EMPLOYMENT TRIBUNALS

Claimant: Dr Annette Plaut

Respondent: Exeter University

Heard at: Exeter **On:** 15, 18-22 & 25/26 October 2021

Before: Employment Judge Housego
Tribunal Member Smillie
Tribunal Member Sleeth

Representation

Claimant: Stuart Roberts, of Counsel

Respondent: Rachel Owusu-Adyei, of Counsel

JUDGMENT

1. The Claimant was unfairly dismissed by the Respondent.

2. Compensation for unfair dismissal is enhanced by 25% for breach of the Acas Code of Practice on dismissals, but that figure will then reduced by 25% by reason of contributory conduct (so that the compensation to be awarded is 93.25% of attributable loss).

3. The claims of victimisation and harassment in respect of the suspension on 11 April 2019 succeed.

4. The remaining claims of race and discrimination are dismissed.

REASONS

Summary

1. Dr Annette Plaut is a physicist, who had worked at the University for some 30 years. She was dismissed, the reason given being the way she had dealt with 2 doctoral students. She claims this was unfair and was also race and sex discrimination. The race discrimination claim is based on her eastern European Jewish heritage, which she says gives her inherent characteristics (in the way she interacts with people) which she says were the reasons for the way she dealt with her students. She says that as a woman she was discriminated against as physics has long been male dominated, and she says that a man would not have been treated so. The University says that Dr Plaut's behaviour warranted dismissal, and that race and sex had nothing to do with it. They say much of the claim is out of time in any event.

2. The Tribunal decided that the claims were either in time, or it was just and equitable to allow them to proceed. The Tribunal decided that the dismissal of Dr Plaut was unfair. The Tribunal could not see any way that a fair procedure could have led to a dismissal, that the Acas Code had not been followed by the Respondent and that compensation should be increased by 25%, but that Dr Plaut contributed to the dismissal by 25% (the end result being that compensation will be 93.75% of the loss sustained, to be assessed at a remedy hearing if not agreed).

3. The Tribunal did not find that the claims of race discrimination and sex discrimination were made out, save one, that of harassment by suspending her for making a comment at her return to work meeting on 03 April 2019 about her protected characteristics.

Claims made and relevant law

4. Dr Plaut claims unfair dismissal and that the dismissal, as well as being unfair was direct race and sex discrimination[1]. She claims that she was harassed in connection with protected characteristics of sex and race[2]. She also claims she was victimised[3] after doing protected acts[4].

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[1] Section 13 of the Equality Act 2010:
"13 Direct discrimination
(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

[2] S26 Equality Act 2010: (1) A person (A) harasses another (B) if—
(a) A engages in unwanted conduct related to a relevant protected characteristic, and
(b) the conduct has the purpose or effect of—
(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

[3] Equality Act 2010 S27 Victimisation
(1) A person (A) victimises another person (B) if A subjects B to a detriment because—
(a) B does a protected act, or
(b) A believes that B has done, or may do, a protected act.

[4] Equality Act 2010 S27(2) Each of the following is a protected act—
(a) bringing proceedings under this Act;
(b) giving evidence or information in connection with proceedings under this Act;
(c) doing any other thing for the purposes of or in connection with this Act;
(d) making an allegation (whether or not express) that A or another person has contravened this Act.

5. In respect of the claim for unfair dismissal, the Respondent has to show that the dismissal was for a potentially fair reason[5]. The Respondent says this was conduct, which is one of the categories that can be fair[6]. This is accepted by Dr Plaut as the real reason, but tainted, she says by considerations of race and sex. It must be shown that the decision to dismiss was fair[7]. The employer must follow a fair procedure throughout[8]. It is not for the Tribunal to substitute its own view of what should have happened, for it is judging whether the actions of the employer were fair, and not deciding what it would have done. Dismissal must be within the range of responses of the reasonable employer[9]. That range is not infinitely wide[10]

6. The burden of proof as to the reason for dismissal is on the employer, on the balance of probabilities. There is no burden or standard of proof for the Tribunal's assessment of whether it was fair to dismiss[11]. If the dismissal was procedurally unfair the Tribunal has to consider assessing what would have happened if a fair procedure had been followed[12].

7. The Respondent does not accept that the dismissal was procedurally unfair, but also asserts that had the procedure been unfair the same result would inevitably have occurred. It says that any failing was cured by the appeal against dismissal.

8. The Tribunal was also asked to consider uplift, of up to 25% for breach of the Acas Code on dismissals[13]. The Respondent denies that the Code was breached.

9. The test for a claim that the Claimant has suffered unlawful discrimination is whether or not the Tribunal is satisfied that in no sense whatsoever was there less favourable treatment tainted by such discrimination. It is for the Claimant to show reason why there might be discrimination, and if she does so then it is for the Respondent to show that it was not. The two steps are not hermetically sealed, and eliding them is not impermissible. The Tribunal has applied the relevant case law[14], and has fully borne in mind, and applied S136[15] of the Equality Act 2010. Discrimination may be conscious or unconscious, the latter being hard to establish and (by definition) unintentional. It is the result of stereotypical assumptions or prejudice.

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[5] S98(2) of the Employment Rights Act 1996
[6] Also S98(2) of the Employment Rights Act 1996
[7] S98(4) of the Employment Rights Act 1996
[8] Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23 CA
[9] Iceland Frozen Foods Ltd v Jones [1982] UKEAT 62_82_2907
[10] Newbound v Thames Water Utilities Ltd [2015] EWCA Civ 677, paragraph 61: "The "band of reasonable responses" has been a stock phrase in employment law for over thirty years, but the band is not infinitely wide. It is important not to overlook s 98(4)(b) of the 1996 Act, which directs employment tribunals to decide the question of whether the employer has acted reasonably or unreasonably in deciding to dismiss "in accordance with equity and the substantial merits of the case". This provision, originally contained in s 24(6) of the Industrial Relations Act 1971, indicates that in creating the statutory cause of action of unfair dismissal Parliament did not intend the tribunal's consideration of a case of this kind to be a matter of procedural box-ticking. As EJ Bedeau noted, an employment tribunal is entitled to find that dismissal was outside the band of reasonable responses without being accused of placing itself in the position of the employer. The authority he cited as an example among decisions of this court was *Bowater v NW London Hospitals NHS Trust* [2011] IRLR 331, where Stanley Burnton LJ said:
"The appellant's conduct was rightly made the subject of disciplinary action. It is right that the ET, the EAT and this court should respect the opinions of the experienced professionals who decided that summary dismissal was appropriate. However, having done so, it was for the ET to decide whether their views represented a reasonable response to the appellant's conduct. It did so. In agreement with the majority of the ET, I consider that summary dismissal was wholly unreasonable in the circumstances of this case."
[11] Section 98(4) of the Employment Rights Act 1996
[12] Polkey v AE Dayton Services Ltd [1987] UKHL 8
[13] https://www.acas.org.uk/acas-code-of-practice-for-disciplinary-and-grievance-procedures/html
[14] The law is comprehensively set out in Royal Mail Group Ltd v Efobi [2021] UKSC 33 (23 July 2021)
[15] "136 Burden of proof
(1) This section applies to any proceedings relating to a contravention of this Act.
(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
(3) But subsection (2) does not apply if A shows that A did not contravene the provision.
…"

10. In addition to defending the discrimination claims on the merits, the Respondent says that they are doomed to fail, as the Claimant has always relied on what she has termed the *"intersectionality"* of race and sex, so that her claims rely on dual discrimination, which was not a breach of the Equality Act 2010 as S12 (about dual discrimination) had never been brought into effect.

Issues

11. These were set out in a case management order (below) but in summary are:

Unfair Dismissal

11.1. Did the Respondent have a potentially fair reason for dismissing the Claimant? The Respondent says the reason for the Claimant's dismissal was conduct (in line with s.98(2)(b) Employment Rights Act 1996), and the Claimant agrees that this was the reason.

11.2. It is not conceded that the procedure was unfair, but if it was, what would have happened had there been a fair procedure? The Respondent says dismissal was inevitable. The Claimant says that she would not have been dismissed at all.

11.3. What period of compensation should there be? (To be dealt with at the remedy hearing, but the schedule of loss indicates loss of earnings to date of retirement at age 60.)

11.4. Should there be an uplift in compensation of up to 25%?

11.5. Should there be any reduction for contributory conduct[16]?

Direct Race Discrimination

12. The Respondent dismissed the Claimant. Was this, at least in part because of the Claimant's race or sex?

12.1. In respect of race the Claimant relies on her eastern European Jewish heritage which, she claims, means that she has inherent characteristics of loudness, and of a conversational style that involves an argumentative style of discussion involving interruption, and much hand movement. She says this is in some ways akin to many Mediterranean peoples. She says that a person from a race without those characteristics would not have been dismissed. (The Respondent says that this is not a true comparator – which they say would be a loud (etc) person who was not of eastern European Jewish heritage, who they say would have been treated just the same as the Claimant.)

12.2. In respect of sex, the Claimant refers to a male Jewish colleague (whose name is omitted as these judgments are public documents, but whose identity will be apparent to the parties) who she says was equally loud (etc) but was not dismissed. The Respondent says that this choice of

[16] S122(2) and S123(6) Employment Rights Act 1996.

comparator is fatal to the race claim. It says that any person would be treated the same, and that the Claimant has not shown primary facts from which an inference of sex discrimination could be drawn.

12.3. Is the Respondent correct, or not, in its objection that the claim must fail because it depends on S12 of the Equality Act 2010 (dual discrimination) which has never been brought into force?

13. Case law indicates that a list of issues is not a pleading, but a tool to facilitate a hearing, and could not be approached with the formality one might approach a commercial contract or pleading[17]. Nor must a Tribunal stick slavishly to a list of issues[18]. In this case this list of issues was set out in a Case Management Order of 25 January 2021. This was complicated by the fact that the appeal against dismissal was decided only on 10 June 2021.

14. The issues set out in the Case Management Order were as follows:

"1. Time limits

1.1 The first claim form alleging discrimination was presented on 17 January 2020. The claimant commenced the Early Conciliation process with ACAS on 18 November 2019 (Day A). The Early Conciliation Certificate was issued on 18 December 2019 (Day B). Accordingly, any act or omission which took place before 19 August 2019 (which allows for any extension under the Early Conciliation provisions) is potentially out of time so that the Tribunal may not have jurisdiction to hear that complaint.

1.2 The second claim form alleging unfair dismissal and discriminatory dismissal was presented on 25 June 2020. The claimant commenced the Early Conciliation process with ACAS on 28 April 2020 (Day A). The second Early Conciliation Certificate was issued on 28 May 2020 (Day B). Although claims arising from the dismissal on 30 January 2020 appear to have been presented in time, the respondent relies on HMRC v Serra Garau UKEAT/0348/16/LA as authority for the proposition that the second Early Conciliation Certificate cannot be relied upon, and that time starts running from the date of the first Certificate, and that the second set of proceedings were therefore presented out of time.

1.3 Was the unfair dismissal complaint made within the time limit in section 111 of the Employment Rights Act 1996? The Tribunal will decide:

1.3.1 Was the claim made to the Tribunal within three months (plus the Early Conciliation extension) of the effective date of termination?

1.3.2 If not, was it reasonably practicable for the claim to have been made to the Tribunal within the time limit?

1.3.3 If it was not reasonably practicable for the claim to have been made to the Tribunal within the time limit, was it made within a reasonable period?

[17] Leslie Millin v Capsticks Solicitors LLP and Others: UKEAT/0093/14/RN
[18] Saha v Capita UKEAT/0080/18/DM

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

1.4.1 Was the claim made to the Tribunal within three months (plus the Early Conciliation extension) of the act or omission to which the complaint relates?

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

1.4.3 If so, was the claim made to the Tribunal within three months (plus the Early Conciliation extension) of the end of that period?

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

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

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

Unfair dismissal

2.1 What was the reason for dismissal? The respondent asserts that it was a reason related to conduct, which is a potentially fair reason for dismissal under s. 98 (2) of the Employment Rights Act 1996.

2.2 Did the Respondent hold a genuine belief in the claimant's misconduct on reasonable grounds and following as reasonable an investigation as was warranted in the circumstances? The burden of proof is neutral here but it helps to know the claimant's challenges to the fairness of the dismissal in advance and they are summarised as follows;

2.2.1 the respondent failed to carry out a full, fair and reasonable investigation; and

2.2.2 the respondent unreasonably concluded that dismissal was the appropriate sanction; and

2.2.3 the respondent failed to consider alternatives to dismissal.

2.3 Was the decision to dismiss a fair sanction, that is, was it within the range of reasonable responses open to a reasonable employer when faced with these facts?

2.4 Did the respondent adopt a fair procedure? The claimant challenges the fairness of the procedure for the reasons set out in paragraph 14 (a) to (e) in her second Particulars of Claim, which in short are these:

2.4.1 the respondent failed to follow the investigating officer's recommendation and made the decision to pursue the matter to a disciplinary hearing; and

2.4.2 the respondent carried out a further investigation following the disciplinary hearing in December 2019, but failed to provide the claimant with a copy of this new information or to respond to it; and

2.4.3 the disciplinary panel received further information from Mr Vukusic after the disciplinary hearing, which again the claimant was not provided with, or a given opportunity to respond to; and

2.4.4 the respondent has relied on allegations which occurred prior to the claimant's final written warning when considering her dismissal; and

2.4.5 there is no evidence to suggest that the claimant had breached her final written warning after it had been imposed.

2.5 If it did not use a fair procedure, would the claimant have been fairly dismissed in any event and/or to what extent and when?

2.6 If the dismissal was unfair, did the claimant contribute to the dismissal by culpable conduct? This requires the respondent to prove, on the balance of probabilities, that the claimant actually committed the misconduct alleged.

3. Direct Sex and Race Discrimination (s 13 Equality Act 2010)

3.1 The claimant describes herself as a Jewish woman.

3.2 Did the respondent do the following things:

3.2.1 suspending the claimant without reasonable and proper calls on two occasions; and

3.2.2 commencing disciplinary proceedings against the claimant for speaking loudly to a student and for touching the student on the back of the head during a scientific demonstration; and

3.2.3 issuing the claimant with a final written warning, live for 18 months, for touching a student without intent to harm; and

3.2.4 Commencing disciplinary proceedings against the claimant for a second time for raising concerns of unconscious bias within the Physics department; and

3.2.5 commencing disciplinary proceedings against the claimant for allegedly causing an irretrievable breakdown in the working relationships between her and her colleagues, later modified by firstly retracting the words irretrievable and colleagues altogether, and to specify just her line management, only to subsequently reinstate the word colleagues but not the word irretrievable; and

3.2.6 fishing for additional grounds to bring disciplinary proceedings against the claimant and thereby finding that she had spoken loudly to a student, despite the fact that the claimant had checked with the student multiple times that the student had understood that no inference should be drawn from the loudness of the claimant's voice and despite the fact that

the last supervision meeting with that student had taken place on 19 December 2018, well before the first disciplinary hearing; and

3.2.7 rejecting the claimant's grievance and grievance appeal; and

3.2.8 overriding the recommendations of Ms Aggett.

3.3 Was that less favourable treatment? The Tribunal will have to decide whether the claimant was treated worse than someone else was treated, known as the claimant's comparator. There must be no material difference between the circumstances of this comparator and those of the claimant. The comparator can be an actual person, or if there is no actual comparator then someone hypothetically. That is to say a hypothetical comparator whom the claimant says would not have been treated in the (less favourable) way in which the claimant was treated. The claimant relies on hypothetical comparators, namely a loud male and/or a female with a quieter disposition (that is of a different ethnicity).

3.4 If the claimant did suffer less favourable treatment above, was this because of her race and/or her sex?

4. Harassment Related to Sex and Race (s 26 Equality Act 2010)

4.1 The claimant repeats the allegations of direct discrimination set out above, and in the alternative argues that this was unlawful harassment. Did the respondent act as alleged?

4.2 If so, was that unwanted conduct?

4.3 Did it relate to the claimant's protected characteristic(s), namely her race and/or her sex?

4.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

4.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

5. Victimisation (s 27 Equality Act 2010)

5.1 Did the claimant do a protected act as follows:

5.1.1 the claimant's instigation and part organisation of an Unconscious Bias Workshop on 21 April 2016 for Physics and Astronomy academic staff; and

5.1.2 her request for a Dignity and Respect meeting with the respondent's HR in 2017; and

5.1.3 her complaints of harassment in 2017 to the respondent's HR department; and

5.1.4 her comments about unconscious bias in the return to work meeting on 3 April 2019; and

5.1.5 her grievance dated 30 April 2019.

5.2 Did the respondent do the following things? The claimant repeats the allegations set out under direct discrimination and harassment above, and asserts that these acts amounted to detriment.

5.3 By doing so, did the respondent subject the claimant to detriment?

5.4 If so, was it because the claimant had done the protected acts?

15. The issue of the appeal against dismissal was not dealt with before the hearing. Plainly it is relevant, as both parties agreed. The Respondent says that it was a rehearing (albeit on paper for Covid reasons) and was fair and cures any defect that occurred before. The Claimant had filed no pleading about the appeal. It is covered in her witness statement at paragraph 58. It was agreed at the start of the hearing that the challenge to the appeal was limited to that paragraph, which reads:

"58. I take particular issue with the Respondent appointing Mark Goodwin to Chair the appeal and refer to [pages 389 and 396 of the core hearing bundle] for email exchanges with the Respondent on this point. I further take issue with the length of time that it took to conduct this appeal [page 428 of the core hearing bundle]. However, on 13 January 2021, the Respondent proceeded to cut off my email access without notice [page 423 of the core hearing bundle]. I was unable to access important documents which I needed to rely upon for the purposes of my appeal. Further, KJ [Kirsty Johnson] filed the Respondent's supporting documentation only on 4 March 2021 i.e. after the agreed 3 March 2021 deadline [page xxx]. Since my evidence had been filed in time (i.e. on 3 March 2021), KJ was effectively preparing her bundle of documentation in response to my evidence."

Evidence

16. There was a bundle of documents running to 708 pages, with further pages added to increase this to 734 pages. In addition, there was a pleadings bundle and a witness statement bundle. The Claimant submitted an addional bundle of documents of 201 pages.

17. The Claimant gave evidence first. She found this stressful. Adjustments were made, and the Tribunal gratefully record that the Respondent's Counsel was flexible and helpful in dealing with the difficulty. It was taken that answers to the remaining questions in relation to the discrimination claims, similar to those already answered about other topics, would be the same about the remaining topics, that there would be no point taken about points not put to the Claimant by so doing, and the remaining questions would be about the unfair dismissal claim (which was not as problematic for the Claimant).

18. For the Respondent, oral evidence was given by:

- Geoffrey Williams (human resources – 1st investigation report)

- Professor Richard Smith (1st disciplinary hearing, final written warning)
- Professor Timothy Harris (Claimant's line manager)
- Kirstie Johnson (Solicitor, Caseworker and part of Human Resources)
- Imelda Rogers (Director of Human Resources)
- Christopher Lindsay (Director of Compliance Governance and Risk)
- Professor Sue Prince (Professor of Law – grievance appeal)
- Professor Tim Quine (Deputy Vice Chancellor – dismissed Claimant)
- Professor Mark Goodwin (Deputy Vice Chancellor – appeal against dismissal)

In the rest of this judgment, these individuals are referred to by initials. Other individuals are referred to by initials the parties will recognise, but their names are not given, as this is a public document, and they have not had the opportunity to comment on matters raised in it.

Preliminary point – out of time issue

19. There is no time point about the filing of first claim, but many of the allegations contained within it are said to be out of time, and not to form part of a series of actions. This was not the preliminary point about time.

20. The preliminary point about time was decided on 18 October 2021. The decision and reasons were as follows.

    20.1. The second claim was filed within time if the second Acas certificate extended time but is out of time if it did not. This is because the notification to Acas was on 28 April 2020, and time ran out on 29 April 2020, 3 months from dismissal 30 January 2020. If the 2nd Acas certificate extended time the 2nd claim was filed within time, on 25 June 2020 (the Acas period being 28 April – 28 May 2020).

    20.2. The Respondent points to The Commissioner for HMRC v Serra Garau UKEAT/0348/16/LA, the succinct summary of which at its start states:

    "The early conciliation certificate provisions introduced from 6 April 2014 do not allow for more than one certificate of early conciliation per "matter" to be issued by ACAS. If more than one such certificate is issued, a second or subsequent certificate is outside the statutory scheme and has no impact on the limitation period."

    20.3. There is also other case law which the Tribunal raised with the parties: Compass Group UK & Ireland Ltd v Morgan (Practice and Procedure: Preliminary issues) [2016] UKEAT 0060_16_2607

    "The words "relating to any matter" are ordinary English words that have their ordinary meaning. Parliament deliberately used flexible language capable of a broad meaning both by reference to the necessary link between the proceedings and any matter and by reference to the word "matter" itself. It is not useful to provide synonyms for the words used by Parliament. Provided that there are or were matters between the parties whose names and addresses were notified in the prescribed manner, and they are related to the proceedings instituted, that is sufficient to fulfil the requirements of section 18A(1) Employment Tribunals Act 1996."

and Romero v Nottingham City Council [2018] UKEAT 0303_17_2604.

> *"1. The appeal involved a reformulation of arguments run and rejected by the Employment Appeal Tribunal in **HMRC v Serra Garau** [2017] ICR 1121. Since **Garau** was not decided per incuriam and is not manifestly wrong, it should be followed: only one mandatory EC process is enacted by the EC provisions in section 18A **Employment Tribunals Act 1996**, and only one certificate is required for "proceedings relating to any matter". A second certificate, where obtained and relating to the same matter, has no impact on the limitation period.*
>
> *2. Since the Employment Tribunal was entitled to conclude that the two certificates both related to the same "matter", it was also entitled to conclude that the claim was made out of time and that, since it was reasonably practicable for it to have been made in time, there was no jurisdiction to hear it."*

20.4. There is no definition of *"matter"* in the legislation, and the Courts have declined to give one.

20.5. The Tribunal decided that the Claimant had always said that her treatment was the result of unconscious discrimination against her by reason of the *"intersectionality"* of her race and gender. The dismissal was (on her account) a continuation of the unconscious discrimination she said she had suffered (and which was the subject of the 1st claim). The dismissal could simply have been added to the 1st claim by amendment. No other Acas certificate would have been required to do so. The matter was discrimination on the basis of race or sex (or both) and this was no more than a further such allegation.

20.6. Accordingly, the discrimination claims in the 2nd claim were out of time. The Tribunal considered the case law on extension of time[19]. The Tribunal decided that it was just and equitable to extend time for the discrimination part of the 2nd claim. The Respondent was always going to have to deal with the 1st claim of discrimination. It would be no prejudice to them to deal with the 2nd. It would be highly artificial to limit the claim to 1st claim, so excluding the very thing the Claimant felt was the aim of the discrimination she said she was suffering. This Tribunal would have allowed amendment to add dismissal as a detriment. There is no additional complexity to the hearing other than adding the additional matter of dismissal as a head of detriment. There has been no delay to the hearing by reason of the 2nd claim.

20.7. The dismissal is alleged to be unfair for a variety of reasons, as an ordinary unfair dismissal claim. The 1st claim was filed on 17 January 2020. The Claimant's letter of dismissal was dated 30 January 2020, and stated this date was the final date of her employment. The principal unfairness alleged was obtaining further evidence after the hearing, in secret, and an email from one of the witnesses to the Chair of the

[19] Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23, paragraph 37: "The best approach for a tribunal in considering the exercise of the discretion under section 123 (1) (b) is to assess all the factors in the particular case which it considers relevant to whether it is just and equitable to extend time, including in particular (as Holland J notes) "the length of, and the reasons for, the delay"."

dismissal panel, involving also Imelda Rogers and Kirstie Johnson, after the hearing. These are matters totally unrelated to race and sex. The term *"matter"* cannot mean every possible dispute between employer and employee. Otherwise, there would be no such word in the legislation and it would be omitted, or provide for *"every"* claim between the parties. They post date the 1st claim. They are about something completely different. The dismissal allegations of unfairness are a new matter. Therefore, time is extended by the Acas certificate and the unfair dismissal claim is in time. This is not a case where a claimant seeks additional mediation in the same matter. *Compass* refers to matters in the past tense, and at the time of the 1st claim the dismissal was in the future: it is a new matter. *Romero* refers to a 2nd certificate in the same matter not extending time: the unfair dismissal claim is not the same matter.

21. While in chambers considering the case, the Tribunal revisited the dismissal letter. It stated:

> *"You are entitled to receive notice in accordance with your Contract of Employment. However the University will not require you to work your notice period. It is proposed that your final day of employment is therefore 30 January 2020. You shall receive three months' pay in lieu of notice (to expire at the end of the summer term on 12 June 2020) in accordance with your contract of employment, subject to normal deductions of tax and National Insurance contributions."*

22. This is very poorly drafted. It says the final day of employment is 30 January 2020. It also says that there will be pay in lieu of notice ("pilon"). However, it also says that notice will expire at the end of the summer term on 12 June 2020. Tax and NI were deducted, which is not usually the case for a pilon. The letter was drafted by the Respondent's human resources department. The Respondent relies on one meaning it contains, over another meaning. Any document such as this, where it contains an ambiguity is to be construed against the drafter who relies upon it (contra proferentem). Had the Tribunal not already decided in favour of the Claimant on this point (on the first day of the hearing) it would have sought representations on this point, which would indicate that the effective date of termination was 12 June 2020. If so the claim of unfair dismissal is not out of time at all (and nor is the discrimination claim it also contains).

23. While the Acas certificate time point was decided at the start of the hearing, the substantive time points were not determined, it being necessary to hear the evidence in order to do so. After some discussion, I indicated that my preliminary view was that as dismissal was in mind at the time of the 1st claim the Tribunal would have to consider whether that was tainted by race or sex discrimination. Neither party indicated that they disagreed with that suggestion at any time in the hearing. The Tribunal adopted that approach, as was discussed during submissions.

Facts found

24. It will assist to set out a timeline first.

01 October 1990	C starts employment (the only female physics

	academic)
30 November 2006	C becomes senior lecturer, physics and astronomy dept
21 April 2016	Unconscious bias workshop for dept academic staff *(said to be protected act 1)*
2017	C requests (and has) meeting with human rights team with Dignity and Respect Adviser *(said to be protected act 2)*
20 February 2017	Outcome letter (no formal action) complaint by colleague AN
21 December 2017	C complains of harassment to R's human resources dept *(said to be protected act 3)*
2016 or early 2017	Student 1 issue with neck and lamp
31 July 2018	Student 1 raises it, initially declining to lodge complaint
07 January 2019	C suspended over Student 1 allegation
30 January 2019	GW report into Student 1
15 February 2019	1st disciplinary hearing – RS chair
12 March 2019	1st disciplinary outcome: final written warning 18 months
03 April 2019	Return to work meeting: TH, GW in attendance, C says made comment about unconscious bias *(said to be protected act 4)*
12 April 2019	C suspended by reason of what she said at the return to work meeting
30 April 2019	TH meets Student 2
01 May 2019	C lodges grievance against KJ *(said to be protected act 5)*
02 May 2019	C required to attend disciplinary
14 June 2019	Grievance investigation report: CL
25 June 2019	Grievance outcome letter – not upheld: M S-N
08 July 2019	Grievance appeal lodged
21 August 2019	Grievance appeal hearing: SP
23 August 2019	Grievance appeal dismissed
29 August 2019	2nd disciplinary resumed
25 August 2019	TA 2nd disciplinary report – recommends informal resolution
14 November 2019	IR does not accept recommendation and convenes hearing
18 November 2019	IR requires C to come to 2nd disciplinary hearing
19 December 2019	2nd disciplinary hearing: TQ
30 January 2020	C dismissed: TQ
12 February 2020	C appeals dismissal
10 June 2021 (16 months later)	C's appeal considered on the papers and dismissed: MG

The Claimant's case

25. She was the first female in the department and had long struggled against unconscious bias as a woman. Her heritage meant that she was inherently loud, and her body language was demonstrative. Her conversational style was naturally argumentative. There was nothing she could do about it, for it was unconscious. If she tried to restrain herself the trait reasserted itself when she became excited or engaged in a topic, and as she was passionate about

physics that often happened. She told her students that was how she was, and that they should not take offence.

26. While she accepted that she was in the wrong over the Student 1, the completely wrong assertion of a laser being shone in Student 1's eye was indicative of the Respondent's attitude to her. She was willing to undertake the matters set out in the final written warning, such as equality diversity and inclusion training (even though she had got 97% in the last such course she had done), but nothing was done to put them in place after the 1st disciplinary hearing, even though she was suspended for many months. This indicated that they were not serious in getting her back to work but wanted her dismissed.

27. There was no reason for TH to seek out Student 2. This was an attempt to get someone to complain about her. Student 2 had pre-existing mental health issues. First, Dr Plaut should have been told this (and wasn't), and secondly if Student 2's health was affected this may well not have been anything to do with her. But there was no medical evidence that his mental health had been affected, or that if it was she had caused it.

28. The Respondent's own policy had not been followed. There was said to be a *"factual investigation"* but there were interviews carried out: this was not a factual investigation but a full investigation not in accordance with the policy. Those interviews were not held with a notetaker, and those interviewed were not told that the interview would form part of a disciplinary process against her, both of which were required by the policy. Those interviewed had been led to criticise her. No account had been taken of Student 2 saying that he did not blame her for a wish to change superviser, nor of the fact that Student 2 had given her a large box of chocolates before Christmas (not usual) or that he had agreed that relationship difficulties were caused by Student 2 not providing his data to her.

29. In the 2nd disciplinary hearing those who spoke for her were given short shrift. The students who had found her very helpful were not spoken to. There was a total focus on negativity, not balance.

30. No account had been taken of the fact that the Student 2 complaint was about things predating the Student 1 matter. She had not breached the terms of the final written warning.

31. She had now from the subject access request seen the enquiries made by TQ after the hearing, concealed from her, and again negative. She had also now found PV's email in the subject access request documents. It was completely improper and it was not any answer to say that it had been ignored when TQ and IR had positively thanked him for it. KG in human resources had not done otherwise.

32. The appeal was 16 months later and was never going to find anything other than that the dismissal was fair.

The Respondent's case

33. There were two complaints about the Claimant from doctoral students. These were serious enough to warrant dismissal. The first was gross misconduct,

and had they known of the other (earlier) matter at the time of the final written warning the Claimant would have been dismissed then. It was a fair dismissal and if there were any issues either they made no difference or they were cured by the appeal. The department was now much more balanced in gender terms than when the Claimant joined as the only woman. There was a great diversity in the academic staff, many of whom had Mediterranean backgrounds, and the Claimant's assertion that she was treated unfairly because of similar interpersonal characteristics was not correct. She was perceived to shout at students, and colleagues. None of this was to do with her being female or Jewish. The claim could not succeed as it was continually said by the Claimant to be based on the *"intersectionality"* of race and sex, and S12 had never been brought into effect.

Submissions

34. Both Counsel provided very lengthy written submissions, prepared over the weekend, and on Monday each spoke to them for over an hour. The written submissions can be read by a higher Court if required, and I made a full record of the oral submissions in my typed record of proceedings. It is not possible to summarise them accurately in any reasonable length. The major points raised are dealt with in the findings and conclusions. In essence, those for the Respondent were that everything that was done was fair, and within the range of responses of the reasonable employer. Those for Dr Plaut were that the range of issues highlighted clearly showed unfairness to the extent that she was targeted for dismissal, and more that it was tainted by sex, in a male orientated department, and race as it was unconscious bias against her inherent characteristics which were an integral part of her race.

Facts found

35. With nearly 800 pages of document evidence and a week's oral evidence with a narrative over many years with multiple people and issues raised this judgment deals with the most important relevant matters, and does not seek to make findings of fact about (or mention) every matter raised by both sides. That a matter, issue, or piece of evidence is not covered does not mean it was not considered. The Tribunal spent 1½ days in chambers finding facts and coming to conclusions.

36. Dr Plaut is a physicist. She joined the physics and astronomy department on 01 October 1990. She was a senior lecturer at the time of her dismissal. She was the only woman in the department when she joined. It is now a department with many women, and members of staff are an eclectic mix of nationalities.

37. Dr Plaut's parents left Germany before the Second World War. This is a family experience which Dr Plaut feels deeply. Dr Plaut feels very strongly that her inherent characteristics include a stereotypical loudness and demonstrative and argumentative style of interpersonal discourse. Dr Plaut is passionate about physics. While she can try to restrain her natural personality, it tends to emerge when she becomes engaged in discussion about physics.

38. Over the years some colleagues and some students have found this somewhat overbearing, despite Dr Plaut telling students and colleagues that

she means nothing by it. There was a view amongst some senior members of the department that Dr Plaut had been allowed for years to get away with behaviour which should really not be tolerated. Others valued her contribution, and accepted that she was not an unpleasant person even when being loudly argumentative in discussion. Those members of staff also pointed to the doctoral students helped by Dr Plaut to succeed when others may well have given up on them. Dr Plaut says that any negativity towards her by reason of her interpersonal communication style is unconscious racism as it stems directly from her inherent cultural upbringing. She finds particularly offensive the suggestion that her loudness is shouting, and finds the application of that word to her to be a great insult.

39. To sum up the great weight of evidence given to us, the vernacular phrase *"she is a Marmite person"* is not inaccurate.

40. The Tribunal was shown evidence of matters going back to 2000. There were a few of them. Nothing came of them. They do no more than indicate that the analysis above is likely to be correct.

41. In February 2017 there was a formal complaint by a colleague (45). After some discussion between the authorities Dr Plaut and the colleague no action was taken. The Tribunal accepted Dr Plaut's evidence that they became, and still are, friends and that continues although the colleague now works elsewhere.

42. Dr Plaut agreed with human resources a form of words to tell doctoral students about the way she might interact with them, which she used. In the outcome letter to Dr Plaut of 20 February 2017 about this complaint (no formal action), KJ said that Dr Plaut had an *"unnaturally loud"* voice (48). Dr Plaut took exception to this saying that the term agreed was that she had a *"naturally loud"* voice. KJ apologised. Dr Plaut feels this indicates an animus against her by KJ. That letter also said that if there were further incidents of misconduct formal disciplinary proceedings would be commenced *"without the need for a further investigation".* It is not possible to see how any subsequent allegation could lead directly to a disciplinary hearing, since it would need to be investigated to make it possible to decide. It would breach the University's policies to do this. Dr Plaut feels this further evidences her belief that KJ was not impartial. Over time the human resources department gradually became less and less tolerant of Dr Plaut.

43. The head of department, then NS, was made aware of the matters set out above. It appears that during his time as head of department there were no substantial issues with doctoral students.

44. In 2017 Dr Plaut emailed KJ about matters of sex discrimination she had been subjected to many years ago. She expressly said should did not expect any action about them. All but one of the people she named had left the University.

45. Doctoral students work largely alone. Dr Plaut is an experimental physicist (there are also theoretical physicists). The superviser is involved in the selection of the doctoral thesis and assists in its delivery. At the start the superviser directs the course of work, and over time the student becomes the

master of it. The progress of work from week to week should be reviewed at one to one sessions.

46. Dr Plaut had 3 doctoral students. Students 1 and 2 and another student, who said he had no issues with Dr Plaut's supervision of his work, and on the contrary was complimentary about her.

47. On 02 November 2017 NS received an email from RS (the superviser who replaced Dr Plaut) about an incident said to have taken place in July 2017[20].

48. On 01 August 2018 TH took over as head of department. He said that Dr Plaut was viewed as someone who would shout at meetings and was *"quite explosive"* At the handover meeting NS told TH that there was an allegation that Dr Plaut had held Student 1 by the neck and shone a light into her eyes. This was said to have occurred some time in the past. It appeared to have occurred on 02 November 2017 (page 53). Student 1 asked to change superviser and this occurred. It is not usually done as the superviser is closely involved in the design and progress of the project of the student, but appears to have been arranged without incident or enquiry revealing this allegation.

49. It was then drawn to the attention of the superviser who had replaced Dr Plaut, SR, some considerable time later. He told NS. When is unclear. From GW's investigation later, it seemed that NS did not know much about it, perhaps because this only reached him in July 2018. He did, however, tell TH.

50. TH sought advice from GW, and spoke to SR. He then spoke to Student 1 the same day, 01 August 2018. Student 1 did not want to make any complaint. TH discussed with GW. GW put Student 1 in touch with a *"Speak out Guardian"*, RF. In late October or early November 2018 (and so a year after the event) Student 1 was described by TH as *"being comfortable"* with this being investigated.

51. GW started investigating, but not until January 2019, the reason given being that Christmas was approaching (although it was almost 2 months away).

52. On 07 January 2019 GW met Dr Plaut and suspended her over the matter.

53. TH signed the letter (64) prepared by KJ calling Dr Plaut to a disciplinary hearing. It alleged that she had shone a laser into her student's eyes. This was not so, as TH fully appreciated. He asked human resources about it. They said that was the allegation, so that was what the letter had to say.

54. Dr Plaut was interviewed by GW about the matter on 09 January 2019 (68 et seq). GW said that the suggestion that there was a laser was incorrect (73). It came from RF's account of what Student 1 had told her. It was RF's error. Dr Plaut was asked about other students. She said that some were very appreciative, and cited one who had given her a Christmas card and a large box of chocolates at Christmas 2018. That was Student 2. Dr Plaut said that Student 1 seemed unable to comprehend saturation, and by way of analogy Dr Plaut used the effect of light from a desk light on Student 1's eyes, directing the student's head in the right direction. RF's account of what Student 1 told her was significantly exaggerated. Dr Plaut works with lasers,

[20] Notes of interview with NS, page 80, 15 January 2019, and Student 1's account 129 – in first year.

which may account for RF's misunderstanding, but it is clear that RF was very keen on Dr Plaut being disciplined, and perhaps lacked objectivity in her account of what Student 1 said to her. Alternatively, Student 1 may have invented the laser light. How this came up was not considered. Student 1 had previous mental health difficulties. Dr Plaut was not made aware of them. After this event (which she has never denied), and for which she said she apologised very soon afterwards, Dr Plaut said that the supervisions continued without incident until Student 1 moved superviser some months later.

55. On 15 January 2019 GW interviewed NS (79). GW prepared a report (99 et seq) dated 28 January 2019. It makes clear that the light was an anglepoise desk light not a laser (109). He concluded that there was evidence that Dr Plaut had shouted at Student 1 and had *"committed a physical assault"* on that student by *"holding them by the neck and shining a desk light into her eyes".* The description of this as an *"assault"* is that of GW.

56. On 04 February 2019 Dr Plaut pointed out (113) that the policy required suspension to be reviewed every 4 weeks, that 4 weeks had passed and there had been no review. The same day she was called to a disciplinary hearing (114). The letter was signed by someone other than KJ, per pro KJ. KJ's evidence was that she did not draft it. The Tribunal did not find credible KJ's evidence that she did not approve it. KJ is a solicitor and was both the caseworker and a solicitor advising the University. This was a letter calling a senior academic to a disciplinary hearing about a matter which was expressly stated could lead to summary dismissal. It is not credible that a paralegal (CL, as it is said the signatory was) would send out such a letter without having it approved, in this case inevitably by KJ. The allegations were of shouting at a student, and of holding a student by the neck and shining a laser light into the student's eyes. Plainly the writer of the letter had not troubled to read GW's report.

57. The letter then says *"We intend to call the following witnesses…"* This demonstrates the difficulty with this process: the human resources department is not being objective here, but prosecuting. Dr Plaut replied to say that it was going to be difficult for her to call witnesses as she was suspended on terms that required her not to contact colleagues (116).

58. Dr Plaut prepared a document commenting on the report of GW. Among other things she pointed out that her brother had died of cancer in April 2017, his cancer having returned in November 2016, so that when this happened it was a time of enormous stress for her.

59. She pointed out that it was somewhat unfair of GW to say that she had only apologised when the student confronted her, because on the contrary as soon as the student had said she was upset Dr Plaut had apologised, profusely. Other parts of the report were slanted unfairly, such as that when the student was ill she was told she was a martyr and should go home as she would infect people: what she had said was in fact supportive – don't be a martyr, go home. The Tribunal finds this a far more likely account, and it typifies a tendency to construe anything negatively so far as Dr Plaut was concerned.

60. On 10 February 2019 Student 1 prepared a narrative account, for the first time (129-130). It refers to Dr Plaut explaining lasers and shone a lamp into her eyes.

61. On 15 February 2019 there was a disciplinary hearing, held by RS. The charge was still the shining of a laser light, even though GW knew it was not alleged by Student 1. RS took the hearing. He was a careful witness for this Tribunal, and sincere. However, Dr Plaut's complaint that the two colleagues she had brought to speak on her behalf were listened to in a cursory fashion was so (they said so as well): the focus was on the allegations not on the generality of Dr Plaut's role as a doctoral superviser. RF, without any supporting evidence, described (137) Student 1 as *"a foreign student and very vulnerable".* There was no reason for Dr Plaut to think that (if that is indeed the case) she was very vulnerable. TH said that the department worked around such behaviour rather than confront it (138). This is relevant to the Tribunal accepting Dr Plaut's account of the return to work meeting. Dr Plaut read from a statement indicating that she felt that language used in documents was gradually embellished with the passage of time. The Tribunal agrees that this was what occurred, whether it is a lamp becoming a laser shined into Student 1's eyes or holding her neck becoming a physical assault.

62. CW (142) said how good Dr Plaut was – he said she had been considered for awards as she had made a huge difference. She got the best from weaker students. He pointed out that PhD students needed to get used to having things challenged: once published their reputations would ruined if their research was not robust. After only a couple of paragraphs of the minutes RS said *"We need to manage time, please."* Nevertheless, RS did give them some weight in his outcome letter.

63. RF gave evidence to RS. She said that Student 1 was traumatised and victimised. There is a real problem with RF's contribution. There was no medical evaluation of Student 1. There is reference to unspecified pre-existing mental health problems. It is not known what they were, or how severe, and whether the way Student 1's presentation to RF was a result of those issues, or whether compounded by being away from her home country. Nor has there been any medically competent assessment of the effect of the incident on Student 1. However, when this was put, very gently, by Dr Plaut's representative RF was adamant that there was such a mental health issue and that Dr Plaut was the source of it (136). This was taken to be so, and that was not fair.

64. The outcome letter was sent on 12 March 2019 (151 et seq). It noted, properly, that Student 1's counsellor referred to treatment but did not attribute stress and anxiety directly to Dr Plaut. It noted that Student 1 was anxious that financial constraints might preclude her attaining her doctorate. It accepted that Dr Plaut's loudness was largely unintentional, but expressed concern at her apparent inability to moderate it. It also expressed concern that there had not been adequate support, and said that the explanation that people *"worked around"* Dr Plaut was unhelpful. It stated that there was no laser lamp. It concluded that this was gross misconduct, but taking into account personal circumstances, supportive evidence, cultural background and lack of any positive action from her department decided against dismissal but to impose an 18 month final written warning.

65. It is not for a Tribunal to substitute its own view for that of an employer, and all the witnesses (including Dr Plaut) have a clear view of the boundaries of academic/student propriety. This was an outcome that was within the bounds of reasonable responses, and RS was plainly approaching the matter fairly, notwithstanding the Tribunals critique of some matters in the hearing. He added in mandatory steps – refresher training in equality diversity and inclusion by 31 March 2019, further voice training / coaching in speech and body language, and regular monitoring by, and with progress meetings with, TH. These were sensible positive steps. It again set out (and this has the hallmarks of authorship other than that of RS) that anything further would result in disciplinary proceedings without an investigation. The one point the Tribunal finds unjustifiable is the assertion that Student 1 had suffered mental health problems as a result of the way Dr Plaut had treated her: that was supposition, and took no account of the other reasons apparent from the narrative as to why that student may have had mental health problems.

66. Dr Plaut was left on suspension. RS's involvement ended with his letter (as it should have done). No step was taken to implement the mandatory steps even though one was time limited for 31 March 2019. Plainly either TH or KJ should have done something about this.

67. On 17 March 2019 Dr Plaut emailed GW to say that she was attending occupational health on 26 March 2019. She wanted to discuss how she might move forward to a healthy working relationship with her head of department and others. She suggested that involving an Acas mediator might be helpful (154). The University declined. This does not indicate a positive attitude towards Dr Plaut.

68. A return to work meeting was held on 03 April 2019. It did not go well. TH said to Dr Plaut that she had not been effectively managed and that was going to change. His body language was not emollient, and was construed by Dr Plaut as him being hostile. GW made a comment about TH not being open to criticism about equality diversity and inclusion (TH is responsible for the University's policy on ed&i). Dr Plaut had said something like *"I criticise him"*. This was not followed up by anyone. The meeting ended with a follow up meeting being arranged for 29 April 2019.

69. Afterwards, this comment was reported to KE (line manager of TH) by TH (159) saying that Dr Plaut had said he was intolerant of diversity, but that he did not intend to take it further, just place it on record. KE asked GW about it, copy to Imelda Rogers (Director of Human Resources). GW emailed KE (still on 03 April 2019) to say that it was *"not actionable"* but that he thought it was unnecessarily provocative, and there would have to be follow up if it occurred again (158).

70. KE contacted JK about it. She is Provost of the University. In turn she contacted IR, saying it needed to be addressed (160).

71. The upshot was that on 11 April 2019 KE and IR decided to suspend Dr Plaut again. KJ was so instructed by AJ, Assistant Director (HR Policy and Reward). Dr Plaut says this was not within policy, and in the hearing of 19 December 2020 IR when asked about this suspension said *"Line management was informed"* (347). The suspension was not in accordance

with policy, because telling line management is post the decision not seeking approval for it.

72. Also on 11 April 2019 Dr Plaut's representative (MA, Regional Caseworker for UCU) emailed KJ and pointed out that

> *"We do not believe … an irretrievable breakdown … If this was the case, why would he [TH] continue to facilitate her return to work?"*

It is a sound observation which demonstrates that the process was being driven by others.

73. The suspension letter from KJ (166) dated 12 April 2019 said that it was a *"precautionary suspension"* pending an investigation into allegations:

73.1. Your conduct in the return to work meeting on 3 April 2019, specifically that you made heated comments about your line manager and Head of Discipline, Professor Tim Harries.

73.2. That your conduct has caused an irretrievable breakdown in working relationships between you and colleagues in the Physics Department and in the College of Engineering, Science and Mathematics.

The letter referred to RS outcome letter and that further disciplinary proceedings would be brought without the need for an investigation (underlined), but that they would undertake a report.

74. This was entirely the result of those higher up in the University – Provost JK, KE (TH's manager) and KJ's manager Imelda Rogers – deciding that notwithstanding TH saying he wanted no action, and despite the independent witness, GW, opinion that it was not actionable they would try to get Dr Plaut dismissed over a single comment in the return to work interview. The colleagues with whom working relationships were irretrievably damaged have never been specified. It cannot have been TH, as he was unhappy, but wanted no action taken. It is impossible to conclude other than that senior people in the University had an agenda to remove Dr Plaut, and sought to use this as the pretext. There was nothing to investigate. GW and TH had already put what they thought in writing. Witnesses were not going to be interfered with. GW and TH were not discomforted by Dr Plaut being on site.

75. *"Precautionary suspension"* is provided for in section 5 of the disciplinary policy (4). There must be an allegation of serious misconduct. It would normally be where the presence of the person could prejudice an investigation, where the employee's presence causes a disruption, or where the employee's presence might be intimidating to potential witnesses. Suspension should be the last resort. None of these apply to this case. It is trite law that suspension is not a neutral act[21].

76. Dr Plaut wrote to GW on 15 April to say that KJ's suspension letter prohibited her from contacting colleagues, precisely the reverse of what the occupational health report recommended – all Dr Plaut's close friends are in the University, so this was to cut her off from her entire support network when she most

[21] Mezey v South West London and St George's Mental Health NHS Trust [2007] EWCA Civ 106, paragraph 12

needed it (particularly as her brother had died in 2017). The University relented.

77. TH then spoke to Dr Plaut's doctoral supervision Student 2. Dr Plaut says this was a *"fishing expedition"*. It was not. TH had little choice but to address the issue for Student 2 of the continued absence of Dr Plaut. He spoke to Student 2 on 30 April 2019. It had been assumed by Student 2 that Dr Plaut was ill. Since she had been suspended in January 2019 he had supervisions with a theoretical physicist, but there had been very few of them, far fewer that the weekly supervisions that there should have been.

78. Student 2 expressed some unhappiness at Dr Plaut's supervision, saying she shouted at him and describing *"negative reinforcement"*. This term was consistently misused in this case (as negative reinforcement involves the removal of something negative to strengthen a behaviour), but what was meant was negativity in approach. He wanted to change supervisors. TH told KJ. The only point in doing so was to add to disciplinary matters.

79. KJ decided to have a *"factual investigation".* That is appropriate when the investigation is limited to documents. It would be a desktop evaluation. It would not involve interviews. KJ interviewed Student 2. She emailed him a note of it, and he agreed it was what he thought. No notetaker was present, as the policy required. Student 2 was not told what he put was to be used in disciplinary proceedings, as the policy required. Student 2 was offered an extension to his funding as a result of his statement. He was led to believe that a complaint was necessary in order to change supervisers when it was not (Student 1 being proof of that). All these matters cast great doubt on the weight to be given to the email to Student 2 from KJ which was the basis of the charge to be added.

80. More, Student 2 accepted that he had withheld his research data from Dr Plaut, fearing that he was being subjected to a form of continuous assessment, and Dr Plaut had objected to this (rightly). Once they had cleared the air on the topic, in November 2018, it seemed to Dr Plaut, with good reason, that the problem was behind them. It was Student 2 that Dr Plaut referred to when the allegation about Student 1 came up. The Respondent says that the Christmas card and large box of chocolates were from someone browbeaten and trying to curry favour to avoid future harsh treatment. That is not something Student 1 has ever indicated, and he was not asked about it. It was not challenged that when Student 2 saw Dr Plaut when she was moving office he spoke to her about changing superviser and said "I don't blame you".

81. Dr Plaut was told at the return to work meeting that she would have to move offices, and she accepted that (it was the last in a series of office moves, and not aimed at Dr Plaut. She moved herself, and was permitted to attend at the University daily for about 3 weeks, while suspended, to do so. This shows that the reasons for suspension were spurious. If genuine she would not have been allowed in. She saw Student 2 and nothing untoward occurred.

82. Dr Plaut then, on 30 April 2019, raised a grievance (178 et seq) against KJ, to the effect that she was targeting Dr Plaut. It appeared to her that both suspension letters came from KJ, and she had been involved in everything set out above, going back to 2016.

83. On 02 May 2019 a disciplinary hearing was called for 14 May 2019, adding in a third charge *"That you frequently shouted during meetings with a PhD student causing them stress and anxiety".* The only witness for the University was to be TH: which underlines the fact (for the Tribunal so finds) that there was no other colleague with whom relationships were said to be impaired.

84. The statement KJ provided about Student 2 was not unfair in that it reported that the situation had been better recently, and that Dr Plaut was supportive in some ways, and that part of the issue was that Student 2 felt that his project was a dead end and not going anywhere, so that his wish to change project and superviser was only partly down to his interaction with Dr Plaut. His dissatisfaction with Dr Plaut will inevitably be linked with his unhappiness at the project which he wanted to abandon, because it was, Student 2 thought, the superviser who first thought of the project (email 02 May 2019: 193, and detailed statement of 14 May 2019: 199 et seq).

85. Any reader of this statement would not regard it as a disciplinary (let alone a dismissable) matter. That is not to substitute the Tribunal's view of matters for that of the employer, but a finding of fact that this was used as a pretext to dismiss Dr Plaut. The charges about the comment (singular – the Respondent's witnesses were unable to identify more than this one comment, recalled slightly differently in each case) and about the asserted breakdown of relationships were so weak that they were dropped once Student 2's wish to change project (and superviser) had been elevated into a disciplinary matter.

86. On 09 May 2019 the disciplinary hearing was postponed on the intervention of MA (Regional Caseworker for UCU).

87. On 16 May 2019 Professor Peter Vukusic emailed Imelda Rogers (203) to say that Student 2 would follow the *"informal complaint"* procedure to *"provide a pathway leading to a change of PhD supervisor".* It was not necessary for Student 2 to complain to change superviser. Student 1 had done so without making one.

88. On 31 May 2019 Dr Plaut asked about the status of her suspension and when it would be reviewed. She was suspended on 07 January 2019 effectively continuously for almost 5 months by then, and (as she said) had been in the Physics Building from 24 April 2019 to 03 May 2019 without incident. This was so, and makes the suspension unsustainable. Dr Plaut was in the building daily, likely to bump into people, which the suspension was expressly said to prevent.

89. Christopher Lindsay, Director of Compliance and Risk) issued his grievance report (207 er seq) to MS-N, Registrar and on 25 June 2019 he reported to Dr Plaut about it. He used the curious word *"invalid"* in dismissing it. In summary, there were 11 things where the University had acted in a way that was *"sub-optimal"* but there was no evidence that KJ was personally responsible. This was a very narrow reading of the remit, as (of course) this begs the question – the substance of the grievance was made out in some cases, but Dr Plaut was aiming the grievance at KJ so as it was not her that was *"sub-optimal"* the grievance was not upheld. The things found to be *"sub-optimal"* – a euphemism for unsatisfactory - were not addressed.

90. As might be expected, Dr Plaut appealed this outcome, by letter of 08 July 2019. Her appeal dissected the outcome letter forensically. When she saw the detailed report of CL she wrote again, expressing concern that it was still being said that she had shone a laser into someone's eye, and that the use of the word *"assault"* continued without justification, to which was now added *"battery"* without justification.

91. When the outcome letter arrived, a caseworker in the human resources team emailed Tracey Aggett (05 July 2019: 231) saying that they needed an addendum to a case report they had already prepared (about allegations 1 and 2). It should not have been human resources preparing the report, for that is the job of the investigator. It seems that the caseworker was telling the investigator what the result of the investigation should be. It would be a maximum of three interviews and that information combined into the existing report which they would work with her on. On 16 July 2019 TA agreed (230).

92. The grievance appeal was on 21 August 2019. It was taken by Professor Sue Prince. She did not feel that anything raised by Dr Plaut showed harassment and bullying as a result of unconscious bias due to her ethnicity (paragraph 18 SP's witness statement). The appeal was dismissed by letter of 23 August 2019 (254-255). It agreed some things had not been done well, but SP found that there was insufficient evidence that KJ was doing anything outwith her role.

93. KJ then wrote (29 August 2019: 256) to say the disciplinary proceedings would resume with an investigation fact finding exercise. The emails to TA indicate that the caseworkers had already done this for the first two allegations.

94. TA was commissioned by KJ (270) that day and her report (258) is dated 25 October 2019. It says that there was evidence that Dr Plaut shouted at a student and undermined progress by negative reinforcement causing anxiety and depression, made heated comments about TH at a return to work meeting, had caused a breakdown of trust with TH and KE.

95. TA's conclusions acknowledge that Dr Plaut's long held feelings of inequality, both as a woman and culturally, underlay much of the matters raised. The report recommended that the strong personalities in the department meant clashes were inevitable but these could be managed *"if everyone puts the effort in on an ongoing basis, and that both sides are willing to compromise a little"* (264). It recommended dealing with this outside the disciplinary procedure and suggested formal mediation (as Dr Plaut had herself suggested before the return to work meeting). She suggested that human resources encourage line managers to have regular 1:1 meetings with reportees to identify and resolve any issues.

96. Annexed to the report were the notes of interviews with people, UZ said that from her perspective Dr Plaut had done good work with students who were not considered natural successes (290), and Professor TN said that he had been Dr Plaut's line manager for 5 years, and that he had got on well with her, observing that *"physicists come in all shapes and sizes"*. As to Dr Plaut's loudness, TN observed that Dr Plaut had nothing on the people he had worked with in Spain (293). He said that in the five years he had managed Dr Plaut there was never a problem with the year abroad programme she ran.

97. It is plain that there was a clash of styles and that Dr Plaut's style is occasionally challenging to colleagues, but is not outside the spectrum of acceptable behaviour. Five years is a long time, and TN's observation has weight. *"Working around"* Dr Plaut's behaviour is one description, tolerance of difference is another. No-one has suggested other than that Dr Plaut's heart is in the right place. Melissa Percival, for example, said that she had known Dr Plaut for over 20 years and liked her (298). She also pointed out that the physics department had been a male bastion. She observed that Dr Plaut is not stereotypically feminine and that could confound people's expectations (in short, she is making the same point that Dr Plaut made – a loud Jewish man is not considered objectionable, just idiosyncratic). Her view was that difference should be recognised and that it had become personal and mixed up with hierarchy and performance issues (299).

98. Imelda Rogers did not accept this recommendation, and on 14 November 2019 (311) ordered a disciplinary hearing. She provided an addendum to the report, to the effect that this was a second instance relating to a PhD student and that the last disciplinary hearing found that *"Dr Plaut's conduct had "a profoundly damaging impact on the health and well being of the PhD student"".* That was, as noted above, not based on any objective evidence. And so unfairness from the Student 1 matter permeated into the Student 2 matter, as this was (as it was singled out) considered important.

99. In the letter from KJ calling the disciplinary hearing (18 November 2019: 314) the allegation about Dr Plaut's comment at the return to work meeting was dropped. That was the only reason for the suspension, underlining the fact (for the Tribunal so finds) that it was unjustified.

100. Two allegations were put, of shouting at and undermining Student 2 and breakdown of relationships with KE and TH. Dr Plaut understandably objected that this was unfair and that she had been suspended for 8 months over something now dropped. She pointed out (317) that her last supervision with Student 2 was in December 2018, 3 months before the disciplinary hearing about Student 1. She pointed out the failures to follow the procedure (*"factual"* investigation when it was not such, no notetaker and no indication to Student 1 that it was for disciplinary reasons, and (319) drawing attention to the 11 things CL found procedurally irregular or sub-optimal). She pointed out, correctly, that there was no medical evidence that any student had suffered mentally, and if they had that she had caused it. She pointed out that RS had said as much in his outcome letter.

101. Dr Plaut points out that in the "factual investigation" dated 02 May 2019 KJ found there was *"insufficient evidence has been found to demonstrate that there has been an irretrievable breakdown in working relationships between Dr Plaut and her colleagues"* but that on 29 August 2019 KJ had still put this as an allegation. Dr Plaut is right: Dr Plaut almost never came across KE (TH's line manager) and TH had wanted to take no action about the return to work meeting, which in any event had been dropped as an allegation.

102. It is plain that Professor KE, Provost JK and Human resources Director Imelda Rogers all wanted Dr Plaut dismissed and set that in train.

103. At the disciplinary hearing on 19 December 2019 Professor CW, Senior Lecturer and Director of Education (Physics and Astronomy) provided a written statement (330 et seq). He had joined in 1990 and his office had been next to Dr Plaut's laboratory for 25 years. He described her as a strong character, female, Jewish and someone who spoke loudly, particularly when excited. He described how she had to fight prejudice, conscious and unconscious to keep the job she loved. Trivial incidents over the years had been escalated by third parties into disciplinary matters. Dr Plaut was a rule follower not a rule breaker. He pointed out that she had been Disability Liaison Officer and had been very good at getting help for students who needed it. He was Director of Education in the department and in a position to know how she interacted with students. She carefully monitored everyone in stage 3 and provided early support so preventing minor problems becoming larger ones. For new first year undergraduate students she was a positive and enthusiastic tutor. *"For students who experience academic or personal difficulties she is one of the most empathetic and supportive staff we have"*. She had successfully supervised numerous PhD students over the years. She was a caring individual who was willing to invest many hours helping a weak student avoid failure. While she was away, her 6 colleagues were happy to help with work she would have done, and to a person asked him to pass on their best wishes to her. She was at times (in CW's opinion) unnecessarily loud (his office being next door to Dr Plaut's lab), but not aggressive.

104. The assessments of Professor TN (line manager for 5 years) and of Professor Williams (25 years close working together) are entirely credible. Dr Plaut is not a bully. She is uncomfortably idiosyncratic at times, particularly when excited, and physics excites her.

105. Professor Tim Quine took the disciplinary hearing (333 et seq). He is one of four deputy vice-chancellors of the University and was an appropriate person to take the hearing. Rachel Burn made up a panel with him. The Tribunal found him a thoughtful and sincere witness who was trying to deal with matters fairly. His hearing lasted from 09:00 to 13:00. He heard from TH, Professor PV, TN and MP.

106. TH accepted that it was usual for there to be medical evidence if there was such a case and that there was none here (333). He accepted that supervisions ought to be weekly, but that during Dr Plaut's suspension Student 1 had only 2 in 3 months. He accepted that before the return to work meeting he was *"uncomfortable"* about Dr Plaut returning to supervise students (339 and 340).

107. In his oral evidence to the panel PV said there was a student complaint process separate to the University disciplinary process. In serious matters the student complaint morphs into a disciplinary process against a member of staff. It was PV who instigated this in the case of Student 2, by contacting Imelda Rogers, Director of Human Resources about it (344).

108. At the end of the hearing TQ said that he and RB might need to seek clarification on some points (363).

109. It is noteworthy that the minutes (134 and 137) contain annotations commenting on Dr Plaut, highlighted in bold, *("AP laughing while GW reads"*

and *"AP laughed aloud"*) which are not usual in meeting minutes and are indicative of the notetaker having a negative view of Dr Plaut.

110. On 30 January 2019 TQ wrote to Dr Plaut dismissing her from her employment (370). The letter clearly states that they had carried out further enquiries after the hearing. It is plain that TQ was not intentionally unfair, because his letter says that is what they have done. He reports that KG spoke to Student 2 after the hearing and obtained more evidence from him.

111. TQ's witness statement at paragraph 28:

> *" In the light of the contradictions between the explanations offered, the panel concluded (1) that it was essential that a first-hand statement co ncerning his experience was obtained from the Second Student; and (2) that the notes of Prof Vukusic's meeting with the Second Student should be provided to the panel. The Panel therefore decided that the Second Student should be interviewed and the notes of that meeting and of Prof Vukusic's meeting should be reviewed by the Panel before a decision was reached. It was agreed that no new lines of enquiry would be opened but that the interview would focus on resolving the areas of disagreement and contradiction between the observations and explanations of Dr Plaut and Prof. Vukusic and Prof Harries."*

112. The documentation about this exercise was not in the bundle of documents prepared for this hearing. Dr Plaut had obtained it via a subject access report and it was admitted into evidence as pages 738-740.

113. TQ emailed KG and Imelda Rogers on 20 December 2020 at 13:46. The email was textbook correct in the circumstances. He and RB wanted Student 2 interviewed by an independent person (neither the investigating officer (TA) nor Kirsty Johnson), and questions put to him which had been agreed with Dr Plaut in advance about the *"I don't blame you"* comment and other things. The superviser who took over should asked whether there had been any conversation about Dr Plaut. He asked for assistance in doing this appropriately.

114. It is, to this Tribunal, inexplicable why these proper instructions were not followed, other than the reason being that those involved were biased against Dr Plaut. Imelda Rogers emailed TQ on the same day at 15:48 asking if they could speak. In her oral evidence Ms Rogers said that she had no recollection of that call taking place, as plainly it did. It was to likely to have subverted this process.

115. On 20 December 2019 at 16:04 KG emailed TQ saying that:

> *"I have spoken with the casework team and they are content for us to initially review the notes taken from both KJ and PV/SG's meeting with [Student 2] to ascertain whether there is sufficient evidence there or whether there really is a need to interview him … If it is deemed that an interview is necessary then we can look to arrange this."*

The *"casework team"* can only mean Kirsty Johnson or Imelda Rogers. In effect they refused to do what TQ had asked. He was reliant on them for sound human resources advice, and he did not get it.

116. On 06 January 2019 KG wrote again to TQ and RB:

> *"I have sought clarity from the casework team on the next steps regarding speaking with [Student 2]. They are happy for me to interview him … With that in mind would you let me know what questions you would like me to ask?"*

The same applies. The Tribunal notes that KG was being directed by others, and was in a junior role. While it might have been hoped that she might have seen this was not the way to do things, the Tribunal is not critical of her, as she was simply doing what those who managed her told her to do.

117. The questions were then drafted by TQ and RB on 06 January 2020, and Student 2 interviewed by KG. None of this was shown to Dr Plaut.

118. Further documents were admitted during the hearing (713-716). On 21 December 2020 at 10:35 PV emailed TQ, IR and KE. It is a one-page litany of generic allegation against Dr Plaut. It was completely inappropriate to do so after the hearing.

119. TQ responded the same day:

> *"Thanks very much for taking the time to put this in writing. I will pick up with the team how we use this in the context of the case…"*

PV then replied that he would take it up with Imelda Rogers team if that would be useful. TQ acquiesced: *"Thanks Pete. V much appreciated."*

Imelda Rogers responded simply *"Thanks"*, and that shows that she had it. KG contacted PV who responded on 22 December 2020, thanking her for *"reaching out"*, and appending a copy of what he called his *"informal"* email (although it had been amended to make it even worse for Dr Plaut) and copies of 2 emails he had sent in the past.

120. Professor Quine readily accepted in his oral evidence that this was not proper and regretted not having said so at the time. He said it made no difference, but it is hard to see how it could not have done. The role of human resources in this is totally unsatisfactory. Plainly that email should not have been sent at all, but when it was Imelda Rogers should have copied it to Dr Plaut. Professor Quine and RB should have been advised about it. It is also a matter of concern that the duty of disclosure did not result in this email chain being disclosed by the University, as plainly it should have been. Those dealing with the subject access request are to be applauded for their integrity in doing so (as was their obligation).

121. Dr Plaut appealed. Professor Mark Goodwin was to hear it. He is another of the four deputy vice chancellors. He was an appropriate person to hear the appeal. CW, Director of College Operations for the College of Humanities was the other panel member. It was due to take place on 28

February 2020, but did not, and attempts to rearrange were not successful. Neither blames the other for this. Covid intervened. Eventually the appeal was agreed to be determined on the papers, intended as a rehearing rather than a review, but this was not until December 2020. It was not until 05 March 2021 that the procedure was discussed with HK of human resources, which is far too long in the circumstances. Dr Plaut was able to submit written questions for the witnesses, not all of whom felt the need to answer. Closing submissions were received on 05 May 2021. The letter dismissing the appeal was considered by the panel and HK on 07 June 2021 and sent to Dr Plaut on 10 June 2021. MG's witness statement at paragraph 22 says that they concluded that it was not Dr Plaut's voice that was the issue but what she was saying, and the behaviour which went with it, specifically aggressive and intimidating behaviour. The witness statement says that it was not volume but the way they decided Dr Plaut behaved towards others that influenced the panel.

122. The dismissal letter was dated 30 January 2020. The appeal letter is dated 10 June 2021. Even with full allowance for Covid-19 disruption it is not fair or justifiable to have a gap of almost 1½ years between dismissal and appeal. The chance of the appeal being successful was minimal to non-existent after so long.

Conclusions

123. Dealing first with the race and sex discrimination claims, the central difficulty for Dr Plaut is that while she objects very strongly indeed (and evidently very sincerely) to the suggestion that she shouts at people, it is plain that this is how some people regard it. Dr Plaut says that is how she is, and to object is consciously or unconsciously racist, because this is, she says, an inherent part of her racial heritage. The problem is that if interlocutors sincerely believe that she is shouting at them, that perception is their reality. The fact (if it be such) that the reason she is (in their perception) shouting at them is her racial heritage does not make it any the less disturbing for them. That is not racism, conscious or unconscious. It is simply their human reaction to how she is presenting to them[22].

124. The problem is compounded because Dr Plaut says that this characteristic is shared by others from the middle East or Mediterranean. Her department has many such people, including women. They have not found the same issue as has Dr Plaut. In summary her experience is not as her cohort, and so it is not easy to see a link between her expression of a racial characteristic and the treatment she received.

125. Dr Plaut then says that it was sexist, because a loud Jewish man was not subjected to criticism. That is an argument against it being connected with race.

126. The Tribunal does not find that there is a taint of sex discrimination to the actions taken in regard to Dr Plaut. They were a response to complaints against her which were unconnected to sex. There is no reason to think that a

[22] A different example might be if culturally a person habitually stood very close to the person being spoken to, with tactile interchange as well: that would be perceived as "invading personal space" even if entirely natural to the individual concerned and connected with racial heritage. The other is not expected to accept such a way of conversing, however inherent to the individual.

man against whom such complaints were made, who had the same way of speaking and interacting with others would have been treated differently.

127. Turning to the claim for harassment, there were five things claimed to be protected acts:

127.1. 21 April 2016, Dr Plaut's arranging of and contribution to an unconscious bias workshop for Physics and Astronomy: this was years before, and while it has a connection to protected characteristics no link between it and anything which occurred later has been established, or even posited other than as part of the narrative history.

127.2. 15 September 2017: a meeting with KJ at which Dr Plaut requested the presence of a Dignity and Respect adviser. This was not made a protected act by reason of the presence of an adviser, or under any policy. It was also 2 years before hand.

127.3. 21 December 2017: a report of historical sexual harassment made to the human resources department (57-58): Dr Plaut expressly stated that she did not expect anything to be done about it, and nothing was done. There is no reason to think this had anything to do with later matters, and it was years before.

127.4. Comment made at the return to work meeting of 03 April 2019: Dr Plaut was critical of Professor Harries' approach to equality and diversity. This was unparticularised, but to say that the person in charge of equality diversity and inclusion at the University did not fully espouse the spirit of such a policy and to say that there was consequential detriment is plainly within the harassment provisions of the Equality Act 2010. It was much later that there was a dismissal, but since the one led to the other it would not be just and equitable not to extend time for that to be considered a protected act for the claim of victimisation. It is a protected act – Dr Plaut made an observation firmly within the definition above.

127.5. 01 May 2019 – the grievance against KJ. This was also firmly within the definition of a protected act – it was a complaint that a solicitor and human resources caseworker was discriminating against her. Since this was within the process leading to her dismissal again it would be just and equitable to extend time.

128. The detriments alleged are the extended suspension and the process leading to dismissal, and the claimed unfairness of that dismissal.

129. The Tribunal finds that the harassment claim in respect of the grievance against KJ does not succeed. This is because the course of action leading to the dismissal started before this grievance. The detriment alleged is a continuum which started before the grievance was lodged and so the grievance cannot have been the cause of a course of action the start of which pre-dated it.

130. The victimisation and harassment claims arising from the comment at the return to work meeting are logically more complex. The comment was the reason Dr Plaut was again suspended, on 11 April 2019. It is not that Dr Plaut did so in an angry or belligerent sort of way, as TH and GW made clear. The

criticism was generic – a single comment that Dr Plaut disagreed with the statement of another that TH was not open to criticism about his implementation of best practice in matters of equality diversity and inclusion. It did not directly relate to any relevant protected characteristic. The Tribunal decided that it was not fair to subject Dr Plaut to the detriment of suspension for making such a criticism. It may be argued that the comment related to all protected characteristics, but that the conduct did not relate to any protected characteristic, and so does not fall within S26 or S27 of the Equality Act 2010. It is, however, clear from all the evidence (the grievance particularly) that Dr Plaut has always maintained that she, a Jewish woman, was discriminated against, consciously or unconsciously, because of her inherent characteristics, and that was why she was having to have a return to work meeting. Whether the claims for sex discrimination or race discrimination succeed or not, if someone raises such claims and is, as a result of doing so, subjected to detriment (suspension for a conduct matter for a senior academic will, at the least, be humiliating) that is within the definition of harassment and is victimisation. It does not alter that conclusion that it was Professor KE, Provost JK and Imelda Rogers, Director of Human Resources who effected that suspension, and not Professor Tim Harries or Kirsty Johnson.

131. The procedure concerning the dismissal was unfair:

131.1. The first hearing ended with a final written warning, but the suspension was not lifted. Dr Plaut had to ask what was happening.

131.2. The suspension was not reviewed at four weekly intervals, or at all.

131.3. Dr Plaut was left without support as she was barred from speaking to any colleague, when the University had previously accepted the recommendation of occupational health that she had no other support mechanism and should always be allowed contact with some colleagues.

131.4. The *"factual investigation"* by KJ was inappropriate.

131.5. Student 2 was not told that he was giving a statement for use in disciplinary proceedings. (There was no notetaker there as policy required either.)

131.6. He was induced to complain by PV on the basis that this would help him change supervisers, when it was not necessary – Student 1 had changed supervisers without complaining.

131.7. The attempts by Professor Quine to deal with matters fairly were subverted by human resources, and to conduct interviews to buttress the case, by people who were not openminded, and to keep them secret from Dr Plaut (other than telling her in the letter of dismissal that was what had happened) is self-evidently unfair.

131.8. The email from PV and the way it was treated on the advice of human resources is an extraordinary failure to act fairly by what is supposed to be a substantial professional human resources department.

131.9. The length of time to the dismissal appeal (allowing fully for the effect of the pandemic) at almost 1½ years is unconscionable.

132. The Tribunal finds dismissal substantively unfair for the following reasons:

132.1. The Respondent did not want Dr Plaut back. That is apparent from the failure to implement any of the matters said by RS to be mandatory. That decision was 12 March 2019, and the return to work meeting was not until 03 April 2019 but no one had done anything to progress equality training or voice coaching. TH said that he found it hard to see how Dr Plaut could return to supervision. Dr Plaut asked for mediation to improve relationships in the department (a positive forward looking request) and the University refused, without any cogent reason.

132.2. The second suspension was ordered by senior staff, over the comment that GW thought not actionable, and about which TH did not request any action. Senior management wanted Dr Plaut disciplined, knowing that she had just had a final written warning. The Tribunal finds this was a pretext to get Dr Plaut dismissed if at all possible.

132.3. Tracey Aggett's recommendation was overruled. Imelda Rogers was entitled to do so, and her point that the effect on the student could not be overcome by the academics working at improving their relationships is a sustainable reason. However, she maintained the charge about the comment which was then dropped. The breakdown of working relationships was not sustainable because only two people were named. Dr Plaut did not have a working relationship with Professor Ken Evans. He was Professor Harries' line manager and did not interact with Dr Plaut in any substantial way. Professor Harries had not wanted to take any action over the comment although he found it hurtful. When coupled with Dr Plaut actively asking for mediation to work on relationships it is impossible to see that this was ever a genuinely held view by those involved.

132.4. Professor Quine was in a position analogous to the manager in Royal Mail Group Ltd v Jhuti [2019] UKSC 55, paragraph 62:

> *"if a person in the hierarchy of responsibility above the employee determines that she (or he) should be dismissed for a reason but hides it behind an invented reason which the decision-maker adopts, the reason for the dismissal is the hidden reason rather than the invented reason."*

He sought to be fair, but his attempts to be so were thwarted by others. It would have been hoped that he would have insisted that his instructions were followed, but perhaps understandably he deferred to senior people in the human resources department. That department mixed human resources advice with casework, acting as decision makers about process.

It is noteworthy that the same individuals dealt with the initial suspension and with PV's email, and by doing so in the way they did undermining the independence of TQ and RB.

132.5. The secret post hearing email from PV was welcomed, and the generic slurs it contained about Dr Plaut were not known to her to be able to

comment. Nor did they form part of any allegation. While judges frequently have to exclude some evidence from their assessment of facts or motivation, it is unrealistic to expect the decision makers in a disciplinary hearing not to be influenced by such a communication[23].

133. The matter involving Student 1 was unacceptable conduct by Dr Plaut, as she recognises. It warranted disciplinary action, as is made clear in the facts section of this judgment. It was in early 2017. The Student 2 matter was in late 2018. Plainly Dr Plaut had not breached her final written warning, which was not imposed until 12 March 2019. There is a big gap in time.

134. When dealing with the matter of Student 1, Dr Plaut had referred to Student 2 as an example of a student who was happy with her supervision of him. While that might be said to be a massive misjudgment by Dr Plaut and evidence of lack of insight, it is far more likely to be the case that Student 2 was not helping by concealing his experimental data from his superviser, that she got cross about it (understandably) then she explained and resolved the position, such that by December 2019 the position was much improved. It is also Student 2's own view that he was unhappy with the project per se.

135. This Student 2 issue was never a sacking matter, whether alone, or on top of an existing final written warning for a later matter. The Tribunal is very well aware that employers always view such a judgment as substituting the Tribunal's own view for that of the employer. It is not. It is the assessment the Tribunal is required to make in applying S98(4) of the Employment Rights Act 1996. This is a very large organisation, of very high reputation, and high professional standards in dealing with the careers of its academics are to be expected. This obligation is the greater when dealing with someone who has spent 30 years working for them.

136. The procedural matters are of such a fundamental nature that the Tribunal rejects the bold submissions of Counsel for the Respondent that the dismissal was both procedurally fair and that even if not had a fair procedure been followed the likelihood of a (fair) dismissal was 100%. On the contrary this dismissal was 100% unfair. Had a fair procedure been followed it is not conceivable that Dr Plaut would have been fairly dismissed. The band of responses of the employer is not infinitely wide[24]. Senior management had decided that Dr Plaut would not be tolerated further. The good things she had done over the years were given no weight. The Tribunal does not doubt but for some people Dr Plaut's approach to life was highly uncomfortable, but that fails to appreciate that this is a façade behind which the evidence is of a long serving dedicated and caring academic. If there was to be a fair dismissal, it would have had to have followed a performance improvement plan following the Student 1 matter. It will not wash to say that had the first (RS panel) known of Student 2 they would or could fairly have dismissed her. That is to construct an alternative narrative to attempt to justify what cannot be justified.

137. An appeal can cure previous defects. This appeal was so long delayed that it was only ever going to have one outcome. In December 2020 MC was asked to deal with it on the papers, yet nothing happened until MC met his fellow panellist on 05 March 2021. The outcome was not until 10 June 2021.

[23] These judgments are public documents and it would not be fair to Dr Plaut to set out the text of this email, to be found in the bundle of documents at page 713, as redrafted, and at page 716 as sent to Professor Quine.
[24] *Newbound*, note 7 above

That is 6 months after the appeal was to be on the papers, and 18 months after the dismissal on 30 January 2019. This was not fair.

138. At paragraph 21 MC observes that he was confident that the warning was in place at the time the University was made aware of the allegations of Student 2. That is so, but why it is relevant is not explained. MC also said that it wasn't a matter of volume, but how you behaved with people. That is so, but the issue with this dismissal is that that if Dr Plaut was to be dismissed for people's perceptions that she was shouting at them, then after 30 years of being herself and doing a lot of good work on the way, she had to be given help and opportunity to change her approach with the clear indication that if not she would leave. This did not happen, and senior management seized on the comment made at the return to work meeting on 03 April 2019 to suspend her before she returned to work and then substituted the allegation about Student 2 when that came up – and only because TH had to speak to Student 2 who had very little supervision since 07 January 2019 (the first suspension) and was going to have a further period without his superviser.

139. The breaches of the Acas code are such that it would be inappropriate to increase the awards for unfair dismissal by less than the 25% maximum, and the Tribunal so decided. The harassment claim is about a different matter and does not fall for enhancement under the Acas codes.

140. The Tribunal considered contributory conduct carefully. It noted that this requires to be proved, on the balance of probabilities, facts which show that the dismissal was to any extent caused or contributed to by any action of the complainant it shall reduce the compensatory award by such proportion as it considers just and equitable having regard to that finding. The same test, slightly differently worded, applies to the basic award[25]. There was an issue with Student 1. Dr Plaut has never denied it. There were some problems with Student 2. Overall (and that is the substance of the phrase just and equitable) the Tribunal does find that Dr Plaut's actions did cause or contribute to her dismissal. The Tribunal decided that the basic and compensatory awards should each be reduced by 25%.

Employment Judge Housego
Date: 16 November 2021

Amended judgment to parties: 17 January 2022

FOR THE TRIBUNAL OFFICE

[25] S123(6) and S122(2) of the Employment Rights Act 1996 respectively