Case No: 2201418/2012

EMPLOYMENT TRIBUNALS

Claimant: Dr Y Soh

Respondent: Imperial College of Science, Technology and Medicine

Heard at: London Central **On:** 11 – 20 January, 3 & 27 February 2017 (in chambers)

Before: Employment Judge H Grewal
Miss E Ebenezer & Mr D Eggmore

Representation

Claimant: Mr A Bousfield, Counsel

Respondent: Ms J Stone, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1 The complaint of having been subjected to detriments for having made protected disclosures is not well-founded;

2 The complaint of unfair dismissal is not well-founded; and

3 The complaint of breach of contract is not well-founded.

REASONS

1 This case came before this Tribunal, having been remitted by the Employment Appeal Tribunal ("EAT") to a freshly constituted Employment Tribunal to consider again the complaints of unfair dismissal, having been subjected to detriments for have made protected disclosures and breach of contract. The EAT ordered that the freshly constituted Employment Tribunal should adopt and not re-open findings made by the previous Tribunal as to matters prior to 3 February 2011.

The Issues

2 The issues to be determined at the remitted hearing were agreed at a preliminary hearing on 13 June 2016 and confirmed at the outset of this hearing. They were as follows.

Protected disclosures

2.1 Whether the following communications by the Claimant amounted to protected disclosures, i.e. whether, in respect of each of them, she disclosed information which, in her reasonable belief, tended to show that a person had failed, was failing or was likely to fail to comply with a legal obligation and, if she did, whether she did so in good faith. The legal obligation relied upon by the Claimant was "a school's duty of care to provide effective education for children" and "wrongful or negligent acts on the part of teachers or schools" that might or do result in "student detriments particularly the failure of students to learn" (quoted from Mawdsley and Cumming, Education and the Law, volume 20):

(a) On 3 February 2011 the Claimant mentioned to Professor Alford that some of the Faculty members were more accommodating to the students than she was and quoted a remark by a student that students were often "spoon fed" by other instructors;

(b) On 13 February 2011 the Claimant stated in her grievance letter that the students "find other instructors more accommodating. They are used to being 'spoon fed' whereas I don't 'spoon feed them'. For example, some of the instructors told them what would be in the exam, and indeed the exam had those problems."

(c) On 14 March 2011 the Claimant stated in a letter "not showing up for lectures without prior warning and not making up for them is a much more serious disservice to the students than lecturing a course at a high level. This raises questions about the meaning of Sole score, and in particular whether high Sole scores necessarily reflect what is best for the students or their subsequent employers."

(d) On 27 May 2011 the Claimant stated "Dr McPhail spoon feeds the students as to what would be in the exam".

(e) The Claimant's email of 16 June 2011 in response to Professor Killner's question.

(f) The Claimant's email of 6 July 2011.

(g) The Claimant's letter of 10 July 2011 and her statement that "Dr McPhail gets excellent SOLE scores by making his course very accommodating to the students, including by giving the students unusually strong indications as to the examination questions."

2.2 If the Claimant made protected disclosures, whether the following amount to "detriments" and, if so, whether the Claimant was subjected to the detriments because she had made protected disclosures:

(a) On 3 August 2011 Professor Alford instigated a formal investigation about the things that the Claimant had said about Dr McPhail's teaching;

(b) The management report of September 2011 and its tone;

(c) Professor Nethercott's statement in his investigation report of 24 November 2011 about whether the Claimant had made a vexatious allegation against Dr McPhail;

(d) On 22 December 2011 the Claimant was subjected to a disciplinary hearing;

(e) The Claimant's allegation that she was subjected to "personal humiliation, destruction of property and attempts to destroy her career" from January 2012 until 31 August 2012.

2.3 Whether the complaints at paragraph 2.2(a)-(d) were presented in time.

Unfair dismissal

2.4 What was the reason for the dismissal? The Claimant contends that the reason or principal reason was that she had made a protected disclosure. The Respondent contends that it was a reason related to conduct.

2.5 If it was a reason related to conduct, whether the dismissal was fair.

Breach of contract

2.6 Whether the Respondent was in breach of contract by not paying the Claimant her expenses in respect of a trip to Seoul on 4 February 2012.

The Law

3 The amendments made to section 43B and C of the Employment Rights Act 1996 in 2013 do not apply in this case as the alleged qualifying disclosures in this case were made before 25 June 2013. The applicable law, therefore, is as it was prior to the amendments.

4 At the relevant time **section 43B** of the **Employment Rights Act 1996** ("ERA 1996") provided,

> "*(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the person making the disclosure, tends to show one or more of the following –*
> *…*
> *(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject."*

In **Babula v Waltham Forest College [2007] ICR 1026** the Court of Appeal held that in order to determine whether an employee has made a qualified disclosure the Tribunal has to make two key findings. The first is whether or not the employee believed that the information which he was disclosing tended to show one of the situations set out in section 43B(1)(a) to (f) of ERA 1996. The second is to decide, objectively, whether or not that belief was reasonable. Wall LJ stated, at paragraph 82,

> "*In this context, in my judgment, the word "belief" in section 43B(1) is plainly subjective. It is the particular belief held by the particular worker. Equally, however, the "belief" must be "reasonable". That is an objective test."*

The fact that the belief turns out to be wrong does not prevent the disclosure in question from being a qualifying disclosure. As Wall LJ said in **Babula** at paragraph 75,

> *"Provided his belief (which is inevitably subjective) is held by the tribunal to be objectively reasonable, neither (1) the fact that the belief turns out to be wrong – nor, (2) the fact that the information which the claimant believed to be true (and may indeed be true) does not in law amount to a criminal offence – is, in my judgment, sufficient, of itself, to render the belief unreasonable and thus deprive the whistle blower of the protection afforded by the statute."*

5 **Section 43C ERA 1996** provided,

> "*(1) A qualifying disclosure is made in accordance with this section if the worker makes the disclosure in good faith –*
> *(a) to his employer;"*

In **Street v Derbyshire Unemployed Workers' Centre [2005] ICR 97** the Court of Appeal held that "good faith" for the purposes of section 43G ERA 1996 required more than a reasonable belief in the truth of the allegations made and that where the person making the disclosure might well have mixed motives, a tribunal should only find that the disclosure was not made in good faith when the dominant or predominant purpose of making it was for some ulterior motive unrelated to the statutory objectives. Wall LJ stated, at paragraphs 71-73,

> "*The primary purpose for the disclosure of such information by an employee must, I think, be to remedy the wrong which is occurring or has occurred; or, at the very least, to bring the section 43B information to the attention of a third party in an attempt to ensure that steps are taken to remedy the wrong. The employee making the disclosure for this purpose needs to be protected*

against being victimised for doing so; and that is the protection that the statute provides.

Motivation, however, is a complex concept, and self-evidently a person a person making a protected disclosure may have mixed motives… the question for the tribunal at the end of the day as to whether a person was acting in good faith will not be: did the applicant have mixed motives? It will always be: was the complainant acting in good faith?

In answering this question, however, it seems to me that tribunals must be free, when examining an applicant's motivation, to conclude on a given set of facts that he or she had mixed motives, and was not acting in good faith. If that is correct, how is it to be done? I can see no more satisfactory way of reaching such a conclusion than by finding that the applicant was not acting in good faith because his or her predominant motivation for disclosing information was not directed to remedying the wrongs in section 43B, but was an ulterior motive unrelated to the statutory objective."

6 **Section 47B(1) ERA 1996** provides that a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure. **Section 48(3) ERA 1996** provides that the Tribunal shall not consider a complaint that a worker was subjected to a detriment in contravention of section 47B(1) unless it is presented before the end of the period of three months beginning with the date of the act or the failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months. Where an act extends over a period the date of the act means the last date of that period and a deliberate failure to act shall be treated as done when it was decided on (**section 48(4)**).

7 **Section 103A ERA 1996** provides that a dismissal is unfair if the reason or principal reason for the dismissal is that the employee made a protected disclosure.

8 The onus is on the employer to prove that the reason or the principal reason for the dismissal was a reason relating to the conduct of the employee (section 98(1) and (2) of the Employment Rights act 1996 ("ERA 1996"). If the employer establishes that, the Tribunal then has to consider whether the dismissal was fair within the meaning of Section 98(4), in other words, whether the employer acted reasonably or unreasonably in all the circumstances of the case in treating that reason as a sufficient reason for dismissing the employee.

9 The well-established authority of **British Home Stores Ltd v Burchell[1978] IRLR 379** provides that in a conduct dismissal case the Tribunal has to ask itself the following three questions:

(i) Did the employer believe that the employee was guilty of misconduct?

(ii) Did he have in his mind reasonable grounds upon which to sustain that belief? and

(iii) At the stage which he formed that belief on those grounds had he carried out as much investigation into the matter as was reasonable in the circumstances of the case?

10 In determining the issue of fairness the Tribunal also has to consider whether there were any flaws in the procedure which were such as to render the dismissal unfair, and, finally, whether dismissal was within the band of reasonable responses open to a reasonable employer in all the circumstances of the case. In judging reasonableness of the employer's conduct the Tribunal must not substitute its decision as to what was the right course to adopt for that of the employer. The function of the Tribunal is to determine whether in the particular circumstances of each case, the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted (**Iceland Frozen Foods Ltd v Jones [1982] IRLR 439,** approved by the Court of Appeal in **Post Office v Foley [2000] IRLR 827).**

Evidence

11 The Claimant and the following witnesses gave evidence in support of her claim – Gabriel Aeppli, Steven Kivelson, Peter Littlewood, Qimiao Si and Phillip Stamp. The Claimant's witnesses were all academics. None of them had ever worked for the Respondent. The following witnesses gave evidence on behalf of the Respondent (they were all employees or former employees of the Respondent) – Neil Alford (Head of the Department of Materials), Jeffrey Magee (Dean of the Faculty of Engineering), David Nethercot (Head of the Civil and Environmental Engineering Department at the relevant time), Stephen Richardson (Deputy Rector at the relevant time), Jason Riley (Director of Undergraduate Studies and Director of Research for the Department of Materials), Andrew Tebbutt (Operations Manager in the Department of Materials) and Iretioluwa Webb (HR Manager for the Faculty of Engineering). There were sixteen lever-arch files of documents in this case. Having considered all the oral and documentary evidence, the Tribunal made the following findings of fact. As directed by the EAT we have adopted the findings of the previous Tribunal in respect of what occurred before 3 February 2011. We have summarised the salient findings from the previous Tribunal's decision on those matters and have indicated where they are to be found in the previous decision. This decision should be read together with paragraphs 8 – 45 of the previous Tribunal's decision).

Findings of Fact

12 In September 2006 the Claimant was offered a full-time Lecturer position by the Respondent in the Materials Department in the Faculty of Engineering. The offer of that position was related to a desire by University College, London to retain her then husband, Gabriel Aepppli, who had been offered a post in the United States (paragraphs 12 and 13 of the previous ET decision). The post was subject to a probation period of two years, a year shorter than the conventional period of probation for Lecturers in the UK. The reason for a shorter period of probation was that the Claimant had several years' teaching in a previous post (paragraphs 15-17 of the previous ET decision).

13 The Claimant was slow to accept the offer and even slower to agree a start date. She officially started on 1 July 2007 but at the start of the autumn term in October 2007 she applied to take unpaid leave until March 2008. At the end of

January she asked to extend the leave to the end of June 2008. During this period the Claimant remained in the US and she continued to be employed by Dartmouth College until 30 June 2009 (paragraph 18-19 of the previous ET decision).

14 In July 2008, during a three week spell in London, the Claimant had her mid-term probation assessment. The Claimant asked to extend her leave and the Respondent made it clear that the open-ended arrangement was unsatisfactory and that the Department needed her full-time. Eventually, it was agreed that the Claimant's leave would be extended but that she had to return to work by 30 June 2009. During the period of absence the Claimant continued to negotiate about space for her laboratory equipment and also asked for a pay rise. The Claimant making repeated demands while not being prepared to start work caused a certain amount of irritation and exasperation among her colleagues (paragraphs 20-22 of the previous ET decision).

15 At a meeting in February 2009 Neil Alford and the Claimant agreed that her probation would be extended to 30 June 2010. She was set the following objectives – she had to start teaching in September 2009 and complete CASLAT (an in-house teaching course which is mandatory for new lecturers at Imperial) by July 2010 (paragraph 25 of the previous ET decision).

16 The Claimant returned to work from her leave of absence on 1 July 2009. In September 2009 she had a meeting with David McPhail, who was the course leader for Materials Physics (MSE 205) and was regarded by his colleagues as a good teacher. The Claimant was due to teach Magnetism as part of that course to second year students in the spring term in 2010. Dr McPhail discussed with her how to adjust the physics content of the course for material scientists and gave her two or three materials science textbooks and pointed her to the chapters on magnetism (paragraph 27 of the previous ET decision).

17 The Claimant delivered ten lectures in Magnetism between 24 February and 24 March 2010. In March 2010 some students complained to Jason Riley that the Claimant did not provide a syllabus or slides and that when she had been asked for a mock paper she had, unlike other new lecturers, refused. After each term students are invited to complete online evaluations of their courses and lecturers. This involves rating different aspects of the lecturer's delivery of the course on a range between "very poor" and "very good" and making comments. The results of this are known as the SOLE scores. The Claimant's ratings in the SOLE scores in spring 2010 were very low and some of the comments were scathing. Jason Riley drew the matter to Neil Alford's attention and recommended extending the Claimant's probation to May 2011 (paragraphs 29-30 of the previous ET decision).

18 In May 2010 the Claimant was invited to a probation review meeting on 7 July 2010. By July student performance in the end of year examination was known. The students had performed particularly badly on the question on the Claimant's course, in spite of her having given seven revision lectures. Sixteen students had achieved zero marks, not having attempted the question at all. The HR department recommended that the matter be taken forward by way of performance review rather than a probation review. On 14 July 2010 the Claimant was invited to a performance review meeting (paragraphs 31-32 of the previous ET decision).

19 The performance review meeting took place on 4 August 2010. The review was conducted by Bill Lee, the former Head of the Department, and Neil Alford, the Head at the time. The outcome was communicated to the Claimant in a letter dated 18 August 2010. The Claimant was issued with a formal warning about the level of her teaching and certain areas of improvement were outlined to her. These included improving her SOLE scores in accordance with agreed metrics, attending at least six one-to-one sessions with David McPhail (who was to be her Academic Advisor going forward) and to meet with Dr David Dye to discuss methods for improving course attendance and student engagement with the course material. Her probation was extended for a period of six months to 16 February 2011 (paragraph 33 of the previous ET decision).

20 On 20 September 2010 the Claimant and her representative met with Jason Riley and Neil Alford to set the Claimant an objective in respect of her SOLE scores. Jason Riley had calculated weighted average SOLE scores for each member of the Department. These ranged from 4.65 to 2.58, with the Claimant having the lowest score. Taking into account the Claimant's teaching experience and her fluency in English she was set a target of a weighted average score of 3.5, which was felt to be achievable and lower than what would ordinarily be expected (paragraph 34 of the previous ET decision).

21 In 2010-2011 the Claimant's MSE 205 course was brought forward to the autumn term to facilitate assessment within her probation period. The Claimant gave twelve lectures in November and December 2010. David McPhail observed two of those lectures, one on 15 November and the other on 9 December 2010. On 15 November he made notes and gave the Claimant feedback in an email. He recorded in his notes that the material was interesting and the pacing good. There were, however, other aspects that were not satisfactory. She had arrived late and then spent time setting up equipment, she did not get control of the class at the beginning and the audience was not attentive for the first 20 minutes, she needed to speak louder, she used a system of units with which students were not familiar and she had started work on a new topic just as the class was about to end. In his email he said that he thought that the amount of material and pace had been appropriate. He highlighted that there had been communication issues and made suggestions on what she could do to improve those (paragraph 39 pf the previous ET decision).

22 David McPhail compiled a formal report after the second lecture which he observed but unfortunately this was not shared with the Claimant. He noted in his report that her presentation had improved from the previous lesson – her delivery was significantly louder, the class was quieter and attentive and she had been punctual, organised and prepared. He was, however, critical of the contents of the lecture. He noted that there was "*loads of mathematics! Page after page of maths"* and that she should "*relate physics to materials properties emphasising importance of key questions in terms of materials selection."* He also commented that she should finish on time and should be sensitive to the class getting restless towards the end of the lecture (paragraph 40 of the previous ET's decision).

23 Other than attending those two lectures and one brief feedback session, there was minimal interaction between David McPhail and the Claimant in respect of her teaching. He was not aware that the Claimant had been told that she was required to have at least six one-to-one sessions with him. He was, however, aware that he was

required to have regular meetings with her (paragraph 35 of the previous ET decision).

24 On 12 January 2011 the SOLE scores for the previous term's teaching became available. Of the 60 students who completed the evaluation between 28 and 32 rated the Claimant as "very poor" or "poor" in each of the four categories. The majority of the comments were negative although there were some positive comments. The criticisms were that she spoke too quietly, the lectures lacked structure and clarity, concepts were explained too vaguely and not linked to each other, she relied entirely on sparse and confusing PowerPoint slides, the lecture notes were inadequate and unclear, her lectures often overran, her lectures were too intensive and aimed at only the highest calibre students and she was rude, inconsiderate and had a derogatory tone. Jason Riley analysed the SOLE scores, using the weighted average SOLE scores, for the whole Department on a spreadsheet. The Claimant scored 2.61, the lowest of 31 lecturers. The highest score was 4.6 and only one other lecturer scored less than 3.5 (paragraph 43 and 44 of the previous ET decision).

25 By this stage the examiners had met to set the questions for the summer exam. The Claimant had not brought a question and model answer to the meeting as she had been requested to do. She had submitted it shortly after the meeting. Messrs McPhail and John Kilner (Chairman of the Department of Materials) had concerns that the mathematical content of her question was too hard for second year Materials students and sought another opinion from outside the Department, which confirmed that their concerns were justified. However, these concerns were not raised with the Claimant and the question was sent to the external examiners without the Claimant being afforded an opportunity to amend it. In preparing for the Claimant's probation view Neil Alford sought David McPhail's opinion on the Claimant's exam question. David McPhail said that it inappropriate with too much emphasis on mathematical physics (paragraphs 42 and 45 of the previous ET decision).

26 On 3 February 2011 Neil Alford invited the Claimant to a meeting and they met later that day. He told the Claimant that on basis of her SOLE scores and comments it was unlikely that the probation review panel would confirm her appointment; it would be unwise for the Department to allow her to continue teaching and there were no Lecturer roles that were research only. He explained to her that promotion would also be problematic because of her low SOLE scores. He asked her to consider the option of taking one year's sabbatical (which would be paid) and to leave the College voluntarily at the end of the year. The purpose of making that offer was to give the Claimant an opportunity to find another role during the year and to avoid any damage to her reputation from not being confirmed at the end of her probationary period. The Claimant responded that other teachers in the Department dumbed down their lectures in order to achieve high SOLE scores. Neil Alford said that he felt that that denigrated the work of colleagues who taught mathematically challenging courses in Materials without lowering the level of their lectures and still attained good SOLE scores. The Claimant also said that the students were not interested in the subject and simply saw it as a route to working in the financial sector.

27 On 8 February 2011 David McPhail (as the Claimant's Academic Advisor) and Jason Riley prepared reports on the Claimant for the probation review meeting. In his report David McPhail said that he had had a series of discussions with the Claimant about teaching over the previous twelve months, initially informally and then more formally after he was appointed her Academic Advisor. The general thrust of the

initial discussions had been to explain that materials engineering was a very different subject from physics. He had shown and lent her a number of Material Engineering text books and referred her in particular to the chapter on Magnetism (which she was teach) to indicate how the subject was taught. He then set out his comments on the two lectures which he had observed and the feedback that he had given to her after the first lecture. This broadly reflected what appeared in his notes and email to the Claimant. The only difference was that in his report he said that after the first lecture he had told her that the level of the mathematics was inappropriate and unnecessary distraction for the subject she was teaching and would in his opinion alienate a lot of the class. That did not appear either in his notes or in his email to the Claimant after the first lecture.

28 Mr Riley's note covered the whole probation period. He said that in 2009-2010 the Claimant had had a very light load of teaching and that her SOLE scores and comments were the poorest that anybody could recall within the Department. The question set by her in the exam (on magnetism) had been answered very poorly. In summer 2010 the Claimant had an informal meeting with Dr David Dye, an experienced lecturer who taught one of the most challenging courses in the Department. He had emphasised to her the importance of providing good lecture notes and overhead displays to the students and of giving them confidence to tackle problems in an exam through tutorials and worked examples in classes. The lecture notes provided in autumn 2010 had been a considerable improvement on material provided to students in the spring of that year. However, the SOLE scores showed no significant improvement in how the course was received by the students. At the beginning of the 2009-10 academic year the Claimant had requested an exemption from the CASLAT course on the basis of her extensive teaching experience in the US. His view was that she would benefit from attending the course.

29 On 13 February the Claimant raised a formal grievance against Neil Alford for creating "a hostile work environment" which had included most recently a threat to dismiss her from her lectureship. In paragraph 2 she set out what had happened at the meeting on 3 February. She said that when Professor Alford had told her that she could not continue teaching because of her low SOLE scores she had quoted a remark form one of her tutees that students were often "spoon-fed" by other instructors. At paragraph 5 she set out twenty reasons why it was wrong to rely on low SOLE scores for dismissing her. One of the reasons was that Dr McPhail had not arranged six formal mentoring sessions with her as had been agreed when her probations had been extended. The 18th reason was that she had learnt through conversations with students why she received such low SOLE scores. One of the reasons given by the students was,

> *"they find other instructors more accommodating – they are used to being "spoon fed" - whereas I don't "spoon feed them". For example, some of the instructors told them what would be in the exam, and indeed the exam had those problems."*

She also complained in the grievance that some members of the academic staff missed lectures, without prior warning to the students and without subsequent make up lectures, and did not meet tutees regularly. Despite that, no disciplinary action had been taken against them.

30 As the Claimant had raised a grievance against Neil Alford, he withdrew from her probation review panel.

31 On 20 February Professor Alford responded to the Claimant's grievance. One of the things that he said in his response was that Dr McPhail had informed him that he had met with the Claimant on more than six occasions. The meetings had not been arranged in advance and had tended to be an ad hoc basis. They had lasted up to an hour and a half and had involved discussions of teaching technique and the difference between material engineering and mathematical physics.

32 On 14 March 2011 the Claimant responded to Professor Alford's response. She disputed what Dr McPhail had said about his meetings with her. She also said,

> "*I believe that not showing up for lectures without prior warning and not making up for them is a much more serious disservice to the students than lecturing a course at a high level to educate the students to compete globally. This raises questions about the meaning of SOLE scores, and in particular whether high SOLE scores necessarily reflect what is best for the students and their subsequent employers."*

In respect of the meeting with Neil Alford on 3 February, the Claimant said,

> "*during this meeting, when I was trying to defend myself against prof Alford's assertion that, based on my low SOLE scores, I was not capable of explaining science to students, I did not use the word "dumb down" but instead said that "other lecturers may be more accommodating to the students", which is quite different, to explain why other lecturers may be receiving higher SOLE scores. Therefore, I was shocked when Prof Alford immediately accused me that I was denigrating other lecturers. I explained to him that "accommodating" does not carry any value judgment, that it is a matter of philosophy, and that, for example some parents, think that accommodating their children is a good thing and some parents think that it is not a good thing."*

33 The Claimant's end of probation review took place on 17 March 2011. The grievance against Neil Alford was heard at the same time by the same panel. The panel comprised John Kilner (Chair, Department of Materials), who chaired the panel, Susan Eisenbach (Head of Department of Computing), David McPhail and Jason Riley. The Claimant was accompanied by a colleague, Professor Saiz. It was made clear to the Claimant that the core issue for the panel was the quality of her teaching. It was pointed out that her SOLE scores for the teaching she had done the previous term had not been good. The Claimant said that SOLE scores were not a good way of judging teaching skills and thought that comments by an independent observer on how a course was taught would be a better way of judging teaching skills. She was asked whether she thought that her teaching was a problem and she responded that having regard to the content and how she had explained it, she did not think that she had done anything wrong. There were discussions about the content of the course and whether the students had found it too difficult and challenging and about who was responsible for the content of the course. Towards the end of the meeting the Claimant sought clarification as to what weight the panel attached to the SOLE scores. Professor Kilner said that the difficulty for the panel was she had asked for a quantified target, had been given a target of 3.5 but that she had not achieved that. The Claimant repeated that SOLE scores were not an accurate measure of how

good she was at teaching and she wanted something objective such as an observer. At that stage Dr McPhail intervened and said that he could help. He said that he had been observing lectures for 20 years and,

> "*The first of your lectures that I observed was one of the worst lectures I have ever seen in terms of communications skills. It was full of communications issues. In the second lecture the communications issues had been partly resolved but it was full of mathematical physics which was inappropriate for a course in material engineering. It lacked the underpinning materials course philosophy whereby we try to relate microstructure, processing and properties. It seemed that you had not taken on board what was required by the Materials Department. Though a very small number of students seemed to enjoy the lectures the vast majority were not engaged."*

The Claimant said that after the first lecture Dr McPhail had only raised issues about communications but had said that content and pace had been fine. She read out the email that he had sent her. Dr McPhail said that in giving her feedback he had had focused on problems that could be fixed quickly but that they had had discussions before she started teaching on the difference between teaching in a Materials Department and a Physics Department. The Claimant accepted that and the fact that he had given her three text books. She said that she had looked at the books but the standard was lower than what she was teaching and she had wanted to teach the topic in a more rigorous manner. The Claimant was also asked to expand upon her grievance at the meeting. She clarified that that her allegation that Neil Alford created a hostile and threatening working environment was limited to his conduct at the meeting on 3 February 2011. The panel interviewed Neil Alford in respect of the grievance after the probation review meeting.

34 On 23 March 2011 the Claimant asked for her Academic Advisor to be changed and for David McPhail to be removed from the panel on the grounds that he had expressed great personal hostility to her at the meeting on 17 March 2011 and had lied.

35 On 30 March 2011 Claire Westgate, HR Advisor, sent the Claimant the probation review panel's report and informed her that it had recommended non-confirmation of her appointment. Consequently, in accordance with the Respondent's procedures, she was required to attend a final probation review interview with the same panel on 5 May 2011.

36 The panel's report dealt with both her probation review and the grievance against Neil Alford. In respect of the grievance the panel concluded that while the discussions on 3 February might have been difficult for the Claimant to accept, there was insufficient evidence to conclude that Professor Alford had been hostile at the meeting. The panel's conclusions on the Claimant's teachings were as follows – the gap between her level of teaching and an acceptable level was too great despite appropriate support and advice having been provided; the use of SOLE scores was the most appropriate method of measuring teaching ability; it was concerned by the Claimant's lack of understanding and awareness of the needs of Materials students and her inability to take direction and advice on this issue; in light of the fact that the Claimant did not think that she had done anything wrong or that her teaching was the problem, it considered that there was little prospect of change; she had received appropriate advice and support from Messrs Alford and McPhail although, in the case

of the latter, it acknowledged that more structured one to one meetings and a more direct approach might have been more beneficial to the Claimant. The panel's recommendation was that the Claimant should not be confirmed in post.

37 The final probation review meeting was subsequently rescheduled to take place on 27 May 2011.

38 On 6 May the Claimant told a couple of her students about the final probation review meeting and that it was likely that she would not be confirmed because of her low SOLE scores. The students told her a few days later that they would collect some testimony in support of her. On 20 May they gave her a petition signed by about 40 students. The petition said that she had shown "*fantastic teaching qualities"* during that year's lecture course and that she took great care in explaining key concepts from the core basic. It said that her tutorial questions were very challenging and demanded more abstract approach. The fact that she had taken time to run a very useful course of revision lectures that term, utilising the first term's feedback, showed her commitment to a high standard of education for the students and to improve her areas of teaching.

39 On 13 May the Claimant raised a formal grievance against David McPhail in which she accused him of "consistent lies and fabrications" in order to create a basis for her dismissal and of having shown "extraordinary hostility" to her at the probation review hearing on 17 March. She asked for Dr McPhail to be replaced by Mike Finnis as her Academic Advisor and for him to be removed from the probation review panel. She said that she had had only one discussion with him about the content of the course that she was teaching and that that had been in September 2009 before he had become her Academic Advisor. While he was her Academic Advisor he had observed two of her lectures and after each had had a brief chat (no more than 10 minutes on each occasion). Neither of the written records produced after those observations had pointed out any serious issues about her style of teaching.

40 On 20 May 2011 the Claimant provided a detailed response to the panel's report. She used the students' petition to support her case.

41 The Claimant's grievance against Dr McPhail was heard together with the final probation review on 27 May 2011. The only change to the panel was that David McPhail had been replaced by Dr Skinner, Senior Lecturer in Materials. The Claimant was accompanied by a colleague, Professor Mike Finnis. The Claimant had prepared a slide presentation and used that to argue her case. In the course of her presentation she referred to an article which she said highlighted the unreliability of student evaluations. She said,

> "*My course isn't easy, thus it leads to low SOLE scores. Some lecturers 'dumb down' their lecture content to accommodate their students, but I'm not as accommodating which is why I have received low SOLE scores. If SOLE scores are to be used to judge teaching then this article should be taken into account. Students have told me that Dr MacPhail spoon feeds them as to what is in the exam and I have the names of the students that have told me this."*

Professor Kilner asked the Claimant,

"*Are you saying that Dr McPhail gives students the exam questions before the exams?"*

The Claimant responded "*yes".*

After her presentation, the panel asked her questions. The panel then heard from the Claimant about her grievance. She was asked what she wanted from the grievance and she replied that she wanted Dr McPhail to be disciplined. The panel then interviewed Dr McPhail in the Claimant's absence.

42 On 8 June 2011 the panel sent the Claimant the outcome of the hearing. Her grievance against David McPhail was not upheld. The panel concluded that although Dr McPail might not have arranged six formal meetings with her, as he was expected to do, and might not have verbally conveyed to her the information detailed in his report, there was insufficient evidence to conclude that he had lied and fabricated in order to create a basis for her dismissal. It also concluded that his "incremental approach", which entailed not pointing out all the negative aspect of her teaching at the very outset, was not appropriate for that stage in her probation period.

43 As far as the Claimant's teaching was concerned, the panel concluded that she had consciously adapted her attitude in order to engage more with the students. She had also demonstrated to the panel that she understood the need to structure her lectures appropriately so that the course content could be covered in the allocated 10 week slot. The panel also noted from the petition that the students felt that there had been an improvement in her lectures in the course of the seven revision lectures which she had run. The panel noted, however, that seven revision lectures was a high number considering the course had only been ten lectures long. The panel also felt that she was not fully integrated in the Department and that she had not established relationship with her colleagues which allowed her to seek help from them on both a formal and ad hoc basis. The panel's decision was to extend her probation for a further period of twelve months to 30 June 2012. The Claimant was set a number of objectives for that period. These included improving her SOLE score to 3.5 (although it was pointed out that this was an extremely low score and she should aim to achieve a higher score), commitment to following the Department's process for approving examination questions, punctual attendance at all departmental meetings and events and attendance on and full engagement with the teacher training for probationary lecturers. The Claimant's Academic Advisor was changed to Jason Riley.

44 On the same day Professor Kilner asked to meet with Claire Westgate in HR to discuss how to proceed in respect of the Claimant's allegation that Dr McPhail gave the students the exam questions before the exams.

45 On 16 June 2011 Neil Alford and Claire Westgate met with the Claimant to ask her to clarify exactly what she had meant when she had said at the probation review meeting that Dr McPhail gave the students the exam questions. The Claimant was accompanied by Mike Finnis. After the meeting Claire Westgate asked the Claimant to clarify whether what she had been recorded as saying at the meeting on 27 May reflected what she had intended to say. The Claimant did not respond and Ms Westgate followed up with another email a week later. She said that she had understood the Claimant to be saying on 16 June that she had not intended to give the impression that Dr McPhail told the students the questions that would come up in

the exam but that she had heard from a couple of students that he provided more guidance to students regarding the exams than other lecturers did. She asked her to confirm whether that was an accurate record of what she had said on 16 June. Not having heard from the Claimant, she chased her for a response on 4 July. The Claimant responded on 6 July. She said,

> "*I clarified during the meeting on June 16, 2011 that some of the students had told me that Dr McPhail told them what would be in the exam and that indeed the exam had those problems. I was not told explicitly by the students that they were shown the exam questions but the students said that they were told what would be in the exam."*

46 On 10 July 2011 the Claimant commented in writing on what Dr McPhail had said in response to her grievance on 17 May 20111. In that document she said that she had realised that she could not trust Dr McPhail after what he said about her teaching at the probation review meeting on 17 March 2011. That feeling of distrust had been compounded when she read his Academic Advisor's report. On both those occasions he had been critical of her teaching and had expressed a different view from what he had told her at the time when he observed her lectures. She said that she suspected that the reason he had done so was that he was a strong believer in the SOLE scores and wanted to align his comments with her SOLE scores rather than admit that the SOLE scores were inaccurate. However, he only got excellent SOLE scores by making his course very accommodating to the students, including giving the students unusually strong indications as to the examination questions.

47 On 11 July the Claimant appealed the outcome of the final probation review.

48 It was clear to the Respondent from the Claimant's response on 6 July 2011 to Ms Westgate's emails that she stood by her allegation that Dr McPhail told the students the exam questions before the examinations. That was clearly a serious allegation which could not be ignored and had to be investigated. On 3 August Ireti Webb (HR Manager) and Claire Westgate met David McPhail and told him that the matter would have to be formally investigated. Dr McPhail's colleagues in the Department, including Neil Alford, thought highly of him and were sceptical as to whether there was any substance to the allegation.

49 Neil Alford and Ireti Webb had a discussion about who should conduct the investigation. They agreed that it should be conducted by someone from outside the Materials Department. Ms Webb suggested Peter Cheung, who was the incoming Deputy Principal for Teaching in the Engineering Faculty. Neil Alford's view was that Professor Nethercot, who was the existing Deputy Principal for Teaching and had experience of having conducted formal investigations, was a better choice. On 8 August Ms Webb asked Professor Nethercot to investigate the allegations against Dr McPhail.

50 On 10 August Professor Nethercot invited the Claimant and Dr McPhail to separate investigation meetings. The meeting with the Claimant was on 22 August and the one with Dr McPhail was on 24 August 2011. He was told that the meeting was to discuss the allegation that he had told several MSE 205 students what would be in the examination.

51 On 12 August Sally Preston Wells, HR Advisor, asked the Claimant to clarify the exam to which her allegation related. Dr McPhail had been seeking this information for some time. The Claimant responded that she would have to ask the students, who had made the comments, to which exams they had been referring and offered to contact them to find out. She believed that different students had been referring to different exams since they were in different years.

52 On 19 August 2011 Professor Nethercot made it clear to the Claimant that she should not contact any students in relation to the allegations that she had made as it could be seen as compromising the investigation which the College was undertaking. He told her that the presumption was that she had made a serious allegation against a colleague on the basis of information available to her at the time. The Claimant said that students should be told clearly that the investigation was not only about Dr McPhail's conduct but also about her credibility and that telling the truth was important because what they said could have consequences for both of them.

53 On 22 August Professor Nethercot interviewed the Claimant. He told her that the purpose of the hearing was to elicit information from her. The Claimant said that she had heard from two students that Dr McPhail gave the exam questions to his students. She was the personal tutor of both students and taught one of them. The first one was student B. She was her tutee and her student. On 31 January 2011 she had spoken to student B about her poor SOLE scores and asked her why she received poor scores. Student B had said that it was because she did not spoon feed students like other instructors did. She had cited Dr McPhail as being one of these. She had not referred to any specific exam. The second one was student C who was her tutee. On 10 February he had spontaneously come out with the comment that Dr McP had told them what would be in exam and that it was. He had said that the exam was about conductivity and they had taken the exam in January. The exam was the MSE 105. It was a monitoring exam. The Claimant said that she had kept the information to herself and had not shared it. At one stage the Claimant inquired whether she was the subject of the investigation and Professor Nethercot replied that she had always been the subject of the investigation, in that, they needed to find out the basis of her allegations.

54 The Claimant was asked why, having kept the information to herself for over three months, she had disclosed it at the meeting on 27 May. The Claimant said that she had done so because it had been alarming and a shock to hear what Dr McPhail had said to the panel about her teaching. Professor Nethercot asked her whether she had made the comment about Dr McPhail because she believed that he had been hostile to her. The Claimant responded that it was not just that, it also explained why her course was not well received. She also said,

> "*If someone makes false statements to destroy my career – as a result of this the College decided to fail me and I think it is the natural conclusion to say what you have just heard."*

Professor Nethercot then asked the Claimant whether she was accepting that she had made the statement because she had been angry because she felt that part of the evidence against her was unsound; the Claimant responded that most of the evidence had been unsound, not part.

55 Professor Nethercot interviewed Dr McPhail on 24 August 2011. He denied that he had ever given or told the students exam questions before the exam. He explained how he conducted revision lectures and emphasised the objectives/learning outcomes, which were the most important aspects of the course. He said that with the first year (those who did the MSE 105) he had a strategy to teach them one specific formula. He told them that they would need it for the next 40 years of their lives and that it would definitely come up.

56 On 25 August Professor Nethercot interviewed four students who had been taught by Dr McPhail and were at the university over the summer. They were selected at random. They were students D, E, K and L. They were all clear that he did not tell students the exam questions before the exams. They talked about his revision lectures and what was covered in them. One of them said that what was discussed at revision lectures was partly decided by the students. Another said that he stressed that they should learn all the diagrams and notes. Some of them said that students would ask him what would come up in the exam but he would not say. Student D said,

> "*He exposes us to the types of questions, but doesn't give lists of exam questions… He gives us expectations but not all come up. He highlights a lot. The course is not very wide so some of what he highlights does come up, but these are things that we are expected to know throughout the course… In the first year he told us an equation was very important and we should know about it, think it was a general equation."*

57 On 26 August the Claimant discussed the situation surrounding her probation and the investigatory interview with one of her students, student AF.

58 On 28 September 2011 Professor Jeff Magee, Principal of the Faculty of Engineering, and Ann Kelly, Head of Faculty HR Operations, heard the Claimant's appeal against the extension of her probation and the outcomes of her two grievances. The Claimant was accompanied and represented by her colleague professor Mike Finnis.

59 On 3 October Ms Wells in HR invited students B and C, who had been named by the Claimant, to separate meetings on 12 October 2011. She told them that the purpose of the meeting was to discuss an allegation that had been made against a member of the academic staff in the Materials Department. She told them that Professor Nethercot would lead the meeting and that Luc Vandeperre, Senior Tutor, would be present to support them.

60 On 7 October 2011 the Claimant had a lunch scheduled with her tutees. Students B and C arrived early and the Claimant spoke with them in her office. She asked them whether they had received any letter from the College. Student C said that they had. She told them the background surrounding the letter and said that they should not be worried but should simply tell the truth. After the lunch she spoke to both students about the conversations that they had had with her earlier in the year in relation to Dr McPhail.

61 On 10 October the Claimant spoke to AF about conversations that she (student AF) had with student B in the summer on the Claimant's behalf.

62 On 10 October Professor Magee wrote to the Claimant to inform her of the outcome of her appeals. The panel upheld the decision of the probationary review panel to extend her probation to 30 June 2012. It also felt that the objectives which she had been set were reasonable and achievable. The panel did not uphold her grievances but believed that she should have been provided with the appropriate constructive feedback on her teaching.

63 On 12 October 2011 Professor Nethercot interviewed students B and C separately in the presence of Luc Vandeperre and Sally Preston Wells from HR. Professor Nethercot began each interview by saying that the purpose of the meeting was to investigate an allegation that had been made against David McPhail. He told them that it was a serious allegation, they were expected to tell the truth and there would not be any negative consequences for them for telling the truth. Student C was asked whether on 10 February he had told the Claimant that David McPhail had told them what would be in the exam and that the exam had had those problems. He said that he could not remember telling her that but that he might have. He was asked what he had meant by it if he had said it. His reply is recorded as,

> "[McPhail] *implied something might come up in the exam. He told us to learn an equation that was fundamental to the course. He told us that if we remembered that equation we would do well in the exam. On the exam it asked you to state the equation."*

Professor Nethercot asked him whether McPhail told them that it would come up in the exam and he replied,

> "*He didn't say it would come up, he implied that if you remember the equation it should give you a few marks in the exam."*

A little later there was the following exchange between him and Professor Nethercot –

> "*DN – Have you ever said DMcP gives out the exam questions?*
>
> *C – I might have. When revising for the exams with my friends we might have talked about how we had to remember that equation.*
>
> *DN – So by giving out the exam question you would be talking about the equation?*
>
> *C – Yes"*

He was also asked whether the Claimant had been in touch with him about this. He said that he had been worried when he had received the email inviting him to an interview and she had explained what was going on. He said that she had spoken to him and student B at the tutorial lunch before the others arrived. She had told him that he would be questioned about something that he had said about Dr McPhail and that it was about her and exam questions.

64 Student B was asked about the conversation which she had had with the Claimant in January 2011. She said that the Claimant had asked her why she had got low SOLE scores and what she was doing wrong. Student B said that she did not

know what to say and she had told her that she needed to be more likeable. She had given Dr McPhail as an example and said that students liked him because he joked around topics and made them more interesting. She said that she had said that students liked to be spoon fed but she had not said that Dr McPhail spoon fed them. She said that students liked to be spoon fed so that they got good results. She said that Dr McPhail gave extra tutorials to prepare students for exams but did not tell them what questions would be in the exams. She said that the Claimant had contacted her through another student during the summer who had told her that she might be contacted by the College and that she would need to recall a conversation. The Claimant had asked her at the tutees' lunch whether she had been contacted by the College.

65 On 20 October 2011 Professor Nethercot produced his investigation report into the allegation against David McPhail. The report, with all its appendices containing notes of all the interviews conducted, was about fifty pages long. Professor Nethercot analysed all the evidence. The only evidence in support of the allegation was that Dr McPhail had told the students that they needed to learn a particular equation because it was central to the course and would definitely come up in the exam and that it had come up in the exam. That evidence came from Dr McPhail himself and student C. Professor Nethercot's opinion was that that did not constitute giving the students the exam question but giving students hints regarding exams which was common practice in the College. He concluded that there was no evidence to support the allegation that Dr McPhail provided inappropriate information to his students about what to expect in the exam and there was, therefore, no case to answer.

66 He continued that the Claimant had made her allegation based on comments she had received from two students, one of whom had denied making the comment. She had not sought at any stage to clarify with the students what they had meant by their comments. She had received the comments in January and February 2011 but had not shared the information until 27 May 2011. It was his opinion that she had made the allegation in response to criticism of her teaching by Dr McPhail in an attempt to discredit him. He believed that if the Claimant had had genuine concerns about Dr McPhail's teaching she would have raised these matters when she was first made aware of them. His view was reinforced by the fact that the Claimant had confirmed that another colleague had been named by one of the students but she had not named that colleague. He also said that, contrary to an express instruction not to contact the students regarding his investigation, she had spoken to students B and C about it at a tutorial lunch on 7 October. It was his opinion that there were reasonable grounds for believing that the Claimant had made a vexatious allegation against Dr McPhail and the Department should consider investigating the matter under the College's Disciplinary Policy and Procedure.

67 Having discussed the matter with HR, Neil Alford decided that the matter should proceed to a disciplinary investigation and that professor Nethercot was the best person to conduct the investigation as he was already familiar with the matter. On 31 October 2011 the Claimant was given Professor Nethercot's report and invited to an investigatory meeting under the disciplinary procedure on 11 November to investigate the allegation that she had made a vexatious allegation against David McPhail. She was advised of her right to be accompanied by a trade union representative or work colleague.

68 On 1 November the Claimant met student AF and told her about the outcome of the investigation and the testimony that students B and C had given. Student AF said that she would talk to student B to see whether she was willing to amend her testimony. At that stage student B was waiting for the Claimant to provide her with a reference. On 10 November the Claimant met with student A and three other students at a Starbucks near the College and told them about matters that had led to her being investigated.

69 On 10 November the Claimant sought clarification from Claire Westgate in HR as to whether she could discuss the investigation with and get testimonies from students. Ms Westgate's response was that the matter was confidential and that it was not appropriate to discuss it with the students and that she should refrain from doing so.

70 The investigatory interview took place on 11 Nov 2011. The Claimant was accompanied by Professor Finnis. It was not in dispute that the information, which had formed the basis of the Claimant's allegation, had been given to her in January and February 2011. She was asked why she had not raised it with anyone at the time and had chosen to raise it when she did on 27 May 2011. The Claimant's response was that it was not easy to raise such matter and she had given Dr McPhail the benefit of the doubt. However, he had lied at the meeting on 17 March when he had been very critical of her teaching. He had previously given her positive feedback about her lecture. He had lied because her SOLE scores were not consistent with his view of her teaching and he wanted to preserve the integrity of the SOLE system because he got good SOLE scores. He had decided that it was in his interest to say that her teaching was terrible and to destroy her career. When he did that she realised that he had no integrity and could not be trusted. Hence, she had brought up what the students had told her. She said that another member of staff had also been named by the students but she did not want to reveal the name because she had no evidence that that person lacked integrity and was, therefore, prepared to give him/her the benefit of the doubt. The Claimant was also asked why she had spoken to the students when Professor Nethercot had told her not to do so during his investigation. The Claimant said that they had been worried by the letter that they had received and she had simply told them not to worry and that they should tell the truth. The Claimant asked whether she could call the students as witnesses if the matter proceeded to a disciplinary hearing and professor Nethercot said that both sides could call whomsoever they wanted as witnesses.

71 Professor Nethercot produced his investigation report on the allegation against the Claimant on 23 November 2011. He concluded that there was evidence that the Claimant had made the allegation without sufficient grounds in an attempt to discredit Dr McPhail, solely in response to his criticism of her teaching. She had said that she had chosen to give him the benefit of the doubt and had only changed her mind when he had made contradictory statements about her teaching. She had stated that she did not know if what the students were saying was true and at no point had she spoken to the students to ascertain their meaning or seek evidence to support her allegation. His view was supported by the fact that she had not disclosed the name of the other lecturer about whom a student had made a similar allegation. He concluded that there was evidence that the Claimant had made a serious allegation without sufficient grounds or evidence, which constituted a vexatious allegation. He, therefore, recommended that the matter proceed to a disciplinary hearing. He also

expressed the view that the Claimant's speaking to the students, when she had been instructed not to do so, was also a disciplinary matter.

72 Jeff Magee was asked by HR to conduct the disciplinary hearing and on 25 November he invited the Claimant to a disciplinary hearing on 7 December. He told her that the allegations against were that she had made a vexatious allegation against David McPhail and had disregarded a direct management request made by Professor Nethercot during his investigation. She was warned that if the allegations were proved it could result in summary dismissal. She was provided with a copy of Professor Nethercot's report and advised of her right to be accompanied.

73 The hearing on 7 December had to be rescheduled as the Claimant had planned to be away at that time. It was rescheduled for 19 December. The Claimant objected to that date as she was due to return from abroad the previous day and the student witnesses would not be available on that date. Ms Westgate told the Claimant on 5 December that she had been informed by the panel that it did not feel that it was appropriate to involve the students at that stage. The same point was also made by Ireti Webb on 6 December. She said that the students had been interviewed by Professor Nethercot and that the panel had the notes of those interviews and did not wish to question the students at the disciplinary hearing. Professor Magee told the Claimant on 9 December that she could raise her rationale for calling the students at the hearing and if the panel accepted her rationale it would adjourn the hearing until they were available. The hearing was postponed to 22 December. The point about raising the issue of calling the students as witnesses at the disciplinary hearing was repeated by Ireti Webb on 15 December 2011.

74 On 8 and 9 December the Claimant was in contact with student AF about students AF and AG helping her by providing a letter and/or giving evidence at the disciplinary hearing. The students also produced for her a tape recording of something that Jason Riley said at one of his lectures.

75 On 21 December 2011 the Claimant write to Professor Magee. In that letter she said for the first time that she had never made an allegation against David McPhail or accused him of improper conduct. All she had done was comment on how different teaching styles could lead to different student satisfaction and, therefore, different SOLE scores. She continued,

> "*I did not realise then, nor have I ever been told by any members of the College, that my words would be used by the College to make a serious allegation against Dr McPhail, since I myself did not see any firm evidence for such an allegation."*

She said that she was surprised that her comments at the meeting on 27 May 2011 had "*escalated into a major incident"*. She had said that Dr McPhail spoon-fed students with respect to what might be asked in the examinations and, in doing so, she had only been recalling what two students had told her. She understood that that there was plenty of room to interpret those words as not implying anything improper. When Professor Kilner had asked her whether she meant that Dr McPhail gave away examination questions to his students, due to the pressure of the circumstances and because English was not her native language, she had said "yes" without first asking him to clarify what he meant. She had clarified at the meeting on 16 June that she

had never intended to create the impression that Dr McPhail's teaching practice was improper.

76 The Claimant also sent on that day her comments on Professor Nethercot's report and other documents upon which she wished to rely. These included a copy of the MSE 105 examination paper in January 2011.

77 The disciplinary hearing took place on 22 December 2011 and lasted nearly two and a half hours. The Claimant was accompanied by Jason Riley. She did not advance any argument as to why the students should attend the hearing. The Claimant's stance at the hearing was the same as what she had said in her letter the previous day. She had never said and had never intended to imply that Dr MCPhail was doing anything improper. She had only repeated what the students had told her. When she had agreed with Professor Kiner that she was saying that Dr McPhail gave students the exam question before the exams, that was not what she had meant. Professor Nethercot reminded her that in his first interview with her, he had made it clear to her that they were investigating her allegation and what the allegation was, and she had never withdrawn that allegation or said that she had been misunderstood.

78 Professor Magee met with the Claimant on 11 January 2012 to give her the outcome of the disciplinary hearing. He gave her a letter setting out the outcome and went through its contents with her. The letter set out why Professor Nethercot had concluded that there was evidence that she had made a vexatious allegation. He set out the defence that she had advanced at the disciplinary hearing that she had never made an allegation of improper conduct against Dr McPhail. He rejected that defence. He said that it was clear from what she said at the interview on 11 November that she believed that what she had been told by the students amounted to a practice that she felt was improper and that the students were aware of the exam questions. Prior to her interview on 22 August it had been clear to her that the allegation that she had made was a serious one and that there would be consequences for Dr McPhail if the investigation had found that there was substance to her allegation. If she did not believe that Dr McPhail had done anything improper, she had had the opportunity to make that clear at the interview on 22 August and had not done so. He concluded that the Claimant repeatedly stating that Dr McPhail told students what would be in the exam amounted to serious misconduct. It is implicit in what he said that he had accepted that she made a vexatious allegation but he did not say that explicitly in his letter and did not elaborate on why it was vexatious. He also concluded that by speaking to students B and C on 7 October and by contacting other students after the start of the disciplinary investigation she had deliberately disobeyed the instruction of the investigating officer. Those actions, in his view, demonstrated extremely poor judgment on her part.

79 Having concluded that the allegations against her had been substantiated, he considered what would be the appropriate sanction. He took into account the following factors - the Claimant's allegation had had a significant impact on Dr McPhail, who was highly regarded academic in the Department and the College; her relationship with him had been irretrievably damaged; her credibility had been called into question; and after four years in post she remained a probationary lecturer, her probation having been extended due to performance concerns. All those matters had led to a breakdown in working relationships and the destruction of trust and

confidence which, in Professor Magee's view, made her position in the Department untenable. His decision was that her employment should be terminated as of that date and that she should be paid three months' salary in lieu of notice. She was advised of her right of appeal. In order to help the Claimant's career and to prevent damage to her professional reputation Professor Magee offered the Claimant the option of resigning instead of being dismissed and the Claimant was given until 16 January 2012 to consider that offer.

80 In accordance with the Respondent's normal practice to withdraw email access for members of staff who have been dismissed, the Claimant's email account was suspended on 18 January 2012. She was informed of this on 17 January 2012. Email forwarding was not a standard service offered to dismissed staff or students. The Claimant subsequently contacted someone in the Respondent's ICT department who agreed to reactivate her account not being aware that she had been dismissed. Once the Department was made aware that the Claimant continued to have access to her email account it requested that the account be suspended. That took effect from 7 February 2012 and the Claimant was provided with a disc copy of her mailbox so that she had access to any past emails that she might require.

81 On 17 January 2012 Neil Alford instructed Andrew Tebbutt, the Departmental Operations Manager, to clear the laboratory space that had been used by the Claimant, so that it could be returned to the Department of Earth Sciences and Engineering for its use. On 18 January Mr Tebbutt informed the Claimant of the things that needed to be done as a consequence of her dismissal. He informed her that she would no longer have access to the Department and that they would arrange for the items from her laboratory to be cleared. He asked her to contact Jason Riley by the end of January if she wished to collect any belongings from her office. He also informed her that the Department was in the process of allocating new supervisors to her students and was investigating the position of her current research grants and proposals. In her response to that email the Claimant informed the Respondent for the first time that the equipment in her laboratory belonged to University College. The Respondent then had to liaise with staff at UCL to ensure that the transfer took place in a safe and controlled manner. The Claimant's laboratory space was not fully cleared until 15 September 2012, some eight months after the process had begun. Part of the delay was due to the College's attempts to accommodate the Claimant's requested timetable for the laboratory being cleared and for her to inspect what was being removed.

82 Neil Alford and others in the Department found other supervisors to take over supervision of the Claimant's students to ensure that they had continuous supervision. They conferred with the students concerned. Neil Alford also considered how best to deal with the Claimant's grant. It is possible to transfer the grant to another Higher Education Institution if the Principal Investigator on a grant becomes a member of staff at that institution. However, it was not possible to do that with the Claimant because she was not employed by another Higher Education Institution. There was only one person within the Respondent who had the right background to carry out the work for which the grant had been awarded. Neil Alford offered it to him but he declined it. Neil Alford was about to return the grant when a professor at UCL asked whether he could be the Principal Investigator and the grant could be transferred to UCL. The Claimant and Dr Aeppli had asked him to make that request. Neil Alford made it clear that their primary concern was the student who had been

working on that project and the professor at UCL agreed to take responsibility for her welfare. The grant was then transferred to him at UCL.

83 On 1 February 2012 the Claimant submitted outline grounds of appeal. She submitted further grounds of appeal on 1 March and 11 April 2012.

84 On 10 April 2012 the Claimant presented a claim to the Tribunal. In that claim the Claimant complained of unfair dismissal and race and sex discrimination. There was no reference in the particulars of her claim to whistle blowing or having made protected disclosures and those being the principal reason for her dismissal. She did not say in the particulars that she had been dismissed because she had accused Dr McPhail of giving exam questions to students before the exams or because she had given information which tended to show that either Dr McPhail or the Respondent was in breach of any legal obligations. On the contrary, she said,

> "*The claim that I made a "vexatious allegation" was concocted from a very short interchange (two sentences) between a Professor and myself on 27 May 2011… The allegation in the investigation report, that the comment I made about Dr McPhail's teaching at my probation appeal hearing implied improper behavior was made without any grounds, fact or evidence. My grievance letter against my HOD dated Feb. 13, 2011 and the minutes of the investigation conducted on 22 August, 2011 prove that my comment did not imply anything improper."*

85 The Claimant's appeal was heard on 16 May 2102 by a panel of three professors the chairman of which was Professor Stephen Richardson, who was Deputy Rector at the time. The Claimant was represented by Professor Littlewood, formerly the Head of the Physics Department at Cambridge University. The ambit of the appeal was to review whether the matter had been adequately investigated and substantiated, whether the Respondent's procedures had been correctly and fairly implemented and to consider whether dismissal was reasonable in the circumstances known to management at the time of the hearing. The Claimant presented her case and called Professors Mike Finnis and Eduardo Sais as her witnesses. Professor Magee responded to the Claimant's appeal and called Professor Nethercot as his witness. The panel informed the parties at the end that it would sent its decision in writing.

86 On 28 May the panel asked Professor Magee to clarify his reasons for dismissal and, in particular, to what extent matters other than the allegations had contributed to the decision to dismiss. The Claimant was made aware that the clarification was sought and, when it was obtained, it was sent to her and she was given an opportunity to comment on it. Professor Magee provided the clarification on 1 June 2012. He said that the Claimant had been dismissed because he had found that she had made a vexatious allegation against Dr McPhail and had disregarded a direct management request made by Professor Nethercot during his investigation. He had considered these actions to be gross misconduct. When looking at the sanction he had looked at broader issues including those relating to her probation and the breakdown in relationship with her colleagues. He did not believe that her attitude to teaching and her relationship with her colleagues would change. He expanded on each of those matters in his clarification. On 25 June 2012 the Claimant responded to his clarification.

87 Professor Richardson sent the Claimant the outcome of the appeal in a letter dated 10 July 2012. The letter comprised 13 typed pages and dealt with all the points which had been raised by the Claimant. The appeal panel upheld the dismissal. It concluded that the Claimant had made a vexatious allegation. The interviews with students B and C had provided some evidence for the origin of the Claimant's comments but neither of those students had indicated to either her or Professor Nethercot that they felt that Dr McPhail had done anything wrong. Their remarks had been taken out of context and on the basis of those comments the allegation against Dr McPhail had been unsubstantiated. The panel also found that while the Claimant's comments on 27 May could be viewed in the context of the pressure under which the Claimant was at that meeting, her comments at various meetings thereafter could not be regarded in the same light as the Claimant had had opportunities to reconsider that position. The panel concluded, based on the Claimant's email of 6 July and her comments at the meetings of 22 August and 11 November that her motive for making the allegation was Dr McPhail's criticism of her and her belief that he had lied. The panel also believed that the Claimant should have been aware of the serious implications of what she had been saying. The panel concluded that the matter had been adequately investigated and substantiated.

88 The panel disagreed with the approach taken by management in respect of calling the students as witnesses at the disciplinary hearing. It felt that the evidence of the students, in particular, of student B whose account had been different from what the Claimant said that she had told her, would have been important. However, its view based on the overall evidence, was that calling the students as witnesses would not have made any difference to the outcome. The panel also concluded that the decision to dismiss for the allegations which had been substantiated and were considered to be gross misconduct was reasonable taking into account the broad context of the Claimant's employment history (her leave of absence for two years followed by performance issues which led to formal warnings and the extension of probation) and the breakdown of her relationship with Professor Alford and Dr McPhail.

89 At a preliminary hearing on 17 July 2012 the Claimant was given leave to amend her claim to add claims that she had been subjected to detriments and dismissed because she had made protected disclosures. The protected disclosures were said to be her allegations that Dr McPhail's conduct in relation to an exam question had failed to comply with a legal obligation.

90 On 31 August 2012 the Claimant gave particulars of her whistleblowing claims. She set out therein for the first time the legal obligation which she believed Dr McPhail to be breaching. She said that there was a legal obligation to provide university education to students with university level examinations. There might therefore have been "educational malpractice" which she said was defined as "wrongful or negligent acts on the part of teachers or schools that result (or may result) in student detriments, especially including the failure of students to learn. The English approach ostensibly acknowledges a school's duty of care to provide effective education for all children". She gave the source of this as a legal text book "Education and the Law" by Mawdsley and Cumming. In her evidence, the Claimant said that she had not read that book at the time when she made the allegations against Dr McPhail.

91 In October 2012 the Claimant submitted a number of expenses claim forms. One of them was a form dated 31 August 2012 for £2181.92 for a trip to Seoul on 3 February 2012. The Claimant had been invited in August 2011 to give a talk at a workshop in Seoul. The Respondent's Expenses Policy provides,

> "*All claims must be made within three months of the expense being incurred. If, exceptionally, this proves to be impossible, the claim from should be additionally authorised by the Faculty Finance Officer."*

The payment was not authorised.

Conclusions

Protected disclosures

92 We found that between 3 February and 10 July 2011 the Claimant communicated the following matters to the Respondent:

(a) Other lecturers in the Department dumbed down their lectures to get high SOLE scores (3 February 2011 to Professor Alford);

(b) She had been told by students that she received low SOLE scores because she did not spoon-feed them in the way that other instructors, who were more accommodating, did. An example given was that some of the instructors had told them what would be in the exam and the exam had had those problems (13 February 2011 grievance);

(c) Some lecturers did not attend their lectures, gave no prior warning of their non-attendance and did not make up the lectures that they had missed (13 February grievance and 14 March 2011 letter);

(d) Some lecturers dumbed down their lecture content to accommodate their students but she was not as accommodating which was why she received low SOLE scores. Students had told her that Dr McPhail spoon fed them as to what would be in the exam. In saying that, she meant that he gave students the exam questions before the exam (27 May 2011 final probation review);

(e) Some of the students had told her that Dr McPhail had told them what would be in the exam and that the exam had had those problems. The students had not said that they had been shown the exam questions but that they had been told what would be in the exam (meeting on 16 June and email on 6 July 2011); and

(f) Dr McPhail only got excellent SOLE scores by making his course very accommodating to the students, including giving unusually strong indications as to the examination questions.

93 We considered firstly the communication relating to lecturers not attending lectures because that is of a different nature from the other communications. When the Claimant mentioned it in her grievance and in the subsequent letter, she was not "disclosing" information to the Respondent in the sense of informing the College about something of which it was not aware. She was using the fact that the Respondent had not taken any disciplinary action against lecturers who did that to support her argument that it was wrong and unfair to tell her that she could not continue teaching because of her low SOLE scores. Her argument was that not teaching at all was far worse and more serious than receiving poor student evaluation for teaching. She was relying on that fact to allege disparity in treatment and unfairness. It was implicit in her complaint about the Respondent's failure to take disciplinary action against them that the Respondent was aware of it. We concluded that in respect of that matter the Claimant did not "disclose information" and, therefore, did not make a qualified disclosure. There was, in any event, no evidence of any causal link between the Claimant's reference to lecturers not attending lectures and her dismissal and the other detriments of which she complained.

94 The remaining communications were related but comprised two distinct elements. They were:

(i) Other lecturers accommodated the students more than she did by dumbing down the content of their lectures and spoon feeding them;

(ii) Some of the other lecturers told the students what would be in the exam and the exam had those problems. On 27 May the Claimant identified Dr McPhail as being a lecturer who did that and confirmed that what she meant was that he gave the students the exam questions before the exam.

95 We accept that in respect of those matters the Claimant "disclosed information" to the Respondent. She told them what she said students had told her about how other lecturers taught their subject and what information they gave to the students about the content of the exams. We then considered in respect of each of those elements what the Claimant believed that information tended to show at the time when she divulged it and, in particular, whether she believed that that it tended to show failure to comply with a legal obligation. In order to determine what the Claimant believed at the time we took into account what she said at the time, what she knew or believed the legal position to be at the time, what she said afterwards, what she said in her evidence and the context in which the information was conveyed.

96 Very soon after the Claimant first asserted that other lecturers accommodated students and spoon fed them, she made it clear that by doing so she was not implying or suggesting any wrongdoing or impropriety on their part. She explained in her letter of 14 March 2011 that when she said that other lecturers were "accommodating" she was not denigrating them because "accommodating" did not carry any value judgment and it was a matter of philosophy – some people thought that it was a good thing and others thought that it was not. There were different views as to what constituted good teaching. If she did not consider that accommodating students by dumbing down the content of the lectures or spoon feeding them and not challenging them was wrong or improper, it follows that she could not have believed that it was unlawful. She did not say and the time, and has not said since, that she believed that that was in breach of any legal obligation. She raised the issue to

provide an explanation for why she got low SOLE scores and other lecturers got high SOLE scores. They adopted a different approach to teaching from her. She thought that her approach was a better one but it was not popular with the majority of students who preferred being spoon fed. We concluded that when the Claimant disclosed that information she believed that it tended to show SOLE scores were not a reliable tool for assessing whether a lecturer was a good or a bad teacher. There was no evidence that she subjectively believed at the time that it tended to show a breach of a legal obligation. Had she believed that, it would not have been reasonable for her to hold such a belief. She has not put before us any basis on which she could have come to that belief at that time. Furthermore, there was no evidence of any causal link between those remarks and the dismissal of the Claimant and the detriments of which she complains.

97 We turned finally to the disclosure of information that some lecturers, and in particular Dr McPhail, told students before the exam what would come up in the exam. The Claimant's position as to whether she believed or suggested that Dr McPhail was doing something wrong or improper has changed a number of times. In her evidence to us she was clear that she believed that what he did was wrong, improper and tantamount to cheating. Between 27 May 2011 and the 21 December 2011, the day before her disciplinary hearing, the Claimant did not at any stage make it clear that she was not suggesting any impropriety on the part of Dr McPhail. She was aware that the Respondent took the matter seriously and that it was investigating her allegation and that, if it was substantiated, it could have serious consequences for Dr McPhail. She never said to the Respondent at that stage that it had misunderstood or misinterpreted what she said. However, she changed her position the day before the disciplinary hearing and said for the first time that she had never intended to say or imply that he had done anything improper. She maintained that position in her claim form to the Tribunal when she stated that the Respondent's allegation against her that she had implied improper behavior on the part of Dr McPhail was groundless and unsupported by any evidence. However, in the course of her appeal to the Employment Appeal Tribunal on 7 July 2015, the Claimant's counsel stated that the Claimant's letter of 21 December 2011 did not reflect her true state of mind and that she had always believed that Dr McPhail was guilty of misconduct in relation to the information which he gave to students about the content of the examinations. We concluded that that was in fact the case. The Claimant always believed that Dr McPhail.s conduct in this respect was unacceptable and improper. Her statements to the contrary to the disciplinary hearing were self-serving and an attempt to extricate herself from the difficult situation in which she found herself.

98 It follows from that that when the Claimant divulged that information about Dr McPhail she believed that it tended to show that he was acting improperly. Acting improperly, however, is not the same as failing to comply with legal obligations. We considered whether the Claimant believed at the time that he was failing to comply with legal obligations. The Claimant did not at that time or at any time thereafter refer in any way to his conduct being unlawful or in breach of legal obligations. She had at that time not seen or read "Education and the Law" by Mawdsley and Cumming. She made no reference to her belief that his conduct was in breach of a legal obligation in her claim form to the Tribunal. In fact she maintained at that stage that she had never suggested that he had done anything improper. She first alleged that she had believed that his conduct amounted to a breach of a legal obligation when she

applied for leave to amend her claim to include a complaint of whistle blowing on 17 July 2012. She first identified the legal obligation on 31 August 2012. There was no evidence that at the time the Claimant disclosed that information that she had any basis for thinking that it tended to show conduct that was unlawful in some shape or form.

99 We also looked at the context in which she disclosed that information. The first time the Claimant said that some lecturers told the students what would be in the examination was in her grievance of 13 February 2011. It featured in that as part of one of the twenty reasons why it was wrong to rely on the SOLE scores to dismiss her. It was one of the explanations given to her by the students for her SOLE scores being low. She made the same point at the final probation review meeting on 27 May 2011. That indicated to us that the Claimant believed that what she said about lecturers telling students what would come in the examination tended to show that some people got high SOLE scores by behaving in a way that was improper and, therefore, SOLE scores were not a reliable means of evaluating teaching.

100 Having considered all the above matters, we concluded that when the Claimant disclosed that information she did not subjectively believe that it tended to show a failure to comply with a legal obligation. It was, therefore, not a qualifying disclosure. In case we are wrong in that conclusion, we went on to consider in respect of this disclosure only, whether it was made in good faith.

101 The Claimant's disclosures in respect of examination questions fell into two categories. The initial allegation was that some unnamed lecturers told students what would be in the exam and the exam had those problems. From 27 May onwards the Claimant specifically named Dr McPhail as a lecturer who did that and made it clear that what she was saying was that he told the students the exam questions before the exam. We considered the issue of good faith separately in respect of those two different disclosures. The question for us in each case was – what was the Claimant's predominant motivation for disclosing the information? Was it directed to remedying one of the wrongs in section 43B ERA 1996 or was it an ulterior motive unrelated to the statutory objective?

102 The Claimant's predominant motivation in making the disclosure about lecturers in general could, in our view, be easily discerned from the context in which it is made. It was raised in a grievance in which she complained about Professor Alford's recent threat to dismiss her from her lectureship. The reason that he had given for wanting to terminate her employment was her low SOLE scores. In her grievance she set out twenty reasons why it would be wrong to rely on her low SOLE scores to dismiss her. The eighteenth of those twenty reasons included the disclosure about lecturers telling students what would be in the exam. It was one of the reasons that the students had given for her getting low SOLE scores. It is clear to us from that that the Claimant's primary purpose in disclosing that information was not to remedy the wrong which was occurring but to prevent her dismissal on the grounds of her low SOLE scores. That is an ulterior motive unrelated to the statutory objective. We would, therefore, have concluded that the Claimant was not acting in good faith when she made that disclosure.

103 We then considered what the Claimant's predominant motivation had been in making the disclosures about Dr McPhail. To the extent that the Claimant was repeating the disclosure that she had made already made on 13 February, her

motivation remained the same – to prevent her dismissal on the grounds of low SOLE scores by showing that they were an unreliable tool for evaluating teaching skills. To the extent that she made the allegation specifically against Dr McPhail and clarified that she meant that he gave the students before the exams, there was a different motivation. Her primary purpose in making the disclosure about him had been to discredit him because he had been very critical of her teaching and had, in her view lied, about it. She felt that he had made false statements to destroy her career. She had been shocked and angry and had realised that he had no integrity and could not be trusted. She had not named the other member of staff mentioned by the students because she had had no reason to question his integrity. It was clear to us that the Claimant's primary purpose in disclosing the information about Dr McPhail was to discredit him and to preserve her job. Her predominant motive was not to remedy the wrongs that had occurred or were occurring. If that had been her predominant motive she would have named him a long time before and she would also have named the other lecturer whom the students had identified. Even if we had concluded that the Claimant's disclosures about Dr McPhal were "qualifying disclosures" we would have concluded that they were not protected disclosures because they had not been made in good faith.

104 For all the reasons set out above we concluded that the Claimant did not make any protected disclosures. In those circumstances, it was not necessary to determine whether the Claimant was subjected to any detriments or dismissed for having made protected disclosures. We only observe in passing that we found some of the Claimant's complaints about detriments difficult to understand. The Claimant complained about the Respondent investigating her allegations against Dr McPhail. She was making serious allegations of impropriety on his part. Clearly, they had to be investigated. It is difficult to see how by investigating them they subjected her to a detriment. Nor have we found that she was subjected to any detriments after the termination of her employment. The Respondent simply followed the processes and procedures that it follows when an employee's employment is terminated.

Unfair dismissal

105 We concluded that the reason for the Claimant's dismissal was that Professor Magee believed that the Claimant had made a vexatious allegation against Dr McPhail, in that, she had made a serious allegation without sufficient grounds or evidence and had done so in an attempt to discredit him because he had been critical of her teaching and that she had disobeyed the instruction not to contact students. That is a reason relating to conduct.

106 We then considered whether the Respondent acted reasonably in all the circumstances as treating that as a sufficient reason for the dismissal. We focus on the first reason because that was clearly the more serious reason. We considered firstly whether the Respondent carried out as much investigation into the matter as was reasonable in all the circumstances. In considering that it is necessary to look at the two investigations that were conducted in relation to this issue – the investigation into the Claimant's allegation that Dr McPhail told the students what would come up in the exam and the subsequent investigation into the allegation that the Claimant's allegation had been vexatious. It was not in dispute what the Claimant had said at the meeting of 27 May 2016 and in her email of 6 July 2011. In the first investigation the Claimant was interviewed first to understand what the basis of her allegation had been. The Claimant had made it clear that her allegation was based on what two

students had told her and she had identified the students in question. She said that one of the students had identified the exam to which his comment related. The Claimant did not say that she had seen that exam paper or any other exam paper. The two students identified by the Claimant were interviewed as were Dr McPhail and four other students who had been taught by him. The Claimant was then interviewed again when it was alleged that she had made a vexatious allegation. The investigation had not looked at the one paper that had been identified or any other exam papers. There was no need to because the Claimant had not looked at them before she made her allegation. That was not evidence upon which her allegation was based. We were satisfied that the Respondent had conducted as much investigation into the matter as was reasonable in all the circumstances.

107 We considered whether Professor Magee had reasonable grounds for believing that the Claimant had made a vexatious allegation. There was clear evidence that the Claimant had made the allegation from the notes of the meeting of 27 May 2011 (the accuracy of which the Claimant did not challenge) and in her email of 6 July 2011. The Claimant's defence that she had never alleged that Dr McPhail had behaved improperly was rejected by him for the reasons given in his outcome letter (see paragraph 78 above). In light of what was said on behalf of the Claimant in the Employment Appeal Tribunal it was a conclusion that he was not only entitled to reach but absolutely correct to do so. It was also reasonable for him to conclude on the evidence before him that the Claimant had made that allegation without sufficient grounds or evidence to do so. The Claimant's allegation had been made on the basis of what two students had told her. Even on her own account in the investigation, what the two students had told her did not translate into the allegation which she made. When they were interviewed, one of them said that she had told the Claimant that other lecturers spoon fed students but had not mentioned Dr McPhail as being one who did. She had not said anything about exam questions. The other one said that he might have said something to the effect that Dr McPhail had told them what would be in the exam and that the exam had had those problems. If he had said it, he would have been referring to the fact that Dr McPhail had told them to learn an equation that was fundamental to the course and had said that if they learnt the equation they would do well in the exam. In the exam they had been asked to state the equation. That accorded with what Dr McPhail had said about teaching them the equation and telling them they would need it for the next 40 years of their lives. Professor Magee was entitled to conclude that that was not sufficient evidence to make the allegation which the Claimant had made. There was plenty of evidence before Professor Magee from what the Claimant had said in her two interviews with Professor Nethercot for him to reach the conclusion that the Claimant had made the allegation to discredit Dr McPhail because he had been critical of her teaching. We were satisfied that there were reasonable grounds to sustain Professor Magee's belief that the Claimant had made a vexatious allegation.

108 We did not accept that Professor Nethercot was not an appropriate person to conduct the investigation, either because he was not independent or because he was not familiar with the area in which Dr McPhail taught. There was no evidence to suggest that he was not independent or that he was in any way influenced by Professor Alford. Professor Nethercot accepted that his saying to the Claimant in his first interview with her that she had always been the subject of the investigation was not felicitously phrased. We agree but it was clear that what he saying was that the initial focus of the investigation had to be her basis for the allegation which she made and only she could supply that information. Knowledge of Dr McPhail's area was not

necessary to carry out the investigation. The issue was what the students had told her and whether that formed a sound basis on which to make the very serious allegation which she had made and why she had made the allegation.

109 The Claimant was told prior to the disciplinary hearing that the panel did not feel it appropriate to involve students at that stage. We can understand the Respondent's reluctance to involve its students, who had already been interviewed once, at the disciplinary hearing. That having been said, it was made clear to the Claimant that if she still wanted to call the students she could raise it at the disciplinary hearing and the panel would consider her reasons for wanting to do so and, if it accepted her rationale, they would adjourn the meeting. The Claimant did not raise the issue at the disciplinary hearing. We did not find that there were any flaws in the procedure which made the dismissal unfair.

110 We were also satisfied that dismissal was within the band of reasonable responses. The making of a serious allegation against a colleague without sound basis and for reasons of personal animosity is clearly a serious matter and one that is bound to seriously damage working relationships. The disregarding of the instruction not to speak to the students during the investigation was also a serious matter.

Breach of contract

111 We were not taken to any express term in the Claimant's contract that entitled her to be reimbursed for the expenses that she incurred in attending seminars and conferences abroad. It appeared, however, to be agreed between the parties that she was entitled to be reimbursed for such expenses if claims were made in accordance with the Respondent's Expenses Policy. The Claimant's expense claim for the trip to Seoul was not submitted in accordance with the policy as it was not submitted within three months of the expense being incurred. The Claimant did not provide any information to demonstrate that it had not been possible to submit it within the three months. As the claim had not been submitted in accordance with the policy, the Respondent was entitled to reject it. It had no contractual obligation to pay it.

Employment Judge Grewal
31 March 2017