



Neutral Citation Number: [2024] EWCA Civ 191

Case No: CA-2023-001139

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE EMPLOYMENT TRIBUNAL (ENGLAND AND WALES)
Mrs Justice Eady DBE
EA-2022-000234-BA

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04 March 2024

Before:

LORD JUSTICE BEAN
LORD JUSTICE MOYLAN
and
LADY JUSTICE ELISABETH LAING

Between:

MR SIMON PIPE **Appellant**
- and -
COVENTRY UNIVERSITY HIGHER EDUCATION **Respondent**
CORPORATION

Schona Jolly KC and Joshua Jackson (instructed by **Cole Khan Solicitors LLP**) for the
Appellant
Ed Williams KC and Anthony Johnston (instructed by **Irwin Mitchell LLP**) for the
Respondent

Hearing date: 16 January 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 4 March by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice Elisabeth Laing:

Introduction

1. The Appellant ('Mr Pipe') is a former BBC journalist. He was a grade 6 lecturer at the Respondent ('the University'). He suffers from attention deficit hyperactivity disorder ('ADHD') and sleep disorder. He wished to be promoted to a grade 7 lectureship. Between 2017 and 2019, he applied for 'progression' three times under the University's Framework for progression ('the Framework'). None of his applications succeeded. Further, in 2020, he twice asked the University 'consider' promoting him, outside the normal process, as a 'reasonable adjustment'.
2. He resigned, and made several claims to the Employment Tribunal ('the ET') ('the claims') under the Equality Act 2010 ('the 2010 Act'). The ET dismissed the claims. He then appealed to the Employment Appeal Tribunal ('the EAT'). The EAT allowed his appeal in part, and remitted to the ET the claims relating to indirect disability and age discrimination based on events in 2020. The EAT dismissed the rest of his appeal. He now appeals, with the permission of Lewis LJ, against that second part of the EAT's judgment.
3. This is an appeal on a point of law. There are four grounds of appeal. I have omitted the grounds in so far as they suggest that the ET and the EAT did not give 'appropriate' or 'due' weight to various matters, or make 'proper' findings, as those are attacks on assessments which it was for the ET to make, and do not raise any arguable questions of law.
 - i. The ET and the EAT did not apply the right causation test under section 15(1)(a) of the 2010 Act, misapplied the causation test, and/or reached a perverse conclusion when deciding that the reasons identified by the ET meant that the 'unfavourable treatment' which Mr Pipe received was not 'because of something arising in consequence of' his disability.
 - ii. The ET and the EAT erred in law in its assessment of proportionality under section 15(1)(b) of the 2010 Act, by eliding the legitimacy of the aims of the Framework with the question of proportionality, and by failing to consider the impact of the unfavourable treatment on Mr Pipe.
 - iii. The ET and the EAT failed to find that Mr Pipe had been put at 'a particular disadvantage' for the purposes of section 19(1) of the 2010 Act.
 - iv. The ET and the EAT failed to make any or any proper assessment of proportionality under section 19(2) of the 2010 Act.
4. Permission to appeal was given on the papers by Lewis LJ. He said that, in effect, ground 1 is an argument that 'the findings and evidence referred to the significance placed by [the University] on the criteria in the framework (particularly the PhD/research criteria) and the [ET] was wrong to find that the failure to progress was in no sense whatsoever caused by something arising from his disability. In ground 2, it is said that the proportionality assessment, even if seen as an assessment of the framework, still had to consider in addition the effects on the individual'. He added that there was 'a realistic prospect that' Mr Pipe might be able to show that 'the

findings fail to take account of the fact that the application for promotion was rejected because he was not seen to meet the required standards in the framework and that paragraphs 161-162 do not sufficiently answer that question. Similarly, there is a realistic prospect that the assessment of justification of the framework did need to address the effects on the individual.’ Grounds 3 and 4 ‘make the same arguments as to being put at a disadvantage and justification in relation to the claim under section 19’. For similar reasons, those grounds had a realistic prospect of success.

5. On this appeal Mr Pipe was represented by Ms Jolly KC and Mr Jackson. The University was represented by Mr Williams KC and Mr Johnston. I thank counsel for their written and oral submissions. Paragraph references are to the judgment of the ET or of the EAT, unless I am referring to an authority. Mr Jackson and Mr Johnston have represented their respective clients in the ET, in the EAT, and in this court.
6. For the reasons given in this judgment I would dismiss this appeal on all four grounds.

The relevant statutory provisions

7. It is convenient to summarise the relevant provisions at the start of this judgment, as it is the background to the reasoning in the judgments below and to the parties’ arguments on this appeal. I can do this briefly, as there is no dispute about the provisions or their meaning.
8. Part 2 of the 2010 Act is headed ‘Equality; key concepts’. Chapter 1 is headed ‘Protected characteristics’. Sections 1-12 define the ‘protected characteristics’ for the purposes of the 2010 Act. They include ‘age’ (section 5) and ‘disability’ (section 6). It is agreed in this case that Mr Pipe had a ‘disability’ for the purposes of the 2010 Act. Chapter 2 is headed ‘Prohibited conduct’. Section 15 is headed ‘Discrimination arising from disability’, section 19 ‘Indirect discrimination’ and sections 20-22 ‘Adjustments for disabled persons’.
9. Section 15(1) provides that A discriminates against B if (a) A treats B unfavourably because of something arising in consequence of B’s disability, and (b) B cannot show that the treatment is a proportionate means of achieving a legitimate aim. Section 15(2) deals with knowledge and is not relevant to this appeal.
10. Section 19(1) provides that A discriminates against B if A applies to B a provision criterion or practice (‘PCP’) which is discriminatory in relation to a protected characteristic of B’s. A PCP is discriminatory in relation to a protected characteristic of B’s if (a) A applies, or would apply, it to people who do not share the protected characteristic, (b) it puts, or would put, people with whom B shares the protected characteristic at a particular disadvantage when compared with people with whom B does not share it, (c) it puts, or would put, B at that disadvantage, and (d) A cannot show that it is a proportionate means of achieving a legitimate aim (section 19(2)).
11. Section 20 describes the duty to make reasonable adjustments for disabled people. It has three requirements (section 20(2), (3), (4) and (5)). A failure to comply with any of those requirements is a breach of that duty (section 21(1)). The requirement which is relevant in this case is the requirement in section 20(3). If a PCP of A’s puts a

disabled person at a substantial disadvantage in relation to a relevant matter in comparison with people who are not disabled, A must take such steps as it is reasonable to have to take to avoid that disadvantage. A discriminates against a disabled person, B, if he fails to comply with that duty in relation to B (section 21(2)).

The facts

12. The judgment of the ET is impressively detailed. For the purposes of this appeal, I am able, however, to summarise the facts by reference to the account in paragraphs 3-44 of the judgment of the EAT, with only such extra references to the ET's judgment as are demanded by the issues on this appeal. I am grateful both to the ET and to the EAT for their thorough and lucid investigation and analysis, which have made the writing of this judgment considerably easier than it would otherwise have been.
13. Mr Pipe started working for the University in 2012 or 2013 as an hourly-paid lecturer in journalism in the school of media and performing arts ('the School'), which was part of the faculty of arts and humanities ('the Faculty'). The University has four faculties and various research centres. The Faculty is the smallest. It has 4500 of a total of 25-30,000 students. Mr Pipe left the BBC in 2011. He got an MA in on-line journalism and started working as an academic in early 2013, joining the University later that year as a full-time grade 6 assistant lecturer. In 2015 he took a post-graduate certificate ('PGC') in academic practice in higher education, with a distinction. He started to work part-time on 1 January 2017, having asked, in April 2016, whether he could work flexibly.
14. The parties agreed in the ET that Mr Pipe was disabled for the purposes of the 2010 Act as a result of his diagnosis of ADHD and his sleep difficulties. The University accepted that, from 2016 at the latest, it knew about his sleep difficulties.
15. In 2015, the University adopted a corporate strategy. It included a policy to increase the number of academic staff with doctorates by 30%. It also set a target for the number of PhDs which should be completed by 2021. The University developed the Framework from January 2017. It included a paper-based process with four stages for grade 6 staff who wanted to be promoted. The EAT described those stages in paragraph 6. They were the completion of a standard application, endorsed with the comments of the applicant's line manager; consideration by the applicant's head of school; then, if the head of school supported the application, consideration by a panel of three members of the applicant's faculty, and, finally, consideration by the University's senior leadership team. The ET found that the Framework was based on two questions which were described in the application form.
 - i. Was there a recommendation to go to the next stage on the grounds that the applicant had met the required standards?
 - ii. Was there a business need (and a budget) for the role?
16. There were four relevant areas under the Framework: teaching and learning; research and scholarship; enterprise; and leadership and management (in and outside the University). An applicant had to show the necessary achievement initially in two, and later, in three, of those four areas. The criteria for promotion from grade 6 to grade 7 were to show activity which illustrated the applicant's ability to meet the requirements

of the profile for the relevant grade 7 role; to have completed a probationary period and to be actively involved in performance appraisal; and to have a PhD, or exceptionally, to show an equivalent 'contribution to professional practice'. The Framework also required a business case for promotion to be made out. The applicant's head of school was responsible for doing that. Before the introduction of the Framework, Mr Pipe had applied unsuccessfully for seven grade 7 posts at other universities. In the summer of 2015, the University interviewed him for such a post but did not appoint him.

17. Mr Pipe applied for promotion in 2017. His application was rejected at the second of the four stages I have described in paragraph 15, above, that is, at the head of school stage. Mr Pipe had asked Mr Dawkins, his line manager, for advice before he applied. The ET accepted the evidence of Mr Dawkins about the relevant conversations. He had stressed the importance of 'a solid business plan' and warned Mr Pipe that his application might not be strong in that regard. It was not known how many applicants in the Faculty were rejected at stage 2 that year. Four were 'moderated' at stages three and four, and then succeeded. One of the successful applicants was also from the School. She was a lecturer in photography who did not have a PhD. Mr Pipe asked the head of school to reconsider her decision. He gave some further information. In March 2017 she emailed him and explained that there were three aspects of his application which were insufficient: evidence about a PhD or an equivalent; evidence of progress in the direction of peer-reviewed publications, or of similar achievements; and evidence about the quality of his teaching.
18. Around the same time, the University asked for an occupational health assessment of Mr Pipe. Its advisor was not able to say whether or not he had a disability for the purposes of the 2010 Act. Some reasonable adjustments were nevertheless recommended. Those did not include that Mr Pipe should be promoted outside the Framework. In June 2017, Dr Zaiwalla, a consultant in neurophysiology, assessed Mr Pipe. Mr Pipe told Dr Zaiwalla that he was under pressure to do a PhD. Dr Zaiwalla opined that Mr Pipe's sleep disorder was so severe that he would find it very difficult to work successfully towards a higher degree.
19. In June 2017, Mr Pipe submitted a grievance. He included Dr Zaiwalla's opinion. The ET observed that Dr Zaiwalla had not mentioned that Mr Pipe had already been awarded an MA and a PGC in higher education teaching. It concluded that the reason for that omission was that Dr Zaiwalla thought that Mr Pipe's impairment was temporary, and that that was also the University's understanding of Dr Zaiwalla's opinion. The ET also thought that Dr Zaiwalla's opinion was based on a false premise, that Mr Pipe was required to have a doctorate in order to get promoted.
20. The University heard and rejected Mr Pipe's 2017 grievance, and his appeal against that rejection. On the appeal, Dr Hides found that the feedback Mr Pipe had been given explained the ways in which his application had been deficient. This was consistent with the University's plan, research strategy and criteria for promotion. The University wanted more lecturers with PhDs. That was not an absolute requirement, but it was 'the norm'. There was no evidence that Mr Pipe had taken any steps in the direction of a PhD or an equivalent. Mr Pipe had not asked for any help with the

impact of his sleep disorder. Mr Pipe had been ‘taken aback’ to be told that this disorder ruled out a PhD. That reaction, coupled with the fact that Mr Pipe had chosen not to do a PhD because he could not see its benefit meant that the University could not have been expected to know about this difficulty. Dr Hides recommended that Mr Pipe ask his line manager for advice about his ambitions for promotion, and that, if Mr Pipe wanted to investigate getting a PhD or equivalent, he should have a meeting with Dr Hides and his head of school. Dr Hides added that the head of school would have to make a business case to support any promotion.

21. The ET found that Mr Pipe did not trust Dr Hides. Mr Pipe continued to think that he could only get promoted if he had a ‘traditional PhD’, ‘when the actuality was otherwise’ (paragraph 106 of the ET’s judgment). The ET also found that Mr Pipe did not engage with the process which the University tried to implement. Instead of using the help he was offered, he followed his own path. He nevertheless said, sometimes, that he did want to consider getting a PhD. Indeed, he even found his own PhD supervisor, while accepting later that ‘that was not the best choice’.
22. In January 2018, Mr Pipe had started working extra hours. He took on another role in the University as an hourly-paid grade 7 lecturer. The Framework was changed during 2018 to require applicants to show achievement and efficiency in three, rather than two, of the four areas described in paragraph 16, above. In March 2018, Mr Pipe again applied for promotion. He explained that he had found a PhD supervisor, had had abstracts accepted for an international conference, and had become an hourly-paid grade 7 lecturer. He also said in the application that, after tests in 2017, he had stopped working towards a PhD. The ET recorded the comments of Mr Dawkins in paragraph 111. The application was not well written, but did show some evidence of his ability to work effectively as a grade 7 lecturer. Mr Pipe’s head of school also supported his application. The Faculty nevertheless rejected it, while recognising that it showed ‘significant progress’ from the previous year. There was evidence of ‘some areas of excellence’ in teaching. While Mr Pipe understood the ‘research agenda’ better, he had not yet done any research at the expected level. He had not made a ‘convincing case’ about leadership and management. The application should have been presented better. It was not ‘coherent’ and ‘persuasive’ enough and included irrelevant material. Finally, ‘the budget position was not yet confirmed’.
23. The only application which the Faculty considered in 2018 was Mr Pipe’s application. He was told in September 2018 that his job-share partner, Ms Perry, had been made a lecturer. She had applied for one of two part-time vacancies which had been advertised externally. Neither Ms Perry, nor the other person appointed, Ms Murphy, had a PhD. Neither was required to work on a PhD once appointed, and neither had published any research. The ET said that these appointments supported the University’s case that it would consider equivalent qualifications.
24. During the course of 2018, Mr Pipe was diagnosed with ADHD. In October, he told Mr Dawkins that he might have ADHD. The diagnosis was formally confirmed later that month. In January 2019 he told the Faculty’s HR advisor about this diagnosis. He said that his consultant had advised him ‘that he should be using’ the 2010 Act ‘to address his work situation’. He asked the University to reconsider his 2018

application as a reasonable adjustment, because his condition would have had ‘a significant impact on [his] ability to meet the requirements set out in the progression system’. The advisor’s response was that the 2018 application had been considered on its merits. It could not be reviewed, but as there would soon be another process, he might want to get feedback from his line manager at an early stage. He might be able to get an extension for making an application.

25. Mr Pipe had asked a Dr Clarke to supervise his PhD. In March 2019 they exchanged emails. Mr Pipe explained that he had an extension for an application for promotion. He acknowledged that it was unlikely that a business case could be made, because student numbers were falling. They did not refer to Mr Pipe’s PhD. The ET found that it had effectively ‘fizzled out’. Also in March 2019, Mr Pipe was again referred to occupational health. A final report in August 2019 (‘the report’) confirmed the diagnosis of ADHD. The report described its effect on Mr Pipe. He found it hard to concentrate, to organise and plan, and could be distracted. He might find it hard to plan and write up research in time. He had a tendency to lose things, and found it hard to give things the priority they needed. The University would need to define his role, and should not give him complicated things to do at short notice. The report recorded Mr Pipe’s suggestion that he should be considered for promotion outside the normal process, in a teaching role that did not involve research. The report said that that might be considered to be a reasonable adjustment. His consultant’s advice was that his ADHD made the normal routes difficult. The impact of ADHD on his promotion prospects was making him depressed. He would be very unlikely to be able to finish a PhD without ‘a significant impact on his mental health’. The advice of his consultant was that he could not do it.
26. In August 2019, Mrs Nicholson had a meeting with Mr Pipe to discuss the report. She sent him an email the next day with advice and links to relevant resources which might help him with the issues he had raised.
27. Two days later, Mr Pipe’s head of school sent him her decision on his application for promotion, which she had made on 1 April 2019. She thought that he had shown that he could teach at level 7. She could not support his application because he had not shown research at level 7. There was no ‘evidence of a clear pathway to PhD or equivalency under way’. In view of the significant fall in the number of students, there was no business case either. Applications to study journalism had fallen from 196 in 2017-2018 to 119 in 2019-2020. Managers were working on a plan for growth so that there might be opportunities for promotion in the future.
28. In 2019 three lecturers in the Faculty applied for promotion from grade 6 to grade 7. All three applications were rejected by the head of school because there was no business case. On 18 September 2019, Mr Pipe’s consultant wrote to his GP. Mr Pipe ‘just is not organised enough to [do a PhD] even with effective treatments’. In autumn 2019, the parties discussed what adjustments might be made to help him with his work.
29. On 10 January 2020, Mr Pipe lodged a formal grievance. He asked the University to ‘consider’ promoting him to grade 7 ‘without going through the normal progression

system ideally to a teaching role with no research requirement as a reasonable adjustment under' the 2010 Act. He was on sick leave from 6 February to 23 April 2020.

30. The grievance hearing was on 1 March 2020. Professor Foster chaired it. Mr Pipe referred to the requirement for a PhD. '...he knows in reality that they bend it to be on a pathway towards a PhD'. Professor Foster told Mr Pipe the outcome in a video call, which he confirmed in a letter. There was strong evidence of Mr Pipe's teaching ability at the required level. There was no substantive grade 7 post for a person to teach only. Mr Pipe did not show that he had 'the variety of skills at the higher grade required for...the grade 7 academic position'. That position required teaching but also entailed 'other academic obligations'. The University had made significant efforts to help Mr Pipe.
31. On 20 May 2020, Mr Pipe asked for another reasonable adjustment, to be appointed to a grade 7 role, to teach only. On 9 July, the University rejected that request. It did not consider promotion to grade 7 outside the Framework. The University said that that was its final position. It asked Mr Pipe not to make any more requests. On 21 August, Mr Pipe resigned with notice to take effect on 20 October 2020.

The ET's reasons

Appendix A to the judgment: the list of issues

32. Appendix A to the ET's judgment is the list of issues. It recorded that Mr Pipe brought claims for discrimination arising from disability, contrary to section 15 of the 2010 Act, indirect disability discrimination contrary to section 19 of the 2010 Act, and failure to make reasonable adjustments, contrary to sections 20 and 21 of the 2010 Act.
33. It is clear from paragraph 12 of that list that the University's case on the section 15 claim included the contention that Mr Pipe would have 'been subjected to' the acts or omissions about which he complained 'in any event as it was ultimately not accepted that there was a business case for his progression', and from paragraph 13 that Mr Pipe's case was that 'the fact that he had not attained a PhD and was not able to demonstrate achievement in research were fundamental to the decisions to reject his applications'. He also asserted that 'there was a clear business case for his promotion, owing to, *inter alia*, his experience and capability as a teacher'. Paragraph 13A sets out the University's case that the fact that Mr Pipe had not got a PhD and could not show achievement in research was 'not the reason/cause (in the sense of having a more than trivial influence upon) the decisions to reject' his applications 'or any of them'. The University repeated paragraph 12 in that regard. Paragraph 14 shows that the University's pleaded case on justification was the same as the case which the ET considered.
34. One issue for the ET on the section 19 claim was what the Framework required, as it was agreed that that was the provision criterion or practice which the University used in deciding whether or not a grade 6 assistant lecturer should be promoted to grade 7 (paragraph 15). Paragraph 24 recorded the parties' agreement that the University applied a PCP to Mr Pipe, that is, the requirements of the Framework. The issue

(paragraph 25) was whether that put Mr Pipe at a substantial disadvantage compared with people who were not disabled.

Appendix B to the judgment: the agreed statement of law

35. Appendix B to the ET's judgment is an agreed statement of law. I will only refer to the passages which are potentially relevant to this appeal.
36. Section B deals with the claim for reasonable adjustments. Under the heading 'Substantial disadvantage' paragraph 11 said that such a disadvantage is 'more than minor or trivial'. It referred to paragraph 53 of *Sheikholeslami v University of Edinburgh*. 'A comparison exercise is required to test "whether the PCP has the effect of disadvantaging the disabled person more than trivially in comparison with others who do not have any disability"... This is not a question of strict causation and does not require exact comparators: *Sheikholeslami* §§48-53' (original emphasis). That decision of the EAT is reported at [2018] IRLR 1090. Paragraph 12 highlighted the question whether a PCP 'bites harder' on a disabled person. If so, apparently equal treatment of disabled and able-bodied people does not eliminate a disadvantage.
37. Section C deals with indirect discrimination contrary to section 19. Paragraph 16 sets out section 19. Paragraph 17 reminded the ET that section 19 deals with 'hidden barriers which are not easy to anticipate or spot', and paragraph 19 that the PCP must place a disabled person at a 'particular disadvantage'. Paragraph 21 states that 'Where a Respondent, in law, or in fact, has failed to make reasonable adjustments, the conditions for indirect discrimination will almost certainly be met: *Griffiths* at § 26-27'. The reference to '*Griffiths*' is to *Griffiths v Secretary of State for Work and Pensions* [2015] EWCA Civ 1265; [2017] ICR 160.
38. Section D deals with the section 15 claim. Paragraph 23 sets out section 15. Paragraph 27 says that 'Under the "because of" test, the "something arising" need not be the sole reason. The Tribunal only needs to be satisfied that the "something arising" had a significant or at least more than trivial influence on Respondent's decision (and influence can be unconscious)'. Paragraph 37 refers to the EAT's decision in *Dunn v Secretary of State for Justice*, which was upheld in *Dunn v Secretary of State for Justice* [2017] EWCA Civ 282. Paragraph 30 repeats the point made in paragraph 21 (see the previous paragraph).

The ET's reasons for dismissing Mr Pipe's claims

39. The EAT summarised the ET's reasoning in paragraphs 45-76. The EAT's summary is directed to the issues on the EAT appeal, and I have relied on it to some extent in making the summary which follows. I have again supplemented that summary, where necessary, by reference to the ET's reasons. The EAT re-ordered the ET's reasons, but I will summarise the ET's reasons in the order in which the ET chose to decide them.

Adjustments

40. The ET explained, in paragraph 192, 'Given that any proportionality assessment of legitimate aims necessarily requires a consideration if there was a failure to make reasonable adjustments we address Mr Pipe's reasonable adjustments complaints

first'. This sentence is clearly a reference to one aspect of the parties' agreed legal position (see paragraphs 37 and 38 above). It is clear that the ET, in agreement with the parties, saw a decision whether or not the University had failed to make reasonable adjustments in Mr Pipe's case as relevant, not only to the claim based on sections 20 and 21 of the 2010 Act, but as also relevant to the question of proportionality (which arose, in substance, both in connection with the section 15 and with the section 19 claim). That is why the ET decided to consider that claim first.

Knowledge

41. The first issue was the University's knowledge. The University accepted that it knew about Mr Pipe's sleeping difficulties by 2016, but did not accept that it had actual or constructive knowledge of a substantial disadvantage caused by his ADHD. The University only knew about that in September/October 2018. The ET considered the relevant evidence and decided, in the light of that, that the University did not have the necessary knowledge until September/October 2018 (paragraphs 193-207).

The provision criterion or practice

42. The ET decided that the relevant PCP was the Framework, and that it therefore had to decide what the Framework required. The Framework required proof of 'peer reviewed research or learning, whether it be theoretical or practical', as proof of academic standards 'which was considered a prerequisite of demonstrating the ability to teach' (ET, paragraph 211). While the ET accepted that the Framework 'formally required a PhD or exceptionally equivalence', the ET noted that some staff were promoted even though they did not have a PhD. The requirement to have a PhD was interpreted flexibly. Being on 'a pathway to' a PhD would be enough; that is, having made a proposal 'and/or' having identified a supervisor for a PhD. It was not necessary formally to have 'signed up' for a PhD. This was supported by the fact that Mr Pipe's 2018 application had reached a further stage than his other applications (ET, paragraph 212).
43. The University was also prepared to consider the 'enterprise route' as an alternative to a PhD (ET, paragraphs 213 and 214). The ET held that, if Mr Pipe had engaged with the University, it would have been flexible about the requirement for a PhD (ET, paragraph 215). In paragraph 217, the ET summarised its findings on this area of the case. As applied by the University, the Framework did not require a PhD. It required that an applicant show he was on a 'pathway to a PhD or equivalent. To that end there were various alternative routes to a traditional PhD route such as the enterprise route, but, in any event, the Framework allowed for progression exceptionally by demonstrating equivalence in contribution to professional practice. Similarly, that flexibility would have been applied to demonstrating achievement across the required number of areas had Mr Pipe engaged in the discussions the University wished to have with him'. It held, in paragraph 218, that the PCP for which Mr Pipe contended had not, in fact, been applied to him.

Was Mr Pipe placed at a substantial disadvantage?

44. The ET nevertheless considered whether Mr Pipe had been put at a substantial disadvantage. In paragraph 220, the ET said 'Insofar as the Framework had necessitated Mr Pipe holding a PhD and/or demonstrating achievement in a number of areas, by virtue of the evidence we heard about his disability and given the low

threshold that the statutory test of disadvantage test entails, we find Mr Pipe would have been placed at a substantial, that is to say, non-trivial, disadvantage in obtaining a PhD, equivalence and/or demonstrating achievement.’

45. It held that the Framework had two fundamental requirements. They were (i) that the applicant had reached the relevant standard and (ii) whether there was a budget, that is to say, a business need, for the relevant post (paragraph 222). In 2017 Mr Pipe had not engaged adequately with the framework. He had spoken to Mr Dawkins several times but as both Mr Dawkins had cautioned, and as the later feedback showed ‘there was no business case for a role’. The ET then found that, in each of the years in which Mr Pipe had applied for promotion, there had been no business case for the post he wanted (paragraphs 223 and 224). In 2019, that was the position across not just the Faculty, but the whole university. In paragraph 225, the ET concluded that the lack of a business case in each year, a fundamental requirement of the Framework, meant that ‘neither he nor the group of which he formed part were put to a disadvantage; there was no business need for a role for him or any disabled or non-disabled person at the relevant times’.

Adjustments

46. The ‘reasonable adjustments’ for which Mr Pipe contended were the use of another method to assess him for promotion and the introduction of a new role to teach professional practice. The ET held in paragraph 229 that Mr Pipe’s case conflated three matters: the process for showing that Mr Pipe had reached the necessary academic standard, the creation of a role to enable him to perform the duties of a grade 7 post, and a business need for such a role.
47. The ET considered that Mr Pipe’s medical evidence did not address the adjustments to the Framework which were required. It was based on Mr Pipe’s incorrect understanding of the Framework (that is, a requirement for a traditional PhD) and thus on the wrong premise. It did not deal with whether Mr Pipe could work in his own time to show a pathway or equivalence. Although Mr Pipe had said he could not work extra hours, he had done so from January 2018. Mr Pipe’s evidence did not address the two issues about the new role, or why its creation was a reasonable adjustment. His own attitude to doing a PhD was itself equivocal. He had not engaged with the University about alternatives, although the University had been willing to ‘engage in a dialogue’ with him (paragraphs 226-239). In paragraph 240, the ET repeated its finding that there was no business case for a grade 7 lecturer, nor for ‘a teaching focused professional practice role’. The reasonable adjustment for which Mr Pipe contended was the creation of such a role for him (paragraph 243).
48. Further, the ET accepted the University’s case that the creation of such a role would have a broad impact on the University as a whole, as there was no such role in its existing academic structure. By the time Mr Pipe’s 2019 application had been rejected, the number of students had fallen significantly. The School could not justify the employment of a further grade 7 lecturer in journalism. There would also be ramifications for other staff which ‘could not be considered objectively reasonable’. The adjustments for which Mr Pipe argued were not reasonable.

The claim under section 15 of the 2010 Act (discrimination because of something arising in consequence of a disability)

49. It was agreed that the rejection of each of Mr Pipe's applications for promotion amounted to unfavourable treatment. The ET agreed with the University, however, that as Mr Pipe was not put under pressure to do a PhD, that could not amount to unfavourable treatment, because that was not what the Framework required. The Framework required applicants to be 'on a pathway' to a PhD, and far from putting Mr Pipe under such pressure, the University had tried to explore with him how he could satisfy the Framework by other means (ET, paragraphs 255-256).
50. The ET then considered whether Mr Pipe had suffered less favourable treatment as a result of 'something' arising from his disability. The relevant symptoms, as described in paragraph 11 of the list of issues for the ET hearing, were 'inattentiveness, and impaired concentration; difficulties with task completion; poor organisational, prioritisation and planning skills; constant fatigue; impulsiveness and hyperactivity'. The University accepted that 'something' arose from Mr Pipe's disability but not that it caused the unfavourable treatment (paragraph 258).
51. The ET agreed. Its first reason (paragraphs 259 and 260) was that there was no business case for the role Mr Pipe wanted in any of the years in which he had applied for promotion, so that even if he had met the criteria for promotion, his application would necessarily have failed, which meant that the failure of his applications was 'in no sense whatsoever caused by something arising from his disability but because of the absence of an available role/business case for a role'. Its second reason was in paragraph 261:
- 'In any event Mr Pipe demonstrated that he did not meet the required standards of a role because of his ADHD, his sleep disorder or some combination of the two. It may be that that would have been the case but having been open to the possibility of alternative pathways Mr Pipe did not engage with the University in identifying one and thus that was not properly explored.'
52. The ET was not satisfied that the rejection of his applications was 'caused by "something"; instead, they stemmed from the absence of a business case for a role for him and/or his failure to engage with the University in identifying a progression pathway for him' (paragraph 262).

Justification

53. The ET also considered the question of justification; that is, whether the three instances of unfavourable treatment which it had found were a proportionate means of achieving a legitimate aim. The University relied on four aims: having a consistent and transparent approach to academic promotion; having consistently high standards for grade 7 lecturers, maintaining its reputation for providing good higher education; having a balance of staff in the faculties and schools commensurate with the requirements of its business, and having regard, among other things, to student numbers and course needs. Those were legitimate aims (paragraph 265).

54. The ET recorded (paragraph 267) that the parties agreed that if A's treatment of B is a direct result of applying a general rule or policy to B, whether that treatment is justified will usually depend on whether the general rule or policy is justified (paragraph 267). In footnote 3, the ET referred to paragraph 43 of a decision of the EAT, *Buchanan v Commissioner of Police for the Metropolis* [2016] IRLR 918, as authority for that agreed proposition. In paragraph 7 of its judgment, the ET had said that the law was 'not contentious' and that the parties (both represented by counsel) had agreed a statement of the law, which formed Appendix B to the judgment. The ET recorded that Mr Johnston had referred to *Buchanan* and added, 'That concerns the principle where A's treatment of B is the direct result of applying a general rule or policy to B, whether B's treatment is justified will usually depend on whether the general rule or policy is justified. Mr Jackson very helpfully confirmed that this was not contentious'.
55. The ET considered this issue in paragraphs 268-270, and held that the Framework was justified, again for the reasons which it gave. The ET found that the University had shown that the means of achieving the legitimate aim were proportionate and that any unfavourable treatment was therefore justified.

Indirect disability discrimination

56. For the same reasons as the ET had given in relation to the reasonable adjustments claim the ET found that the PCP on which Mr Pipe had relied had not in fact been applied to him (paragraph 278). It took the same approach to disadvantage from disability (paragraph 279). It relied on some of its earlier reasoning in relation to justification (that is, that the Framework was a proportionate means of achieving the University's legitimate aims) (paragraphs 280-283), having noted, nevertheless (paragraphs 281 and 282), that what had to be justified was not the 'treatment' but the PCP. In paragraph 283, it repeated what it had said in paragraphs 7 and 267 in reliance on the *Buchanan* case (see paragraph 54, above).

Indirect age discrimination

57. The ET decided that this claim failed, too, because the PCP relied on by Mr Pipe had not been established.

The grounds of appeal to the EAT

58. There were 12 grounds of appeal to the EAT. The EAT put them into three main groups. The first group of grounds (1-4) concerned the reasonable adjustments claim. The second group (grounds 5-6) related to the 'something arising' claim. The third group (grounds 7, 10, 11 and 12) concerned the claims of indirect discrimination (age and disability). Grounds 8 and 9 related to the indirect disability discrimination and indirect age discrimination claims, respectively.

The EAT's reasoning on the issues which are the subject of the grounds of appeal in this court

Disadvantage (ground iii.)

59. The EAT considered 'Disadvantage' in paragraphs 122-139. This part of the EAT's judgment addresses what is now ground iii. In the EAT appeal, this topic was relevant

to grounds 2 (failure to make reasonable adjustments), 8 (indirect disability discrimination) and 9. The express focus of most of the EAT's reasons in this section is the claim for reasonable adjustments.

60. In paragraphs 123-126, the EAT referred to all the authorities to which the ET had referred on this topic. In paragraph 127 the EAT summarised the ET's conclusions, including that there had been no business case for a role in any of the relevant years. The EAT held in paragraph 129 that the ET's approach was that 'regardless of any disadvantage [Mr Pipe] might have suffered in respect of the PhD pathway to progression, the lack of a business case to support each of his applications meant that the result would have been the same if he had suffered no such impairment: there was thus no relevant disadvantage as a result of the application of the Framework in any of the instances relied on by [Mr Pipe]'. In paragraph 130, the EAT explained why, contrary to Mr Pipe's arguments, the ET's reasoning was neither 'tainted by any consideration of behaviours that might have been said to have been related to his disability ...nor did it thereby test the question of disadvantage by reference to the mitigations to the PCP offered by [the University] as potential adjustments in [Mr Pipe's] case...'
61. In paragraph 131, the EAT noted Mr Pipe's argument that the ET had erred in applying 'a strict test of causation', and that the ET had also erred in losing sight of 'the low comparative threshold'. The EAT's response to that argument was that the ET was not considering the impact of the requirement that Mr Pipe have a PhD or equivalent in the abstract but in the context of the applications he actually made, and all of which failed because there was no business case for the role (paragraph 132). Any disadvantage he might otherwise have suffered from the requirement to have a PhD or equivalent 'was simply irrelevant' in each of the relevant years. The answer to the question posed in paragraph 49 of *Sheikholeslami* ('What would have been the position if [Mr Pipe] did not have the relevant disability') given by the ET was that 'it would have made no difference because there was no business case for a grade 7 role into which [Mr Pipe] could progress' (paragraph 133).
62. The EAT considered the section 19 claim in paragraphs 135-6 (this is the focus of ground iii. in the appeal to this court). In paragraph 135 the EAT acknowledged that the statutory test for the section 19 claim was different, but added that there was 'no suggestion that the ET would have been required to reach a different conclusion as regards the question of disadvantage in respect of the claim of indirect disability discrimination'. The ET had found as a fact that even if the requirement to have a PhD or equivalent had been 'removed – [Mr Pipe's] applications were bound to fail as there was no business case for a grade 7 role into which he could progress'.
63. There was no perversity challenge in either ground 2 or ground 8 of the grounds of appeal to the EAT. There was 'no proper basis' for the EAT to go behind the ET's findings of fact. The EAT therefore dismissed the appeal on both those grounds (paragraph 136). I note that, by contrast, Mr Pipe's ground of appeal to the EAT as respects the University's knowledge of his disability did include a perversity challenge, which Ms Jolly relied on in her oral submissions (EAT, paragraph 102).

64. Paragraphs 153-164 of the EAT's judgment are headed 'Section 15 [of the 2010 Act] – Causation'. In this part of its judgment, the EAT addresses ground 5 of the appeal to it, which is now ground i. The EAT noted that section 15 does not require a comparative assessment. The parties agreed that the rejection of each of Mr Pipe's three applications was unfavourable treatment. There were then two separate questions of causation: (1) what was the reason for the treatment and (2) was the reason something that arose in consequence of Mr Pipe's disability (paragraph 154). The 'something' which caused the unfavourable treatment did not have to be the 'main or sole reason', but it must have 'at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it' (see paragraph 32(b) of *Pnaiser v NHS England* [2016] IRLR 170).
65. In paragraph 158 the EAT said that the ET had agreed with the University that while Mr Pipe's various impairments were 'something arising in consequence of his disability', they did not cause the unfavourable treatment; first, because there was no business case in any of the relevant years, and second, because he had failed to engage with the University in finding a suitable route for promotion. Mr Pipe criticised both facets of that conclusion. In paragraph 160, the EAT referred to its earlier reasoning about 'Disadvantage'. While the decision-makers might well have taken into account the fact that Mr Pipe had not been able to meet the standards in the Framework, his applications had all been rejected because there was no business case for a new role into which he could be promoted (paragraph 160). There was evidence to support the ET's conclusion that, in each year, the unfavourable treatment was 'in fact due to the lack of a business case to support his progression'. The weight to be given to the different explanations given to Mr Pipe was 'a matter for the ET' (paragraph 162).

Objective justification (grounds ii. and iv.)

66. The EAT considered what are now grounds ii. and iv. in a section headed 'Objective Justification' (paragraphs 165-178) (grounds 6 and 11 of the appeal to the EAT), observing that this issue only arose if its reasoning on grounds 5 and 8 was wrong (paragraph 165). In paragraph 166, the EAT noted the similarity between the relevant statutory tests (in section 15(1)(b) and in section 19(1)(b) of the 2010 Act), although, under section 15, it is the unfavourable treatment which has to be justified, and under section 19, the PCP.
67. Mr Pipe argued that the ET had erred in considering whether the general policy (the Framework) was justified, rather than the particular treatment which he was given (paragraph 171). In *Buchanan*, the EAT had acknowledged that, in some cases, the question whether the treatment is justified will depend on whether the PCP is justified. The EAT referred to a general statement by Baroness Hale in paragraph 64 of *Seldon v Clarkson Wright and Jakes* [2012] UKSC 16; [2012] ICR 716 that if a policy is justified, its application in individual cases is likely also to be justified. The EAT had distinguished that approach in *Buchanan*, a disability discrimination case, because, it said, an attendance management policy will usually be flexible enough to provide for its application in the circumstances of individual cases. Mr Pipe was now arguing that the flexibility of the Framework meant that it was not enough for the University to show that the Framework was justified; it also had to show that its application to Mr Pipe was also justified (paragraph 172).

68. It was not clear to the EAT that Mr Pipe had run that argument in the ET, as it seemed to have been common ground that it was the Framework which had to be justified. In any event, the argument misunderstood the ET's findings about the flexibility of the Framework. The EAT explained why, concluding that the Framework is not like an attendance policy. The Framework did not permit 'a series of responses to individual circumstances'. Even if there was no rigid requirement to have a PhD, an applicant would still have to meet the requirements of the Framework (paragraph 173). In this case, the ET's approach to justification (that is, to consider whether the Framework was justified) was 'appropriate in this instance' (paragraph 175). The ET had considered all the relevant factors and its conclusions were open to it (paragraph 178).
69. As this was a case that 'required justification to be considered in relation to a general policy, rather than a response to individual circumstances, the ET had not erred in not referring, at this stage of its analysis, to Mr Pipe's individual circumstances. In any event, the EAT did not consider that the ET had lost sight of those (paragraph 179).

The submissions on this appeal

70. Near the beginning of her submissions, Ms Jolly said that she did not 'shy away from a perversity appeal in part'. I note that only one of the grounds of appeal for which Mr Pipe was given permission to appeal (ground i.) refers to perversity. The contentions in this part of the appeal relied on detailed reference to the evidence before the ET to support a conclusion that Mr Pipe's failure to satisfy 'the PhD/research criteria' was 'an effective cause' of his rejection in each year, 'even if it was not the only cause'.
71. She had difficulty in dealing with a question from Bean LJ. He asked what the correct analysis would be if a claimant had applied for a post such as deputy vice-chancellor, and was told in response that there was no vacancy, but that anyway the university did not think that he was qualified for the position. She appeared to suggest that whether or not the university gave two reasons for not appointing the applicant would make a difference to the legal analysis. Moylan LJ asked her whether her submission was that Mr Pipe's failure to meet the research criteria was an effective cause of the rejection of his applications, even if those applications would have been rejected whether or not he had met the research criteria. Ms Jolly submitted, more than once, that if something featured in the University's express reasons, it was an effective cause. Section 15 was engaged if the failure to meet the criteria was part of the University's reasoning. She invited the court to consider paragraphs 259 and 260 of the ET's judgment (see paragraph 51, above). The ET's reasons showed that that failure was a substantial cause. The reasons for rejection which he had been given relied on his failure to meet the research criteria. It would be different if the reasons Mr Pipe had been given had said that the University did not have a post for him.
72. Ms Jolly submitted that the concept of 'business case' was ambiguous. It was not clear if it was the same as the absence of a budget. The ET had elided the two. Whether there was a business case depended on the strength of the application. Later in her submissions she appeared to argue that the requirement for a business case was not part of the PCP at all. The PCP consisted solely of the research requirements, which Mr Pipe had not met.

73. She submitted, further, that Mr Pipe's failure to meet the research requirements played a material part in the rejection of his applications, even if it was not the sole reason why they were rejected. The ET's reasoning in paragraphs 216 and 261 was muddled (see paragraphs 51 and 52, above). Those paragraphs suggested that 'there was more than one causal reason'. What was more likely was that the lack of a business case was 'part of the story'.
74. She made four points on the section 19 claim which she expanded in her oral submissions.
- i. An ET cannot properly consider disadvantage if it has not properly understood the PCP which imposes the relevant disadvantage.
 - ii. The ET failed properly to consider a structured approach to the questions of group and individual disadvantage.
 - iii. The ET had not taken into account that the particular disadvantage was the reduced likelihood of being promoted.
 - iv. There was no sustainable basis for the ET's conclusion that Mr Pipe was not put at a particular disadvantage.
75. The ET's approach to justification was said to be wrong because the ET had not understood what the PCP was, and because it had not taken into account many individual effects on Mr Pipe in each of the relevant years. There would be financial and non-pecuniary impacts. Even in a case in which the policy had to be justified, the individual effect also had to be considered as part of that assessment. The ET had not properly understood why Mr Pipe had failed to engage with the University.
76. Mr Williams submitted that ground i. was in effect a perversity challenge. The ET knew and applied the key legal principles, and made permissible findings on causation. The University did not dispute that there can be more than one reason in play: the question, on the authorities, was 'What was the 'effective reason?'. The court asked him about paragraphs 261 and 262 of the ET's reasons. He accepted that the reasoning was somewhat confused, and that part of paragraph 262 was hard to reconcile with paragraph 260. His overall submission was that paragraph 261 and the last clause of the last sentence of paragraph 262 were superfluous. The important finding, in paragraph 260, was that the rejection of Mr Pipe's applications was 'in no sense whatsoever caused by something arising from his disability but because of the absence of an available role/business case for a role'. The reasons which the University gave Mr Pipe as feedback on his applications were not to be equated with the reasons for his treatment. They were simply part of the evidence which the ET had to weigh.
77. He submitted that ground iii was, also, in effect, a perversity challenge which did not meet the high threshold for success. The findings on ground i. could be read across to ground iii. If those submissions were right, there was no need to consider justification (grounds ii. and iv.).
78. He relied on the ET's findings in the reasonable adjustments claim; promotion outside the Framework was not reasonable; nor was the creation of a special role for Mr Pipe which only required him to teach. Those individual circumstances worked in the

University's favour. As the EAT observed in paragraph 179 (see paragraph 69, above), the ET did not lose sight of Mr Pipe's individual circumstances.

Discussion

79. I have described the facts, the reasoning of the ET and of the EAT, and the parties' submissions in some detail. That description means that I can give my own reasons briefly.
80. The starting point is that, in my judgment, this court is entitled to assume that the ET understood the law as set out in Appendix B to its judgment. There is nothing in the ET's reasons which shows that it did not apply those legal principles. I did not understand Ms Jolly to submit otherwise. Two points emerge from Appendix B. First, it is clear that the ET understood that it was not to apply what Ms Jolly called 'a strict causation test'. Second, it understood the law on justification/proportionality, and, in particular, first, that a decision on reasonable adjustments is a relevant context for those questions, and, second, that there are cases in which a finding that a PCP is justified will mean that its application in an individual case will also be justified.

Ground i.

81. In any event, and in addition to the necessary assumption that the ET understood the law correctly, the ET found as facts, in short, first, that it was a requirement of the Framework that there should be a business case for the bespoke role which Mr Pipe wanted, and second, that there was no business case for a role at grade 7 in the Faculty, let alone for that role, in any of the three years in which he applied for promotion to grade 7. There was evidence to support those findings in each year. It was open to the ET to accept that evidence. Its acceptance of that evidence does not begin to show that it erred in law. Having said that, I do accept that paragraphs 260-262 of the ET's reasons are difficult to follow. I accept Mr Williams' submission that consistently with the substance of the ET's reasons leading up to paragraph 260, that paragraph expresses the core of the ET's conclusions. I also accept his submission that paragraph 261 and the last clause of the last sentence of paragraph 262 are superfluous to that conclusion.
82. Those findings of fact lead to two further points. First, I accept Mr Williams's submission that to the extent that ground i. is, in effect, no more than a perversity challenge, it does not meet the high threshold for such a challenge. I further note that a perversity challenge was not argued in the EAT (see paragraph 63, above). The EAT cannot be said to have erred in law in not considering or deciding such an argument, therefore.
83. Second, on those particular facts, and if, contrary to my clear view, the ET applied the wrong test for causation, the nuances of the causation test which the ET applied are irrelevant. The lack of a business case was a show-stopper. An able-bodied person who applied for promotion to grade 7 from the Faculty in 2017 and 2018, and an able-bodied person who applied from anywhere in the University in 2019, would have encountered exactly the same road-block, and would not have been promoted to grade 7. That meant that there was no room at all, as the ET found, for anything arising from Mr Pipe's disability to play a causal role of any kind. The precise causation test, as

respects the ‘something arising from’ Mr Pipe’s disability, is irrelevant to that stark conclusion. In other words, it does not matter, on these facts, what causation test the ET had applied, once it made its finding that there was no business case in any of those years.

84. I would dismiss ground i.

Ground iii.

85. I turn to ground iii. I of course accept that the words of the statutory tests which apply to the two claims are different (see paragraphs 9 and 10, above). Nevertheless, on the facts of this case, that makes no difference on this point. I note that, in the EAT, Mr Pipe sensibly did not argue otherwise, as the EAT recorded in paragraph 135 of its judgment (see paragraph 62, above). I agree with the EAT that there is, on these facts, no difference of substance between the two tests, and that it follows that the application of the two tests should lead to the same result. More fundamentally, however, the causal potency of the lack of a business case made the other requirements of the Framework causally irrelevant, so whatever causation test the ET had applied, that part of the claim would have failed.

86. I would also dismiss ground iii.

Grounds ii. and iv.

87. If I am right about grounds i. and iii., it is not necessary to decide grounds ii. and iv. Like the ET and the EAT, however, I will consider them nevertheless.

88. The two relevant tests (in section 15(1)(b) and in section 19(2)(d)) are expressed in the same words. Both are expressly framed as a proportionality test. It is therefore convenient to consider grounds ii. and iv. together.

89. The first point is that, as the ET realised, its decision on the reasonable adjustments claim set a floor for its consideration of the tests in section 15(1)(b) and section 19(2)(d). If, contrary to its actual finding, the ET had found a breach of the section 20 duty, that would have tended to suggest that the University’s rejection of Mr Pipe’s applications, in reliance on the Framework, did not satisfy section 15(1)(b) or section 19(2)(d). In the event, of course, the ET found that there was no breach of the section 20 duty. That finding is significant because it shows that the adjustments to the Framework which Mr Pipe wanted were not reasonable adjustments which the law required the University to make. That conclusion was based on an intense focus on Mr Pipe’s circumstances and arguments. Evidently and consciously, the ET built its reasons about the other claims on the foundation of its reasoning about the reasonable adjustments claim.

90. The second point is that the ET recorded that counsel had agreed, on the basis of *Buchanan*, which itself distinguished the reasoning of Baroness Hale in *Seldon v Clarkson Wright and Jakes*, that in some cases, where the reason for treatment is a PCP, the question whether a treatment satisfies a proportionality test (ground ii.), or whether a PCP is proportionate (ground iv.) will depend on whether the treatment or PCP is proportionate (or justified, in other words). That is a relevant legal principle. It

was applied by the ET in this case. I can see no basis for a suggestion that, in some way, the ET misunderstood or misapplied that principle to these facts. If the ET, as I consider it was, was entitled to apply that legal principle in this case, that leaves no room for any argument that the ET erred in law in not expressly factoring the effect on Mr Pipe into its consideration of proportionality/justification. The whole point of Baroness Hale's reasoning is that the proportionality of the PCP may be treated as a legitimate proxy for the application of the proportionality test to an individual case.

91. I would dismiss grounds ii. and iv.

Conclusion

92. The ET did not err in law in its judgment. The EAT did not err in law in not detecting an error of law in the ET's judgment. I would therefore dismiss this appeal.

Lord Justice Moylan

93. I agree.

Lord Justice Bean

94. I also agree.