the investigation. Professor Norcliffe was to be supported by Susan Tallents HR manager. Hilary Hughes was to remain as the HR representative supporting Mr Dhillon in his capacity of commissioning manager.

90. The remit of the investigation was set out in the box at the top of page 179. This provided that the independent investigator was required to investigate:-

90.1. "The student complaints that have been received relating to the content of some of Dennis Taylor's lectures.

90.2. Whether Dennis has carried out his role as a senior lecturer in accordance with the requirements of the Dignity at Work Policy and the professionalism section of the Code of Behaviour"

91. On the Claimant's behalf, Mr Leader emailed Hilary Hughes on 3 March 2015. He said that there was no objection to the appointment of Professor Norcliffe.

Mr Leader asked that he (Professor Norcliffe) interview all of the students making the allegations and that he establishes how the allegations were made and to whom and in what circumstances. Hilary Hughes responded on 3 March 2015 to say that it was up to Professor Norcliffe to determine whether the information that had already been obtained from the students was sufficient or whether he needs to contact them again. We refer to pages 182 to 184.

92. It was suggested to Mr Dhillon that the 20 minutes or so allowed on 17 February was not an adequate time for the Claimant to discuss the issue with his trade union representative. Mr Dhillon said that he had indicated to the Claimant that should he need more time then that would be afforded to him. There is no record of Mr Dhillon having said that to the Claimant and in fact, on the contrary, Mr Dhillon asked for the Claimant's immediate response to the allegations (page 169). Mr Dhillon accepted there to be no record of him offering the Claimant additional time but maintained that that was offered to him.

93. The Tribunal prefers the Claimant's evidence upon this issue. If additional time was offered to the Claimant then it is surprising that the Respondent's own note omits reference to that. Further, that is at odds with the tenor of the request made of the Claimant for an immediate response to the allegations which the Claimant had seen for the first time that morning.

94. Against that, there is no record of a request made by the Claimant or Mr Leader on his behalf for further time. The Tribunal was impressed by Mr Leader as a representative who would not hesitate to fight his member's corner and we have little doubt that had more time been required he would have asked for it.

95. A staff student committee meeting was held on 4 March 2015 (pages 185 to 190). A complaint was raised about the law of contract module taught by the Claimant. There it was recorded that in Semester 1 "students found the seminars lost focus with irrelevant topics being discussed by the tutor eg tutor talking about Playboy magazine instead of starting the seminar. This results in time being wasted and due to rushing to finish the seminar". Similar feedback was given about the criminal law module taught by the Claimant.

96. When this was put to the Claimant he accepted discussing issues around Playboy "as an ice breaker". He said it was raised in the context of a ban or proposed ban upon the publication of photographs of naked or semi naked women upon page 3 of The Sun newspaper. The Claimant said that this had been raised in the context of discussing pornography with students. He remarked, "I said something like, Playboy was all you could get in my day" and that this remark led to a discussion about the appropriateness or otherwise of 'page 3' of The Sun.

97. Dr Rob Hunt on behalf of the UCU emailed Sital Dhillon on 19 March 2015 (page 196). He protested that the Claimant had been effectively suspended from the beginning of February 2015. Dr Hunt said that this was "wholly disproportionate" in response to the allegations against him.

98. In reply, Hilary Hughes said on 23 March 2015 (at page 195) that the Claimant was not suspended but on a period of authorised absence. She said that the issues under investigation were serious and that the Claimant had been provided with details of the support facilities available to him in the remit letter of

26 February 2015 at page 178. Dr Hunt replied, "Many thanks for the reply, appreciated. I think that covers any concerns we have/had".

99. The Claimant acknowledged that Dr Hunt had agreed with Hilary Hughes' position (or at any rate had not continued to protest on the Claimant's behalf). The Claimant sought to distance himself from this upon the basis that he had never met Dr Hunt.

100. Around three weeks later, on 23 April 2015, Dr Hunt emailed Hilary Hughes and Sital Dhillon (page 197). Contrary to the position that he had adopted on 30 March 2015 he now said that Mrs Hughes' response of 23 March had not addressed the Claimant's concerns. The point was made again that the period of suspension was excessive and, further, that reviews had not taken place in accordance with the PRF. Dr Hunt said, "We are seriously concerned that the university's actions are creating a situation in which Dennis will find it untenable to return to his position once the investigation is eventually completed".

101. Hilary Hughes' evidence is that, "at that point, and, as teaching was about to end, Mr Dhillon agreed that the period of authorised absence could end and the Claimant could be set some work to complete at home. A letter confirming this was sent to the Claimant on 8 May 2015 (page 206 of the bundle)." The Claimant declined the opportunity of returning to work upon the basis that he had or was about to raise a grievance with the Respondent.

102. Professor Norcliffe was briefed by Sital Dhillon, Hilary Hughes and Susan Tallents. We refer to paragraph five of his witness statement. They furnished him with the background to the situation and a copy of Vicky Thirlaway's note of the meeting with the students at pages 147 and 148 of the bundle. Professor Norcliffe was also furnished with the notes of Mr Dhillon's meeting with the Claimant of 17 February 2015.

103. Professor Norcliffe and Susan Tallents resolved to meet Vicky Thirlaway and Elizabeth Smart before anyone else "as they had the detail of the complaints from the students". Professor Norcliffe therefore met with Vicky Thirlaway on 31 March 2015. We have in fact referred to this meeting already. The notes of it are at pages 310 to 322. Professor Norcliffe then met with Elizabeth Smart on the same day (pages 327 to 337).

104. Professor Norcliffe says that as a result of those meetings it was decided to speak to Mark Edwards. This he did on 15 April 2015 (pages 340 to 341).

105. The Claimant met with Professor Norcliffe on 21 April 2015. The notes of the meeting are at pages 354 to 373. The Claimant was accompanied by Mr Leader. Professor Norcliffe was accompanied by Susan Tallents.

106. Mr Leader was concerned to enquire whether or not students had been interviewed. Susan Tallents said that it was "not normal university process to interview the students and we haven't interviewed the students as of date". She said that it was within Professor Norcliffe's "gift if he chooses to do that, but it isn't normal". Hilary Hughes confirmed when she gave evidence that the Respondent's policy is to avoid involving the students in staff matters as much as possible. The concern of the Claimant and his trade union representative was that the allegations raised against the Claimant were therefore "second hand".

107. Professor Norcliffe asked the Claimant to confirm his role at the Respondent. The Claimant confirmed that he lectures in contract law and criminal law. Professor Norcliffe asked the Claimant about his lecturing style. He said that he had had no complaints in his 29 years with the Respondent. He went on to say that he had won awards and prizes. He then said, "My lecturing style is because I teach criminal law is open because I have to talk about unsavoury things". In general terms, he was anxious to ensure that students were engaged with his lectures and to avoid boring them. He said that student attendance at his lectures was good.

108. Professor Norcliffe then descended into the particulars of the issues of concern that had been raised with Vicky Thirlaway by the students. We shall set out here what was said by the Claimant in relation to each of the four matters of concern relayed to Vicky Thirlaway by the students and in turn by the Respondent to the Claimant.

109. The first of these was "reference to using a Mars bar in a sexual fashion to explain an issue with returning items under the Sale of Goods Act." About this the Claimant said:-

    109.1. "What I actually said was sexual purpose, by purchasing a Mars bar for sexual purpose, I actually referred to Mick Jagger and his girlfriend Marianne Faithful out of the text book, well not the text book but the case in the 60s and I found that was a very good way to get over section 14 of the Sale of Goods Act."

    109.2. The Claimant said that "section 14 is a complex part of the Sale of Goods Act and it comes in two parts, the first part says that goods must be satisfactory for the purpose which is the thing that they are bought for, for the second part of it is saying that its got to be fit for the purpose and I have used that example for 25 years and like I say I've used it to anybody". He went on, "what I'm explaining is section 14 of the Sale of Goods Act, it comes in two parts, satisfactory quality, reasonable fitness for the purpose made known, and then it goes on to say unless it is unreasonable to rely or you don't rely on the skill and judgment of the seller. So I say to them Mars bar, I explain to them 'do you want a good example or an iffy example'. I also explain to them where I get it from. I say this is Mick Jagger because I like the idea that when they go away it will be in their head and they'll think about it, I like that. I might be controversial in a way but I like them to go away thinking about the issue having a thing to hang it on, Mick Jagger – icon. So I have in the past talked about the court case slightly and I've said you know 'what happens if you go to a shop and buy a Mars bar for sexual purposes'. There are lots of issues there because if you go to section 14B fitness for purpose first of all you've got to make it known what sexual purpose you are using the Mars bar for and the second thing is you've got to think about if it's reasonable to rely on the skill and judgment of the seller and therefore it encapsulates that. The students find it quite funny because of Mick Jagger and I hope that makes it a good way of thinking about it. In the past 25 years ago I used to talk about ball bearings and buying ball bearings of satisfactory quality and it used to go as flat as a pancake because they didn't get it. I talked to students probably two months ago from 10 years ago and in the conversation 'I also remember section 14'".

109.3. Professor Norcliffe therefore asked the Claimant if he was not denying that he uses this example to illustrate the intricacies of the Sale of Goods Act. The Claimant said, "I use it quite happily and I don't see an issue with that whatsoever, I don't go into any explanation, I don't say what Mick Jagger did with it or whatever. I'll leave that up to the students to think about and what Mick Jagger did with it was totally different from what you'd imagine what he'd do with it so I'll leave it at that. The reason that I go on to the third point which is going to Meadowhall and buying it from Ann Summers the reason that I actually mention that is because I used to say in the past would it be any different if I went into the sex shops and bought it from a sex shop because the seller has got more expertise but this year, the first year I have ever changed it I talked about going into Ann Summers because it is getting more respectable, it's more respectable and I thought why shouldn't you know that concept, does that person have that expertise in Ann Summers etc".

109.4. Professor Norcliffe therefore ascertained that the Claimant was linking the first issue of concern (referred to at page 174) and the third issue upon the same page regarding the discussion about shopping at Ann Summers in Meadowhall. The Claimant confirmed this to be the case and said that he did this to illustrate the point about whether it was reasonable to rely on the skill and judgment of the seller. He said, "Now everyone who buys a Mars bar for that purpose actually it's not reasonable to rely on the judgment of the seller, you probably haven't explained it properly so it encapsulates a lot better than a ball bearing or something that is a normal thing that you can buy at a shop for students to remember".

109.5. Professor Norcliffe was concerned that not all of those to whom he was teaching contract law in the first year of their studies had also encountered criminal law. It appears that some of them do not meet criminal law until their second year or second semester.

110. We now turn to the second issue of concern identified at page 174: "discussion at the start of a lecture about a story concerning having two penises". The Claimant explained that he saw four female students looking at a mobile phone. He said that one of them asked the Claimant if he had "seen this" (which was an article about "a man with two tails"). He said, "I announced it to all the lecture because I didn't want to feel that closeness with these four female students showing me something so I announced it to anybody. I said 'has anybody else seen that guy, guy with two tails and it shocked me'".

111. The Claimant said that he walked from that lecture to quickly deliver another. The image and the story had stuck in his mind. The image was had been shown to him during the course of a criminal law lecture. He then went to deliver a contract law lecture. He said, "it really bugged me and I was thinking at the time about the Sexual Offences Act and I was thinking in terms of having two tails could that amount to rape, that's my thought process because the Sexual Offences Act talks about insertion of a penis, not penises so there was a technicality there, if you inserted two penises it wouldn't probably be rape, it would be the sexual offence of insertion probably, it wouldn't be rape. The other thing to be brutally frank in terms of rape which is my favourite subject by the way, not the rape but the criminal law, in terms of rape if you have got two tails and a female gave you consent to intercourse and by accident the other tail

entered the anus, could you be found guilty of raping the anus, which could not be the case because in actual fact it would not be intentional penetration and that was going through my head but I mean my head is buzzing at that point. I go into this next lecture, I repeat everything that I said in the first lecture and I don't know whether when I walked into that lecture it was at the beginning or the end when I actually said 'have you seen it on the [phone]'". The Claimant said that this was "in my brain all the time as I was giving this lecture in contract law I was thinking about it". He said that when he raised the issue he realised the group was not doing criminal law but in fact contract law and he said "that's going to be interesting for you for next year" because I was thinking I would use that in a lecture to explain a complex point, that's where it came from".

112. The discussion then turned to the fourth issue at page 174: discussing hypothetical issues of having sex with students for grades as part of the topic of consideration, including a comment it would be more expensive for males due to the "clean up being messier".

113. The Claimant did not accept this allegation. He said that he was a teacher in contract law and in particular the issue of the unenforceability of contracts which are held to be contrary to public policy in some way. The Claimant said, "I was giving this lecture and if you look at my notes the one bit I haven't got any cases on is to deal with moral contracts and I went through the lecture notes, immoral contracts – and I thought Jesus Christ what can I say about immoral contracts and I remember saying to them 'an example of an immoral contract one that the law will not enforce is one for example if a student gave sex for grades, that's all I said'. I looked round and thought "I don't like that". The Claimant went on to say, "I said "sex with students is far too …" I'm not sure if I said 'messy' or whatever and what I actually meant by that is that it turns your academic relationship with the students". The Claimant said that he had said this at the top of his head and it was not an example that he would use again. He said, "I think I back tracked and said prostitution is an immoral contract so I mentioned that".

114. Professor Norcliffe then asked the Claimant about the generalised comment towards the end of page 174 to the effect that he invited students to choose a clean or a graphic example to illustrate the points he was seeking to make. The Claimant said that he did not really use that expression but conceded that he may have said "do you want a more iffy one so that you'll remember it, or…… ? I might have said dirty I'm not saying, but dirty in a sense, is one of those words".

115. Professor Norcliffe asked the Claimant whether he would often say to students "now to remember this I can give you a straight one or a more iffy one?" The Claimant said "yes something like that, I'll always say, in terms of that example every year they have always gone for the Mars bar example and I explain from where I get it from. I don't say its from the top of my head this one, I explain Mick Jagger because I like the concept. The only thing that makes me uptight I once read in an exam paper about the Mars bar and Mick Jagger, it came out in the exam paper which I wasn't too keen on". The Claimant went on to say that he "works at a university and not a kindergarten".

116. Professor Norcliffe then asked the Claimant about the remarks made at the staff student meeting. The Claimant said that he could not recall discussing Playboy magazine. He did say, "I can imagine them saying it in terms of explaining to

the students in terms of what they see on the internet now and probably in my life it was a Playboy magazine on the top shelf whatever but I can't see a major discussion around Playboy magazine". The Claimant accepted that he may have mentioned it or may not have but that he "wouldn't have mentioned it in a disgraceful way, it would have been mentioned because of some comment made by a student, I don't walk in there and think 'ok I'm going to talk about Playboy magazine'".

117. The Claimant made reference (at page 366 and 367) to being "the only vocal person to say anything against peer review". He said that he had become a trade union representative in October or November of the previous year. He considered himself to be victimised because of that issue and confirmed that his intention was to raise a formal grievance.

118. The Claimant maintained that he had not been offensive. He concluded that he had "no regrets, none whatsoever" and said that he would never apologise for his conduct. He said, "I honestly don't think I said anything wrong. Like I say if I said it to a student, if I had used inappropriate behaviour, inappropriate language I'd understand it but this is like a trumped up charge. It really is. It beggars belief that a university can operate in this way".

119. The following emerged from the Claimant's cross-examination about this interview:-

119.1. With reference to the first issue at page 174 the Claimant was asked to accept that he was "in reality talking about the insertion of a Mars bar into a woman's vagina". The Claimant said that that was the Respondent's interpretation of what he had said. However, when pressed in cross-examination the Claimant accepted the Respondent's interpretation to be correct and that what he was in reality talking about was the use of a Mars bar "as a dildo" (as the Claimant put it).

119.2. The Claimant accepted that he could have used other examples to illustrate the intricacies of the Sale of Goods Act 1979. However he questioned whether students would have remembered the point as well had other examples been given and said that he had used this particular example in this way for over 25 years.

119.3. It was suggested that there was no credibility to the Claimant's point that the use of the Mars bar in the example given by him in lectures may be for anything other than either to be eaten or used "as a dildo" (again to borrow the Claimant's phraseology). It was suggested by Mr Lewinski that it were to be the case that any other purpose had been in the Claimant's mind then the example fails and falls away. There is much force in Mr Lewinski's point.

119.4. It was suggested that the example given by the Claimant was deeply shocking (both to female and male students). It was a distasteful and unnecessarily sexualised and gratuitous example to illustrate a dry contractual point about the complexities of the Sale of Goods Act. The Claimant accepted that had he been graphic then "potentially" he would agree with that proposition but considered that he was using humour and imagination as a "good teaching method" to illustrate his point.

119.5. The Claimant accepted there to have been no actual legal case concerning Mick Jagger and Marianne Faithfull around the alleged incident the subject of his lectures.

119.6. The Claimant accepted that he extended the example by reference to purchasing a Mars bar from a sex shop or from Ann Summers. The Claimant said that he did this to explain the concept of "the skill and judgment of the seller" by reference to the use of the chocolate bar for sexual purposes.

119.7. It was suggested (by reference to Amy Trimble's statement at pages 409 to 411 to which we will turn in due course) that the Claimant had extended the example still further by talking about returning the chocolate bar to the seller as unfit for use for sexual purposes and the practicability of so doing if it was "all melted and sticky". The Claimant said that he could not recall saying that but it was germane to the issue of a buyer having a reasonable belief in the skill and judgment of the seller and that "even with Ann Summers you couldn't rely upon skill and judgment of the seller in those circumstances". He accepted that he did talk about the concept of returning goods not found to be fit for their purpose.

119.8. It was suggested by Mr Lewinski that the Claimant's example was graphic and disgusting. The Claimant said, "Is it in this day and age? We are in the 21st century. What is the difference between sexual aids and any other type of purchase?"

119.9. With reference to the second issue at page 174 (around the man with diphallia), the Claimant confirmed that it was female students who had drawn the story to his attention. He walked from one lecture to another. He had not realised that he was then facing a different group when he introduced the topic to the students in the second lecture as it had been "difficult to cut my brain off from one thing to another in five minutes time". He accepted that he had made an error and a mistake in that the second group were there to learn about contract law and had had no exposure to criminal law at this stage of their university careers. The Claimant accepted that the newspaper article in question (appearing upon the student's smartphone) had nothing to do with contract law or the topic being taught in the lecture. He accepted this to be a gratuitous reference to a sexual image. The Claimant said that was the case "in one sense. I did say it would be an interesting topic for next year on the issue of consent".

120. By reference to the fourth issue at page 174, the Claimant accepted candidly that he had made reference to the issue of exchanging sex for grades. He defended his position upon the basis that had intended to refer to the case of **Pearce v Brookes** [1866] LR1 Ex 213 but could not recall it on the day. The Tribunal takes judicial notice that this case concerned a contract for the hire of a brougham to a prostitute which was supplied by the hirer with the knowledge that it would be used *'as part of her display'* (as it is put in the relevant law report). It was held that the contract was unenforceable as being for an unlawful purpose. The Claimant told us that he could not bring this case to mind and that "the only thing I could think of was sex for grades. That's what I said". It was put to the Claimant by Mr Lewinski that the Claimant had, before

the Tribunal, embellished his explanation as there was no reference to **Pearce v Brookes** in the notes of his meeting with Professor Norcliffe.

121. By a reference to that example, it was suggested to the Claimant that he did make a reference to it being "more expensive for males due to the clean up being messier". It was suggested that this was the case by reference to Amy Trimble's account (at page 409). The Claimant did not deny this to be the case. He said, "I couldn't think about anything else – sex is more interesting than penalty points". The Claimant candidly accepted that he had himself thought the example of "sex for grades" to be inappropriate afterwards (by reference to page 361).

122. By reference to the generalised comment at the end of page 174, the Claimant accepted that he has invited the students to choose a "dirty example". He said in cross-examination, "yes I might have said that".

123. The Claimant was challenged as to his assertion at page 361 that he thought it inappropriate for a student to make reference to the Mars bar example in an exam paper. The Claimant said that the student should have cited jurisprudential examples from decided cases. In the Tribunal's judgment, the Respondent is correct in its submission that it is hardly surprising in the circumstances that a student would cite the example given to them by the Claimant in his lectures about the Sale of Goods Act.

124. It was suggested that the references to Playboy were apropos of nothing. Again, this was an example of a gratuitous sexual reference. The Claimant said that those references were intended to be 'ice breakers'

125. It was suggested to the Claimant that there were numerous inoffensive examples to illustrate the point he was seeking to make around the Sale of Goods Act. The issue of the return of the chocolate bar as unfit for purpose was described by the Claimant as being "so absurd as to explain section 14".

126. Finally, the Claimant confirmed that he remained unrepentant about what he had said to the students. He said before us that he had not done anything wrong and continued to maintain his position.

127. The Claimant maintained before Professor Norcliffe that he was being victimised. He was concerned about Mr Dhillon's management of the department. He was concerned about the peer review issue and had been vocal about it. He maintained that it was Mr Dhillon's wish to ruin his reputation as a good lecturer of 29 years standing and that there was a conspiracy against him. He suggested that the staff had "steamrollered" the students into making complaints.

128. On 7 May 2015 Mr Leader forward to Susan Tallents the Claimant's response to the transcript of the interview held on 21 April 2015. The Claimant's response is at page 203. He observed that there was "a lack of substantial and material evidence" and that the case was "based on rumour and innuendos". He went on, "this being the case the only evidence that could support any disciplinary action is that provided by me, in a signed statement. Since this is contrary to any concept of natural justice and human rights, I am unwilling to sign my statement without an assurance that my signed statement will not form the material basis of any disciplinary action and furthermore is not to be used without my consent". He also said that the reference to the Playboy magazine issue should be removed "as it was not part of the original brief, although it

does show signs that the management conducted a 'fishing trip' as an 'afterthought' to support a weak argument".

129. When taken to this in cross-examination, it was suggested to the Claimant that his own admission was the clearest evidence and that there was nothing improper in the Respondent using it. The Claimant said, "The Respondent has to prove its case". In closing submissions, Mr Lewinski described the Claimant's position upon this as "bizarre". The Claimant did concede in cross-examination that his position as portrayed in the document at page 203 was not a sensible one.

130. On 9 May 2015 Susan Tallents emailed Mark Leader (page 209). She pressed the Claimant for his grievance following the intimation of his intention to raise one at the investigatory meeting with Professor Norcliffe. She said that Professor Norcliffe had correctly raised the issue about Playboy magazine as it had been raised by a witness.

131. On 14 May 2015 the Claimant informed Susan Tallents of his intention to pursue a victimisation complaint. We refer to page 211. Susan Tallents replied the following day (also at page 211) to say that due to the Claimant's intention to raise allegations about Mr Dhillon she would speak to Hilary Hughes to advise of the need to change the commissioning manager. The scope of Professor Norcliffe's investigation would then be extended to include an additional remit to cover the Claimant's grievance. On 19 May 2015 Susan Tallents confirmed that Professor Wigginton was now appointed as the new commissioning manager (page 213). The Claimant fairly accepted this to have been a proper step taken by the Respondent.

132. Hilary Hughes set about arranging a meeting with Professor Wigginton in order to discuss the Claimant's grievance. The meeting took place on 18 June 2015. Between 21 May 2015 and 11 June 2015 there were exchanges of emails around the proposed meeting date.

133. On 2 June 2015 Mark Leader informed Hilary Hughes that the situation was impacting upon the Claimant and causing a strain with his home life (pages 217 and 218). He also said that the Claimant had no access to work emails but that anyway accessing work emails and engaging with work issues during suspension increased his anxiety levels. Hilary Hughes offered to intervene to enable the Claimant to have access to his emails. Mr Leader informed her that this was of little concern to the Claimant as "he is almost relieved to not have access, as checking it engenders such profound anxiety". Mr Leader went on to say, "I'm happy to continue to be a conduit for information if you wish, however this is not an ideal situation for any of us". The Claimant told us in evidence that he was "psychologically destroyed at this point".

134. Professor Wigginton says that, upon his appointment as commissioning manager, he "was not really aware of the matters in relation to the Claimant. I might have been aware that there were disciplinary issues but I did not know the detail and I had not been asked to provide any input or advice". While he "was given the broad headlines about the allegations" he had no paperwork.

135. The meeting of 18 June 2015 was for the purposes of discussing how to deal with the grievance. The notes of the meeting are at pages 224 to 232. As we can see, there was some detailed discussion about the matter. Towards the

end of the meeting Professor Wigginton sought to summarise the points that he had ascertained the Claimant to be making. These were:-

135.1. How the student complaints were raised, the status and nature of them and whether there was scrutiny of their validity.

135.2. Whether the approach taken to the management of the concerns was appropriate and whether it amounted to victimisation of the Claimant

135.3. The circumstances of the Claimant's return to work after his period of absence in light of the occupational health referral. The latter refers to the referral to occupational health by Peter Charlish in October 2013.

136. The Claimant complained that the remit was very narrow. He said that he wasn't really engaging with matters at this point having suffered a breakdown of his marriage. Tragically, at around this time the Claimant's granddaughter died. The Claimant said that in reality he left matters to Mr Leader who was more engaged with the process than was he at that stage.

137. When taken to this issue in cross-examination, the Claimant said that he was essentially asking Professor Wigginton to look at the department as a whole. That said, the Claimant accepted that he and Mr Leader had not taken issue with the remit identified by Professor Wigginton and relayed in Hilary Hughes' letter of 26 June 2015 (at pages 233 and 234 and which repeated the three issues at paragraph 135.). Hilary Hughes confirmed that Professor Norcliffe's remit was extended to include the three issues there identified. She also mentioned that should her own position become compromised as a result of the investigation process then she would step down. The occupational health report of 18 November 2013 was enclosed with Hilary Hughes' letter. This corroborates the Claimant's evidence that he had not seen it before then.

138. On 2 July 2015 Mr Leader emailed Hilary Hughes and Susan Tallents (page 241). He referred to the very sad passing of the Claimant's granddaughter. The Claimant unsurprisingly was "incoherent with grief". Because of these tragic events the Claimant had not yet seen a copy of the remit letter sent by Mrs Hughes on 26 June 2015. Mr Leader reiterated that it was his belief that it was necessary for the students alleged to have made a complaint against the Claimant to be interviewed by Professor Norcliffe in order to establish the circumstances surrounding how the alleged complaint was made initially, what happened and why it was never formalised. Also, he called for an investigation as to why Mr Dhillon decided to suspend the Claimant. It was the latter issue which gave rise to Hilary Hughes' own concerns about her position given her involvement in the matter during the early part of February 2015.

139. On 3 July 2015 Mrs Hughes emailed Mr Leader (page 240). She suggested there be an occupational health referral in the light of the matters referred to by Mr Leader. Given the circumstances, Hilary Hughes suggested (as an alternative to the Claimant being the first to be interviewed about his grievance by Professor Wigginton) that Mr Dhillon and Mr Charlish be interviewed first. She also confirmed the Respondent's intention to make contact with one of the students involved in the complaint.

140. On 9 July 2015 Professor Norcliffe met with the Claimant for a second time. The notes of the meeting are at pages 374 to 404. The Claimant was accompanied by Mr Leader. Professor Norcliffe was accompanied by Susan Tallents. There was a discussion about the circumstances leading to the

Claimant's absence in 2013 and some of the issues he perceived to exist in the law department at the time. Save for the passages at pages 392 and 402, the Tribunal was not taken to any other parts of the note of this meeting.

141. We do not consider it necessary to recite in detail what was discussed at the meeting of 9 July 2015. The Claimant raised:-

141.1. The issues around Lesley Lomax.

141.2. The consumer module that created a great deal of stress for him.

141.3. The circumstances leading to the occupational health referral in 2013.

141.4. The return to work issue in the autumn of 2013 including the adjustments to the Claimant's workload.

141.5. Concerns about Mr Dhillon's management of the department.

141.6. Mr Dhillon's approach to him about early retirement.

141.7. The circumstances giving rise to the Claimant's concerns about how the issues arising from the student complaints had been dealt with when they first came to light in February 2015.

142. Professor Norcliffe said that he had discussed matters with Mark Edwards who, it will be recalled, had counselled the Claimant prior to February 2015 to be cautious in the language that he used because some students found it inappropriate. The Claimant had no particular recollection of this but said, "If Mark Edwards had said moderate my language, I would have said 'well I don't swear anyway, unless I have to' and therefore when I'm talked to about moderating my language I would ignore that. I hate to say it, I would ignore it. I mean whether or not it was said, is irrelevant because at the end of the day it wasn't said with any force. And therefore I wouldn't take it on board anyway". In cross-examination, the Claimant confirmed that he took the reference by Mark Edwards to inappropriate language as being about swearing and not the content of the Claimant's lecture material.

143. Towards the end of the meeting (recorded at page 402) we see that Susan Tallents mentioned to the Claimant that the summer period was upon the parties. The Claimant understood that and said that he was "quite happy" for matters to take their course. He said it did not matter if the investigation took another two or three months given that he had by this stage been off for six months anyway. He said that the Respondent had turned "a small thing … into a massive mountain". He considered the allegations against him to have been concocted and to amount to victimisation.

144. On 9 July 2015 the Respondent received an email from Amy Trimble. This was in response to a request from the Respondent for her account. The Respondent's request is at pages 246 and 247. Amy Trimble's reply (to which we have already referred) is at pages 409 to 411.

145. Amy Trimble said that when explaining the legal concept of consideration in September 2015 the Claimant had used an example of a student giving sexual favours in return for a grade increase. She went on, "it was added that if the student was male then money and sex would have to be exchanged for the grade increase 'due to the messier clean up"".

146. She referred to a conversation in a lecture about a newspaper article that the Claimant had seen on the way into work regarding the man with diphallia.

Amy Trimble said that the Claimant "proceeded to ask the male students what they thought about diphallia and together they weighed up the 'pros and cons' of having another penis. Dennis then asked the female students if they would rather a man had one or two penises. This conversation lasted 15 minutes into scheduled lecture time".

147. Amy Trimble said that "an example of the Sale of Goods Act was given regarding items only being eligible for return if it does not fulfil its purpose. This example included the use of a chocolate bar for a sexual act, here the students were told "you can't return it all melted and sticky because it didn't work". It was later clarified that this example was in reference to Mick Jagger and Marianne Faithfull."

148. Amy Trimble said that "it should be noted that with some inappropriate topics within the lecture hall context Dennis asked if we wanted 'the clean or the dirty example'. He was often not answered by students".

149. Miss Trimble then said that "when we asked Dennis for advice regarding the semester one presentation assessment, we were told that if we wore a low cut top it may help our grade". She went on to say, "we were informed that Dennis' wife had made a comment that annoyed him and as a result she would not be 'getting any' for a week'". Miss Trimble also said that discussions took place between the Claimant and male students regarding walking around sex shops during seminar time.

150. Amy Trimble confirmed that seven individuals had expressed their concern and discomfort regarding inappropriate comments and it was this than led to her, in her capacity of student representative, raising the issue with Vicky Thirlaway. After that informal chat a meeting was then arranged with Elizabeth Smart and the Claimant was taken off the student timetable. This then led to the second meeting at which Vicky Thirlaway and Amy Trimble were present (that being the meeting that took place on 6 February 2015).

151. When taken to Amy Trimble's statement in cross-examination the Claimant did not allege that Amy Trimble was fabricating her evidence. He was somewhat reticent about alleging that she was part of a conspiracy to be rid of him but did say that students may be influenced. The Claimant said that Amy Trimble was incorrect to say that the article (about the individual with diphallia) had been in a newspaper. It was in fact upon one of the student's smartphones in the form of a news article. The Claimant accepted that he "might have" had the conversation to which Miss Trimble referred about the "pros and cons of having another penis" and asking for the female students' comments. The Claimant said that he may have said this as a joke and for humour.

152. Professor Norcliffe was cross-examined by the Claimant to the effect that he had contented himself with only one student's account. Professor Norcliffe accepted this to be the case. He said that his decision made sense because Amy Trimble was a student representative and it was she who had taken the case to Vicky Thirlaway. Professor Norcliffe rejected the Claimant's criticism that Amy Trimble had only been asked to give her account some months after the event. Professor Norcliffe said that he had approached Amy Trimble as a result of Mr Leader's request to have input from the students.

153. On 30 July 2015 Hilary Hughes wrote to the Claimant (pages 249 and 250). She extended her condolences to the Claimant over the tragic loss of his

granddaughter. The Claimant was reminded about the Respondent's staff counselling service. Hilary Hughes said that she had been informed by Susan Tallents that the Claimant was uncertain as to who his point of contact should be from within the department. James Marson, principal lecturer in law, had agreed to be appointed as the Claimant's contact. He would in addition support the occupational health referral. The Claimant was asked to confirm that he was comfortable with Mr Marson acting in this capacity. Mrs Hughes reminded the Claimant that Mr Dhillon had written to him on 8 May 2015 about undertaking work at home or at the university. That being the case, the Claimant was no longer on authorised absence with effect from 8 May 2015. Hilary Hughes asked for clarification from the Claimant as to whether he was at work but choosing to work from home, on annual leave or on sick leave. It was put to the Claimant by Mr Lewinski that the Respondent had very much "put the ball in the Claimant's court" regarding work. The Claimant accepted that it "seemed that way" but commented that he "was in a mess in August".

154. On 3 August 2015 Susan Tallents wrote to the Claimant (pages 252 and 253).. She enclosed a transcript of the meeting of 9 July 2015 with Professor Norcliffe and reminded him also to return the transcript from the meeting of 21 April 2015 which remained outstanding. Mrs Tallents had in fact spoken to the Claimant that day arising out of Hilary Hughes' letter of 30 July 2015. Various options were discussed as was a temporary change of line manager.

155. The issue of the Claimant's status appeared to be resolved on 6 August 2015 (page 254). Mrs Tallents confirmed that the Claimant was deemed to be on authorised absence from 9 February to 31 July 2015 and then on annual leave from 1 August to 31 August 2015. The Claimant was not required to undertake the work that Elizabeth Smart had sent to him. Hilary Hughes was to be replaced as the HR support for the commissioning manager by Miss Ward. James Marson was to be the Claimant's temporary new line manager.

156. The Claimant said in evidence that he felt isolated and had little contact with James Marson. This was limited, he said, to around four telephone conversations. On 1 September 2015 (page 262) we can see that the Claimant complained of having had no contact at that stage with James Marson. The Claimant said, "Under the current situation appending the outcome of Alan *[Norcliffe]*'s report I do not consider that it would be appropriate for my psychological health to return to a fluid unresolved situation particularly when I am under an obligation of confidentiality. If it is requested I will obtain a doctor's sick note to cover my absence". He said that the "unresolved nature of the last eight months have taken a toll on my health confidence and well being to the point that is subjectively appears my continued employment with the university is sadly becoming less and less tenable or desirable". This was acknowledged by Susan Tallents who suggested waiting for Mr Leader's return from annual leave to discuss the situation further (page 262). The Claimant had explained in his email to Susan Tallents of 20 August 2015 (pages 256 and 257) why he thought it was inappropriate for him to return to work. This was because it would not be appropriate to undertake exam papers or marking "given the obstacle of an inability to communicate with colleagues". He considered Hilary Hughes' letter of 30 July 2015 to be "inept or a further attempt at victimisation".

157. On 9 September 2015 the Claimant was emailed by Susan Tallents (page 264). She referred to a conversation with Mark Leader where it was confirmed

(following her discussion with Professor Wigginton) that the Claimant may remain on authorised absence during September and until the investigation has been concluded. She asked for his observations upon Amy Trimble's account (in the bundle at pages 409 to 411). She also reminded him that there remained outstanding the Claimant's comments upon the transcripts of the interviews with Professor Norcliffe.

158. The Claimant's reply to the email at page 264 off 9 September 2015 is at pages 407 and 408. He said that all of the allegations against him were "partially true but without the context and in cases embellished".

159. With reference to Amy Trimble's evidence that female students had been encouraged to wear low cut tops, the Claimant said that he had told students not to worry about their attire when undertaking their oral presentations in front of the seminar group. The Claimant said that he was more concerned about the substance and clarity of their presentation and did not wish them to feel that they would obtain additional marks for attire or go to extra expense in buying smart clothing. The Claimant then said, "A six foot plus male student contrary to everything I had been saying over the previous weeks repeated the same question 'will I gain marks if I wear a suit?' Exasperated I replied 'if you wear a short skirt and (I think I said) high heels you might get extra marks but forget it. You must let it go'. The group burst out laughing and took it the way that it was meant – as a joke and not remotely as a request".

160. The other issue raised by Amy Trimble was that pertaining to the Claimant's wife. The Claimant said, "I do remember my partner (I don't use "wife" in front of students) had been wanting the house perfect at Christmas putting pressure on me to get a log burner fitted. I remember saying "why is it that everything needs to be done for one day. Are all mums like that? I may have followed that or a similar comment as an attempt to humour, spinning the popular notion that women withdrew favours to that of me withdrawing favours. However as far as being 'mad' I wasn't at all".

161. On 15 September 2015 Hilary Hughes asked James Marson to contact the Claimant in order to make progress with the occupational health referral (page 265). This was followed up by Mr Marson on 21 September 2015 (page 268). The Claimant accepted the occupational health referral to be a sensible and supportive measure on the part of the Respondent.

162. On 18 September 2015 Mr Leader informed Mr Tallents that the Claimant was unable to go through the transcripts as to do so made him too anxious. However Mr Leader had gone through them "and they do appear to be essentially what we discussed. There are a few errors in transcription but nothing important as far as I can see". This is at page 266.

163. The occupational health referral form is at page 269 to 273. Occupational health was informed that the Claimant was on a period of authorised absence whilst an investigation was being conducted. The referral said that the Claimant "has reported that he is feeling stressed as a result of this and due to his personal circumstances. The investigation has nearly concluded and we would like advice on whether there are any actions that could be taken to support Dennis currently and in relation to his return to work". A number of specific concerns were raised. These were whether the Claimant was fit to return to work, the support measures that should be considered when the Claimant returns to work and how the return to work should be arranged.

164. Professor Norcliffe completed his report on or around 9 September 2015. He says at paragraph 27 of his witness statement that he went through a quality assurance process with the Respondent. After that process had been undertaken Professor Norcliffe finalised the report and it was submitted formally to the Respondent in October 2015. The report is at pages 274 to 511.

165. At the outset of the report Professor Norcliffe sets out his remit. This was the remit agreed or reached following the meetings of 17 February 2015 and 18 June 2015. There were therefore five items in total within Professor Norcliffe's remit. Professor Norcliffe then describes the investigation process. At the table on page 276 he sets out those whom he interviewed and the dates of interview. We have referred to most if not all of these interviews already.

166. In painstaking detail, Professor Norcliffe then goes through his main findings and observations. This is section 4 of his report at pages 277 to 295. We need not set this out in detail.

167. He then reaches his conclusions which are set out at section 5 of the report to be found at pages 295 to 301.

168. Mr Norcliffe concluded that the comments of a sexual nature identified in Vicky Thirlaway's note *[at pages 147 and 148/308 and 309]* had been proven upon the evidence before him. He concluded that the comments were of a sexual nature and were inappropriate and that there was a gulf in perception between what the Claimant regarded as appropriate and what his colleagues felt was appropriate in the classroom. His conclusion was that the Claimant's use of sexual comments had contravened aspects of the Respondent's Dignity at Work Policy. He also concluded that the Claimant had not demonstrated the professionalism expected when carrying out his duties as a senior lecturer. He thought there was a risk of the reputation of the Respondent being brought into disrepute. He found that the Claimant had made remarks to the effect that wearing short skirts or low cut tops may be of benefit to female students and in so doing the Claimant had acted unprofessionally and had contravened the Respondent's Code of Behaviour and Dignity at Work Policy.

169. He did not find there to be anything irregular in the way in which the student complaints had been raised. They had been brought to Vicky Thirlaway's attention by Amy Trimble in her capacity as a student representative. Matters were sufficiently serious to warrant further investigation. He concluded there to be no credible evidence that this decision was indicative of victimisation of the Claimant or was anything other than appropriate.

170. Professor Norcliffe found the handling of the Claimant's return to work in the autumn of 2013 to be appropriate. In particular he had had a significantly reduced workload.

171. Professor Norcliffe recommended that the commissioning manager may wish to consider formal proceedings under the PRF in relation to the Claimant's breach of the Respondent's Code of Behaviour in relation to the examples he used of a sexual nature in his law of contract lectures and seminars and his breach of the Respondent's Code of Behaviour in relation to comments he made to level 4 students about securing a better grade in the semester 1 presentation assessment. He also considered that the Claimant's comments potentially brought into disrepute the Respondent's law and criminology department.

Professor Norcliffe went on to recommend that the Claimant be reminded of the Respondent's Code of Behaviour and the implications should there be any further breaches of the Code. He recommended there to be a 'development intervention' to address the breaches and to explore whether the Claimant and Miss Smart were agreeable to having a "facilitated conversation to restore their relationship". A similar measure was recommended by him with a view to repairing the relationship between the Claimant and Mr Dhillon.

172. The following emerged from the cross examination of the Claimant upon Professor Norcliffe's report:-

172.1. That the conclusions that Professor Norcliffe had reached (identified in italics in section 5 of the report) were permissible conclusions obtained from the evidence before him.

172.2. That Professor Norcliffe had concluded that the Claimant perceived he had done nothing wrong by his conduct and again that was a permissible conclusion to have reached upon the basis of the evidence before him.

172.3. That the remark about students wearing low cut tops was a conclusion reached by Professor Norcliffe upon the basis of the evidence of one student but nonetheless was a permissible conclusion to have reached upon the basis of what he had before him.

173. The Claimant agreed that Professor Norcliffe's approach had been even-handed as there was criticism of the Respondent by reason of the failure to share with the Claimant on 9 February 2015 details of the matters of concern. The Claimant fairly accepted that Professor Norcliffe had concluded that as Mr Dhillon had stepped aside and had no further involvement in the matter after the review meeting of 17 February 2015 this told against a conspiracy against him or of him being victimised by Mr Dhillon. The Claimant accepted that to be a conclusion open to Professor Norcliffe upon the basis of the evidence before him. He said the conclusion may have been different had he investigated matters more thoroughly. The Claimant accepted the logic of Professor Norcliffe's recommendations. He accepted them to be permissible findings based upon the evidence before him.

174. On 19 October 2015 Professor Wigginton sent a copy of Professor Norcliffe's report to the Claimant (page 512). At this stage, the Claimant was only sent the report at pages 274 to 302. He was not sent the appendices listed at page 303 and which are in the bundle at pages 304 to 511. The Claimant was invited to attend a meeting on 5 November 2015 to discuss the report, its recommendations and the next step in the process.

175. On 28 October 2015 the Claimant was assessed by his GP. Following that assessment the GP advised the Claimant that he was not fit for work because of work stress. The Claimant was certified as unfit for work between 28 October and 30 November 2015. We refer to page 515.

176. On 5 November 2015 Mark Leader emailed Miss Ward (page 516). He told her that the Claimant was devastated by Professor Norcliffe's findings and recommendations. It appears from this email that the Claimant had not in fact read the report but that Mr Leader had read it and had summarised it for him. Mr Leader told Miss Ward that he had suggested that the Claimant should read the report over the next few days. Mr Leader told Miss Ward that the Claimant was "struggling with terrible anxiety and didn't know whether/if he could bring

himself to [read the report]". Mr Leader said that he was "loathe *(sic)* to contact Dennis as doing so increases his anxiety. His state of mind is of great concern and I am worried about what he may have done/do. I hope I'm overstating things, but have seen the impact this situation has had on him since February. He was extremely optimistic about the outcome of the investigation and thus it has come as yet another blow to him".

177. On 6 November 2016 Mr Leader spoke to Miss Ward. Mr Leader told her that he refused to contact the Claimant as even contact from him causes anxiety. Therefore, Mr Leader was going to wait for the Claimant to contact him as "he doesn't want to be responsible for what happens if he contacts him. Also [he] doesn't think it is his role to do a job of the line manager". It was Mr Leader's evidence (at paragraph 11 of his witness statement) that "because of his depression and anxiety Dennis had requested and Professor Wigginton agreed that all communication be conducted through me as his trade union representative". The Respondent challenged this evidence upon the basis that there was no formal agreement to this effect. The matter appears not to have been discussed at the meeting of 18 June 2015 (the notes of which commence at page 224). Mr Leader said that the Claimant's email difficulties led to communication issues which exacerbated the Claimant's stress and anxiety and Mr Leader thus agreed to act as the go-between in order to support the Claimant. There is corroboration of Mr Leader's position in the email of 2 June 2015 at pages 217 and 218 (to which we have already referred). Evidence of this arrangement whereby the Respondent would contact the Claimant through Mr Leader was, according to Mr Leader, demonstrated by the email and telephone notes of 5 and 6 November 2015 at page 516.

178. The Respondent certainly embraced Mr Leader's involvement in the matter. We have already referred to the emails at pages 180 and 182 (about who should be interviewed by Professor Wigginton), pages 195 to 197 and page 200 (upon the issue of the Claimant's authorised absence) as well as pages 217 and 218 (upon the question of the Claimant's email access). Therefore, there is good evidence that Mr Leader agreed to act as a conduit between the Respondent and the Claimant and, indeed, that the Claimant preferred communication to go through Mr Leader until 5 November 2015. It was at that point that Mr Leader refused to act further given his concerns for the Claimant's health. By this stage, of course, the Respondent had nominated Dr Marson as the Claimant's point of contact within the department (page 268).

179. Miss Ward prepared a typed note of the telephone conversation recorded in manuscript on page 516. The typed note is at page 518. Miss Ward said that she considered the Claimant may benefit from Mr Leader's support. Mr Leader said that he would not contact the Claimant and refused so to do. The Claimant accepted in cross-examination that Mr Leader's position left the Respondent with no option but to contact the Claimant directly. While accepting this to be the Respondent's position the Claimant did say that another option was for the Respondent simply to leave the Claimant alone.

180. Also on 5 November 2015 Hilary Hughes asked Dr Marson if he had heard anything from the Claimant. Dr Marson responded to say that he had not (page 524). Mrs Hughes requested Dr Marson to telephone the Claimant (page 523).

181. The Claimant spoke to James Marson on 10 November 2015. On 11 November Dr Marson emailed Hilary Hughes to let her know the outcome of the discussion (page 522). Dr Marson reported that the Claimant was "very unhappy with the decision and considers the investigation a 'stitch up'. He informs me he is seeking legal advice and will take action when it suits him to do so. He has a sick note until the end of the month – which he has promised to send to me, and will obtain another in December".

182. As we can see from page 519, the Claimant did in fact obtain another sick note upon the expiry of that at page 515. Again, the Claimant's GP, following an assessment on 30 November 2015, diagnosed the Claimant as unfit for work because of work stress.

183. On 23 November 2015 Mrs Hughes emailed James Marson (page 521). She asked if the fit note (that being the one at page 515 dated 28 October 2015) had yet been received. Dr Marson said that he had not yet got it. However, it appears that there was a discussion between Dr Marson and the Claimant on 26 November 2015 which the Claimant said that he would send it in.

184. In the email of 23 November 2015 Mrs Hughes said that Professor Wigginton wished to refer the Claimant to occupational health. The Claimant accepted in cross-examination that this was a sensible suggestion. It appears from the email exchange at page 520 that as at 1 December 2015 the sick note of 28 October 2015 had still not been received by the Respondent.

185. That situation was quickly remedied as on 4 December 2015 Dr Marson emailed the Claimant to acknowledge receipt of the sick notes that are in the bundle at pages 515 and 519. The latter certified the Claimant as unfit for work until 11 January 2016.

186. On 14 December 2015 Dr Marson wrote to the Claimant (page 528). He confirmed that the Respondent wished to refer him to occupational health and enclosed a proposed referral form. The form is at pages 528A and 528B. Advice was sought about the Claimant's state of health and his fitness to return to work. The Respondent also sought advice about the support which may be afforded to the Claimant in the course of the investigation, in particular to support the Claimant in order that he could effectively participate in meetings connected with the investigation. Advice was also sought about any other supportive measures that may be put in place in connection with the ongoing investigation.

187. Concerns were raised between Hilary Hughes and Dr Marson about a lack of response from the Claimant to the letter of 14 December 2015 and about the Claimant's intentions upon expiry of the sick note at page 519. Dr Marson spoke to the Claimant on 11 January 2016. The Claimant said that he had spent some time in hospital over the Christmas break and had missed the scheduled doctor's appointment. He was due to see his GP on 18 January and anticipated being signed off as unfit for work again. The Claimant mentioned his intention to appeal against "the decision of the investigation into his activities". We refer to pages 530 to 532.

188. On 12 January 2016 Hilary Hughes emailed Mr Leader. She said that the Claimant "appears to have misunderstood the situation in relation to the investigation as he told James [Marson] he is going to appeal the investigation decision. I have checked with Marie Ward where the process is up to and

Chris Wigginton has invited Dennis to the review meeting which is his opportunity to hear Dennis' comments to the report in brief – after which he will make a decision on the way forward". She also made reference to the need for Dr Marson to speak to the Claimant regarding the question of the fit notes and the occupational health appointment. Mr Leader simply replied "thanks Hilary" the same day. We refer to page 533.

189. It appears that the Claimant got in touch with Dr Marson by text on or around 15 January 2016. This prompted the email from Dr Marson to the Claimant of that day (page 534). This confirmed an appointment for the Claimant to see Yvette Stables of occupational health on 3 February 2016. Dr Marson also reminded the Claimant that fit notes were required to cover the Claimant's ongoing absence as that of 30 November 2015 had expired on 11 January 2016.

190. Yvette Stables' report is at page 536. This consultation was undertaken over the telephone. The structure of the report focuses upon current issues, OH opinion and management advice. By reference to current issues, Yvette Stables said the Claimant had been absent from work from 28 October 2015 "due to perceived work related stress". She mentioned that the Claimant had been "excluded from work for a year prior to this as he was subject to a disciplinary process". She said that the Claimant had told her that he had some personal health issues for which he is receiving hospital care and has also attended his GP who advised him to refrain from working and prescribed anti-depression medication. He was advised to contact counselling services but had not yet made any arrangements. She said "Dennis tells me he has never had a complaint in 30 years and has always had good reviews. He tells me the thoughts of coming to a SHU building fills him with dread. Dennis states that he has decided to sue the university and will be speaking to a lawyer tomorrow. Dennis states that he would have his lawyer present at any forthcoming disciplinary meetings and would prefer the meeting were not held at SHU building".

191. This was the OH opinion:

> *"Work related stress is the adverse reaction people have to excessive pressure or other types of demand placed on them. At appointment today Dennis was engaging and spoke openly regarding his recent issues. He sounded very stressed and was tearful throughout the appointment. A well validated mental health assessment completed today suggests he may have mild anxiety and depression. I have encouraged Dennis to contact counselling as he may need ongoing support during this disciplinary process. Dennis is not fit to return to work due to ongoing symptoms".*

192. This was the management advice given by Yvette Stables:

> *"I am unable to give a return to work date at this time. With counselling Dennis should be given support and coping mechanisms to help him better deal with stress. A speedy resolution to issues outstanding at work is likely to expedite an improvement in his mental well being. This condition will continue if his stressors remain unchanged. Dennis is fit to attend meetings. The assessment today indicates an ability to understand allegations, distinguish right from wrong and a reasonable understanding of proceedings. General medical evidence is that undue*

delay in dealing with 'stressors' can result in an exacerbation of symptoms and so our advice is to conclude matters with normal care, concern and sensitivity and in a timely manner by scheduling a meeting".

193. In cross-examination, the Claimant expressed himself surprised by Yvette Stables' recommendations (particularly for the Respondent to get on with matters and hold a meeting). The Claimant said, "I was gone mentally at this time. I was stressed and depressed". The Claimant fairly accepted that he would expect the Respondent to follow advice "if that was independent specialist advice". He conceded that PAMOH Solutions from whom the Respondent sought and obtained OH advice were independent specialists. He also conceded there to be no advice from Yvette Stables for the meeting to be held elsewhere than the Respondent's premises. It was also noted that the Claimant himself had not made that suggestion.

194. Upon receipt of the OH report, Hilary Hughes asked Dr Marson to contact the Claimant. She advised him to tell the Claimant that the Respondent was now in receipt of Yvette Stables' report, that upon the basis of it he would be sent an invitation to a meeting with Professor Wigginton and to ask the Claimant if he wants to see a copy of the report. Dr Marson followed this advice and spoke to the Claimant on 5 February 2016. Dr Marson said that the Claimant told him that he did not wish to see a copy of the report "and is focusing on a legal claim against the university". We refer to pages 537 and 538.

195. When asked about this in cross-examination, the Claimant said that when he spoke to Dr Marson he asked him what was in the report. He says that Dr Marson told him that the report "is fine – there are no problems" upon which basis the Claimant told Dr Marson "it was ok to go ahead then". The Claimant accepted that he did decline a copy of Yvette Stables' report. The Claimant also told Dr Marson that he would not be attending a meeting without legal representation.

196. On 9 February 2016 the Claimant wrote a letter to Professor Wigginton. The letter is at pages 539 to 543. Handwritten annotation at the top of page 539 evidences that the Respondent in fact received this on 23 February 2016.

197. The private Preliminary Hearing held on 21 September 2016 identified this letter as being one of two items of correspondence setting out disclosures which the Claimant says qualify for protection under the provisions of Part IVA of the Employment Rights Act 1996. We shall not set out this lengthy letter in full. However, it is plain that the Claimant rejected Professor Norcliffe's finding. In summary that Claimant's position was:-

197.1. That the report was confusingly absurd to the extent that it does not "stack up" and is superficial.

197.2. The report was premised upon a dubious moral position that is over-paternalistic to students studying law and the finding that the Claimant's attempts to engage or humour students inappropriate because of their young minds.

197.3. The evidence upon which basis Professor Norcliffe made his findings was flimsy, the comments having been conveyed by a few students through Amy Trimble.

197.4. That there was "out dated morality on inappropriate discussion even [extending] to discussion of an Ann Summers shop that I did refer to in order to get across a memorable legal point".

197.5. That Professor Norcliffe's position was incompatible with academic freedom.

197.6. That the Respondent's reaction was disproportionate and the investigation inept. Further, the Claimant contended that the report was an "excuse for inept management".

197.7. The Claimant contended there to be a link between his trade union role on the one hand and the Respondent's actions on the other (we refer to the second paragraph at page 542).

198. The alleged public interest disclosures set out in this letter are in passages in the fourth and sixth paragraphs of page 542 and the third substantive paragraph at page 543. The alleged disclosures are these:-

198.1. That the Claimant "could not see how any reasonable employer would accept this report and ignore my claim of victimisation. It has been a substandard enquiry that has not only failed to understand and recognise my claim but has ignored all other markers that suggest not is all well within the law of fraction. No reasonable employer could act on a report that is economical with facts, economical in its resource base, economical with explanation and ignorant of evidence."

198.2. "Bullying intimidating leadership that has not only corrupted management ethics but has embedded itself through a cowed management team which causes employees work stress is not one an academic institution should be seen to support."

198.3. "However, (and with reservations) even though my loyalty to the university is stretched (and to some of its rogue employees non existent) I am reluctant to unleash public approbation and potential shame on it by pursuing my grievance through into the public domain. I am certain that to many, as I, it is inconceivable to imagine the university to continue supporting unfair management practices at the expense of an employee who has been victimised and smother attempts to stand up and be a 'whistle blower'".

When cross-examined upon the contents of this letter, it was suggested to the Claimant that there was nothing dubious about the Respondent's wish to protect students from inappropriate sexualised comments. The Claimant agreed that students "should be protected from sexual advances but not from an explanation. It is a question of my intention behind the comments". The Claimant was challenged as to his suggestion that the Respondent was seeking "to curtail academic freedom which cannot be extended to unrestrained exposure". The Claimant replied that academic freedom was "the ability to develop thought and how to put across information".

199. The Claimant was challenged as to his suggestion that Professor Norcliffe was not independent. The Claimant said that he was having paranoid thoughts at the time. He accepted now that Professor Norcliffe was "not personally biased". He maintained however that the research and evidence upon which basis Professor Norcliffe reached his conclusions was biased.

200. Towards the end of the letter (at pages 542 and 543) the Claimant sets out a number of options open to him. These were:

- To make his treatment public.
- To present his case to the board of governors or the Secretary of State for Education and Science.
- To pursue a legal action for victimisation/constructive dismissal.
- To negotiate an exit strategy.

201. It was put to the Claimant in cross-examination that none of these options involved engagement with the Respondent and were in fact the Claimant's options. The Claimant accepted this to be the case and maintained that he could not engage with the Respondent because he was ill. The inability of the Claimant to engage with the Respondent was rightly questioned by Mr Lewinski upon the basis of the Claimant's ability to prepare as carefully constructed and considered a letter as that of 9 February 2016. There was nothing emanating from the Respondent's occupational health advisor or, for that matter, any of the Claimant's own medical attendance to the effect that the Claimant was unable to engage with the Respondent's process. From this, it is an inescapable conclusion that the Claimant simply did not wish to engage with the Respondent's process. It is not the case that he was unable so to do by reason of ill health.

202. The Claimant's mindset set the tone for the review meeting which took place on 8 March 2016. In cross-examination, the Claimant candidly accepted that he was willing to engage with the Respondent but only upon his terms. When it was put to him that he was not offering to engage with the formal process of the Respondent pursuant to the PRF, the Claimant said "no, for principles". We find therefore that the Claimant decided upon a principled position: that he simply would not engage with the Respondent's process pursuant to the PRF and instead wished for the Respondent to pursue matters but upon the Claimant's terms. To that end therefore the Claimant had offered (in his letter of 9 February 2016) "a confidential, private and unreported meeting in an attempt to bridge the chasm of distrust that I currently feel". On 25 February 2016 this suggestion had been rejected by Professor Wigginton. We refer to the third paragraph of his letter at page 546.

203. The notes of the meeting of 8 March 2016 are at pages 548 to 550. At the start of the meeting the Claimant handed to Professor Wigginton and Marie Ward the document that we see at page 551. In this document, the Claimant says that "there is a conspiracy operating and that there is a serious problem with bullying and victimisation within law leading to unwarranted actions by management". He said that he was attending the meeting alone as Mark Leader "appears not to have been informed and when I asked for his presence at such short notice could not attend anyway". He maintained that the investigative process was flawed "and the report is now about management protection, justification and damage limitation rather than an objective and constructive dialogue".

204. The meeting was adjourned for a period of five minutes to enable Professor Wigginton to read the document. Upon resumption, Professor Wigginton asked the Claimant if he was willing to engage with the meeting the purpose of which was to discuss the investigation report and

recommendations. To this the Claimant "stated that he didn't want to be here, he was stressed".

205. In his witness statement (at paragraph 21) Professor Wigginton says, "it was a difficult meeting, the Claimant kept leaning over the table and pointing at me and I felt he was getting more and more stressed and aggressive. I tried to calm things down and get the Claimant to engage with me on the issues we were supposed to be discussing but the Claimant was not willing to address those issues. He talked about wanting to sue Professor Norcliffe for defamation. I asked him to give me his comments on the investigation report but he said that he was not prepared to divulge those as they could be part of his legal case. I repeatedly tried to get the Claimant to discuss the investigation report and the recommendations, and explained to the Claimant that if he was not willing to engage with this, I would need to make the decision how to proceed regardless. Nothing I said could persuade the Claimant to engage with the process or sit and discuss the investigation report with me. Instead, he made clear he did not want to be at the meeting and continued to behave confrontationally and aggressively to the point where, having done my best to get the Claimant to engage, I felt I had no option but to terminate the meeting".

206. The Claimant candidly accepted that he had behaved aggressively at the meeting. During the course of the proceedings before the Tribunal he offered an apology to Professor Wigginton for his behaviour. Having considered the notes of the meeting at pages 548 to 550, coupled with the Claimant's genuine apology during the course of the proceedings, we accept that the summary of the meeting at paragraph 21 of Professor Wigginton's witness statement as accurate.

207. The Claimant intimated an intention to go to see his GP and obtain a report "that would contradict what OH said". Presumably, this was a reference to the OH opinion upon the Claimant's fitness to attend meetings. The Claimant did not obtain any medical evidence upon this issue. We agree with Mr Lewinski's submission that the Claimant's presentation of the document at page 551 evidences the Claimant taking a principled stance upon the question of engagement with the Respondent's process.

208. On 10 March 2016 Professor Wigginton wrote to the Claimant (pages 552 and 553). Professor Wigginton said that due to his concerns about the Claimant's behaviour at the meeting of 8 March 2016 he had no alternative but to stop the meeting prior to the Claimant being informed by Professor Wigginton of his decision. Professor Wigginton said that "the next steps in the process are to invite you to a stage 1 grievance hearing and also a disciplinary hearing to consider the allegations against you". The Claimant was offered two alternative dates. Professor Wigginton was to chair the meeting supported by Miss Ward.

209. Professor Wigginton said that the purpose of the meeting was to "firstly discuss the report and my conclusion on your grievance. After a short adjournment, the meeting will reconvene to also consider the allegations against you in a disciplinary hearing".

210. The following disciplinary allegations were raised against the Claimant:

    210.1. Breach of the university's Code of Behaviour in relation to the examples you used of a sexual nature in your law of contract lectures and seminars.

210.2. Breach of the university's Code of Behaviour in relation to comments you made to Level 4 students about securing a better grade in the semester one presentation assessment.

210.3. That the Claimant's comments potentially brought into disrepute the law and criminology department and the wider university.

211. Professor Wigginton enclosed a further copy of Professor Norcliffe's investigation report. The appendices were also sent. The Claimant was informed of his right to be accompanied by a work colleague or trade union representative.

212. On 11 March 2016 the Claimant's GP assessed him again. He again certified him as unfit for work for a period between 11 March and 30 April 2016 by reason of work stress. We refer to page 554.

213. On 18 March 2016 the Claimant telephoned to inform the Respondent that he would not be attending the stage 1 grievance and the disciplinary hearing scheduled for that day. This was one of the two dates offered to the Claimant by Professor Wigginton in his letter at page 552. Professor Wigginton therefore wrote to the Claimant (page 558) to remind the Claimant of the alternative date for the meeting which was 22 March 2016. Professor Wigginton took the view that it was appropriate to continue in the light of the occupational health advice at page 536.

214. On 21 March 2016 the Claimant wrote to Professor Wigginton (pages 559 and 560). He thanked Professor Wigginton "for the remainder of Alan Norcliffe's report, which I believe I should have received six months ago". He went on to say, "I find it unacceptable that you have referred to my "behaviour" in the last meeting which I have a perfectly reasonable explanation of which you were aware. I do not consider any reasonable person let alone senior manager to refer to the manifestation of my mental condition as a "concern" to you. This demonstrates a lack of understanding of the nature of stress and depression and employees. I also consider your attempt to reconvene the meeting, only a week after, is both insensitive and unproductive". He complained that Professor Wigginton was unsympathetic and "bordering on vindictive to reconvene a meeting within such a short period without any enquiry into my state of health". He also complained that Mark Leader had not been invited to attend the meetings contrary to the Claimant's express request that he should be the initial point of contact. We have of course dealt with the issue concerning Mark Leader being the conduit for correspondence earlier in these reasons.

215. On 24 March 2016 Professor Wigginton replied to the Claimant (pages 561 and 562). The stage 1 grievance hearing and disciplinary hearing was re-scheduled for 19 April 2016. Professor Wigginton reminded the Claimant that the allegations against him were potential acts of gross misconduct and could result in disciplinary action up to and including summary of dismissal. Professor Wigginton had also said this in his letter of 10 March 2016. Professor Wigginton had told the Claimant that it was the Claimant's responsibility to arrange representation should he wish to be accompanied.

216. Upon the question of the Claimant's health Professor Wigginton said, "Whilst I appreciate that you are finding the process stressful the advice provided by occupational health is that a resolution to the outstanding work issues was likely

to assist in an improvement in your health and to conclude these matters in a timely manner by scheduling a meeting. They also advised that you are fit to attend a meeting. As your period of absence is continuing, your line manager will be contacting you in line with the university's sickness absence procedure to arrange a further OH referral appointment where we will seek to re-confirm the advice that you are still fit to attend the meetings under the formal PRF process".

217. Professor Wigginton confirmed that he considered it appropriate to continue with the process notwithstanding the reference in the letter of 24 March 2016 to the possibility of a second occupational health referral. Professor Wigginton told us that he "was looking for re-confirmation to underscore what was said previously".

218. Hilary Hughes put in hand arrangements for further occupational health referral. This was sent to the Claimant by email. We refer to Dr Marson's confirmation of this on 6 April 2016 (pages 563 and 564).

219. The further draft occupational health referral is at pages 564A and 564B. The management advice of 4 February 2016 is set out at 564B. OH was told that the Claimant had subsequently advised that he was not fit to attend meetings. Therefore, the Respondent wished to re-visit the management advice proffered by occupational health and that it was appropriate to continue or otherwise. Occupational health were asked to advise about the Claimant's fitness to return to work, measures that could support a return, the Claimant's fitness to participate in meetings and arrangements that could support his participation in the PRF investigation process.

220. On 8 April 2016 the Claimant wrote to Professor Wigginton (page 565). He repeated his contention that there had been an act of victimisation against him. He said that he wished to "contest the *bona fide* nature of the report *[prepared by Professor Norcliffe]* since it reaches unbalanced conclusions based on only partial considerations. I therefore contest that this is not a truly independent report". He went on to say that, "I am concerned that we seem to be going round in circles with no progress made to reach a mutually satisfactory understanding. Perhaps a new approach is needed with, as previously requested by myself, a meeting on neutral territory with yourself or an alternative representative of the university". He said that Professor Wigginton had failed to address his concerns, the focus had been on disciplinary matters and the trade union representative had not been kept informed.

221. At pages 566 to 568 are email exchanges between Hilary Hughes and Dr Marson upon the question of whether or not the latter had heard from the Claimant in connection with the further occupational health referral. Dr Marson said that he had not heard anything from the Claimant. However, as we can see from page 570, Dr Marson did hear from the Claimant on 12 April 2016. Dr Marson was told by the Claimant that he had sent the letter to Professor Wigginton of 8 April 2016 (page 565) to which we referred in paragraph 220. The Claimant was non- committal as to whether or not he was going to attend the meeting of 19 April 2016.

222. The Claimant did not attend the occupational health appointment that had been made for him for 13 April 2016 (page 569). The Claimant accepted in cross-examination that he was not engaging with the occupational health process. This left the Respondent in the position of only having the report of 4 February

2016 for guidance. This the Claimant accepted. However, he said that he was surprised that "they didn't send occupational health to see me". That said, the Claimant accepted that he had not made that suggestion himself and simply did not engage with the process in any form.

223. In response to the Claimant's letter of 8 April 2016, Professor Wigginton wrote on 15 April (pages 571 and 572). He told the Claimant that it was his responsibility to arrange trade union representation. He reminded the Claimant of the contents of the occupational health report of 4 February 2016 and in particular that a resolution to the outstanding work issues was likely to assist in an improvement in the Claimant's health and that the Claimant was fit to attend a meeting. The Claimant failed to attend the occupational health appointment that had been arranged for 13 April 2016. Professor Wigginton did not consider it appropriate for him to deal with what he described as "a new alternative": (this was in response to the Claimant's suggestion of a "new approach"). Professor Wigginton thus made arrangements for Alan Dainty, assistant director of human resources, to meet with the Claimant on a without prejudice basis. The hearing scheduled for 19 April 2016 was postponed to enable for this discussion to take place.

224. A discussion did take place between the Claimant and Alan Dainty. The Claimant said that he told Mr Dainty that he wanted "truth and justice" but that Mr Dainty dismissed the Claimant's 'proposal'. The Respondent's position was that Mr Dainty did not pursue matters because in reality the Claimant wanted to discuss with him the very issues that were part of the process being dealt with by Professor Wigginton. The Claimant said that Alan Dainty told him that he (Mr Dainty) "could not deliver truth and justice". The Claimant had reservations about Alan Dainty's involvement anyway as he had been "involved from the beginning".

225. By way of follow up from that meeting, Professor Wigginton wrote to the Claimant on 22 April 2016 (page 573). Professor Wigginton confirmed that Alan Dainty said to him (Professor Wigginton) that Mr Dainty did not feel the basis upon which the Claimant wanted to meet was appropriate. In reality, we find, the Claimant wanted to pursue matters his way and not engage with the Respondent under the PRF. The Claimant wanted Alan Dainty to investigate those matters the subject of Professor Norcliffe's investigation and Professor Wigginton's remit to decide upon the Claimant's grievance and the disciplinary matters to which his conduct gave rise. Professor Wigginton told the Claimant that the postponed grievance and disciplinary hearing was now scheduled to take place on 28 April 2016.

226. On 27 April 2016 the Claimant wrote to Professor Wigginton (pages 574 and 575). Although dated 27 April 2016 the annotation upon the copy at page 574 evidences the Respondent to have received this letter only on 5 May 2016.

227. By reference again to the minutes of the private Preliminary Hearing of 21 September 2016 (in particular at page 44) we see from paragraph 10 that this letter was said by the Claimant to contain additional disclosures qualifying for protection under Part IVA of the 1996 Act. The salient passage containing the disclosure is that in the fourth paragraph of the letter. There the Claimant says that the issues raised within it (of a failure to follow employment procedure and protocol, of flawed decision making and a refusal to hold a meeting to discuss the Claimant's concern) when linked to a refusal to contemplate the

victimisation or bullying eroded the Claimant's confidence and trust in the Respondent's ability to conduct the proceedings fairly.

228. The Claimant appeared to be contending in the letter of 27 April 2016 that the Respondent was ignoring his concerns. It was suggested by Mr Lewinski that the Respondent was not so doing and in fact those matters the subject of his grievance were central to the stage 1 grievance hearing which by this stage had been twice postponed. The Claimant said that he took it that that meeting would be a disciplinary hearing and that he had not read Professor Wigginton's letters as extending also to the hearing of his grievance. It is difficult, frankly, to see how the Claimant could reasonably have interpreted Professor Wigginton's letters as ignoring his grievance. To the contrary, the letter of 24 March 2016 makes clear that Professor Wigginton would first reach his conclusions upon the Claimant's grievance and then after a short adjournment matters would turn to the disciplinary issues. We refer in particular to the fourth paragraph on page 561. The Claimant had contended that combining the grievance and disciplinary hearing was perceived by him to be a threat. That said, the Claimant had not suggested that the two hearings be heard upon different occasions.

229. On 28 April 2016 the Claimant wrote to Professor Norcliffe. He said that the report was "seriously lacking in integrity". He observed that the "balance is so managerial pre-disposed that I find it difficult that a distinguished academic would have been prepared to put a name to it". There was a suggestion that Professor Norcliffe did not have the necessary skill to undertake the task. He asked if the report was the result of Professor Norcliffe's "sole professional endeavour" and for confirmation that he was willing to stand by the contents of his report.

230. The stage 1 grievance hearing and the disciplinary hearing went ahead on 28 April 2016. The Claimant failed to attend. After a 30 minute delay, Professor Wigginton proceeded with the hearing at which he was accompanied by Marie Ward and a note taker. The notes of the disciplinary hearing and the stage 1 grievance hearing are at pages 579 to 586.

231. Professor Wigginton noted the remit of the Claimant's grievance (and the three component parts to it) at page 580. After considering Professor Norcliffe's report he decided not to uphold any parts of the grievance.

232. Following a five minute adjournment (as recorded at page 582) Professor Wigginton then dealt with the disciplinary hearing. He upheld the first and second allegations against the Claimant. That is to say, he found the Claimant to be in breach of the Respondent's Code of Behaviour in relation to the examples he used of a sexual nature in his lectures and seminars and to be in breach of the Respondent's Code of Behaviour in relation to comments made to Level 4 students about securing a better grade in the semester one presentation assessment. He also determined that there was a potential for the Claimant to have brought into disrepute the law and criminology department and the wider university.

233. Professor Wigginton was concerned that the Claimant had not accepted: that his use of language was inappropriate in any way; that he had not done anything wrong; and would never apologise for his conduct. Professor Wigginton considered this to demonstrate a lack of self-awareness. He therefore felt that the risk to the Respondent of putting the Claimant back in

front of students was too high. He therefore decided to dismiss the Claimant with notice stage 4(b) of the PRF cited at pages 4 and 5 above.

234. Professor Wigginton notified the Claimant of his decision on 3 May 2016 (pages 587 to 590). The Claimant was informed that the first allegation (of a breach of the Respondent's Code of Behaviour in relation to using examples of a sexual nature in his lectures and seminars on contract law) was upheld. The inappropriate comments were then set out at page 588. These were:-

- References to using a Mars bar sexually.
- Discussions with students about a newspaper article concerning a man with two penises.
- Using an example of sex with students for higher grades to illustrate a point on immoral contracts.
- Regularly asking students if they want a dirty example or a boring one.
- Comments relating to his sex life with your wife.

235. Professor Wigginton said, "An important conclusion in the report is that there was a gulf in perception between what you regarded was appropriate and what students of the university and your colleagues felt was appropriate in the classroom situation."

236. Turning to the second allegation, the Claimant was told that the evidence presented in the investigation report concluded that the Claimant did suggest to female students that wearing a low cut top may help them secure a better grade. This conclusion was reached based upon "a student's written statement" (this being the statement of Amy Trimble at page 409) and the comment in the Claimant's own witness statement confirming that he did make this comment. This was a reference to the Claimant's statement at pages 407 and 408. Professor Wigginton therefore concluded that allegation 2 was upheld, that being a breach of the Respondent's Code of Behaviour in relation to comments made to Level 4 students about securing a better grade in the semester one presentation assessment.

237. Professor Wigginton found the third allegation not to be upheld. He said there was no evidence to demonstrate that the reputation of the Respondent had been brought into disrepute (as opposed to having the potential to do so)..

238. Professor Wigginton then went on to say:-

> *"In reaching my decision regarding the appropriate sanction, I have considered the evidence provided in the investigation report, your employment record at the university. I have also considered your participation and engagement with this process, including comments that you have made in your letters to me as well as at the discussion at the review meeting on 8 March 2016.*
>
> *I have also considered that despite being given multiple opportunities to do so, you do not accept that your comments have been in any way inappropriate. You stated during your investigation meeting that you didn't think you had done anything wrong and would never apologise. Your lack of engagement in this process and lack of acceptance that you have acted inappropriately is extremely concerning.*

This is a very serious matter and the impact on students has been severe, however, had you engaged in the process, recognised your inappropriate behaviour and committed to modifying that behaviour I would have considered action short of dismissal. My priority is to protect the university and its students and given the above, I feel that action short of dismissal would not resolve the issue.

Therefore after due consideration I confirm that you are dismissed under section 8 stage 4(b) of the University's Disciplinary Procedure on the grounds of misconduct.

Your termination of employment is with effect from 28 April 2016 and you will be paid in lieu for your notice period of three months. You will also be paid for any accrued but untaken annual leave. I need to inform you that you are no longer allowed on university premises, without prior arrangement from myself".

239. The Claimant was given a right of appeal. He was informed that the appeal should be lodged by 13 May 2016. The Claimant did not appeal against Professor Wigginton's decision.

240. On 3 May 2016 Professor Wigginton wrote to the Claimant with the stage 1 grievance outcome. He agreed with Professor Norcliffe's conclusions that the student complaints were raised appropriately and that appropriate consideration was given to their validity prior to the investigation being commenced. The first limb of the grievance (about how the student complaints were raised, the status and nature of them and whether there was scrutiny of their validity) was therefore rejected.

241. Professor Wigginton then turned to the second grievance: whether the approach taken to the management of the concerns was appropriate and whether it amounted to victimisation. He concluded from the evidence that there was sufficient evidence in February 2015 to place the Claimant upon authorised absence and that that was the correct decision. There was an acknowledgement that the specifics of the complaints should have been shared with the Claimant on 9 February 2015. Professor Wigginton said, "This does not call into question the approach taken to the management of the concerns and I note that the specifics of the complaint was shared with you on 17 February 2015". He concluded there to be no credible evidence of victimisation.

242. Professor Wigginton then looked at the third limb of the grievance: the circumstances of the Claimant's return to work after a period of absence in light of the OH referral made in October 2013. He concluded the return to work to have been managed in accordance with due process and that appropriate moderations were made to the Claimant's work plan. Professor Wigginton acknowledged there to have been confusion about responsibility for writing assessments but that does not call into question the approach taken to the Claimant's return to work.

243. Again, the Claimant was given a right of appeal against Professor Wigginton's findings at stage 1 of the grievance process under the PRF. The Claimant chose not to exercise his right of appeal.

244. In cross-examination, the Claimant accepted Professor's Wigginton's conclusions (both in relation to the disciplinary and grievance matters) to be

permissible and logical based upon the evidence presented to him in Professor Norcliffe's report. The Claimant accepted that Professor Wigginton was entitled to make those findings and to determine that the Claimant's conduct was serious particularly in light of the Claimant's refusal and apparent inability to see that had done anything wrong.

245. It was suggested to the Claimant by Mr Lewinski that from the Respondent's perspective the Claimant's judgment could not be trusted or relied upon when it came to him determining what was appropriate to place before students and that trust in the Claimant had been undermined. The Claimant said that "I could agree with that based upon what is in the report". It was suggested by Mr Lewinski that to allow the Claimant to continue in his role was a risk both to the Claimant and to the students and that there was logic therefore to the Respondent's decision. The Claimant accepted this to be the case.

246. Within the bundle (at pages 602 to 605) is a chronology of events prepared by the Claimant. This in fact appears to be incomplete. The Claimant was taken to this during cross-examination. At paragraph 18 of this document the Claimant makes reference to the addition to the scope of Professor Norcliffe's remit of the two issues referred to in Susan Tallent's letter to the Claimant at pages 405 and 406 and which gave rise to the Claimant's written statement at pages 407 and 408. Upon the issue of the Claimant's suggestion that female students should wear low cut tops to assist with their grade the Claimant said in the chronology that "this was my attempt at satire as I did not want my students going to the expense of buying suits and ties and becoming uncomfortable when I was more interested in what they had to say not what they looked like – all my students were informed constantly of that – no marks given for dress sense – unfortunately newer colleagues were asking for formal dress". When taken to this in cross-examination, the Claimant accepted that he had said, when asked by a male student whether business attire should be worn, "what, in low cut tops and short skirts." The Claimant said that he did this intending it to be a joke and with humour to reinforce the point.

247. In the document at pages 407 and 408 the Claimant made reference to discussion with the male student in the context of wearing a shirt skirt and high heels. Professor Norcliffe determined, upon the basis of Amy Trimble's written statement, that the Claimant "might have suggested to female students, probably in jest, that wearing a low cut top might help". Professor Norcliffe also set some store by the fact that the Claimant had not denied making such a comment to female students.

248. We now turn from our findings of fact to a consideration of the relevant law. We shall start with the Claimant's complaint of unfair dismissal. The Claimant has brought two unfair dismissal complaints: what is commonly referred to as 'ordinary' unfair dismissal and unfair dismissal for having made a protected disclosure. We shall start with a consideration of the law as it relates to 'ordinary' unfair dismissal.

249. The right not to be unfairly dismissed is a statutory right to be found in Part X of the Employment Rights Act 1996. Section 98 of the 1996 Act provides that in determining whether the dismissal of an employee is fair or unfair it is for the employer to show one of the statutory permitted reasons. The relevant reason in this case relates to the Claimant's conduct.

250. If a permitted reason is shown by the employer, then the Tribunal has to determine whether the employer entertained a reasonable belief that the Claimant was guilty of misconduct and that such belief was formed after having carried out as much investigation into the matter as was reasonable in the circumstances of the case. The Tribunal must then go on to consider whether the employer acted fairly and reasonably in treating that as a sufficient reason to dismiss the employee in all the circumstances of the case in accordance with the provisions of section 98(4).

251. The Tribunal must consider whether the decision to dismiss fell within the band of reasonable responses. The Tribunal must consider the reasonableness of the employer's conduct and not simply whether they themselves consider the dismissal to be fair. The Tribunal must not substitute its decision as to what was the right course for that of the employer. The function of the Tribunal is to determine whether in the particular circumstances of the case the decision to dismiss the employee fell within the range of reasonable responses. If the dismissal falls within the band the dismissal is fair. If the dismissal falls outside the band it is unfair. The range of reasonable responses test applies as much to the question of whether an investigation into suspected misconduct was reasonable in all the circumstances as it does to other procedural and substantive aspects of the decision to dismiss a person from their employment for a conduct reason. Therefore, the objective standards of the reasonable employer must be applied to all aspects of the question of whether an employee was fairly and reasonably dismissed.

252. The burden is upon the employer to establish the fact of the belief that the employee had committed the acts of misconduct which led to his or her dismissal. It is for the Respondent in this case to establish that it did believe that the Claimant had committed acts of misconduct. The next issue is whether the Respondent had in mind reasonable grounds upon which to sustain that belief and that at the stage at which that belief was formed the Respondent had carried out as much investigation into the matter as was reasonable in all the circumstances of the case. There is a neutral burden upon the latter issue.

253. Should the Claimant succeed with his complaint of unfair dismissal the Tribunal must consider remedy. The primary remedy upon a successful complaint of unfair dismissal is re-employment. We do not understand the Claimant to be seeking re-employment. It follows therefore that we are concerned in this case only with compensation. The provisions of section 118 to 126 of the 1996 Act are therefore engaged.

254. The 1996 Act provides for a basic and a compensatory award. The basic award is calculated by reference to a statutory formula and is determined by reference to the employee's weekly wage, age and length of service. The compensatory award is in such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the employee in consequence of dismissal in so far as that is attributable to action taken by the employer.

255. The Tribunal may reduce the amount of the basic award in circumstances where it considers that any conduct of the Claimant before dismissal was such that it is just and equitable to reduce the basic award to any extent. There need be no causal connection between the impugned or culpable or blameworthy conduct on the one hand and the dismissal on the other.

256. The Tribunal may reduce the amount of the compensatory award by such proportion as it considers just and equitable where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant. In determining whether to reduce an employee's unfair dismissal compensation upon the grounds of contributory fault, the Tribunal must firstly make a finding that there was conduct on the part of the employee in connection with his or her dismissal which was culpable or blameworthy. In this context, culpability extends to conduct which may be said to be perverse, foolish or bloody minded. Secondly, there must be a finding that the matters to which the complaint relates were caused or contributed to some extent by action that was culpable or blameworthy. Thirdly, there must be a finding that it is just and equitable to reduce the assessment of loss to a specified extent.

257. Accordingly, when considering contributory conduct the focus shifts from an analysis of the employer's conduct to the employee's conduct. There is therefore a clear distinction between considerations relevant to the fairness of dismissal on the one hand and those relevant to a consideration of contributory fault on the other. The latter requires findings of fact about the alleged blameworthy conduct on the part of the employee. The question of fairness on the other hand entails the Tribunal considering whether in all the circumstances the employer's decision to dismiss fell within the band of reasonable responses.

258. Upon a consideration of what is just and equitable to award in favour of a successful employee by way of the compensatory award, a Tribunal may also consider whether an employee would still have been dismissed in the event that the dismissal was rendered unfair by reason of procedural unfairness or whether the particular employment would have fairly come to an end at a determinant point anyway. If the Tribunal considers that that would have been the case then compensation can reflect the chance that the employee would have lost his or her employment in any case.

259. We now turn from the complaint of 'ordinary' unfair dismissal to the complaint brought by the Claimant under section 103A of the 1996 Act. This provides that an employee who is dismissed shall be regarded as unfairly dismissed if the reason (or if more than one the principal reason) for the dismissal is that the employee made a protected disclosure.

260. It is for the Claimant to satisfy the Tribunal that there has been disclosure of information which is a qualifying disclosure. It must therefore be a disclosure of information that in the reasonable belief of the employee making the disclosure is made in the public interest and tends to show one or more of the six matters (or 'relevant failures') referred to in section 43B(1) of the 1996 Act.

261. It will be recalled that the Claimant's case is that he made protected disclosures in the letters of 9 February 2016 (at pages 539 to 543) and 27 April 2016 (pages 574 and 575). In his email of 14 February 2017 the Claimant linked those disclosures (detailed above in paragraphs 197 and 198 and 226 to 228 respectively) with the following:-

    261.1. The issues around Lesley Lomax referred to in paragraphs 18 to 25 above.

    261.2. The issues around Andrew Maxfield referred to in paragraphs 26 to 31 above.

261.3. Issues around what the Claimant describes (at page 50) as "the abuse of the university's appointment procedure in appointing a departmental secretary to a course management role on a part time basis without the particular applicant going through the competitive selection process that a principal lecturer's post entails." We see from the fourth paragraph of the fourth page of the Claimant's witness statement that this was in fact a reference to the recruitment of a departmental secretary named Sue Bulley. Under cross-examination, the Claimant accepted that he had no involvement in Ms Bulley's recruitment. It is the Respondent's position that she was appointed senior lecturer in August 2014 following an interview process. The Claimant conceded that he was not aware of that and said that "that was not what I was told". She was then appointed to the post of principal lecturer in September 2015 again following a recruitment process. The Claimant again appeared unaware that that was in fact the case.

262. It is the Claimant's case that his disclosures qualify for protection as coming within section 43B(1)(b)(c) and (d) of the 1996 Act. The Claimant therefore says that his disclosures are of information which in his reasonable belief were made by him in the public interest and tend to show one or more of the following 'relevant failures':

- That a person has failed, is failing or is likely to fail to comply with a legal obligation to which he is subject;
- That a miscarriage of justice has occurred, is occurring or is likely to occur;
- That the health or safety of any individual has been, is being or is likely to be endangered.

263. Mr Lewinski took us to passages in **Cavendish Munroe Professional Risks Management Limited v Geduld** [2010] IRLR38. In the head note on page 2 of the case report it is said that "in order to fall within the statutory definition of protected disclosure, there must be a disclosure of information. There is a distinction between 'information' and an 'allegation' for the purposes of the Act. The ordinary meaning of giving 'information' is conveying facts for example, communicating information about the state of a hospital would be stating that: "the wards have not been cleaned for the past two weeks. Yesterday sharps were left lying around". However, an allegation about the same subject matter would be "you are not complying with the health and safety requirements".

264. We were also taken to **Kilraine v London Borough of Wandsworth** [2016] IRLR422. At paragraph 30, it is said that the dichotomy between 'information' and 'allegation' is not one that is made by the statute itself. The question is simply whether the disclosure is simply one of information. It may have that status even if it also contains an allegation.

265. Each case must of course turn upon its facts. In the normal case, little is to be gained by descending into the facts of another case as the focus normally is upon extracting the relevant principle to be derived from it. It is however, we think, illustrative to descend briefly into the facts of **Kilraine**. We cite paragraph 31 from the case report:

> *"… I turn to the third alleged disclosure. This was in a letter of 10 December 2009. The paragraph upon which Mr Robison [counsel for Ms Kilraine] relied was this:*
>
> *"I think that it is also important to remind you that what has been achieved over the years has been despite bullying and harassment that was tolerated and, at times, not least at present, encouraged over that time by [named individuals and others], and also despite successive and repeated failure to honour LA and individual agreements to extend my role and to provide career development. Since the end of last term, there had been numerous incidents of inappropriate behaviour towards me, including repeated sidelining and all of which I have documented. As an example, I have brought to your attention the inappropriate behaviour of [a named individual] and despite your undertaking have received no feedback""*

266. The Employment Appeal Tribunal held that the Employment Tribunal was justified in concluding that the alleged disclosure cited was not information. The EAT said, at paragraph 32, "If one takes away the word "inappropriate" from the highlighted section, it says nothing that is at all specific. It does not sensibly convey any information at all. On this basis, I consider the Employment Tribunal was justified in concluding as it did, but even if I were wrong on that, it is difficult to see how what is said alleges a criminal offence, a failure to comply with legal obligations or any of the other matters to which section 43B(1) makes reference. It is simply far too vague. 'Inappropriate' may cover a multitude of sins. It has to show or tend to show something that comes within the section".

267. The statutory language in section 43B(1) is couched in terms of the reasonable belief of the worker making the disclosure and not in terms of the belief of a reasonable worker. The focus therefore is on what the worker in question believed rather than what anyone else might or might not have believed in the same circumstances. In consequence, the worker's personality and individual circumstances have to be taken into account when judging whether he or she had a 'reasonable belief'. The statutory test is not totally subjective, however, as a reasonable belief rather than a genuine belief is required. Therefore there has to be some substantial basis for the belief. Rumours, unfounded suspicions, uncorroborated allegations and the like will not be enough.

268. The disclosure itself must be made in the correct manner. There are seven permissible methods of disclosure set out in sections 43C to H inclusive. We do not understand the Respondent to dispute that the Claimant made the alleged disclosures in accordance with section 43C: that is to say, that the Claimant made his disclosures to the Respondent as his employer.

269. As has already been said, it is for the employer to prove a fair reason for dismissal. There is no burden on the employee either to disprove the reason put forward by the employer or to positively prove a different reason, even where the employee is asserting that the dismissal was for an admissible reason. However, where the employee positively asserts that there was a different and inadmissible reason for dismissal, such as making protected disclosures (as in this case) then he or she must produce some evidence supporting the case that there was an inadmissible reason and challenging the evidence produced by the employer. The employer can defeat a claim of an inadmissible reason for dismissal either by proving a different reason or by

successfully contesting the reason put forward by the employee. If the Tribunal is not satisfied that the reason for dismissal is the reason asserted by the employer, it is open to it to find that it is the reason asserted by the employee, but it does not have to so find.

270. The Claimant contends that he was unfairly dismissed upon grounds related to trade union membership or activities. Section 152(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 provides that for the purposes of Part X of the 1996 Act the dismissal of an employee shall be regarded as unfair if the reason for it (or if more than one the principal reason) was that the employee was, or proposed to become, a member of an independent trade union, had taken part or proposed to take part in the activities of an independent trade union at an appropriate time or had made use or proposed to make use of trade union services at an appropriate time. (There are other bases for automatic unfair dismissal under section 152(1) which we shall not cite here).

271. Here, the Claimant has adequate service to complain of 'ordinary' unfair dismissal and thus there is no onus upon him to prove that the reason for his dismissal related to his trade union membership or activities. Again, the legal burden of proving the reason for dismissal is on the employer. Where the employer produces evidence that appears to show the reason for the dismissal, but the employee alleges that the real reason related to his union membership or activities, there is an evidential burden on the employee to produce evidence that casts doubt upon the employer's reason. Once this evidential burden is discharged, the onus remains on the employer to prove the reason for dismissal.

272. The Claimant also contends that he was subjected to a detriment during his employment upon grounds related to trade union membership or activities. Protection against victimisation by employers upon trade union grounds is to be found in section 146(1) of the 1992 Act. It is therefore unlawful to subject an employee to detriment for a reason relating to trade union membership, activities or services.

273. It is necessary for the worker to show that the worker in question has been subjected to a detriment by an act, or deliberate failure to act, on the part of the employer. A dismissal cannot amount to a detriment. The word 'detriment' is given a wide construction extending to acts or omissions which a reasonable worker would or might take the view was to put him or her under a disadvantage and reasonably be considered in all the circumstances to be a detriment.

274. The Tribunal must therefore determine whether or not the worker has been subjected to a detriment. If so, the Tribunal must be satisfied that the employer's sole or main purpose in subjecting the worker to a detriment was, amongst other things, to prevent or deter the worker from becoming, or seeking to become a union member, to take part in union activities or to make use of union services.

275. Whether or not an activity or service is a 'trade union activity or service' is to be determined by reference to the facts of the case. It is not solely dependant upon whether the person undertaking those activities is or is not a formal representative of the union.

276. We now turn to the Claimant's complaint of disability discrimination. There is an issue as to whether or not the Claimant is a disabled person for the purposes of section 6(1) of the Equality Act 2010.

277. By section 6(1) of the 2010 Act a person has a disability if he or she has "a physical or mental impairment" which has a "substantial and long term adverse effect on [his or her] ability to carry out normal day to day activities". The burden of proof is upon the Claimant to show that he satisfies this definition. There are supplementary provisions for determining whether a person has a disability. These are at Schedule 1 of the 2010 Act. In particular, the effect of an impairment is long term if it has lasted for at least 12 months, it is likely to last for at least 12 months or it is likely to last for the rest of the life of the person affected.

278. Guidance has been issued upon matters to be taken into account in determining questions relating to the definition of disability. We shall refer to this as 'the guidance' for short. The guidance came into force on 1 May 2011 and is therefore relevant to this case. It is mandatory for the guidance to be taken into account by the Tribunal pursuant to paragraph 12 of Schedule 1 to the 2010 Act.

279. The material time for establishing disability (that is to say, whether there is an impairment which has a substantial adverse effect on normal day to day activities) is the date of the alleged discriminatory acts. Therefore we are concerned with whether or not the Claimant was a disabled person at around the time that the Respondent committed the impugned acts set out at paragraph 21 of the minute of the private Preliminary Hearing of 21 September 2016. By way of reminder, the impugned acts are:-

- A failure upon the part of the Respondent to keep in personal contact with the Claimant.
- The requirement of the Respondent for meetings to take place within the university.
- Going ahead with meetings on 8 March 2016 and the disciplinary hearings when the Claimant said he was unable to attend through ill health.

280. The time frame with which we are concerned therefore appears to be from February 2015 after which, on the Claimant's case, some or all of the impugned acts or omissions occurred.

281. The definition of disability requires that the adverse effect on a person's ability to carry out normal day to day activities arises from a physical or mental impairment. There is no statutory definition of the expressions "physical impairment" or "mental impairment" and nor is there any definition in the guidance.

282. We are dealing, in this case, with mental impairment. The terms "physical impairment" and "mental impairment" have been held to have their ordinary and natural meanings, it being left to the Tribunal to make a decision in each case on whether the evidence available establishes that the Claimant has a physical or mental impairment with the stated effects. Paragraph A3 of the guidance tends to support this view as it states that in many cases there will be no dispute as to whether a person has an impairment and that any disagreement is

more likely to be about whether the effects of the impairment are sufficient to fall within the definition within section 6(1) as supplemented by the provisions in section 1.

283. The questions that arise upon this issue for the Tribunal are:-

283.1. Does the complainant have an impairment which is either mental or physical?

283.2. Does the impairment affect the Claimant's ability to carry out normal day to day activities in one of the respects set out in paragraph 4(1) of Schedule 1 to the Act, and does it have an adverse effect?

283.3. Is the adverse effect upon the Claimant's ability substantial?

283.4. Is the adverse effect upon the Claimant's ability long term?

284. It is not necessary to consider how the impairment is caused. What is important to consider is the effect of the impairment (provided that it is not an excluded condition, which issue does not arise in this case).

285. "Substantial" in this context means "more than minor or trivial". This reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people.

286. Appendix 1 to the Equality and Human Rights Commission's Employment Code states that: "normal day to day activities" are activities that are carried out by most men or women on a fairly regular and frequent basis. It gives examples such as walking, driving, typing and forming social relationships. The expression "normal" should be given its ordinary everyday meaning.

287. When considering mental impairment, there is no need for the Claimant to establish that he suffers from a clinically well recognised illness. The focus of the Tribunal's enquiry is upon the effect the mental impairment has on the employee's day to day activities. There are however limitations as a mental impairment cannot be established in circumstances where the employee is simply suffering a reaction to life events. Mr Lewinski took the Tribunal to a passage in **Herry v Dudley Metropolitan Council** (UK EAT/0100/16). At paragraph 56 the EAT said:-

> *"Although reactions to adverse circumstances are indeed not normally long lived, experience shows that there is a class of case where a reaction to circumstances perceived as adverse can become entrenched; when a person concerned will not give way or compromise over an issue at work, and refuses to return to work, yet in other respects suffers no or little apparent adverse effect on a normal day to day activities. A doctor may be more likely to refer to the presentation of such an entrenched position as stress rather than as anxiety or depression. An Employment Tribunal is not bound to find that there is a mental impairment in such a case. Unhappiness with a decision or a colleague, a tendency to nurse grievances, or a refusal to compromise (if these or similar findings are made by an Employment Tribunal) are not of themselves mental impairments: they may simply reflect a person's character or personality"*.

288. The Claimant pursues discrimination complaints by reason of the protected characteristics of age and disability. The statutory provisions as to prohibited

conduct for the purposes of the discrimination complaints are to be found in Chapter 2 of Part 2 of the 2010 Act. The relevant sections for our purposes are: section 13 (directed discrimination); section 20 (an alleged breach upon the part of the employer to comply with the duty to make reasonable adjustments); and section 26 (harassment). The first of these is relevant to the complaint of age discrimination. The second and third of these are relevant to the Claimant's complaints of disability discrimination.

289. The prohibited conduct is made unlawful in the workplace pursuant to the provisions to be found in Part 5 of the 2010 Act. As the Claimant was an employee of the Respondent then the following provisions are relevant:

289.1. Section 39(2)(d): subjecting the Claimant to a detriment. This is relevant to the age discrimination complaint.

289.2. Section 39(5): an alleged breach by the Respondent of the duty to make reasonable adjustments.

289.3. Section 40: alleged harassment by the Respondent of the Claimant.

289.4. The latter two are relevant to the disability discrimination complaint.

290. Upon all complaints, the burden of proof is upon the Claimant to show a *prima facie* case of discrimination. This obligation arises pursuant to the provisions of section 136 of the 2010 Act. The burden is upon the Claimant to prove that the alleged discriminatory treatment actually happened and that the Respondent was responsible. It is for the Claimant to prove that he suffered the treatment and not merely to assert it. Where there are facts from which the Tribunal could decide, in the absence of any other explanation, that there has been a contravention of any of the relevant provisions then the Tribunal must hold that contravention occurred. However, if the Claimant has established a *prima facie* case and shifted the burden to the Respondent, the Respondent may discharge the onus which has shifted by providing a non-discriminatory explanation for the treatment in question.

291. The issue upon the complaint of direct discrimination is to ask whether the Claimant has been treated less favourably by the Respondent than was an actual or hypothetical comparator. On a comparison of cases for the purposes of the direct discrimination complaint there must be no material difference between the circumstances relating to each case. Should less favourable treatment have been established then the question is why the employee was treated less favourably: was it upon the grounds of age (or whichever protected characteristic is in question)? Or was it for some other reason?

292. As we say, the complaint of direct discrimination relates to the Claimant's protected characteristic of age. By section 5 of the 2010 Act' in relation to the protected characteristic of age a reference to a person who has a particular protected characteristic is a reference to a person of a particular age group and a reference to persons who share a protected characteristic is a reference to persons of the same age group.

293. In considering a claim that an employer has discriminated against an employee by failure to comply with the duty of reasonable adjustment, a Tribunal must firstly identify a provision, criterion or practice ('PCP') applied by or on behalf of the employer which is said to cause a substantial disadvantage to the Claimant by reason of disability in comparison to a non-disabled comparator. A duty is

placed upon employers to make reasonable adjustments in circumstances where the impugned PCP puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled. The employer is then required to take such steps as it is reasonable to have to take to avoid the disadvantage. A failure to comply with that requirement amounts to a failure to comply with the duty to make reasonable adjustments and an employer will have discriminated against the disabled person if it fails to comply with the duty in relation to that person.

294. The onus is upon the Claimant to identify in broad terms the nature of the adjustments that would ameliorate the substantial disadvantage. As we have said, the Claimant also bears the burden of establishing a *prima facie* case that the duty has arisen by application by the employer of a PCP. Should the Claimant identify in broad terms the nature of the adjustment that would ameliorate the substantial disadvantage and that the disadvantage has arisen by reason of the application to him of the PCP on account of his disability the burden then shifts to the Respondent to show that the disadvantage would not have been eliminated or reduced by the proposed adjustment and/or that the adjustment was not a reasonable one to make.

295. The test of reasonableness in this context is an objective one. As the reasonable adjustment provisions are concerned with practical outcomes rather than procedures, the focus must be on whether the adjustment itself can be considered reasonable rather than the reasonableness of the process by which the employer reached the decision about a proposed adjustment. It is unlikely to be reasonable for an employer to have to make an adjustment that involves little benefit to the disabled person. However, there does not necessarily have to be a good or real prospect of an adjustment removing a disadvantage for that adjustment to be a reasonable one. It is sufficient for a Tribunal to find simply that there would have been a prospect of it being alleviated. The focus of the Tribunal must be on whether the adjustment would be effective by removing or reducing the disadvantage that the Claimant is experiencing at work as a result of his disability and not whether it would advantage the Claimant generally.

296. Whereas the Disability Discrimination Act 1995 stipulated a number of specific factors to be considered when determining reasonableness, the 2010 Act does not do so. However, there is a list at paragraph 6.28 of the EHRC Employment Code (to which we have already referred) as examples of matters that a Tribunal may take into account. The Code also stipulates that what is a reasonable step for an employer to take will depend on all the circumstances of each individual case. The factors to have in mind include the extent to which taking the step would prevent the effect in relation to which the duty was imposed, the practicability of such step, the cost of it and the extent to which it would disrupt the employer's activities. Other factors that need to be taken into account include the extent of the employer's financial and other resources and the nature of the employer's activities and size of undertaking.

297. An employer is not subject to the duty if the employer does not know and could not reasonably be expected to know that the employee in question has a disability and is likely to be placed at a substantial disadvantage in relation to a relevant matter by the employer's PCP. The words "could not reasonably be expected to know" gives scope to a Tribunal to find that the employer had constructive knowledge of the disability and the likelihood of it placing the employee at a disadvantage by application of the PCP. The question therefore

is what objectively the employer could reasonably have known following reasonable enquiry. There is however no remit for a requirement for the employer to make every possible enquiry where there is little or no basis for doing so. The question therefore is whether the employer knew or could reasonably be expected to have known that the employee had a disability and that that disability was liable to affect him or her by disadvantaging the employee in relation to a relevant matter.

298. We now turn to the harassment claim. Section 26 of the 2010 Act makes clear that there are three essential elements: unwanted conduct; that the unwanted conduct has the prescribed purpose or effect; and that it related to a relevant protected characteristic (in this case disability). A stand alone claim of harassment does not require a comparative approach. It is simply necessary to establish a link between harassment on the one hand and (in this case) the Claimant's disability on the other.

299. Unwanted conduct can include a wide range of behaviour including spoken or written words or abuse. The unwanted conduct in question must have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

300. Accordingly, conduct which is intended to have that effect will be unlawful even if it does not in fact have that effect. Conduct that does have that effect will be unlawful even if that was not the intention. Therefore, a claim brought on the basis that the unwanted conduct had that purpose involves an examination of the perpetrators intention. A claim brought upon the basis that it was the effect of the alleged perpetrators behaviour involves a consideration of the perception of the Claimant, the other circumstances of the case and whether it was reasonable for the conduct to have that effect. The test therefore has both subjective and objective elements to it. The objective aspect of the test is primarily intended to exclude liability where a claimant is hypersensitive and unreasonably takes offence. A Tribunal must consider whether it was reasonable for the conduct to have the effect on that particular claimant.

301. By section 123 of the 2010 Act proceedings 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. For the purposes of section 123, conduct extending over a period is to be treated as done at the end of the period and failure to do something is to be treated as occurring when the person in question decided on it.

302. The issue of time limits goes to the question of the Tribunal's jurisdiction. It is therefore incumbent upon the Tribunal to consider whether any of the Claimant's claims are time barred and if so whether it is just and equitable to extend time to enable the Tribunal to consider them. If the claims have been presented out of time, the Tribunal has a very wide discretion in determining whether or not it is just and equitable to extend time. The Tribunal is entitled to consider anything that it considers relevant. However, time limits are exercised strictly in employment cases. There is no presumption that time should be extended on just and equitable grounds. It is for the Claimant to persuade the Tribunal that it is just and equitable to extend time. The exercise of discretion is the exception rather than the rule.

303. In exercising our discretion, we may have regard to the check list contained in section 33 of the Limitation Act 1980. This governs the exercise of discretion in

relation to time limits in personal injuries brought before the County Court or the High Court. This requires a court to consider the prejudice that each party would suffer as a result of the decision reached and to have regard to all of the circumstances of the case and in particular the length of, and reasons for the delay, the extent to which the cogency of the evidence is likely to be affected by the delay, the extent to which the party sued has co-operated with any requests for information, the promptness with which the Claimant acted once he knew of the facts giving rise to the course of action and the steps taken by him to obtain appropriate advice once he knew of the possibility of taking action. The relevance of some or all of these factors depends upon the individual case and Tribunals do not need to consider all of the factors in each and every case.

304. We understand the Respondent's position to be that a time limit issue only arises in relation to the Claimant's complaint of age discrimination. As the disability discrimination complaints arise from the Respondent's conduct after February 2015 until the decision was taken to dismiss the Claimant the Tribunal considers the Respondent's position to be correct given that there was a continuing course of conduct up to and including the date of dismissal of the Claimant.

305. Having considered in some detail the relevant law as it applies to the several issues raised in this case we now come to our conclusions.

306. We shall start with a consideration of the Claimant's complaint of ordinary unfair dismissal. We find that Professor Wigginton had reasonable grounds to believe that the Claimant was in breach of the Respondent's Code of Behaviour in relation to the matters identified in his decision letter of 3 May 2016 (at paragraphs 234 to 236 above).

307. Dealing with the first allegation (identified at paragraph 210.1) and the component parts of that allegation:-

307.1. <u>References to using a Mars bar sexually</u>

Professor Wigginton had ample material from which to determine that the Claimant had made such references. We refer to paragraph 109 where we summarise what the Claimant told Professor Norcliffe at the interview held on 21 April 2015. That finding was corroborated to some degree by what the Claimant told Sital Dhillon on 17 February 2015 (in particular summarised at paragraphs 84 to 86). Professor Wigginton also had before him Amy Trimble's account (paragraph 147).

307.2. <u>Discussions with students about a newspaper article about a man with two penises</u>

Again, Professor Wigginton had before him ample material from which he could reasonably conclude that the Claimant had so conducted himself. Again, this was admitted and accepted by the Claimant in his interview with Professor Norcliffe (paragraphs 110 and 111). Were corroboration to be needed, it was to be found in Amy Trimble's account (paragraph 146).

307.3. <u>Using an example of sex with students for higher grades to illustrate a point on immoral contracts</u>

The Claimant accepted that he had said words to this effect in order to make a point about the illegality of contracts for an immoral purpose

when the matter was discussed with Mr Dhillon on 17 February 2015 (paragraph 84.7). He accepted having used the same example at the interview with Professor Norcliffe (paragraph 113). Amy Trimble confirmed the Claimant had said this when she gave her account (paragraph 145).

307.4. Regularly asking students if they want a dirty example or a boring one

Before Mr Dhillon the Claimant accepted that he had asked students whether "they want an example that they will remember or run of the mill". We refer to paragraph 84.3. In and of itself, that would not be sufficient to found a reasonable belief in the allegation as there was no reference at that stage to a "dirty example." However, the Claimant accepted that he had invited students to accept an "iffy" example over a "straight" example when the matter was raised with him by Professor Norcliffe (paragraphs 114 and 115). Again, this was corroborated by Amy Trimble (paragraph 148).

307.5. Comments relating to his sex life with his wife

This issue was, in fact, a matter not raised with the Claimant by Sital Dhillon. It emerged later from Amy Trimble's account (paragraph 160). When asked about it, the Claimant confirmed in writing that he had (in an attempt at humour), made a remark along the lines as suggested by Amy Trimble (paragraph 160).

308. The second allegation was that referred to at paragraph 210.2. It related to an alleged breach of the Respondent's Code of Behaviour in relation to comments made by the Claimant to Level 4 students about securing a better grade in the semester 1 presentation assessment. Again, this was not something raised with the Claimant by Sital Dhillon in February 2015. Nor was it raised with the Claimant by Professor Norcliffe in April 2015. It was a matter that emerged out of Amy Trimble's evidence. We refer to paragraph 149. The Claimant's account is at paragraph 159.

309. There was a difference between the two accounts. Amy Trimble said that the Claimant had suggested to female students that wearing a low cut top might help with the assessment. The Claimant said that he had made this remark to a male student in the context of wearing a short skirt and high heels. Professor Norcliffe's conclusion (by reference to paragraph 247 above) is that the Claimant "might have suggested to female students, probably in jest, that wearing a low cut top might help". In our judgment, it was within the range of reasonable responses for Professor Wigginton to have concluded that the Claimant did make such a remark given the wealth of evidence that he had made inappropriate sexualised references in his lectures and that the Claimant did so in an attempt at humour.

310. We make the following findings upon the question of the reasonableness of the procedure followed by the Respondent:-

310.1. It was outside the range of reasonable responses for the Respondent not to share with the Claimant the details of the allegations being raised against him at the first meeting that took place on 9 February 2015. That failure cannot be excused upon the basis that the Respondent had one more student to interview. As we have said, this failure appears to be candidly acknowledged by the Respondent and was something about

which Professor Norcliffe was critical in his report. We refer to paragraph 68.

310.2. It was within the range of reasonable response for the Respondent to remove the Claimant from the workplace. The issues that had been raised during week ending 6 February 2016 were serious. The Respondent had no option but to look into them. The Respondent reasonably concluded that removal of the Claimant from his lecturing duties was required. This was a reasonable step for the protection both of the students and the Claimant for the reasons that we have outlined at paragraph 71.

310.3. While we have reservations about Mr Dhillon's conduct of the review meeting of 17 February 2015 we are not persuaded that this was outside the band of reasonableness. Our concern is about the Claimant being presented with the allegations, being given just 20 minutes to consider them with his trade union representative and then being required to give an immediate response. Had the Claimant been unaccompanied at the meeting we would have held that Mr Dhillon's demand for an immediate response would be outside the range of reasonableness. What saves the Respondent from such a finding is that the Claimant was accompanied by a very capable trade union representative who doubtless would have asked for further time had such been required. We refer to paragraphs 92 to 94.

310.4. The continued removal of the Claimant from the workplace after 17 February 2015 was within the range of reasonableness for the same reasons as given in paragraph 310.2. Dr Hunt's contention that the effective suspension of the Claimant was wholly disproportionate is plainly misplaced in the circumstances. In any event, the Respondent did suggest that the Claimant be allowed to work with effect from 8 May 2015 which the Claimant declined (paragraph 101). Less than a month later, the Claimant, through Mr Leader, expressed relief at not having exposure to work and work emails (paragraph 133).

310.5. There was no unreasonable delay in the Respondent progressing matters after 17 February 2015. Mr Dhillon appointed Professor Norcliffe to carry out the investigation to which the Claimant had no objection (paragraph 90 and 91). In our judgment, Professor Norcliffe investigated matters reasonably quickly. We refer in particular to the timescales outlined at paragraphs 102 to 105. After interviewing the Claimant on 21 April 2015, the Respondent then pressed the Claimant to furnish particulars of his grievance (paragraph 130). The grievance meeting of 18 June 2015 was arranged within a reasonable timescale as was the addition to Professor Norcliffe's remit. Delays in completion of Professor Norcliffe's report were occasioned by the Claimant's delay in returning the transcripts of the meeting that was held on 21 April 2015 and 9 July 2015 (paragraph 154). Completion of the report in October 2015 was within a reasonable timescale. The Respondent's subsequent handling of the matter was complicated by the issue of the Claimant's health. From the detailed chronology that we have set out of events from September 2015 to the date of Professor Wigginton's decision we see no evidence of any unreasonable delay upon the part of the Respondent.

310.6. It was within the range of reasonable responses for the Respondent to take the view though there was no requirement to interview any of the student body. The Respondent had the Claimant's own account given to Professor Norcliffe on 21 April 2015. In our judgment, it would have fallen within the band of reasonableness for the Respondent not even to have commissioned a statement from Amy Trimble. The Respondent had sufficient information simply from the interview with the Claimant. Given the Respondent's policy of endeavouring to keep students out of staff related disciplinary matters it is our judgment that it fell within the range of reasonable responses for the Respondent not to have broadened the remit by requesting students other than Amy Trimble to give their account. Amy Trimble was the student representative and it was a reasonable decision on the part of the Respondent to confine its enquiries to her.

310.7. The Respondent acted within the range of reasonableness in the manner in which it contacted the Claimant. As we have seen, there was contact between the Respondent and Mr Leader throughout the process. It was clear that the Claimant preferred contact to be through Mr Leader. He cannot therefore reasonably criticise the Respondent for failing to make direct personal contact with him. The Respondent acted reasonably after Mr Leader had confirmed that he no longer was prepared to act as the go-between. The Respondent introduced the Claimant to James Marson. The Claimant had no objection to his appointment as temporary line manager and contact point.

310.8. The Respondent acted reasonably in how it had handled matters in the light of concerns around the Claimant's health. The Respondent commissioned an occupational health report. Professor Wigginton also commissioned a second occupational health report but his efforts were thwarted by the Claimant's lack of co-operation. The Respondent's decision to proceed with the disciplinary and grievance proceedings was in accordance with the occupational health opinion that we have cited at paragraphs 191 and 192.

311. In conclusion, therefore, we hold that Professor Wigginton had reasonable grounds upon which basis to believe that the Claimant had breached the Respondent's Code of Behaviour in relation to the examples he used of a sexual nature in his law of contract lectures and seminars and in relation to comments made to Level 4 students about securing a better grade in the semester 1 presentation assessment. That reasonable belief was formed after carrying out as much investigation into the matter as was reasonable and having followed a reasonable procedure save in relation to the Respondent's conduct of matters on 9 February 2015.

312. Professor's Wigginton's decision is cited at paragraph 238. He decided to dismiss the Claimant under section 8 stage 4(b) of the PRF. He chose not to dismiss the Claimant summarily for gross misconduct.

313. At paragraph 39 of his witness statement Professor Wigginton said, *"I considered that the comments made by the Claimant certainly amounted to very serious misconduct, and could, even by themselves, possibly have been considered to amount to gross misconduct – see the reference to a serious breach of the university's policies at section 6 of the disciplinary policy (page 83*

of the bundle). However, what particularly concerned me at the time was this combined with the Claimant's absolute failure or refusal to show any recognition of inappropriateness or wrong doing and the effect of this on his ability or willingness to change. I formed the view that, given the stance he had taken, there was a substantial likelihood that the Claimant would not modify his behaviour and that, if put in front of students, he would make further unacceptable remarks and cause further offence. This was a fundamental issue of trust and confidence: by his actions (in what he said to the students allied to how he reacted to this in the investigation and disciplinary process), I felt that trust and confidence in the Claimant as an employee and in particular as a student–facing lecturer, had been irreparably damaged. In these circumstances, given the high duty of care owed by the Respondent to its students, I felt there was no alternative but to dismiss the Claimant".

314. When asked about his decision by the Employment Judge Professor Wigginton said that the Claimant's conduct "didn't fit in with gross misconduct. It was about trust – of putting him back in front of students. We couldn't put him back into the university". Professor Wigginton therefore was of the view that the Claimant's conduct did not amount to gross misconduct.

315. Miss Ward confirmed, again under questioning from the Employment Judge, that the Respondent would normally only dismiss for a first offence in a case of gross misconduct. The PRF contemplates a dismissal for a first offence of gross misconduct at section 6. The staged disciplinary sanctions at section 8 of the PRF accord with Miss Ward's understanding that summary dismissal would not normally be the case for a first offence falling short of gross misconduct. We have cited the salient passages in paragraph 11.

316. As we have said at paragraph 251, the Tribunal must be careful not to substitute its decision as to what was the right course for that of the employer. In the usual course, it is the employee that complains that his or her employer's decision to dismiss was too harsh and outside the range of reasonable responses given the equity and substantial merits of the case. In this case we had the converse situation as we were effectively being urged by the Respondent's counsel that the Respondent's decision not to summarily dismiss the Claimant was too lenient. We appear to have been invited to substitute a decision of summary dismissal for misconduct (but with pay in lieu of notice) for one of summary dismissal for gross misconduct. It is our judgment that accepting such an invitation would be to lead the Tribunal into error.

317. On these facts, we conclude that it was open to the employer to have dismissed the Claimant for gross misconduct. However, this employer chose not to do so. It chose an equally permissible course (within the range of reasonable responses) of dismissing the Claimant for misconduct and paying him in lieu of his notice entitlement. Having taken that course, the difficulty that arises for the Respondent is that it breached its own procedure in so doing. We observed at paragraph 9 that the PRF had been agreed between the Respondent's management and the recognised trade unions with the contribution and endorsement of ACAS. It was not urged upon us by the Respondent that departure from that procedure in the circumstances was within the range of reasonable responses nor do we see how it could be. After all, Professor Wigginton reached his decision upon the basis of the framework set out in the PRF.

318. It therefore follows that the decision to dismiss the Claimant was one that fell outside the range of reasonable responses of this employer by reason of departure from its own procedure and also by reason of the Respondent's conduct of the meeting of 9 February 2015. The complaint of ordinary unfair dismissal therefore succeeds.

319. We therefore turn to consideration of remedy. We shall start with the consideration of the question of contributory conduct. We refer to the principles outlined at paragraphs 253 to 257.

320. As we said, the focus shifts from an analysis of the employer's conduct to the employee's conduct at this stage. We find as a fact that the Claimant did behave as found by Professor Wigginton upon which basis he found the two allegations to be made out. Not only did we have before us the material considered by Professor Wigginton, we also had the Claimant's concessions in cross-examination. We refer in particular to paragraphs 119 to 126.

321. The Claimant's conduct was plainly culpable and blameworthy. We find his conduct to be perverse, foolish and bloody minded.

322. It is difficult, frankly, to understand why the Claimant sought to illustrate the workings of the Sale of Goods Act 1979 with such an unfortunate and inappropriate example as that which he adopted. As was submitted by Mr Lewinski, there are many examples from decided case law which could have been used and which do not feature ball bearings (which the Claimant was keen to avoid making the focus of his lectures). The example he chose had no jurisprudential basis. It was one made up by the Claimant. We agree with Mr Lewinski's characterisation of it as deeply shocking, distasteful, gratuitous and unnecessarily sexualised.

323. Similar observations may be made about the issue of exchanging sex for grades. The issue of unenforceable contracts may be demonstrated by reference to numerous cases of which **Pearce v Brookes** is but one example. The Claimant would have been on safe ground so to do, those cases having a jurisprudential base.

324. The Claimant's comments about the individual with diphallia were most unfortunate. We accept that the Claimant did not, before the student body, articulate his ruminations out loud upon matters as did the Claimant when explaining his position before Professor Norcliffe on 21 April 2015 (see paragraph 111). The Claimant did allude to the possibility of this but did not articulate out loud his way of thinking as he did at the meeting with Professor Norcliffe. However, rather than simply shutting down conversation about the issue when the female students drew it to his attention the Claimant chose to broadcast the matter. This was ill judged conduct on his part.

325. We accept as a fact that the Claimant was attempting to be humorous when discussing the question of dress for the semester 1 presentations. In our judgment, that remark, the attempt at humour about his wife and the general request to the students as to the type of example they wished him to furnish to illustrate a legal point demonstrate poor judgment on the Claimant's part about the tone he was setting for his lectures. It was against that general tenor that much more serious matters (particularly around the chocolate bar, the diphallia issyue and "sex for grades") arose. It is the Claimant's conduct as a whole that must be considered. The less serious examples simply serve to reinforce the

reasonableness of the Respondent's view that no trust and confidence could be reposed in the Claimant to behave responsibly when giving lectures to students.

326. The Claimant was also bloody minded in his approach. At no stage did he show any contrition or repentance. Even before the Tribunal, he continued to maintain that he had done nothing wrong. We refer to paragraphs 118 and 126. It was the lack of contrition that effectively sealed his fate. We have cited from Professor Wigginton's witness statement and the decision letter. The clear implication of both is that Professor Wigginton may well have stepped back from the ultimate sanction had the Claimant been contrite about his conduct and agreed to mend his ways. In reality, the Claimant appeared to mistake academic freedom for the right to say what he wished regardless of the offence caused or likely to be caused.

327. In conclusion, therefore, it is our judgment that the Claimant conducted himself in such a way that can be properly characterised as perverse, foolish and bloody minded. It is difficult to see any justification for the Claimant conducting his lectures in this way. It is understandable that he did not wish to deliver a lecture that was dull and boring. However, the jurisprudence that has developed around the Sale of Goods Act 1979 and the issue of immoral contracts is such that a lecture was perfectly capable of being devised that would be interesting but without descending into the offensive. It was the Claimant's conduct that led to his dismissal. There was a clear causal connection. That extends not only to the Claimant's conduct of his lectures but also the lack of repentance and bloody minded refusal to see what he had been doing was inappropriate. It was that lack of contrition which ultimately led to his downfall as we have said.

328. The Claimant's conduct was such that it is in our judgment just and equitable to reduce both the basic award and the compensatory award by 100%. It is our judgment that the Claimant is entirely the author of his own misfortune.

329. In the light of our conclusions upon the question of contributory conduct, it is unnecessary to consider the issue to which we refer at paragraph 258: that is to say, a consideration of whether the Claimant would still have been dismissed at a determined point of time anyway. That said, it is our judgment that the procedural error around the conduct of the meeting of 9 February 2015 made no difference to the ultimate outcome anyway. The Claimant did not venture to suggest how the failure to furnish him with the particulars of the allegations on 9 February 2015 would have affected the outcome. It is of course a matter of speculation as to how long the Claimant would have lasted had Professor Wigginton not dismissed him for misconduct. Given the Claimant's demeanour before us (in particular his refusal to recognise that he had done anything wrong) it is our conclusion that the Claimant would very quickly after 3 May 2016 have found himself liable to dismissal for repeating the impugned conduct. As we say, however, these considerations are academic in the light of our findings upon the question of contributory conduct.

330. We now turn to the complaint of automatic unfair dismissal. The first question that arises is whether the Claimant made protected disclosures at all. If the disclosures (which are referred to at paragraph 261) were not protected then the Claimant will fail at the first hurdle. The Claimant, as we said at paragraph 261, seeks to link the disclosures with the issues around Lesley Lomax, Andrew Maxfield and Sue Bully.

331. We have cited the relevant passages of the first disclosure of 9 February 2016 at paragraph 198. It is difficult, frankly, to see how any of the passages to which we refer in paragraph 198 and which the Claimant says constitute protected disclosures convey any information. We make a similar observation about the disclosure of 27 April 2016 (the salient passage said to contain the disclosure being recited at paragraphs 226 and 227). To borrow the wording of the Employment Appeal Tribunal in **Kilraine** the relevant passages say nothing at all specific. They cannot be said to sensibly convey any information at all. Thus, the Claimant's complaint of automatic unfair dismissal for having made protected disclosures must fail.

332. If we were to be wrong upon this conclusion, then we hold that the Claimant could not have had a reasonable belief that the treatment of Lesley Lomax constituted one or more of the relevant failures in paragraph 262. We bear in mind that the Claimant is a lecturer in law. There was no legal obligation upon the Respondent to offer Lesley Lomax an honorary visiting fellowship. It is also difficult to see how the Claimant could entertain a reasonable belief that the Respondent's failure so to do was in the public interest. The question of an honorary visiting fellowship was an issue between Lesley Lomax and the Respondent and of little interest to anybody else. The Claimant did not explain how it was or could be.

333. We accept that the Claimant could form a reasonable belief that the Respondent was seeking to operate the law clinic in a way which would be contrary to Andrew Maxfield's professional duties as a solicitor. The Claimant is not a solicitor. If he was told by Mr Maxfield (who is a solicitor) that the proposed *modus operandi* of the law clinic may jeopardise Mr Maxfield's practising certificate for the reasons that he gave then it would, in our judgment, be reasonable for the Claimant to form a belief that the Respondent (by proceeding as it proposed to do in relation to the law clinic) was likely to put Mr Maxfield in the position of failing to comply with the legal obligations as a solicitor to which Mr Maxfield was subject.

334. However, the difficulty for the Claimant is that he has simply not produced evidence supporting his case that there was an inadmissible reason (in this case, dismissal for having made a protected disclosure) at play. The point was not put to Professor Wigginton. In any event, the April 2016 disclosure was received by the Respondent after Professor Wigginton had decided to dismiss the Claimant. It cannot therefore have been causative of Professor Wigginton's decision. There was no evidence of Professor Wigginton was aware of the alleged disclosures or that those disclosures influenced his decision at all.

335. We find that the Claimant did not have a reasonable belief that Susan Bully had been inappropriately recruited. We refer to our findings at paragraph 261.3. Again there was no suggestion put to the Respondent's witnesses that these issues were causative of his dismissal.

336. We now turn to the Claimant's trade union discrimination complaints. As we said at paragraph 275, whether or not an activity or service is a trade union activity or service is to be determined by reference to the facts of the case. We accept that the Claimant was providing trade union services and engaging in trade union activities when raising concerns about the peer review issue to which we refer in paragraphs 76 and 77. The Claimant was noted on the list of trade union officers to which we refer at paragraph 74.

337. As identified at the private Preliminary Hearing of 21 September 2016 (at paragraph 17 on page 45 of the bundle), the alleged detriment to which the Claimant says he was subjected caused by his trade union activities was the Respondent's decision to suspend him pending an investigation into alleged misconduct. The Claimant's case is that the suspension pending that investigation was a pretext and the real reason was the Respondent's unhappiness about his involvement on behalf of the membership around the peer review issue.

338. The Claimant did not suggest to Mr Dhillon during cross-examination that Mr Dhillon had been motivated to suspend the Claimant by reason of trade union activities. We cannot see from his printed witness statement that the Claimant gave any evidence (or at any rate any convincing evidence) to this effect.

339. Inferences against the Claimant's proposition that Mr Dhillon was improperly motivated to suspend him may be found by reference to the Respondent's treatment of the Claimant following his return to work in the autumn of 2013 (at paragraphs 33 to 38 and 44). Further, it is the case that others expressed unhappiness with the peer review process. We refer to Mr Lynch's contribution to the debate about it at paragraphs 78 and 79. It is the case that Mr Lynch has suffered no harm to his career as a consequence of what he said on 11 February 2015.

340. In the circumstances, we find that the reason that the Respondent decided to effectively to suspend the Claimant was because of the Claimant's conduct that came to light during week ending 6 February 2015 and not because of trade union services or activities. The Claimant candidly accepted that the Respondent had an obligation to look into matters once those allegations came to light and to remove him from the lecture room in order to enable them so to do. For us to accept the Claimant's case upon this issue would require us to find that it was simply a coincidence of time that the Claimant was suspended at around the same time as the students made their complaint to Vicky Thirlaway. That is not a conclusion that can be properly reached upon the facts of this case.

341. The other detriment of which the Claimant complains (again recorded in paragraph 17 of the minute of the private Preliminary Hearing) was the detriment of the Respondent excluding the Claimant's trade union representative who was assisting him with the misconduct allegations. This complaint fails on the facts. As we have said several times, the Respondent did engage with Mark Leader until the point in time at which he declined to contact the Claimant. There is simply no basis upon which to make a finding that the Respondent excluded Mark Leader from the process.

342. The Claimant has adduced no evidence that cast doubt upon the Respondent's reason for dismissing him. It was not suggested to Professor Wigginton that he (Professor Wigginton) was at all motivated by the Claimant's trade union activities to dismiss him. It was not even suggested to Professor Wigginton that he knew of the Claimant's status as a trade union representative. Quite simply, there is paucity of evidence that the Respondent was motivated to dismiss the Claimant for an inadmissible reason relating to the Claimant's trade union membership, services or activities. To the contrary, all of the evidence points

the other way. The reason why the Respondent dismissed the Claimant was solely related to the Claimant's conduct.

343. We now turn to the question of disability discrimination. This complaint must fail at the first hurdle upon the basis that there was simply no evidence from the Claimant that he was at the material time a disabled person by reason of mental impairment. He gave no evidence as to how the mental impairment affected his ability to carry out normal day to day activities, whether the adverse effect upon him was substantial and whether the adverse effect upon him was long term.

344. We do have the GP notes at pages 515 and 519. Both of these refer to work stress. In our judgment, that diagnosis falls short of being sufficient to constitute mental impairment for the purposes of the 2010 Act. The citation from **Herry** at paragraph 287 is in our judgment apt.

345. In reality, the Claimant is left with the occupational health opinion of 4 February 2016 (cited in particular at paragraph 191). That is, however, insufficient to plug the evidential gap upon which basis the Tribunal may make a finding that the Claimant's day to day activities have been affected to a substantial degree upon a long term basis.

346. The disciplinary discrimination complaints must therefore fail. We shall however go on to consider the substantive complaints in any event. We shall start with the reasonable adjustments complaint.

347. The relevant PCPs are those identified at paragraph 21 of the minute of the private Preliminary Hearing. The first of these was an alleged failure upon the part of the Respondent to keep in personal contact with the Claimant. This fails on the facts. We have seen that the Respondent kept in touch with the Claimant through Mark Leader until the time at which Mr Leader declined to continue his involvement with the matter. The Respondent made arrangements to change the Claimant's line manager to James Marson. The Claimant had no objection to Mr Marson's appointment. We can see from the chronology that Mr Marson then was in regular contact with the Claimant.

348. The second alleged PCP was the requirement of the Respondent for meetings to take place within the university. We can accept that this PCP may cause a disadvantage to a disabled person with the mental impairment of mild anxiety and depression in circumstances where the disabled person perceives that to be caused by the employer. The difficulty for the Claimant, however, is that there was no recommendation by occupational health for meetings to take place upon neutral territory away from the Respondent's premises. Occupational health noted the Claimant's preference but did not give management advice to the effect that the Claimant was not fit to attend meetings upon the Respondent's premises. Therefore, in our judgment, the Respondent may avail itself of the defence that it lacked the requisite knowledge. We explained the principles at paragraph 297. In our judgment, there is no mandate for a suggestion that the Respondent could reasonably have been expected to know that the Claimant was a disabled person and likely to be placed at a substantial disadvantage in relation to a relevant matter (that being the location of meetings) by the application of the Respondent's PCP. The Respondent had done all it reasonably could in our judgment to ascertain the position by asking its external occupational health service to advise.

349. The third impugned PCP was going ahead with meetings of 8 March 2016 and the disciplinary and grievance hearings when the Claimant said that he was unable to attend through ill health. Again, this is plainly capable of being a disadvantaging PCP in an appropriate case. Again however the Claimant's difficulty is the contents of the occupational health report at page 536. Far from suggesting that the Claimant was unfit to attend hearings, the advice from occupational health was to the contrary. Occupational health said that a speedy resolution to issues outstanding at work was likely to expedite an improvement in the Claimant's well being and that the Claimant was fit to attend meetings. Therefore, again, there is no basis for a finding that the Respondent knew or could reasonably have expected to know that the application to the Claimant of that PCP was likely to place the Claimant at a substantial disadvantage.

350. It therefore follows that the reasonable adjustments claim would have failed anyway even had we found the Claimant to be a disabled person. We therefore turn to the harassment claim.

351. The harassment claim arises out of the same three issues as the reasonable adjustments claim. Accordingly, dealing with each in turn:-

    351.1. For the same reasons as given at paragraph 347, the allegation that the Respondent engaged in unwanted conduct by failing to keep in personal contact with the Claimant fails on the facts.

    351.2. We have determined that the Claimant did not want to have meetings upon the Respondent's premises. Accordingly, the Respondent convening the meetings upon their premises was unwanted conduct. We find that the Respondent did not convene meetings upon its premises with the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. The Respondent convened meetings to take place within the university considering it reasonable to do so in the light of occupational health advice. We also do not consider, objectively, that it was reasonable for the Claimant to consider that the Respondent holding meetings on its own premises had the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. The objective aspect of the test (as we describe at paragraph 300) is fatal to the Claimant's case. Objectively, it was not reasonable for the Claimant to consider the Respondent's conduct to have the proscribed effect upon the basis of occupational health advice that there was nothing to indicate that the meetings should take place away from the Respondent's premises. In any event, the Respondent holding the meetings at its own premises was not motivated by or related to the Claimant's disability but rather was motivated and related to its handling of the conduct issue that had arisen in the first week of February 2015.

    351.3. For similar reasons, the third complaint of harassment (going ahead of meetings on 8 March 2016 and the disciplinary hearing when the Claimant said that he was unable to attend through ill health) fails on the facts. We can go some way with the Claimant. Plainly, the Respondent deciding to proceed with these meetings was unwanted conduct from the Claimant's point of view. However, the Respondent did not convene

those meetings for the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him. The purpose of convening the meetings was to progress the conduct and grievance issues that were then in hand. It also cannot be said, in our judgment, that the Claimant could reasonably have considered that the convening of those meetings had the proscribed effect. Again, the Claimant's case founders upon the occupational health advice to the effect that the Claimant was fit to attend meetings. Further, occupational health advice was that the Claimant would positively benefit from an early resolution of matters. The Respondent therefore acted reasonably in our judgment in wanting to progress matters. Its wish so to do was also not related to the relevant protected characteristic of the Claimant's disability but was related to the Respondent's desire to resolve the conduct and grievance matters.

351.4. It follows therefore that even if we are wrong to have found that the Claimant was not a disabled person with the meaning of the 2010 Act, the disability discrimination complaints would have failed in any event.

352. We now move on to the complaint of age discrimination. This complaint revolves around the invitation to the Claimant and others to consider early retirement. The relevant factual findings are at paragraphs 40 to 43. These events took place during 2013. There was no connection between the discussions around early retirement on the one hand and the subsequent events from February 2015 onwards on the other. The age discrimination complaint therefore relates to acts extending over a period ending at some point during 2013 at the latest. It follows therefore that the Claimant has brought his complaint of age discrimination outside the relevant time limit to which we refer at paragraph 301.

353. The Tribunal will have jurisdiction should the Tribunal decide to extend time as explained in paragraphs 302 and 303. The Claimant advanced no explanation as to why his complaint was out of time. Nor did he advance any reasons upon which basis the Tribunal should consider enlarging time to enable us to have jurisdiction to consider the complaint. As we said, there is no presumption that time should be extended on just and equitable grounds. It is for the Claimant to persuade the Tribunal that it is just and equitable to extend time and time limits are exercised strictly in employment cases. There is simply no basis upon which for the Tribunal to exercise its discretion to extend time. The age discrimination complaint is therefore out of time and the Tribunal has no jurisdiction to consider it.

354. Even if we were to extend time, we would have dismissed the age discrimination complaint on the facts anyway. As we said at paragraph 290, the burden of proof is upon the Claimant to show a *prima facie* case of discrimination. It is therefore for him to show that he was less favourably treated than an actual or hypothetical comparator and that less favourable treatment was upon the grounds of age. As we observed at paragraph 43, some of those spoken to about the prospects of early retirement are of a different age group to the Claimant. The Claimant cannot therefore complain of less favourable treatment in comparison to the persons listed at pages 139 to 143 who are of a different age or age group to him because they have been treated the same.

355. It must follow therefore that the Claimant is seeking to compare himself against actual or hypothetical comparators of a different age or age group not featuring on the list and were not spoken to about voluntary redundancy. The Claimant complains of less favourable treatment by being spoken to about the prospect of taking early voluntary retirement and that that was to subject him to a detriment. There is no statutory definition of the word "detriment". It has been held to mean "putting under a disadvantage" or "existing if a reasonable worker would or might take the view that the action of the employer was in the circumstances his detriment".

356. We fail to see how simply asking an employee to consider voluntary early retirement is to disadvantage that employee or could reasonably be considered to be a detriment. In these circumstances, we find as a fact that the matter went no further when the Claimant made it plain that he was not interested in exploring matters further. There was no comeback against him. Indeed, it may be considered that those of a different age or different age group who were not asked about the prospect of voluntary early retirement (as were some of a different age or a different age group) may have been subjected to a disadvantage by not being given or offered an opportunity to consider their future in that way. In our judgement therefore the Claimant was not subjected to less favourable treatment because of the protected characteristic of age by being asked to consider voluntary early retirement by Mr Dhillon in 2013. In any event, as we say, the Tribunal has no jurisdiction to consider the age discrimination complaint which fails for want of jurisdiction.

357. In conclusion, therefore:-

357.1. The complaint of ordinary unfair dismissal succeeds.

357.2. Upon remedy, there shall be no basic or compensatory award as both are reduced by 100% by reason of the Claimant's conduct.

357.3. The complaint of unfair dismissal for an impermissible reason for having made a protected disclosure fails.

357.4. The trade union discrimination and disability discrimination claims fail.

357.5. The age discrimination complaint fails because the Tribunal does not have jurisdiction to consider it.

Employment Judge Brain

Date: 10 July 2017