EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Dr Theodore Piepenbrock	**v**	**The London School of Economics and political Science**

Heard at: London Central as a video hearing
On: February 2022: 14-18, and 28
March 2022: 1-4, 7-11, 14-18, 21- 25, 28 – 31
April 2022: 1
Chambers: April 2022: 4-8, 19-22, and
May 2022, 3-5.

Before: EJ G Hodgson
Mr D Kendall
Mr D Clay

Representation

For the Claimant: Mr G Piepenbrock and Dr Piepenbrock
For the Respondent: Mr P Michell, counsel

JUDGMENT

1. **The claim of unfair dismissal fails and is dismissed.**

2. **The claims of discrimination because of something arising in consequence of disability (section 15 Equality Act 2010) fail and are dismissed.**

3. **The claims of victimisation (section 27 Equality Act 2010) fail and are dismissed.**

REASONS

Introduction

1.1 The claimant presented a claim to the London Central employment tribunal on 26 January 2015. He brought claims of unfair dismissal, disability discrimination, and victimisation. The claim was stayed for a long period, whilst the High Court considered his personal injury claim. The employment claim was heard over a total period of 43 days starting on 14 February 2022 and ending on 6 May 2022.

1.2 It may assist the reader if we give an overview. The claimant states that he had been a highly successful international architectural/structural engineer responsible for designing some of the world's tallest buildings and longest bridges. Sometime around 2000, he decided to pursue a career in academia. He earned his MBA, MSc, and PhD degrees at Massachusetts Institute of Technology (MIT). His first academic appointment after MIT was at the LSE. On 1 September 2011, the claimant was employed as an LSE fellow in the department of management; this was for an initial fixed term of one year. This was a development role and was focused on teaching, albeit he had an opportunity to undertake his own research. The appointment was later extended to a total period of three years. On 1 September 2012, the claimant was also appointed to the role of deputy academic dean in the new executive global masters in management programme. This was a largely administrative position for a fixed term of one year.

1.3 In the first year, the claimant's teaching was largely well received, leading to his winning an LSE prize for his teaching.

1.4 One of his students was Ms D. She became his graduate teaching assistant from September to November 2012, when she resigned. In November 2012, the claimant was undertaking a lecture tour in Boston and Seattle in the United States. Ms D accompanied him. The claimant alleges that Ms D had become infatuated with him. He alleges that on 12 November 2012, she invited him to her hotel room and greeted him at the door in a state of undress. He alleges that he spurned her sexual advances. He alleges that this led to his having extensive conversations with her, both in Boston and later in a hotel room in Seattle, during the early hours of the morning. Whilst the outline of the events is agreed, the detail is disputed.

1.5 It is common ground that Ms D contacted the LSE, either directly or through her mother, and the LSE agreed to pay for a flight so that she could return from Seattle to her mother in New York. It is common ground security guards attended at the hotel room which she was occupying and ensured her safe passage from the hotel.

1.6 Ms D resigned by email of 18 November 2012. In this email she made allegations of improper conduct against the claimant. On 11 December 2012, Ms D sent a formal complaint alleging harassment.

1.7 The claimant was told of the fact of the formal complaint on 12 December 2012. This caused a rapid collapse of his mental health. By the evening of 12 December 2012, the claimant stated, by email, that he could "give no more." The claimant never returned to work. The claimant did not engage with the LSE, in relation to his teaching duties, in any constructive or professional way, thereafter.

1.8 At the end of his fixed term period of employment, on 2 September 2014, the claimant was dismissed. Between 12 December 2012 and 2 September 2014, the claimant made numerous complaints and lodged numerous grievances against the LSE's employees. It was the claimant's case that the actions of the respondent caused him personal injury by causing depression.

1.9 In addition, he says treatment of him amounted to disability discrimination, victimisation, and unfair dismissal. It is his case that the respondent decided at an early stage that he was guilty of sexual harassment, punished him, and resolved to dismiss him. The claimant alleges that the respondent acted as a harassment machine, consistently victimised him, and dismissed him as an act of victimisation. It is those claims that we now consider.

The Issues

2.1 The issues were defined during the hearing on 5 May 2021, when the claimant's application to amend was decided. The issues were supplied to the parties and the content, as given to the parties, is set out below.[1]

The claims

2.2 The claimant brings the following claims:

2.2.1 Unfair dismissal contrary to section 94(1) Employment Rights Act 1996.

2.2.2 Victimisation contrary to section 27 Equality Act 2010.

2.2.3 Discrimination arising from disability contrary to section 15 Equality Act 2010.

Disability

2.3 The claimant alleges he is disabled by virtue of anxiety and depression. He put it originally as follows:

[1] Minor clarifications and typographical amendments have been made were helpful.

> **The claimant was disabled as of 12 December 2012 by virtue of his anxiety and depression.**

2.4 By amendment he has added the following:

> **The claimant suffered from a disability when he began working at the respondent in 2011 by virtue of the anxiety and depression he experienced while he was employed at the Massachusetts Institute of Technology in 2010, which he disclosed to the respondent in his interview in 2011;**in **any event, the claimant was disabled as of 13 December 2013 by virtue of his continuous chronic depression and anxiety caused by the respondent.**

2.5 The respondent contends that the claimant was not disabled within the meaning of the Equality Act 2010 until about 13 December 2013 and/or that it did not have actual or constructive knowledge of that disability until about that date.[2]

Unfair dismissal

2.6 It is accepted the claimant was dismissed.

2.7 The respondent specified the sole or principal reason for dismissal in its application to amend the issues dated 1 April 2021[3] as follows:

> **The respondent will rely on 'some other substantial reason' as the reason for the claimant's dismissal for S.98(1)(b) ERA purposes. In particular, the fact that:**
>
> **a. the claimant's three-year term of appointment had come to an end;**
> **b. there was no alternative role available to the claimant;**
> **c. the claimant appeared unwilling or unable to return to work and/or engage with the respondent about work until his various complaints had been resolved to his own satisfaction (and had caused an inordinate number of complaints to be raised on his behalf); and**
> **d. the claimant had been off work for some 21 months prior to the EDT, with no obvious prospect of return.**
>
> **Alternatively, the respondent will rely on some or all of the same matters saying that the principal reason for dismissal was capability or conduct for the purposes of S.98(2) ERA.**

2.8 The respondent alleges it acted fairly in dismissing.

Discrimination arising from disability

2.9 The alleged disability is set out above.

2.10 The claimant alleges the following allegations of unfavourable treatment:

[2] The respondent did not set out the basis of the concession.
[3] It had previously been unclear.

2.10.1 allegation one [16.1][4]: by an internal email on 25 July 2013 from Professor Calhoun, referring to the claimant's communication with the respondent via his wife as "bizarre";
2.10.2 allegation two [16.2]: by an internal email on 2 August 2013 from Professor Estrin to Professor Willman, referring to the claimant's behaviour since December 2012 as "extraordinary";
2.10.3 allegation three [16.3]: by indicating in the same email on 2 August 2013 that the claimant "cannot expect to take up where he left off", and that Professor Estrin would not be "willing to contemplate using [the claimant] for teaching. In this or future modules";
2.10.4 allegation four [16.4]: by failing to renew the claimant's Deputy Academic Dean contract; further or alternatively, and
2.10.5 allegation five [16.5]: failing, on 2 September 2014, to renew the claimant's employment contract.

2.11 The claimant failed to set out in the original claim form or in any application prior to 22 January 2021 what matter or matters arising in consequence of disability he relied on.[5] He clarified this in the proposed amended claim of 22 January 2021. Some amendments were allowed, and the issues as set out below record verbatim what the claimant alleges is the 'something' arising in consequence of dismissal.

The 'something' arising from the claimant's disability was:

a. The claimant's absence.
b. The claimant's inability to teach and research due to his chronic illness (depression and anxiety).
c. The claimant's behaviour being his inability to perform some functions, especially given his need for his reputation and teaching resources.
d. The claimant being prevented from performing his professional duties, because of his difficulty with concentration, and his phobias (fear of people and especially women) and his general inability to meet with people and be in public settings.
e. The exacerbation of the claimant's anxiety and depression and his ASD traits resulting in difficulties in relationships or interaction with people (including his difficulties in understanding social rules and communication).
f. The claimant's need for support from his wife with communication.
g. The claimant's diminished ability to think or concentrate.
h. The claimant's chronic anxiety.
i. The claimant's chronic depression.
j. The claimant's ongoing autistic meltdown/shutdown.
k. The claimant's focus on establishing truth and justice.

2.12 The respondent now concedes the claimant was disabled from 13 December 2013 and that in relation to allegations one, two, and three the relevant individuals had no knowledge of any disability.

[4] The numbers in square brackets refer to the amended particulars of claim and were included for the parties' for ease of reference.
[5] See para 36 of the decision for the hearing commencing 17 June 2020.

2.13 It is the respondent's case that, in any event, any treatment was a proportionate means of achieving a legitimate aim.[6]

2.14 As regards justification for S.15(1)(b) EqA purposes, the respondent will rely on the matters at] above and/or says as follows:

> **It had a real need to ensure that:**
> **a. it used its charitable funds for the delivery of its charitable objectives in accordance with its regulatory requirements;**
> **b. its leading position and reputation in the HE sector was maintained;**
> **c. high quality, reliable and consistent teaching resource and other necessary support was and remained in place for the benefit of students;**
> **d. its staff received the support and assistance they reasonably required from colleagues in order to deliver teaching services to the requisite standard; and**
> **e. its financial and other resources were used as efficiently and effectively as possible.**

2.15 The claimant had been absent from work for some 21 months by the time of his effective date of termination (and for 9 months by the time his academic dean role terminated). He had failed to maintain reasonable and appropriate professional contact with the respondent and its OH provider and/or to take reasonable steps to provide necessary information and support to staff members covering his teaching work whilst he was absent from work.

2.16 The conduct complained of (in so far as it was "in consequence" of the claimant's disability) was therefore a proportionate means of achieving the legitimate aims set out [as parar 2.14 above].

<u>Victimisation</u>

2.17 The claimant relies on various alleged protected acts. He has failed to set out in his claim form the specific wording relied on within each document that is alleged to contain a protected act.

2.18 The documents said to constitute or contain protected acts are as follows:

2.18.1 act one [20.3]: 11 March 2013, by a letter from the claimant's solicitors at that time, Morgan Cole, to Mr Gosling;
2.18.2 act two [20.5]: 19 March 2013, by an email from his wife, Dr Sophie Marnette-Piepenbrock to Mr Gosling;
2.18.3 act three [20.6]: 20 March 2013, by an email from his wife to Mr Gosling;
2.18.4 act four [20.8]: 30 April 2013, by an email from his wife to Ms Lisa Morrow, Senior HR Partner;
2.18.5 act five [20.9]: 17 May 2013, by an email from his wife to Professor Bevan;

[6] The respondent substantially amended its justification defence in its application of 1 April 2021 and those matters relied on from that date are set out in these issues.

2.18.6 act six [20.11]: 2 June 2013, by an email from his wife to Ms Morrow and others;
2.18.7 act seven [20.12]: 10 June 2013, by an email from his wife to Mr Gosling, copied to Ms Morrow;
2.18.8 act eight [20.13]: 21 June 2013, by an email from his wife to Professor Craig Calhoun, LSE Director;
2.18.9 act nine [20.14]: 24 July 2013, by an email from his wife to Professor Barzelay, Department of Management Head, and others;
2.18.10 act ten [20.15] : 2 September 2013, by an email from his wife to Professor Estrin, copied to Professor Barzelay;
2.18.11 act eleven [20.16]: 6 September 2013, by an email from his wife to Mr Gosling;
2.18.12 act twelve [20.17]: 10 September 2013, by an email from his wife to Professor Calhoun;
2.18.13 act thirteen [20.18]: 20 September 2013, by an email from his wife to Professor Calhoun and others;
2.18.14 act fourteen [20.19]: 30 September 2013, by an email from his wife to Professor Estrin and others;
2.18.15 act fifteen [20.20]: 7 October 2013, by a letter from the claimant to the respondent;
2.18.16 act sixteen [20.21]: 14 October 2013, by an email from his wife to Ms Susan Scholefield, LSE Secretary;
2.18.17 act seventeen [20.22: 23 October 2013, by an email from his wife to Ms Scholefield;
2.18.18 act eighteen [20.23]: 8 November 2013, by an email from his wife to Professor Calhoun and others;
2.18.19 act nineteen [20.24]: 28 November 2013, by an email from his wife to Professor Calhoun and others;
2.18.20 act twenty [20.25]: 13 December 2013, by an email from his wife to Ms Scholefield;
2.18.21 act twenty-one [20.27]: 26 January 2014; by an email from his wife to Ms Scholefield;
2.18.22 act twenty-two [20.28]: 6 February 2014, by an email from his wife to Ms Scholefield;
2.18.23 act twenty-three[20.30]: 30 May 2014, by an email from his wife to Mr Indi Seehra, HR Director;
2.18.24 act twenty-four [20.33]: 6 August 2014, by an email from his wife to Professor Barzelay; and/or
2.18.25 act twenty-five [20.34] : 7 March 2014 – 10 October 2014, by 39 emails from his wife to Professor Calhoun.

2.19 The claimant alleges he suffered the following detriments:

2.19.1 detriment one [21.2]: failing, between 11 March 2013 and present, to investigate, or investigate timely and/or properly, the complaints/grievances made by the claimant, either directly or through his wife, in the above correspondence or any other correspondence between 11 March 2013 and November 2014;
2.19.2 detriment two [21.3]: failing to contact Mike Wargel in relation to his testimony in support of the claimant;

2.19.3 detriment three [21.5]: by an internal email from Professor Estrin to LSE Director Calhoun on 21 June 2013, alleging that the claimant did not win an award and that his wife was not a professor, in response to learning that the claimant was battling suicide;

2.19.4 detriment four [21.6]: Repeatedly referring to the claimant's complaints and/or behaviour as "bizarre" in internal correspondence (e.g. email from G. Gaskell on 23 June 2013, email from C. Gosling on 17 July 2013, email from C. Gosling on 25 July 2013, email from C. Calhoun on 21 June 2013);

2.19.5 detriment five [21.7]: in emails on or around 2 July 2013 referring to letters sent to the respondent in support of the claimant as baffling and not "very sensible" (e.g. email from LSE Director Calhoun on 2 July 2012 and email from Kevin Haynes on 2 July 2013);

2.19.6 detriment six [21.9]: from 28 August 2013 until 2 September 2014, the refusal by some employees of the respondent, on repeated occasions, to correspond with the claimant through his wife;

2.19.7 detriment seven [21.10]: the refusal by Professor Estrin to agree to contact the claimant as requested by an email from his wife on 2 September 2013;

2.19.8 detriment eight [21.11]: the refusal of Professor Estrin and Professor Barzelay to contact the claimant as requested by an emails from his wife on 30 September 2013;

2.19.9 detriment nine [21.12]: by an internal email on 5 December 2013 from Mr Andrew Webb, Director of Corporate Policy, stating that he did not "really give a zebra's what we say to Piepenbrock or Mrs…";

2.19.10 detriment ten [21.13]: by an internal email on 22 December 2013 from Mr Webb, referring sarcastically to the claimant's wife's tone as "the usual measured, eirenic [sic], conciliatory tone";

2.19.11 detriment eleven [21.14]: By an internal email from Professor Calhoun on 5 January 2014 commenting on Mr Wargel's email asking why his testimony in support of the claimant has been ignored stating "I continue to ignore";

2.19.12 detriment 12 [21.15]: Ms Scholefield on 4 February 2014, refusing to meet with the claimant and his wife at the claimant's home;

2.19.13 detriment thirteen [21.16]: Professor Calhoun, on 10 March 2014, forwarding the claimant's grievance to Ms Scholefield with the sarcastic comment "And a good morning to you!";

2.19.14 detriment fourteen [21.17]: failing to respond to the claimant's wife's request on 10 March 2014, that Professor Barzelay get in contact with the claimant;

2.19.15 detriment fifteen [21.18]: failing to action the claimant's agreement to external mediation;

2.19.16 detriment sixteen [21.19]: Andrew Webb instructing Dame Dobbs' Secretary on 17 March 2014, to not respond or pass on Mr Wargel's report of the respondent's treatment of the claimant;

2.19.17 detriment seventeen [21.20]: initially imposing short deadlines for submitting an appeal against the grievance outcome, and commenting on evidence in the grievances;

2.19.18 detriment eighteen [21.21]: failing, in or prior to August 2014, to conduct a genuine consultation with the claimant regarding the renewal of his fixed term contract; and

2.19.19 detriment nineteen [21.22]: failing on 2 September 2014 to renew the claimant's employment contract.

2.20 The detriments were recorded as set out in the amended particulars of claim. EJ Hodgson noted in the decision for the hearing commencing 17 June that many of the allegations appeared to fall into three categories,[7] as follows:

a. those that contain specific alleged detrimental acts and are sufficiently clear (category 1);
b. those that appear to refer to specific acts but lack one or more relevant details (category 2); and
c. those which are generalised, and it is difficult to understand what is the alleged detrimental act, if any (category 3).

2.21 EJ Hodgson clarified which allegations fell under each head.

d. Category 1 - those that contain specific alleged acts of detriments and are sufficiently clear: 3, 9, 10, 11, 12, 13, and 19.
e. Category 2 - those that appear to refer to specific acts but lack one or more relevant details: 1, 2, 4,[8] 5, 7, 8, 14, and 16.
f. Category 3 – those which are generalised and it is difficult to understand what is the alleged detrimental act (category 3). The claimant has failed to set them out adequately or at all. The following fall into that category: 6, 15, 17, and 18.

2.22 To the extent that any act of victimisation or unfavourable treatment is out of time, the claimant alleges that there is a continuing course of conduct and/or it will be just and equitable to extend time.

2.23 There is a claim of personal (psychiatric) injury. This is a remedy matter.

2.24 The respondent did not accept all claims have been brought in time. The claimant should provide evidence explaining why any claims that are out for time were not brought in time.

Evidence

3.1 The claimant gave oral evidence. In addition, the following gave live oral evidence for the claimant: Mr Garry Piepenbrock (the claimant's son); Professor Marnette-Piepenbrock (the claimant's wife); Dr Paul Thornbury; Dr Iles; Prof Nightingale. In addition, the claimant relied on written statements from the following: Dr Mike Wargel; Dr Peter Amies; and Dr Jon Spiro.

[7] This was considered by EJ Hodgson in detail at paras. 24 – 34 of the decision from the hearing commencing 17 June 2020. The summary set out in these issues is taken from those paras.
[8] In EJ Hodgson's decision of 17 June 2020, he put this allegation into category 3. The amendment allowed identified four emails, which made the allegation clearer.

3.2 The respondent called the following witnesses to give live evidence: Professor Gwyn Bevan; Professor Saul Estrin; Professor Michael Barzelay; Mr George Gaskell; Mr Kevin Haynes; Mr Christopher Gosling; Professor Craig Calhoun; Mr Andrew Webb; Ms Susan Scholefield; Ms NeelamTalewar; and Mr Indi Seehra. In addition, the respondent relied on a written statement from Ms D.

3.3 We received various documents during the course of the hearing. These included an agreed bundle and index, a supplemental bundle, medical reports, various applications, and written submissions.

3.4 In addition, the respondent filed a chronology and cast list.

Concessions/Applications

Applications considered on 28 February 2022

4.1 The first five days of the hearing were set aside for reading. Leading up to, and during that period, the claimant made multiple further applications. Those applications were considered on 28 February 2022, the first day with the parties. Many of the applications were complex and supported by extensive documentation.

4.2 On 31 January 2022, the claimant applied to rely on a statement from Dr Paul Thornbury. On 7 February 2022, he renewed his application submitting Dr Thornbury's "final witness statement" (application one).

4.3 On 10 February 2022, the claimant filed three further documents. The first PDF purported to address the relevance of Dr Thornbury's statement. The second PDF challenged the anonymity of Ms D (application two). The third PDF referred to reasonable adjustments for "Mr Garry Piepenbrock's autism" (application three).

4.4 On 11 February 2022, the respondent filed relevant documents necessary for the hearing, in accordance with the tribunal's order.

4.5 On 14 February 2022, the claimant raised further matters which we do not need to consider in detail. He also filed his opening submissions and further 'information' in relation to the protected acts and detriments. There was no application to amend the claim or the issues. [9]

4.6 On 17 February 2022, the claimant requested the respondent confirm the order in which it would call its witnesses (application four). (This was clarified on 18 February 2022.)

[9] This was not filed in response to any direction. We confirmed new fact and new allegations may require an application to amend. No application was made at any time.

4.7 On 18 February 2022, the claimant alleged that the respondent continued to violate "reasonable adjustments for a disabled litigant in person." This extensive letter contained several applications. First, the claimant objected to the respondent calling former LSE HR director, Mr Chris Gosling, to give oral evidence and requested specific disclosure of the correspondence confirming his initial reluctance to give evidence (application five). Second, he objected to the respondent's allocated timetable for witnesses (application six). Third, there was some form of challenge to the anonymity of Ms D, but the specific application was difficult to understand (application seven).

4.8 On 21 February 2022, the claimant made an application to receive a transcript of the hearing, and further, or in the alternative, for permission to record the hearing (application eight).

4.9 On 23 February 2022, the claimant made two further applications. The first was a request to send "relevant information" to the press/media (application nine). The second was an application that former treating psychiatrist, Dr Andrew Iles, should answer questions from the respondent and the tribunal in writing (application ten).

4.10 On 25 February 2022, the claimant made further applications. Four supplemental statements were filed. The claimant requested permission to rely on those statements (application eleven). The claimant filed further documentary evidence and requested it be admitted (application twelve). The claimant sent an amended application for reasonable adjustments for Mr G Piepenbrock. Finally, he filed an "application to censure the respondent's barrister, Paul Michell of Cloisters Chambers" (application thirteen).

4.11 On Sunday, 27 February 2022, Mr G Piepenbrock, on behalf of the claimant, sent an email stating, "We have now unfortunately had to file three formal complaints to the Bar Standards Board (on 19 October 2020, 1 December 2021 and 25 February 2022) about Mr Michell's misconduct." They allege that "Mr Michell's behaviour (e.g. his issuing of harassing, defamatory patently false information on his CV) has contributed to various witnesses withdrawing their cooperation in this landmark hearing."

4.12 At the hearing on 28 February 2022, Dr Piepenbrock was represented by Mr G Piepenbrock. We consider the various applications. During the late morning, Dr Piepenbrock reacted negatively to Mr Michell and withdrew from the hearing. Although he appeared several times thereafter to make general statements, his involvement during the rest of the day was limited. Mr G Piepenbrock was able to conduct the hearing on behalf of Dr Piepenbrock, his father. We allowed him breaks when requested.

4.13 We were able to agree the approach to some of the applications. To the extent that there remained issues, we reserved the decision and confirmed that we would discuss the matter the following day. We adjourned until 14:00, 1 March 2022.

4.14 We noted that in several statements and in part of the bundle Ms D's name had been given. We directed that her name must be anonymised in any document made available to the public.

4.15 We now record the decisions reached, and where necessary, our reasons. We will refer to these initial applications by the numbers we have given them above.

4.16 Application one: this application was resolved by consent. The respondent did not object to the claimant relying on the statement of Dr Thornbury. The respondent did not propose to cross-examine Dr Thornbury. The respondent maintained its view that the statement was irrelevant but invited the tribunal to decide relevance as part of its deliberations. The tribunal confirmed relevance would be considered after the statement was put in evidence, and such consideration may form part of our final deliberations.

4.17 Application two: the application was resolved by consent. Employment Judge Hodgson had previously directed that the anonymity of Ms D be maintained. It is not necessary to consider the history of her anonymisation at this stage. Maintenance of anonymity reflects the High Court order of 4 October 2018 in case number HQ15P05111. The relevant part of the High Court's order states:

> **1. Permission be given to anonymize the proceedings so that the name of Ms D shall be used to identify the person referred to in the statements of case by that name.**
> **2. There shall be no reporting or disclosure of the identity of the person referred to in paragraph 1 or of any information that may lead or easily expected to lead to the identification of that person.**

4.18 Further, anonymity of Ms D is a live matter before the EAT. HHJ Shanks has issued a temporary anonymisation order which he is due to review at a further hearing.

4.19 If this tribunal were to allow Ms D to be identified, her identity may be reported in the press. Further, as the findings of the High Court are binding on this tribunal, and must be referred to by this tribunal, our identifying her would, effectively, also identify her in the High Court proceedings. It is at least arguable that this would be a breach of the High Court order. It may be inappropriate for this tribunal to remove her anonymity when the effect could be to undermine a High Court order.

4.20 It was open to the claimant to appeal this aspect of the High Court's decision. He has not done so. It may still be open to him to seek variation of that decision.

4.21 These matters were discussed. All parties accepted that the position should be preserved in these proceedings. We can consider anonymity

further after HHJ Shanks has given his ruling. If the matter is to be considered further, it will be necessary for both parties to file detailed skeleton arguments referring to the relevant case law.

4.22 Application three: this application was dealt with by consent. The tribunal observed that significant time was given to considering reasonable adjustments for Dr Piepenbrock. Those adjustments were considered at an early stage.[10] That early consideration was, itself, an adjustment for Dr Piepenbrock. It follows that significant adjustments had already been made, and we do not need to detail them here. Those adjustments were made in response to any disability, including autism, that the claimant may have.[11]

4.23 Whilst the heading for the application refers to Mr Garry Piepenbrock's autism, there is no formal diagnosis of ASD. He has taken one screening test administered by his GP, which suggested he may be on the autistic spectrum. However, we have no clear medical evidence that he is. In any event, the only additional adjustment requested for Mr Piepenbrock was that if he is cross-examined, such cross-examination questions be put in writing.[12]

4.24 Mr Michell confirmed that he did not propose to cross-examine Mr Piepenbrock on his statement. Mr Piepenbrock confirmed that he would give his evidence first. It may be the Mr Piepenbrock will be relevant to questions arising out of the evidence given by the claimant. Mr Michell confirmed that in those circumstances he would not cross-examine Mr Piepenbrock initially. We agreed that it may be appropriate for Mr Piepenbrock to be recalled, depending on the evidence given by Dr Piepenbrock. We agreed no further action was necessary, unless there were a subsequent application to recall Mr Piepenbrock to give evidence.

4.25 Application four: this was agreed by consent. The respondent gave the relevant clarification on 18 February 2022.

4.26 Application five: this was not agreed. Statements in this case, by way reasonable adjustment, were exchanged early.[13] Mr Gosling statement was served at the appropriate time. The respondent cannot control whether Mr Gosling is willing to give oral evidence. The respondent is not obliged to prove by reference to documentation whether Mr Gosling has changed his mind. To the extent the claimant requests disclosure of documents which would prove whether Mr Gosling has changed his mind, that is not relevant to these proceedings. We confirmed the claimant may ask Mr Gosling, when he cross-examines him, whether he had changed his mind, and if so why. However, we noted that this may not be a relevant question, but relevance would be determined when the question

[10] See, for example, the decision of 2 September 2021.
[11] For the purpose of making adjustments at all times it was accepted the claimant's contention that he is autistic.
[12] Ultimately, he was not cross-examined.
[13] The order of 5 May 2021 initially required exchange by 19 May 2021

we asked. We rejected the claimant's contention that in some manner he was disadvantaged because he could not prepare his cross-examination. The statement had been in his possession for many months; he had time to prepare. For these reasons we refuse the application.[14]

4.27 Application six: this was resolved by consent. It was accepted that attempts must be made to timetable this case. However, it was not possible at an early stage to set out a timetable. There was considerable uncertainty, not least of all as to whether the claimant would give evidence. It was agreed that this would be kept under review.

4.28 Application seven: this is a further application in relation to the anonymity of Ms D and adds nothing to application two.

4.29 Application eight: we could not resolve this application by consent. The application was in two parts. The first was for the claimant to receive a transcript of the hearing. The second was for the claimant to have permission to record the hearing.

4.30 As to the first application, there is no mechanism to achieve this. We have noted that respondents occasionally apply for permission to have a stenographer produce a transcript of a hearing. This involves the stenographer recording the hearing, but normally that recording is not released to the parties. Any recording remains, effectively, the property of the tribunal. When a stenographer is used, a written record of the hearing is given to the parties and the tribunal daily. This ensures equality. However, transcription by a stenographer is expensive, and there is no power to order it. If a party is willing to fund a professional stenographer, we can allow it. That was not the case here. In the courts, where recording is required, parties may obtain transcripts through the relevant providers upon payment of a fee. There is no equivalent in the tribunal. It follows that we cannot order a transcript.

4.31 The claimant suggested that the respondent's notes of the hearing should be forwarded to him. That is inappropriate, as they are not an official record.

4.32 As for the claimant recording the hearing, we were referred to the case of **Heal v the Chancellor, Master and Scholars of the University of Oxford and others** EAT070/19 (Choudhury, P). This case provides some useful guidance. We have regard to paragraphs 27 and 48 (which set out general guidance).

4.33 We must consider adjustments. There is no automatic entitlement to be granted any adjustment requested. The granting of adjustments is a matter of case management. Paragraph 27(e) gives guidance as to matters which may be considered when a request is made to record the

[14] Later in the hearing the claimant stated he had not read any of the respondent's statements.

proceedings. We will consider each of those points now in the context of this case.

4.34 It is necessary to consider the extent of the nature of the medical evidence. In this case, for reasons which we will explore further in this judgment, the medical position is not clear. The claimant has depression and alleges that he is autistic. It is the autism which is advanced as the primary reason for adjustments. However, the medical evidence on this is limited, particularly as to its effect.

4.35 We have had regard to the report from Dr Martin Pearson and the claimant's treating doctors. Dr Pearson does not consider whether the claimant is able to make notes or whether a recording is necessary. There is no medical evidence which would demonstrate the claimant is incapable of taking notes. Moreover, the claimant was supported by his son. Both Mr and Dr Piepenbrock, whether together or in combination, produce extensive documentation. There is no reason to believe that they cannot make notes during the hearing. If necessary, further time could be given to allow those notes to be made. We conclude that this is not a case where a medical condition prevents, or even seriously inhibits, the taking of notes.

4.36 To the extent there is any possible difficulty in taking notes, that is largely alleviated by the fact that there are two people who are capable of taking the notes.

4.37 The alleged disadvantage is unclear. It would appear to be the claimant's position that he should be able to review in detail the exact wording of all or any part of the proceedings in order to participate reasonably in these proceedings. However, a preference or desire does not in itself establish disadvantage or justify an adjustment.

4.38 Moreover, allowing the claimant to record the proceedings may lead to significant disadvantage. The available medical evidence makes it plain that the claimant has become obsessed by these proceedings. The purpose of any adjustment is to allow an individual to participate reasonably in the proceedings, such that the proceedings may be resolved fairly. The purpose is not to alleviate the symptoms of an obsession. It appears the claimant wishes to review, during the hearing, and thereafter, every aspect of the litigation. The risk is the claimant 's obsession will be fuelled by the overwhelming detail. There is a real risk that this would lead to innumerable, and irrelevant, matters being raised during the hearing in a manner which will prevent the hearing from proceeding in any meaningful way. Allowing the recording may have the opposite effect of facilitating participation. Allowing the claimant to record the proceedings would potentially undermine his ability to participate in these proceedings, as it is likely to fuel his obsession, distract him from the issues, and lead him to become fixated on the on the minutiae of aspects of the evidence which may have little or no relevance.

4.39 There is a real risk that the recording could be used for a prohibited purpose, and it is inevitable that allowing the claimant to record the proceedings would cause the respondent's witnesses considerable concern. It has already been determined, during the strike out application of 3 and 4 March 2020, that the claimant has behaved inappropriately towards Ms D. In particular, he has vilified her publicly on his website. The tribunal was concerned to note that the claimant through his representative, sought to resile from his admission that that website was under his control; that development was concerning.

4.40 During the strike out hearing, the claimant recognized that his behaviour had been inappropriate, and accepted the need to avoid repetition; the tribunal cannot wholly ignore the inappropriate behaviour. In the previous decision, it was noted that the claimant's behaviour undermined a fair hearing, and any repetition of his behaviour may lead to a fair hearing being impossible. Further, it was noted that the claimant's publication of information relating to Ms D, which identified her on a public website, may have breached the High Court order. Whilst we cannot decide whether the claimant breached the High Court order, it follows that this tribunal cannot assume that the claimant will respect orders.

4.41 We must have in mind that the respondent's witnesses may have considerable concern about the misuse of information. We take the view there is a real risk that the recording would be used for prohibited purposes.

4.42 It also follows that we are not satisfied that we can impose specific directions or limitations which will be respected.

4.43 We are satisfied that allowing a recording will lead to considerable disruption of the proceedings, as it is likely the claimant will use the recording during the hearing in a way which would be disruptive, whether or not that be his intention.

4.44 We do not need to consider specifically the factors in paragraph 48, as, in this case, they add little to what we have already considered.

4.45 We should summarise the position.

4.46 First, the disability does not prevent the claimant taking and reviewing notes. Note taking is normal, and it is the same for all parties. We have no reason to believe that the claimant suffers any disadvantage by the requirement to take notes.

4.47 Second, there is a real risk that the recording will be misused.

4.48 Third, it is likely that the recording would be used in a way which would disrupt the proceedings this would cause the claimant disadvantage and undermine a fair hearing. Whilst the claimant may wish to review the minutiae of the evidence on a daily basis, that will in fact inhibit his ability

to participate in these proceedings and is an adjustment which would potentially cause him disadvantage.

4.49 Fourth, allowing recording is likely to produce satellite arguments about the evidence, the nature of the evidence, and the appropriateness of behaviour, particularly of Mr Michell. All this will serve to undermine fair hearing.

4.50 We observed on the first day that, when considering this application, Mr Michell made reference to the claimant's disability. He focused on the claimant's autism and did not specifically mention the claimant's depression. Mr Michell submissions were appropriately brief. There was no reason for him to mention the claimant's depression. The claimant's application focused on his autism, not his depression. Dr Piepenbrock reacted strongly and negatively; he left the room. Later he explained that he had had an "autistic meltdown." It appeared to be his case that, in some manner, Mr Michell was acting inappropriately, as he was failing to acknowledge the full extent of Dr Piepenbrock's disability. Objectively, this was not fair criticism of Mr Michell's submissions. Mr Michell's conduct was at that time, and throughout the hearing, unimpeachable. It illustrated that Dr Piepenbrock was sensitive to the effect of minute detail, and that the interaction between such perceived slights and Dr Piepenbrock's mental health was unpredictable and disruptive of his ability to participate.

4.51 During the discussion, we noted that the tribunal could record the hearing. If there were to be reasonable and legitimate dispute about exact the wording of any part of the hearing, it would be possible for the tribunal to use that recording as part of the judge's note. This may resolve any difficulties, and may provide some comfort to the claimant, who may worry about the precision of notes. It was not objected to by the respondent. In the circumstances, EJ Hodgson confirmed that he would endeavour to record the hearing, such recording to form part of the judge's note, and to be used at the judge's discretion to clarify points of dispute, where that may be both proportionate and reasonable to do so.

4.52 It follows that both the application for transcripts and the application for a recording were refused.

4.53 Application nine: this was resolved by consent. One member of the press attended. The tribunal confirmed that if any member of the press wished to see any statement, or document, after being put into evidence, arrangements would be made. It was envisaged that the LSE would be required to make a room available where the documents could be viewed. The tribunal noted that there is nothing to stop any witness sending his or her own document or statement to the press. However, it is unlikely that such an action would be covered by litigation privilege. It was suggested that no party should provide any document to the press, save through the mechanism authorised by the tribunal.

4.54 Application ten: this was not resolved by consent. The tribunal confirmed that Dr Andrew Iles is a treating psychiatrist and therefore, whilst he is an expert in his own field, he is not an expert before the tribunal. As a treating doctor, he is a witness of fact. If the claimant wished to call him, he should be asked to attend and he would need to give sworn evidence. Given the length of this hearing, and the flexibility which can be accommodated, Dr Iles should be able to attend to give evidence. His evidence may not be disputed. His evidence may be relevant. It is appropriate that he should give oral evidence.

4.55 Application eleven: four supplementary witness statements were filed. It appeared these were largely concerned with the reasons why various witnesses no longer wished to give live evidence. The tribunal confirmed that the claimant should seek to put the new statements in evidence at the same time that the statements, which have been exchanged, were put in evidence.

4.56 Application twelve: this is not disputed. The respondent has taken no issue with the claimant filing further documentation. By way of practicality, it should be filed as a supplementary bundle.

4.57 Application thirteen: this matter was discussed, and neither party objected to the tribunal's proposed approach. In essence, it is the claimant's case that Mr Michell has acted inappropriately. In particular, he is criticised for the way he has represented the nature of the claimant's litigation on his CV, as published on the Cloisters website. As noted, complaints have been made about Mr Michell to the Bar Standards Board. The correspondence of 27 February would indicate a further complaint has been made. The tribunal has no jurisdiction over that complaint, and it would be inappropriate for us to comment directly.

4.58 We clarified that where there is complaint about the conduct of an individual, this may lead to applications. Those applications could be for a case management order, including an application for reasonable adjustments. Further, it may be possible to apply to strike out. It may be possible to argue that a representative has acted in a way which is unreasonable conduct the proceedings, or amounts to vexation, or more generally prevents a fair hearing.

4.59 Mr Piepenbrock confirmed that there was no application for any case management order and there was no application, on any ground, for strike out. He stated that there may be, in due course, an application for costs, and the document as filed which requests "censure" in some manner foreshadows that application. It is difficult to interpret the application to “censure” in that manner. However, it was not necessary for us to consider it further on day two. It is relevant to the tribunal to note that the application for censure demonstrates that the claimant has formed a negative view of Mr Michell.

4.60 During the proceedings, we continued to consider, actively, reasonable adjustments to enable the claimant to participate in the proceedings.

4.61 On the afternoon of 28 February 2022, the claimant, following what he described as an autistic meltdown, did not attend for the majority of the afternoon. We confirmed that Mr Piepenbrock could ask for an adjournment at any time to check on his father. We granted Dr Piepenbrock's request to give an explanation at the start of the afternoon's hearing. He explained that he had suffered an autistic meltdown, when his brain “shuts down,” and this occurs when he is faced with false statements. In this case, he believed Mr Michell had in some manner disputed the claimant was disabled by reason of depression and anxiety. Whilst we acknowledge that was how Dr Piepenbrock described his perception, we do not accept that his account was, objectively, a fair characterisation of the submissions given by Mr Michell. Dr Piepenbrock also returned towards the end of the afternoon to further reiterate his explanation.

4.62 Mr Piepenbrock requested that we view certain videos on autism, as detailed in his request for reasonable adjustments. The respondent had no objection. We confirmed we would view the videos.

4.63 We also confirmed we would read the documents submitted which purport to give further details of the detriments and protected acts. We noted that, generally, issue is not taken with clarification where it is clearly adding clarifying facts, rather than identifying new, unrelated-facts, or bringing new claims. We formed no view on the additional documents at that time.

Day 2 - 1 March 2022

4.64 On 1 March 2022, we confirmed the orders we had made in relation to the thirteen applications identified. We started the process of timetabling the evidence. We enquired about Dr Piepenbrock's health and his ability to proceed with cross-examination. We confirmed we would give Mr Piepenbrock time to contact his witnesses and propose times they be called. Mr Piepenbrock gave evidence and adopted his statement. Mr Michell confirmed that his evidence was agreed and to the extent it had any relevance, it was put in dispute. He noted that it may be necessary to ask Mr Piepenbrock questions, after Dr Piepenbrock had given answers, and it may be necessary to seek Mr Piepenbrock’s recall.

4.65 Mr Michell confirmed that a room would be made available to view the statements and documents, should there be any request from the media to do so. We confirmed that where necessary, to facilitate public access, key documents will be read out, and if necessary, shared on the screen.

4.66 Dr Thornbury was called. Neither the respondent nor the tribunal had appreciated that a further statement had been filed for him after the original application to present his evidence. We asked him to return the

following day, so that the respondent could review whether it was necessary to cross-examine on the further evidence.

4.67 The claimant called Professor Deborah Nightingale. No admissions were made about her evidence and to the extent it could be relevant, it was disputed. However, the respondent considered it unnecessary to ask questions. There were brief questions from the tribunal.

Day 3 - 2 March 2022

4.68 Following the hearing on 1 March 2022, the claimant sent two further emails prior to 2 March 2022. The first email sought to clarify Mr Piepenbrock's address, as the tribunal had assumed he lived in Balliol College. That was clarified on 2 March 2022. We accept that some confusion had arisen out of Mr Piepenbrock's misunderstanding and reassured him that this presented no difficulty. We also considered his second email, which referred to Dr Piepenbrock's mental health, and timetabling. The first part of the email simply reiterated the matters raised at the hearing regard to Dr Piepenbrock's perception of the reason for the difficulties that he experienced during the hearing. We considered the timetable. We considered adjustments, as necessary. Broadly, we agreed that Professor Sophie Marnette Piepenbrock would give evidence at 14:00, 3 March 2022. Dr Andrew Iles would give evidence at 11:00 on 4 March 2022. Dr John Spiro would give evidence at 14, 00 on Friday, 4 March 2022. We observed that half an hour for Dr Iles's evidence may be insufficient. Mr Piepenbrock confirmed that he would contact Dr Iles and confirm that he may need to continue to give as evidence at a later date. We also confirmed that should he find a more convenient opportunity, he should contact the tribunal.

4.69 We agreed the claimant should start to give his evidence on Monday, 7 March 2022. Having regard to the outline reasonable adjustments already considered, he would not be required to attend on any Wednesday. Breaks could be given when necessary. The total length of cross-examination during the day could be adjusted. We agreed that the tribunal should maintain some flexibility, as it was unclear how Dr Piepenbrock would react to cross-examination. We noted that, absent adjustments, and considering the issues raised in cases of this nature, we would normally allocate between one and two days for cross-examination of the claimant. We agreed that, if practicable, the cross-examination should be completed in no more than four days. That extension of time was an adjustment to allow the claimant to participate in the proceedings. We also noted that there is no absolute rule that every point of disputed evidence must be put to a witness. In a case of this nature, where much of the dispute is reasonably clear, and the parties have had an opportunity to put their evidence in writing, there is balance between ensuring that a case is put properly, such that the evidence is tested, and causing unnecessary distress by over pedantic or formulaic challenges to all possible points raised in evidence. We confirmed that neither party would be expected to ensure that each minute point of dispute was challenged.

We confirmed the respondent should, as far as practicable, ensure the questions are clear, concrete, and deal with facts. Challenges to opinion and interpretation may be unhelpful and could lead to disruption of the hearing.

4.70 It follows that by the end of day three, we had dealt with several witnesses, and the broad outline of the timetable for the claimant's remaining evidence had been put in place and agreed.

4.71 During the hearing, Mr Piepenbrock referred to the medical evidence in the High Court being superseded, in some manner, by the diagnosis of autism. He asserted that the experts in the High Court had missed Dr Piepenbrock 's autism. We asked the parties to confirm that all medical evidence filed in the High Court, including the reports of Professors Maden and Fahy was given to us, and if not already in the bundle, should be supplied.

4 March 2022

4.72 On 4 March 2022, we completed the evidence of Professor Sophie Marnette-Piepenbrock. In addition, we heard from Dr Andrew Iles, a psychiatrist who treated the claimant since 7 April 2018. In addition, we considered two emails sent by Mr Piepenbrock, the first sent on 3 March 2022 at 23:15, and the second sent on 4 March 2022 at 09:01.

4.73 The first email set out the times that Mr Piepenbrock and Dr Piepenbrock spoke to Professor Marnette-Piepenbrock on the evening of 3 March 2022. We confirmed that there was no need to produce such a record. All were aware that there can be no discussions with a witness who is giving evidence. We would normally accept any assurance of compliance given. Mr Michell confirmed that he did not intend to raise questions and accepted the general assurance.

4.74 The email also referred to the timetable. In fact, Professor Marnette-Piepenbrock's evidence was completed in the time envisaged. Dr Isles's evidence was completed by 11:30. It was noted that Dr Spiro may not give evidence. It was confirmed that it would be possible to interpose his evidence, should he wish to give evidence, at a later date, albeit we would not consent to his being interposed during a time when the claimant was giving evidence. We confirmed, in due course, the claimant should confirm whether it was proposed that Dr Spiro would be called.

4.75 The first email also contained the following:

> **Finally, Dr Piepenbrock is on schedule to give oral evidence beginning next Monday at 10am. Judge Hodgson, you have repeatedly indicated that based on your extensive experience in managing hearings, you expected that as a baseline, Dr Piepenbrock's examination should take between one and two days (in the absence of reasonable adjustments for Dr Piepenbrock's disabilities), which sounds entirely reasonable to us. Given how Mr Michell conducted himself on Monday (causing Dr Piepenbrock's**

> **autistic meltdown/shutdown) and given how Mr Michell conducted his cross-examination today of Professor Marnette-Piepenbrock (which resulted in Dr Piepenbrock immediately having to go to bed out of exhaustion), it appears that some further reasonable adjustments will be required. Dr Piepenbrock therefore proposes to give oral evidence on Monday, Wednesday and Friday, with a rest day in between on Tuesday and Thursday. These three days should be more than sufficient to meet your expectations of one-to-two days, while making reasonable adjustments for the doubly-disabled Dr Piepenbrock, especially if Mr Michell sticks to relevant issues, which is something that he clearly struggled to do today in his cross-examination, and which I will endeavour to do when I cross-examine the Respondent's witnesses.**

4.76 Mr Michell objected to the request. The tribunal noted that significant consideration had been given to the conduct of these proceedings prior to the hearing. Adjustments had been requested and made. The claimant specifically requested that he be permitted to take Wednesdays, as a rest day, to recover and to avoid exhaustion. That request had been granted. In reliance thereon, the respondent's representatives, witnesses, and the tribunal had made arrangements. We noted it would be possible for such arrangements to be changed, and the request accommodated. However, it was not clear whether Dr Piepenbrock would be able to tolerate any cross-examination. At various times, he had confirmed that he was looking forward to cross-examination. The only change appeared to be an allegation that Mr Michell's conduct would make the cross-examination even more exhausting. This was based on an assertion that Mr Michell's conduct on the first day of the hearing when the parties were present, was inappropriate. It was said to be inappropriate because in some manner he was alleged to have denied the claimant's disability by reason of anxiety and depression. As noted above, there was no objective justification for this criticism of Mr Michell.

4.77 Moreover, Dr Piepenbrock was concerned about the accuracy of the description of the proceedings contained on Mr Michell's website. Since then, Mr Michell had made it plain that the respondent was not suggesting the claimant did not have depression or anxiety and was not seeking to argue that depression and anxiety did not amount to a disability. Moreover, some changes had been made to the website.

4.78 The tribunal confirmed it could not support Dr Piepenbrock's characterisation of Mr Michell's conduct on Monday. On the contrary, Mr Michell's submissions had been succinct and reasonable. There was no reason for him to refer to depression or anxiety in his submissions. This failure to refer to those matters directly was not either an express or implied denial of their existence. We confirmed it was clear that Dr Piepenbrock had developed a negative view of Mr Michell, and that was unfortunate. However, the tribunal's concern was that Dr Piepenbrock's negative view Mr Michell may prevent any meaningful cross-examination.

4.79 It was far from clear that it would be necessary to change the reasonable adjustments already agreed. Having discussed this matter in detail, Dr Piepenbrock agreed that it would be appropriate to continue with the

timetable, as originally envisaged. We confirmed the cross-examination would proceed on Monday, Tuesday, Thursday, and Friday. However, by way of reasonable adjustments, we would permit during those periods regular and reasonable breaks as reasonably necessary. Further, we would keep the matter under review. We also clarified that the reference to cross-examination of a neurotypical person being completed in 1 to 2 days was a broad estimate. Whilst the claimant indicated that three-days should be sufficient to cross-examine him, we preferred to keep the matter under review. The time initially allowed was four days.

4.80 We also considered the second email. This referred to acknowledging a cast list had been filed by the respondent to which the press had requested access. The email raised concern that the respondent had failed to serve it on the claimant. Following discussion, it was clarified that the cast list and chronology had been filed in accordance with an order from 18 August 2020. That order did not provide for service on the claimant prior to the hearing nor did it require agreement. The order was permissive. The claimant had a right to file his own cast list and chronology. In the circumstances, we agreed that it should not be given to the press, as its status was uncertain. We noted that the purpose of the cast list and the chronology was to assist the tribunal and was not in itself evidence or a pleading. EJ Hodgson confirmed the order reflected his general practice, which was not to require agreement of chronologies. The reason for this is that requiring agreement invariably created difficulties, as the parties remained uncertain as to its status, and it would lead to unnecessary conflict. Attempts to agree chronologies often lead to litigants in person being distracted and may undermine their ability to prepare for the hearing. Sometimes cast lists and chronologies are helpful; sometimes they are not. However, requiring agreement is always problematic. In the circumstances, the claimant should consider the chronology, if he wished to. No further action was necessary.

4.81 The email also has a section which was headed "LSE threatens Garry Piepenbrock with criminal action". This referred to a letter from the Solicitor's Regulation Authority. Mr Piepenbrock's email suggested that the Solicitor's Regulation Authority was "threatening to prosecute" me with a criminal offence for acting "...as your father's legal representative"

4.82 The tribunal confirmed that there was no impediment to Mr Piepenbrock acting on behalf of his father. That is the position throughout employment tribunals, and it is understood it is the position adopted by the EAT. Following discussion, it appeared that the Solicitor's Regulation Authority's letter did not relate to the employment tribunal proceedings at all. Mr Michell thought there may have been a misunderstanding, but could not comment, as he had not seen the letter. We noted the disclosure of the letter was a matter for the claimant, and for Mr Piepenbrock; the tribunal did not require it. It appeared the letter was irrelevant and had nothing to do with these proceedings. We noted that the tribunal would consider the letter, if Mr Piepenbrock wished us to, and although no advice could be

given, the tribunal may be able to offer clarification. In the circumstances, no further action was requested or was necessary.

4.83 On the afternoon of 4 March 2022, Mr Piepenbrock sent a further email. This email clarified some evidence given at the High Court about which rooms in Seatle, in 2012, were booked when and for which individuals. It is clear this was of concern to the claimant. It was a detail not specifically relevant to this hearing. The tribunal noted the clarification.

7 March 2022

4.84 On 7 March 2020, cross-examination of the claimant commenced. He was able to participate most the day and was given breaks as requested. At around 10:43, we granted the claimant's request for adjournment, as he asked for a five-minute break because of a buildup of stress and anxiety. We adjourned again at 11:31, as requested. We adjourned for an early lunch at 12:36. In the afternoon, we adjourned at about 14:50. At 16:07 we adjourned to the following day.

4.85 At the end of the day, there was some discussion as to what breaches of duty and breaches of contract were found by the High Court. We noted that any dispute would be for resolution by the tribunal during deliberations, but we would seek to give as much guidance as practicable.

4.86 Prior to the hearing, it had been agreed that, as far as practicable, Wednesdays would be rest days. The claimant had indicated that he wished to vary this so that he would only be required to give evidence every other day. We agreed that this would be kept under review, but we agreed that the original plan would proceed. We noted the claimant agreed with the proposal that cross-examination of him would be completed within four days. This would mean that by the weekend he would no longer be giving evidence and would be free to discuss the case. We noted that it would be stressful for him not to discuss the case, and therefore, the cross-examination should be as short as was reasonably practicable to reduce the stress. Having considered this matter, the claimant agreed that the original plan was the most appropriate. We confirmed it would be kept under review.

4.87 During the hearing, the respondent sought "clarification" as to what parts of the bundle should be made available to the press. We confirmed that the whole bundle should be made available to the press. Should the respondent wish to vary the position, it would be necessary to make an application. No such application was received.

4.88 At 22:37 on 7 March 2022, Mr Piepenbrock sent an email. The email approved of the tribunal's handling of the hearing, and the provisions made for reasonable adjustments.

Dear Judge Hodgson,

> **Just as my father stated to you at the end of the hearing, I too am very appreciative of the way that you handled the hearing today, taking reasonable (if not excellent) care to make adjustments for his multiple disabilities. If only the LSE had taken a fraction of the care that you are, we would likely not be in this hearing nearly ten years later. As expected, he is exhausted and has been asleep for most of the evening since the hearing ended. Although I know that you will monitor the situation tomorrow, I was hoping that you might consider a slightly earlier finish tomorrow - perhaps 3pm if you believe that the circumstances merit it. Thank you in advance for your consideration on this point.**

4.89 In addition, the email considered the breaches of contract and breaches of duty of care. Ultimately, this is not controversial, and we do not need to set out the detail.

8 March 2022

4.90 On 8 March 2022, cross-examination of the claimant continued. He had asked for the day to be shortened, it was agreed that we should review it in the afternoon, but in principle, if he needed a shorter day, it would be granted. There was a break at 11:15. (The hearing started slightly late because of the tribunal's difficulty connecting to the video hearing.) We took an early lunch at 12:33 and resumed at 13:57 (there was a short delay because of further technical issues). The claimant was upset about the way he perceived he had appeared in the morning, but following a short discussion was able to proceed. We had a further break, as requested at 14:54. Thereafter we agreed to the claimant's request for a shorter day and following some further discussion about procedural matters before we stopped at 15:41. We agreed that Wednesday 9 March would be a rest day, the claimant would not be required to attend.

4.91 The agreed rest day took place on 9 March 2022.

4.92 On 9 March 2022 at 22:33, Mr Piepenbrock sent a further email as follows:

> **Dear Judge Hodgson,**
>
> **Public Access to ET Documents**
> **As the LSE's solicitors are hosting public access to ET documents, you directed the LSE's solicitors to copy me in all correspondence with the Press in the spirit of transparency. I have strong evidence to suggest that I have not been copied into all correspondence between the LSE's solicitors and the media. I request therefore that the LSE's solicitors explain why they did not comply with your order.**
>
> **Also, I attended *Pinsent Masons*' London office today to ensure that the appropriate ET documents were available for the press and the public to view, per your order. Unfortunately, I was not permitted to view the materials. I was wondering whether this was what you had envisaged.**
>
> **BBC Documentary and audio recordings**
> **An award-winning director who makes documentary films for the BBC wrote to my parents that he would like to make a documentary of this LSE scandal: *"My heart broke for Ted — and obviously for you and your son. Such an awful turn of events and terrible the impact it's had on him,***

> ***someone with integrity and an extraordinary teacher and thinker. I'd like to see if I could help you both with a film. It's a story that needs telling — the fact that this has happened to other people as well is awful."*** **He stated that his motivation for these documentaries are people with integrity: *"I get my inspiration from the people that I make my films about. These are people who have integrity... and they are often punished for having integrity. We live in a world where if you have integrity, life is a lot harder."***
>
> **As background material for such endeavours, there exists recorded audio evidence of interviews with Dr Piepenbrock's LSE faculty colleagues in which they allege unethical/unlawful behaviour by the LSE, excerpts of which are provided in my father's Witness Statement paragraph 41. I am writing to ask if you require the audio recordings of the transcripts, and if so, how I would be able to get these to you.**
>
> **<u>Other Witnesses</u>**
> **By way of an update on any remaining witnesses for the Claimant, it appears unlikely for the reasons given in Dr Piepenbrock's supplementary statement (dated 25 February 2022), that any further witnesses feel able to come forward and/or will be called. I believe, however, that we will want to submit their signed witness statements as evidence and as part of the official record. I hope this is helpful.**
>
> **Thank you in advance for your consideration.**

4.93 On 10 March, it was agreed that it would not be possible to deal fully with the email until Dr Piepenbrock had completed his evidence. The claimant was able to give evidence on 10 March 2022. We offered several breaks. We allowed breaks as a they were requested. The claimant was, largely, able to deal appropriately with the cross-examination. To the extent that he showed any signs of distress, or difficulty, breaks were offered, and upon returning, he was able to proceed.

4.94 We offered a break at 10:55. We gave a further break at 11:45, as the claimant appeared distressed. He confirmed that he was able to proceed when he returned at 12:00, and he thanked the tribunal for the way it was dealing with the hearing.

4.95 We took an early lunch at 12:15, as the claimant once again appeared distressed, and left the video call. We took an extended lunch. After lunch Dr Piepenbrock confirmed he was able to proceed. We adjourned at 14:44 and the hearing concluded at 16:00.

4.96 At various times during the week, we confirmed that the claimant would need to give consideration to the proposed timetable for cross-examination of the respondent's witnesses. We also explained it would be necessary to consider which statements from those witnesses who were not called would be put in evidence.

<u>11 March 2022</u>

4.97 On 11 March, the cross-examination of the claimant proceeded and concluded around 15:00 in the afternoon. We had a break in the morning at 11:13 and lunch at 12:57. The afternoon was taken up with re-

examination which concluded around 15:00. The claimant was able to cope adequately with the cross-examination, albeit he found it stressful; his reaction to the stress appeared to be, generally, well contained. No criticism was made of the tribunal's handling, and at various times, the claimant and Mr Piepenbrock confirmed that both the tribunal's handling of the claim, and the adjustments it had made, were reasonable and appropriate and appreciated.

4.98 On 11 March 2022, we confirmed, again, that after the weekend, the claimant would be expected to confirm which further statements would be put in evidence, and thereafter to consider the timetable for cross-examination of the respondent's witnesses. There was no suggestion that the claimant would not be able to proceed, or that there would be difficulty in continuing with the hearing.

14 March 2022

4.99 On 14 March 2022, at 01:57, Mr Piepenbrock sent the following email:

> **Dear Judge Hodgson,**
>
> **My Father's Health**
> **As I believe you know, due to my father's chronic depression/anxiety, he has slept during the days and has been up during the nights for the vast majority of the past nine years. This has taken a toll on his physical health. After a challenging first week, which included debilitating autistic meltdowns/shutdowns, followed by a long week of cross-examination, my father is mentally and physically exhausted and has developed increasing chest pains over the weekend. In spite of your best efforts to manage the ET hearing making reasonable adjustments these past two weeks for his mental health disabilities, my father's mental and now physical health problems have unfortunately begun to accumulate, and the NHS doctors strongly recommended that he go to the emergency room tonight to diagnose and treat his increasing heart problems. (I attach a photo of the hospital wristband that he received a short time ago).**
>
> **Due to my father's deteriorating medical condition, he will unfortunately not be able to attend the hearing today, and I will endeavour to get a GP appointment later today which can hopefully give guidance and recommendations for how to make further reasonable adjustments for his safe return, hopefully tomorrow (Tuesday).**
>
> **Not only do I need to care for my father, but it would be difficult for me to conduct cross-examination by myself, as I rely on him for many facts, as well as for attempting to take notes, despite his challenges with concentration and writing. I note that Mr Michell had a paralegal and multiple members of the Respondent who could have been relied upon to take notes for him, and I would have no such equivalent.**
>
> **While I still remain confident that we will be able to cross-examine all of the Respondent's witnesses within the timescales which you originally set out, I am concerned that this week will be critical to ensure that additional reasonable adjustments are made to minimise the accumulation of mental and physical health issues so that they do not end up delaying the hearing further and possibly putting a fair hearing in jeopardy. Therefore, I would like to ask if you might consider making a reasonable adjustment for his**

> **physical health problems in line with any GP recommendations that I am able to secure to allow him to be able (with my support) to finish conducting the litigation that he has waited for nearly a decade to litigate. I will email you before the hearing begins to give you any update that I have at that time.**
>
> **Please note that I have not copied the Respondent into this correspondence, as my father's current medical condition is private and it is not necessary for them to know the details, other than to know that he will be unable to attend the hearing today.**
>
> **Thank you in advance for your patience and consideration.**
>
> **Faithfully Yours,**

4.100 On 14 March 2022 at 09:43, seventeen minutes before the start of the hearing, Mr Piepenbrock sent the following email:

> **Dear Judge Hodgson,**
>
> **As a follow-up to my email at 2am this morning, I wanted to give you an update on my father's health.**
>
> **I just got off the phone with my father's GP, and she has prescribed some medication and she has arranged urgent tests for him at UCL Hospital. She is also writing a letter for you to explain the situation and to recommend an additional reasonable adjustment based on his physical illness. I believe that the letter will be ready for me to pick up later in the afternoon, and I will send it to you as soon as I receive it.**
>
> **To be clear, in spite of my father's illness, he is very keen to cross-examine the Respondent's witnesses, as he has been waiting nearly a decade to do so.**
>
> **I will be able to join the call at 10am but will not be able to conduct the cross-examination this morning without him as he remains asleep. If all goes well, I am hoping that my father will be able to attend the hearing again tomorrow.**
>
> **Thank you as always for your patience and consideration.**

4.101 We discussed the application for adjournment made on 14 March 2022. Mr Piepenbrock confirmed that the effect of his two emails was to seek an adjournment until 10:00, 15 March 2022. He then anticipated that his father would be able to join him, and he could proceed with cross-examination. He confirmed that a GP would provide some form of letter in the afternoon of 14 March 2022, which he would collect. His initial application gave limited details of Dr Piepenbrock's condition, and it was not supported by medical evidence. He stated it was necessary to allow an adjournment, so that his father could assist him with cross-examination, particularly by providing facts. Further, Dr Piepenbrock would be able to take notes. Failure to adjourn was said to undermine the ability of Mr Piepenbrock to deal with cross-examination and present Dr Piepenbrock's case.

4.102 The respondent objected to the application to adjourn. Mr Michell referred to the presidential guidance on seeking a postponement (2013). He noted the claimant had failed to inform the respondent of the application at all. The respondent had not been invited to send objections. No medical evidence had been provided. In the circumstances, the normal position would be that the application should not be considered. However, in exceptional circumstances an application may be considered. Further, there had been no attempt to discuss the postponement. The information provided was inadequate and brief. There was no proper explanation about the claimant's medical condition. No supporting evidence had been provided. It follows there was no evidence confirming the nature of the difficulty, its effect on the hearing, the prognosis, or the likely effect on the continuation of the hearing. It appeared the claimant may now be relying on difficulties with his physical health, but the position was fundamentally unclear.

4.103 Further, it was unclear why the claimant would need to be present during cross-examination. Mr Piepenbrock was representing Dr Piepenbrock. Dr Piepenbrock had made it clear that he had read no statement, this even though, by way reasonable adjustment, the statements had been provided months earlier. Delay should not be necessary to enable preparation of cross-examination which could have, and should have, been prepared earlier.

4.104 We adjourned to consider the application. There was considerable force in the respondent's arguments. It was clear Mr Piepenbrock had deliberately chosen not to serve the application to adjourn. The respondent had not been informed of the application to adjourn. The account given of Dr Piepenbrock's difficulties on Sunday evening was inadequate. No proper medical evidence had been filed. It was unclear why it was alleged that Dr Piepenbrock's physical health prevented him from attending on 14 March 2022, when it was his assertion that he would attend on 15 March 2022. It was reasonable to have expected the claimant, via Mr Piepenbrock, to have prepared cross-examination. Instead, the claimant had not read the witness statements, and it appeared little progress had been made in preparing for cross-examination, despite the adjustment of ordering the statements to be exchanged months in advance. It was difficult to see how allowing further time would necessarily improve the situation. It was unlikely to lead to further significant preparation of cross-examination questions.

4.105 We were not persuaded that this was an exceptional case. However, we had regard to the overriding objective, which is to deal with cases fairly and justly. The application to adjourn may not lead to significant disruption of the hearing. Granting the application would lead to the loss of one day of the hearing. We accepted that it was a lengthy hearing. However, that is not, in itself, a reason to allow the time allocated to be used inappropriately or wasted. We were persuaded that it may be possible that the medical evidence could assist. We were also persuaded that there could be a degree of naïveté on the part of Mr Piepenbrock

when failing to inform the respondent of his application to adjourn, such that we should accept that he had not intended to breach any rule.

4.106 Further, it remained unclear to us whether the claimant would be in a position to proceed the following day, and it may be that a more general request to adjourn would be made. In the circumstances, despite our reservations, we considered it better to allow the claimant to produce medical evidence, before confirming whether we should proceed, and if so on what basis. We were therefore persuaded to adjourn until 10:00 the following day.

4.107 We gave consequential orders as follows: the GPs letter must be disclosed to the tribunal and the respondent as soon as is practicable; thereafter, as soon as practicable, the claimant must confirm whether the case should proceed on 15 March 2022; if the claimant proposed a further adjournment, that application for an adjournment must be in writing and copied to the tribunal and the respondent; if an application for adjournment were made, the respondent should, as soon as practicable, give a full written response. That written response should refer to relevant case law and any presidential directions. In addition, we also stated that the claimant should, as far as practicable, provide an estimate of times for cross-examination for each witness.

4.108 Having confirmed our decision to adjourn, there was further discussion about the relevant circumstances which had led to Dr Piepenbrock not attending the hearing. We sought clarification of the medical position. Mr Piepenbrock confirmed the general position. At approximately 22:00 on 13 March 2022, Dr Piepenbrock attempted to read Professor Bevan's statement. This caused him a degree of distress. He experienced anxiety and associated chest pains. It was not unusual for him to experience chest pains, and he had experienced them many times before. Mr Piepenbrock advised Dr Piepenbrock to telephone 111. There was some discussion. This did not result in an ambulance being sent. Instead, Dr Piepenbrock chose to attend at the Royal Free Hospital, presumably at accident and emergency. He walked to the hospital sometime after midnight. This took about 15 minutes. He stayed in the hospital for approximately an hour. It is unclear what investigations were undertaken, if any. It was not known if there had been an ECG. Mr Piepenbrock kept in touch with Dr Piepenbrock by telephone. Dr Piepenbrock reported that he would not be seen for approximately six hours, and thereafter he returned home. He walked once again. In the morning, he had one conversation with his GP. The GP recommended that he take aspirin. It was unclear what referral had been made by his GP. During the morning of the hearing, Dr Piepenbrock was in bed with exhaustion.

4.109 At 15:28, on 14 March 2022, Mr Piepenbrock forwarded a letter from a GP (Dr June Ng). The letter did not provide any confirmation of any physical condition, its effect on the claimant’s ability to participate in the hearing, the prognosis, or any continuing effects. The letter read as follows:

> **I write to confirm that Mr Piepenbrock has today contacted the surgery due to chest pains he has been experiencing.**
>
> **I will be referring Mr Piepenbrock to the Rapid Access Chest Pain Clinic to further investigate these symptoms in case they are cardiac-related.**
>
> **Mr Piepenbrock informs me of the current tribunal hearing. I believe he would benefit from any reasonable adjustments you can make with regards to his rest days to benefit his current physical and mental health.**

4.110 In his email, Mr Piepenbrock stated:

> **I also confirm that although my father remains very unwell, he believes that he will be able to assist me in the hearing tomorrow at 10am.**

15 March 2022

4.111 On day 12 of the hearing, 15 March 2022, the claimant's case was completed. A number of witnesses statements were put in evidence, but the witnesses were not called.

4.112 Thereafter, we considered the conduct of the respondent's case. We had received two emails from the claimant. The first was from Mr Piepenbrock at 15:30. As well as forwarding a letter from the claimant's GP, this suggested, in relation to four witnesses, the claimant's proposed timing. The second email sent on the morning of 15 March 2022 forwarded a copy of the Equality and Human Rights Commission Code of Practice on Employment 2011.

4.113 We noted that the medical evidence was not in itself sufficient to justify an adjournment. We observed that the adjournment was largely in response to concerns about the claimant's mental health, whereas the request was made in relation to his physical health, in particular concerns about his heart. In effect, it was an adjustment to allow the claimant an opportunity to produce medical evidence.

4.114 We reviewed the adjustments already made and considered further adjustments. We noted the role of the tribunal is to provide a fair hearing for both sides. Tribunals should guard against time being wasted. Tribunals should provide guidance. Tribunals should consider adjustments.

4.115 We noted that significant adjustments had already been made for the benefit of the claimant. These included the following: witness statements were exchanged in October 2021 to facilitate preparation; detailed issues were produced by the tribunal to assist the parties; the respondent had produced in tabular form a document indicating which issues were addressed by each witness; the listing was considerably in excess of that which would normally be allowed; the tribunal had continued to give guidance to the claimant and the claimant's representative; breaks had

been allowed (some being identified and offered by the tribunal and some being in response to requests); rest days had been factored in; and the case had been adjourned on Monday, 14 March 2022.

4.116 Matters had been raised during the hearing, including the submissions made by Mr Piepenbrock on 14 March 2022, which caused the tribunal serious concerns. During the submissions on 14 March, which led to the adjournment, Mr Piepenbrock confirmed his preparation was limited. Full cross-examination had not been prepared, and Mr Piepenbrock alleged he was reliant on Dr Piepenbrock in relation to a number of matters, including confirmation of dates. In the circumstances, it appeared that the preparation was limited, and the cross-examination may not have been adequately prepared. Dr Piepenbrock had confirmed he had read none the respondent's statements, despite their being available, by way of reasonable adjustment, many months before the hearing. Further, the tribunal was concerned that the claimant was not fully engaging with directions. In particular, there was no adequate reason for the claimant's failure to say, in relation to each of the respondent's witnesses, how long it was proposed the cross-examination would take.

4.117 The tribunal considered it necessary to make further adjustments. In doing so, the prime aim was to ensure that the claimant could participate reasonably in the hearing. However, that occurred in the context of ensuring that the hearing was fair and that the time allocated, which was already extensive, was not unduly wasted.

4.118 We proposed the following adjustments. Cross-examination of the respondent's witnesses would be limited in time and would conclude no later than 16:00, Friday 25 March 2022. For each witness, we would review the time requested by the claimant. We would consider first what would be a reasonable amount of time for that witness to be cross-examined, having regard to the witness's importance, and having regard to what relevant evidence could be given relating to the issues. It may be appropriate to allow up to twice the normal time for cross-examination of the witness and that initial extension of time would be an adjustment. During cross-examination, we would actively assist the claimant, and his representative, to identify for each witness the relevant issues. We would give guidance on the relevance of questions, and an indication as to the matters which should reasonably be explored with the witness. Towards the end of any cross-examination, we would review whether time for the witness should be extended. Time would be extended in limited circumstances, having regard to the following: whether the claimant and his representative had been able to accept guidance; whether the cross-examination had addressed the issues and avoided exploring irrelevant material; whether the engagement with the witness and the tribunal had been reasonable; and if it was reasonably necessary for more time to be given to explore relevant matters. We noted that if the claimant or his representative had not been able to focus on relevant issues, it may not be appropriate to extend time, particularly if it was likely further time would be used to cross-examine on peripheral or irrelevant matters.

4.119 Both Dr and Mr Piepenbrock agreed that the proposals were appropriate and realistic.

17 March 2022

4.120 After cross-examination of Professor Gaskell was completed, we considered the timetable. The claimant had initially asked for two days to cross-examine Professor Estrin. EJ Hodgson confirmed that he had read the statement of Professor Estrin and cross-referenced it to the issues and the matters raised in the claimant's statement. It appeared that Professor Estrin's role was limited. There were limited detriments alleged which largely related to comments in emails. Much of the background had been decided by the High Court. It appeared the cross-examination of Professor Estrin should be limited. Having regard to the matters already decided, the points in issue, and the available evidence, a reasonable time estimate for cross-examination would be in the region of an hour. Given the claimant's disability, it would be reasonable to double that time estimate and thereafter to actively review it, having regard to the principles already established.

4.121 There was approximately two hours of cross-examination in the morning. There were difficulties with the cross-examination. There was little or no attempt in the morning to address the specific detriments. Instead, Mr Piepenbrock focused on what he described as the proportionate means of achieving a legitimate aim. This was discussed and it was noted that the basic aim and its legitimacy, which revolved around providing proper teaching for students, was not disputed. It was explained that the unfavourable treatment, the detrimental act, must be the means of achieving the aim. In this case what was at issue was the failure to renew his teaching post. It was that decision to renew which must be a means to achieve the aim and must be proportionate. However, the cross-examination appeared to focus on the expense of replacing the claimant on short term notice with other individuals. Unfortunately, the claimant found it difficult to understand and persisted in pursuing questions that were ultimately irrelevant. At around midday, the tribunal identified the detriments, and in particular referred to the specific pages which needed to be considered. However, despite encouragement the claimant and his representative found it difficult to focus on the issues. The tribunal allowed time to be extended into the afternoon. Breaks were allowed, as requested, and the tribunal continued to attempt to give guidance. By the end of the afternoon, the claimant's representative still appeared to have difficulty focusing on the matters before the tribunal. In the circumstances, the tribunal confirmed it would adjourn for the evening to allow the claimant to consider his position. Thereafter, a further half an hour would be allowed for cross-examination of Professor Estrin. The tribunal confirmed that one way forward would be for the claimant to state, generally, the points he believed demonstrated that the alleged detrimental treatment was because of a protected act or was because of something arising in consequence of disability. It may then be possible for

EJ Hodgson to frame those points as questions. However, it was not for the tribunal to undertake cross-examination.

The rest of the hearing

4.122 On Friday, 18 March 2022, after the hearing, the respondent filed a statement from Ms Joanne Hay, together with an application to admit her evidence. The respondent had indicated, towards the end of Friday, that the application would be filed. We confirmed that it would not be dealt with until the end of the respondent's evidence.

4.123 On Monday, 21 March 2022, we confirmed that we would not deal with the application until the end of the week, so that the claimant could fully consider it. We confirmed both parties should set out their positions in writing. Ultimately, we ordered submissions to be made by no later than 9:00, Friday 25 March. At the end of the respondent's evidence on 25 March 2022, we received oral submissions, and confirmed we would reserve judgement. We agreed with the parties that we would inform the parties as to whether we had allowed the application to admit Ms Joanne Hay's evidence so that the parties could address her evidence, if necessary, in their submissions. We agreed that the reasons for the decision would be reserved and would be produced in the final judgement. However, both parties expressed the view that it be helpful to know whether the application had been allowed and it would not be necessary to have the reasons to complete the submissions.

4.124 On 24 March 2022, we received a written application from Mr Piepenbrock to extend time for filing the submissions. It had been agreed, initially, that the submissions would be filed on Monday, 28 March 2022. An extension of two days to 30 March 2022 was requested as a "reasonable adjustment." The respondent did not object. The tribunal granted the request, as a reasonable adjustment. It was confirmed that submissions must be filed by 16:00, 30 March 2022. Oral submissions would take place at 10:00, 31 March 2022. In addition, we directed the respondent should provide a list of authorities that it relies on and identify which of those appeared on **Bailii** or the EAT website. The respondent should send a list of all the cases relied on and copies of up to six authorities that were most important. We noted that there was a balance to be struck. During the course of the hearing, we had explained the nature of law, and in particular matters which the claimant needed to focus on. We had explained the importance of setting out the facts relied on, identifying whether detrimental treatment occurred, and thereafter explaining why treatment was discriminatory. In the case of victimisation, it was necessary to consider what evidence indicated any detrimental treatment was because of a protected act, rather than the reasons advanced by the respondent. We also spent some time explaining the nature of discrimination because of something arising in consequence of disability and the justification defense for the purposes of the section 15 claim. We reiterated that the claimant should focus on these matters and should not

be distracted by attempting to digest in detail the case law on which the respondent may choose to rely. Arguments about the law could be clarified during oral submissions. Hence, the order was designed to provide the claimant with appropriate information, but to avoid unnecessarily overloading the claimant with case law which may distract from reasonable preparation of the claimant's own submissions.

4.125 On 25 March 2022, after the last witness, Mr Andrew Webb, had given his evidence, we asked Mr Michell to confirm whether the respondent was relying on the statement of Ms D. It had always been the respondent's position that this D would not be called. Mr Michell confirmed that the respondent did wish to rely on her evidence. As her statement had been exchanged in accordance with the relevant case management order, the respondent could, as of right, ask us to take the statement into account. Mr Piepenbrock objected to the respondent relying on the statement. He stated that Ms D's evidence was irrelevant. We noted that he had a number of choices as follows: he could simply allow the evidence to be considered, and make submissions about it; he could allow it to be admitted and, in submissions, say it was irrelevant; or he could apply to exclude it on the basis it was irrelevant (in whole or in part). We allowed him time to consider this. Mr Piepenbrock elected to make an application to exclude it completely on the ground it was irrelevant. We directed that the application should be put in writing, together with all supporting arguments. He should make it clear whether all of the evidence was objected to as being irrelevant, or any part of it. The application must be filed by 09:00 on Monday 28 January. The respondent was to file its response by 16:00 on Monday 28 January. If practical, we would make a decision and communicate it to the parties. The reasons would be reserved and given in the final judgement. Both parties confirmed that they were content to be notified by email, rather than orally at a hearing.

4.126 On 29 March 2022 at 11:59, Mr Piepenbrock made a further application for reasonable adjustments. He sought a further 24 hours to file his submissions. By way of a further reasonable adjustments, this was granted.

<u>Ms Hay’s evidence</u>

4.127 On 18 March 2022, at 16:51, the respondent filed an application to admit, as late evidence, Ms Joanne Hay’s statement. The letter set out supporting reasons, which in summary were as follows: the pleaded case had no allegations against Ms Hay; salacious and false allegations were made by the claimant in his October 2020 witness statement; the statement of Dr Paul Thornbury had been admitted late, by consent, but contained irrelevant allegations; the claimant had been focused on ensuring the press gained access to the case papers; the press had reported on allegations of sexual misconduct made against Ms Hay, and had published allegations made by Dr Thornbury, it being the respondent's case the allegations against Ms Hay were sensationalist and untrue; and Ms Hay had been upset.

4.128 The application went on to set out arguments for admission of the evidence; these included the following: the false allegations against Ms Hay had the protection of litigation privilege; the claimant was litigious and has brought one claim against Ms Hay and is pursuing a further claim, it being the respondent's case that "it is all but impossible for Ms Hay to 'set the record straight' without the threat and likelihood of further legal action from the claimant;" Ms Hay had no safe right of reply; a safe right of reply is essential for article 6 purposes and the protection of article 8 and/or article 10 rights; permission had been given to rely on Dr Thornbury's statement; and allowing her evidence would further the overriding objective.

4.129 Further submissions were made both by the respondent and the claimant in accordance with the tribunal's order.

4.130 The respondent's further submissions dated 25 March 2022 continued with the themes identified in the original application. It confirmed that she would not be called to give evidence. It alleged she had not produced a statement previously because there were no allegations of wrongdoing against her. It acknowledged that there were "serious, scandalous and false allegations" made by the claimant, against Ms Hay, in the claimant's witness statement of 9 October 2020. It had been decided to take no action at that time. It referred to Dr Thornbury's statement and noted the respondent had not objected to it, accepting that it may be proportionate to admit evidence, even when not relevant. It alleged there had been press coverage and stated the following:

> **8. Unfortunately, the allegations contained in C's witness statement which concern JH- in particular, the false allegations of sexual assault in 2011- are matters which some of the media have chosen to focus on. Some press reports have also used PT's statement as part of the 'story' e.g. [27]. As a result, there have been a number of press reports which have reproduced C's false and sensationalist allegations against JH. See e.g. [11]; [13]-[17]. This salacious coverage was quite unexpected, given (as set out above) the irrelevance of the allegations against JH to the pleaded case**

4.131 It says this of Ms Hay's statement:

> **9. JH has - as she explains in her statement - been deeply upset by the press reports and by what she sees as yet another personalised attack by C. She has therefore prepared her witness statement in order to "set the record straight", in the more protective environment of the tribunal. The statement is restricted to the allegations made by C. So, it does not seek to engage with other issues in the case (which plainly could have been dealt with 'first time around').**

4.132 It notes that privilege may attach to the allegations made against Ms Hay in these proceedings. At paragraph 12 and 13 it states the following:

> **12. JH is therefore left with no safe right of reply or ability to give her own account, unless she can give it in the context of evidence via her statement.**

> **13. To enable her to do so is essential for Article 6 purposes, and/or for the protection of JH's Article 8 and/or Article 10 rights. In particular:**
>
> **a. Her reputation has been traduced in the press. She ought to be given the opportunity to respond, and within the confines of this case. A trial which enables wholly false allegations to be maintained without opportunity for response within that litigation is unfair to individual concerned.**
>
> **b. C has already been given permission to adduce PT's late and irrelevant evidence. PT's statement has already been used by the press [27]. There ought to be parity of treatment for Article 6 purposes, especially given paras 9-12 above. As explained by EJH, it is well established that the tribunal can decide relevance when considering its conclusions, and it is not likely to be inappropriately influenced by irrelevant evidence.**
>
> **c. JH's evidence is short and to the point. No 'new' issues are introduced by her. Her denial of sexual assault has already been put to C in XX. And her evidence at least engages with matters in C's statement, rather than – in the case of PT - addressing entirely new matters.**
>
> **d. It is impossible to discern any prejudice C can legitimately be said to sustain if the statement is admitted. The prejudice to JH if it is not admitted is significant, for the reasons set out above**.

4.133 The claimant filed written submissions opposing inclusion of Ms Hay's statement. Paragraph 2 says the following:

> **2. Given Ms Hay's drunken sexual assault of Dr Piepenbrock over ten years ago in September 2011 and her subsequent retaliatory campaign against her victim, Ms Hay and the LSE have had more than enough time to address the serious allegations against her.**

4.134 At paragraph 4 it is alleged that Ms Hay is a central witness it says the following:

> **4. The contemporaneous documentary evidence clearly shows that Ms Hay was a central witness for the LSE in Dr Piepenbrock's Employment Tribunal claim, and yet the LSE chose not to call her as a witness, in spite of the fact that she was chosen to be a witness in the High Court, where the Judge issued findings that she was central to the breaches of duty of care and contract that the LSE was criticised for. The refusal to call Ms Hay as a witness in this ET claim was a litigation choice made by Ms Hay and the LSE which they should now have to live with.**

4.135 It alleges that the respondent has been on notice of the allegations against Ms Hay, which were contained in the claimant's witness statement, from 9 October 2020. It is alleged it is "far too late and is entirely unreasonable" to admit the statement. It alleges the respondent has failed to apply for anonymity.

4.136 Paragraph 8 goes on to allege that Ms Hay's proposed witness statement is irrelevant it says the following:

> **8. Ms Hay's proposed witness statement concerning her 2011 drunken sexual assault is irrelevant to Dr Piepenbrock's case of victimisation, discrimination arising from disability and unfair dismissal. Ms Hay was,**

> **however, a central witness to these unlawful activities, and yet she offers no testimony whatsoever to her role in these highly relevant issues.**

4.137 As to irrelevance, the claimant confirmed that the approach of the tribunal had been appropriate. He says this at paragraph 11.

> **11. Mr Michell attempted to cross-examine Dr Piepenbrock on Ms Hay's drunken sexual assault of him and ET Judge Hodgson rightly stopped the questioning based on irrelevance. It was Mr Michell's choice to insist on having Dr Piepenbrock read out allegations of Ms Hay's sexual assault in a public hearing with the press present, which was ostensibly another 'poor litigation choice'. This was an entirely self-inflicted wound by Mr Michell and the LSE.**

4.138 At paragraph 13, the claimant acknowledges that he raised no grievance against Ms Hay whilst an employee of the LSE. He goes on to say:

> **13. …If Ms Hay had attended Dr Piepenbrock's ET cross-examination, she would have heard him state under oath that he was strongly advised by LSE colleagues not to raise any grievance against Ms Hay, otherwise she would unleash the 'harassment machine' against Dr Piepenbrock, which she did anyway, because Dr Piepenbrock spurned her unwanted advance. Ms Hay's also asks why Dr Piepenbrock did not raise her drunken sexual assault in the High Court. If Ms Hay had attended Dr Piepenbrock's ET cross-examination, she would have heard him state under oath that he did attempt to raise it in the High Court, but he could not develop his explanation as it was advised that he would be in violation of legal privilege.**

4.139 At paragraph 14 the claimant alleges that her statement, concerning the alleged assault, is "false testimony." He goes on to refer to this as possible perjury. Much of the remainder of his submission goes on to dispute the veracity of the evidence that Ms Hay proposes to give. He maintains his allegation that Ms Hay's behaviour amounted to bullying. He refers to her "excessive drinking." He alleges there were many grievances made against her.

4.140 The claimant states that admitting irrelevant evidence is an abuse of the ET process. He says this at paragraph 19:

> **19. The fact that Ms Hay seeks to offer an irrelevant witness statement and then refuses to be cross-examined on it is further evidence of her manipulative and self-serving motives.**

4.141 At paragraph 20 of his submissions, he says the following:

> **20. It was Ms Hay who was responsible for defaming Dr Piepenbrock in the international media in 2018 with her false statements that he was a 'master manipulator' on the alleged basis that he did not engage with the investigation into Ms D's not proven allegations, when Ms Hay knew that Dr Piepenbrock repeatedly engaged in this investigation, both in giving oral and written testimony over a period of seven months. To the contrary, Dr Piepenbrock spoke the truth about Ms Hay's drunken sexual assault both in his signed witness and his sworn testimony in the Employment Tribunal, which has been recently covered in the media. Dr Piepenbrock's statements about Ms Hay are not defamatory (even without protection**

afforded by litigation privilege) as they are statements of truth, and it was the media's decision of what to publish.

4.142 The claimant concludes by alleging that Ms Hay mocked ET judges and makes further allegations against her.

4.143 In his oral submissions, Mr Michell submitted the no allegations had been made against Ms Hay during the claimant's employment and there is no allegation against her in the claim.

4.144 It is accepted that around 2018 a grievance was brought against Ms Hay. This followed the High Court proceedings and a subsequent report by the Daily Mail in which the claimant was described as a master manipulator. The respondent believes the claimant has formed the view that Ms Hay was responsible for the article. Thereafter, the allegations made against her, by way of grievance, and otherwise, were retaliation for her alleged involvement in the Daily Mail article. It follows that the respondent's position is her evidence is not relevant to the current proceedings, but the background is the claimant now has a vendetta against her and is seeking to play it out in these proceedings.

4.145 It is clear from the claimant's own submissions that Mr Michell is, essentially, correct. Paragraph 20 of the claimant submissions confirms his belief that she was responsible for what he considers to be false statements made in the media in 2018. This is confirmed by paragraph 302 of the claimant's statement, where alleges that it was Ms Hay who "lied to the Daily Mail."

4.146 The claimant does nothing to dispute the respondent's contention that there is no allegation against Ms Hay in the current proceedings. The claimant submissions do nothing to identify how, or in what manner, any evidence that could be given by Ms Hay, or about Ms Hay, is relevant to any issues in this case. Both parties appear to agree that Ms Hay's evidence, as it relates to the matters to be decided in this case, is essentially irrelevant. The claimant appears to accept in paragraph 8 of his own submissions that her evidence is irrelevant.

4.147 The claimant's submissions do nothing to establish why he has given evidence in relation to the alleged conduct of Ms Hay. The evidence does not go directly to any issue in this case. There is a general assertion made by the claimant in his statement that Ms Hay is in fact the central witness. The claimant's case has now developed to the point where he accuses Ms Hay of being the most important orchestrator of the harassment against him. For example He says this at paragraph 42 of his statement: "Ms Hay had a reputation for being a bully, for excessive drinking of alcohol while at work, and for orchestrating the LSE's infamous 'harassment machine', precisely the behaviour that Lord Woolf had just called out."

4.148 As to why he did not bring any allegations against her whilst employed, the claimant's case is that he was advised, by persons unnamed,[15] that he should not bring a claim against her, as it would lead to his career being ruined. No rational explanation is given for his continuing failure to include Ms Hay in his claim brought in 2015, when he had been dismissed. His explanation, which revolves around the assertion that he was too frightened to proceed against her, is not one we can accept. The claimant's behaviour, whilst employed, is characterised by his bringing complaints against numerous individuals, including the most senior employee. There is nothing to suggest that his behaviour was dictated by the fear of any individual. Moreover, the suggestion, that in some manner he made a rational decision not to bring a claim against the person he now describes as the central player in the alleged harassment he received, is unsustainable. It is the claimant's own case that he is driven by the need to challenge untruthful statements and inappropriate behaviour. His willingness to raise complaints and grievances is illustrated and confirmed by the entirety of his approach to the dispute with the respondent, and his approach to every aspect of the subsequent litigation. Had he believed Ms Hay was a central player, and indeed the orchestrator of a campaign against him, he would have brought a grievance against her. Dr Piepenbrock asks us to believe that, in some manner, he chose to protect the person who was orchestrating the campaign against him, and instead he focused on numerous individuals who played more minor roles. That is not believable.

4.149 We find, on the balance of probability, Ms Hay has become a focus of the claimant's allegations in his witness statement because of her perceived involvement with the publication of a Daily Mail article in 2018. The claimant's action is essentially retaliatory for that article. This has led the claimant to make numerous allegations against Ms Hay in his witness statement. He has failed to establish any relevance in his own submissions. On a careful reading of his submissions, he appears to accept that her evidence is irrelevant. It would also appear therefore that he admits his own evidence on this point is equally irrelevant.

4.150 The respondent has made choices in this matter. It rightly identified that there are no claims against Ms Hay. It identified that numerous allegations are made against Ms Hay in the claimant's statement. Her name is mentioned 87 times in the claimant's statement and much of the statement concerns unattributed allegations against her. The respondent took the view that many of those allegations are scurrilous and vexatious. Nevertheless, it chose not to apply to exclude any part of the claimant's statement; we accept that that decision may have been made for sensible reasons in the context of extremely contentious litigation.

4.151 The respondent chose to take a similar view in relation to Dr Thornbury's evidence. It was open to the respondent, at any time, to apply to exclude

[15] No detail is given anywhere about who those people are, what was discussed, what was disclosed, or how the claimant sought, if at all, to maintain any confidentiality about the potential grievances.

that evidence on the basis that it was irrelevant. There can be no criticism of the respondent for failing to do so. The respondent has taken the view, quite reasonably, that the claimant is extremely litigious, and that, no doubt, inhibited the respondent from taking more aggressive action in relation to what it perceived to be scurrilous and irrelevant evidence. The tribunal has accepted that approach, again for pragmatic reasons. However, the decision is ultimately the respondent's.

4.152 The result is that significant amounts of evidence have been put before the tribunal which are not relevant. There can be little doubt that had the respondent chosen to submit Ms Hay's statement shortly after 9 October 2021, it would have been admitted. If not admitted, the corollary would have been EJ Hodgson may have been invited to make a ruling on the admissibility of those aspects of the claimant's evidence which were said to be irrelevant, gratuitous, or scurrilous.

4.153 It was always a possibility that when that evidence was admitted, it would be reported by the press. That happened. It is not for the tribunal to interfere with the right of the press to report matters as the press sees fit. It is not for the tribunal to set any record straight. It is not for the tribunal to allow those who allege they have been maligned in press reports to use the tribunal forum to answer those allegations. Tribunals must hear cases fairly and justly. As for evidence, the basic principle is only evidence which is sufficiently relevant should be admitted.

4.154 It is the respondent's case that Ms Hay's evidence does not go to the issues in this case. It appears that is right. It remains the respondent's position that the claimant has led irrelevant evidence regarding Ms Hay. The respondent has allowed that evidence to be presented to the tribunal and has accepted that it will be challenged in submissions. That is a very common position. However, it does leave the possibility that those allegations, which may ultimately prove to be irrelevant and retaliatory, may be reported on.

4.155 The respondent has asked that we admit, consequently, irrelevant evidence from Ms Hay. Further, that we then decide points of dispute about alleged scurrilous allegations which are themselves irrelevant to the issues that we must decide. It is not part of the tribunal's function to decide disputes which are irrelevant to the issues in a case. This would be an abuse of process. We do not criticise the respondent for taking the stance it has in relation to Ms Hay's evidence. The difficulty arises primarily because of the claimant's action in making allegations which appear to have no relevance in this case. However, we cannot allow the tribunal process to be manipulated in this manner.

4.156 The arguments advanced in relation to Ms Hays' article 6, 8, and 10 rights do not, in our view, take the matter further. Article 6 concerns the right to a fair trial. Ms Hay is not a party to the proceedings. The respondent knew about the allegations made by the claimant against Ms Hay. We have no reason to believe that Ms Hay was not informed of those

allegations. There was reasonable opportunity to seek to exclude the evidence, or to put in evidence of her own.

4.157 Article 8 concerns the right to live a private life without government interference. The respondent's submissions do not develop how this is relevant.

4.158 Article 10 concerns the right to freedom of expression. It appears to be the respondent's position that as, on its case, the claimant has misused this litigation to make irrelevant and false allegations, she should be able to answer those in these proceedings. It was open to her to file a statement at an earlier stage. There is nothing to stop her refuting the allegations outside the tribunal. We are not persuaded the proposed course, said to protect the freedom to impart information without interference by public authority, is an appropriate use of the tribunal's time.

4.159 We refuse the respondent's application to admit Ms Hay's evidence.

4.160 On 28 March 2022, the claimant applied to exclude Ms D's evidence.

4.161 Paragraph 1 of his application read as follows:

> **1. Dr Piepenbrock makes this application to exclude Ms D's entire witness statement from the current Employment Tribunal proceedings on the basis that it is false, maliciously-motivated and irrelevant.**

4.162 It is the claimant's case her evidence is false and maliciously motivated. He goes on to allege that the falseness and malice were admitted by Ms D, and he cites alleged evidence of Mr Wargel. He alleges that the High Court made damning findings against Ms D. He goes on to say that despite all the evidence he has cited,"...the unstable stalker continues to accelerate her false, malicious and discredited allegations with increasing venom and hysteria, going so far as to disgustingly accuse Dr Piepenbrock nearly a decade later in her ET witness statement of 'grooming' her, in spite of the fact that she was not a child, but a grown adult woman when she exposed herself to Dr Piepenbrock."

4.163 The claimant is critical of Ms D's failure to give evidence in the High Court. He alleges she lied to the High Court in her application for anonymity. He says this at paragraph 9.

> **9. In spite of this, Ms D refused to offer a witness statement in Dr Piepenbrock's High Court litigation where she was the critical central witness, and instead, she maliciously offered a witness statement in Dr Piepenbrock's Employment Tribunal litigation, where she has absolutely no relevance. Her ET witness statement is clearly maliciously-motivated.**

4.164 He alleges that the respondent has accepted her evidence is irrelevant. Nevertheless, at paragraph 13 he goes on to say that if the "irrelevant" statement is admitted there should be a ruling on whether Ms D sexually harassed Dr Piepenbrock on 12 November 2012.

4.165 It follows the central point raised by the claimant is that Ms D's evidence is alleged to be irrelevant. He identifies no single issue, in the current proceedings, to which it is relevant.

4.166 The respondent set out its response in written submissions of 28 March 2022. The respondent makes several general points as follows: Ms D's statement was exchanged in October 2021 in accordance with the tribunal's directions; the claimant's application is late; and the only basis for excluding Miss D's evidence was on the grounds of relevance, and relevance can be decided as part of the tribunal's deliberations, it being the most sensible and proportionate approach.

4.167 The respondent takes issue with the claimant's assertion that Ms D's evidence is false or maliciously motivated. The respondent is critical of the claimant's actions and alleges his behaviour to Ms D and others has been inappropriate. The High Court's finding as to the wrongful nature of the claimant's behaviour towards Ms D is relied on, and it is alleged that the claimant's account of the High Court proceedings is inaccurate. As to the alleged admission by Ms D, it is stated the claimant has distorted the Skype messages by unreasonable selection.

4.168 As to relevance, the respondent says the following at paragraph 4:

> **a. It is extraordinary for C to assert that Ms D's evidence "has absolutely no relevance", and is (therefore) "clearly maliciously motivated", when he has dedicated over 30 pages of his witness statement to making a variety of allegations about her (including 3 pages on the percentage chance of whether or not he saw "private parts").**
> **b. It is predictable but unattractive for C to continue to advance his own narrative, in graphic terms, whilst wanting to silence Ms D on the point. This sits uneasily with GP's submission (in the context of the JH application) that it would be a "clear abuse of process" to make statements in the ET which were not relevant to the claim.**
> **c. C talks at para 8 of his application about 'avoiding estoppel issues'. Presumably, this is in order to exclude evidence - except his own - about pre-12.12.12 events. That will not stand. (Of course, there are 'estoppel issues' – e.g. the HC made several findings which C is stuck with in the ET.)**
> **d. Ms D is named at para 9 of the APOC [A17/9763]. She does not speak to any of the issues set out in the List of Issues. But she speaks to the background of the case. She also speaks to the aftermath. For the reasons she explains in her statement, and for the sake of parity of treatment, her account ought also to be heard. The ET can then make its own assessment as to relevance etc, as set out at para 2(c) & (d) above.**

4.169 The claimant's position is difficult to understand. Evidence may be false and/or malicious; however, that is a finding which can normally only be determined after the evidence has been admitted and tested. There is no basis for an untested finding that Ms D's evidence is false or malicious.

4.170 There are significant differences between the account of Ms D, and the limited account given by the claimant. In particular, Ms D is categorical that she did not expose herself to the claimant when she was in Boston.

There is no basis for our concluding that her evidence is malicious or false. It is now the claimant's case that when she appeared at the hotel room door, she was in a state of undress. As noted by the respondent, several pages of the claimant's statement are dedicated to consideration of whether or not she was wearing underwear or was entirely naked. Whatever the nuances contained in that part of his statement, his oral evidence to us was categorical and he referred to Ms D as showing him her vagina.

4.171 Ms D's evidence is to the effect that the claimant's allegation is invention. The claimant does not develop why he suggests that we can, or should, find that her evidence on this point, or any other point, is false or malicious. It is common ground that he did not allege, at the time, that she appeared before him naked from the waist down. To the extent it is necessary, we will explore these matters further below. However, the claimant did not allege in 2012 that she appeared before him naked. That allegation was not made until June 2013 – over six months after the alleged event. It is at least arguable, on the balance of probability, that had that event occurred, he would have made the allegation contemporaneously. The claimant seeks to persuade us that he took some form of moral high ground to protect Ms D from the consequences of her own sexual harassment of him.

4.172 For the reasons which we will explore more fully below, we do not find the claimant to be a reliable witness. We reject his assertion that he was influenced by some form of benign motivation to protect her from the consequences of her own action. The reality is that if we needed to decide the point, the lack of any contemporaneous allegation by the claimant would weigh heavily and may be determinative. It follows that in no sense whatsoever could we find at this stage that Ms D's evidence on these matters was false or malicious.

4.173 The claimant's main argument is that Ms D's statement is irrelevant. This is an unsustainable position for the claimant to take. The respondent is right to say that the claimant dedicated over thirty pages of his witness statement to making a variety of allegations against Ms D. Ms D answers, in part, some of those allegations.

4.174 There is an argument that much, or all, of the evidence advanced by the claimant concerning the alleged actions of Ms D is irrelevant. There is an argument that the evidence advanced by Ms D is irrelevant in the context of the issues we must decide. However, if that evidence is irrelevant, it should have been obvious to both parties at an early stage and the respondent is right to say that the claimant has delayed without any proper reason or excuse.

4.175 It would have been open to the claimant to admit the irrelevance of his own evidence and invite the tribunal to ignore all comments made about Ms D. However, that was not the claimant's approach. In some manner, which is difficult to understand, he appears to maintain that, despite his

assertion that Ms D's evidence is irrelevant, his evidence relating to Ms D is, in some manner, relevant.

4.176 It is necessary to consider the overriding objective. As part of that, we must, as far as practicable, ensure the parties are on an equal footing. To reject Ms D's evidence as irrelevant, whilst do nothing to exclude the claimant's evidence about Ms D's behaviour, would be the antithesis of ensuring an equal footing. The evidence relating to the actions of Ms D could be irrelevant. As has been noted on several occasions during these proceedings, it is not unusual for a tribunal to hear evidence which ultimately is ignored on the grounds of relevance. In a situation such as this, where the allegations are numerous, broad, and in many cases unclear, it may not always be possible to deal with relevance prior to hearing the evidence. Further, the amount of time necessary to determine relevance may be such as to render its consideration impracticable, and disproportionate. This may lead to unwelcome consequences, such as Ms Hay has experienced.

4.177 In a difficult, contentious case, as this was proven to be, it may be that the tribunal and the parties must accept that relevance may have to be considered as part of the submissions, albeit we accept that such practice is itself fraught with difficulty, and may undermine a fair hearing, particularly if a party advances under the cloak of privilege scurrilous or irrelevant matters.

4.178 In this case, the claimant has led evidence relating to Ms D. Evidence has been provided by Ms D in the form of the witness statement. She has chosen not to give oral evidence. It is possible that all or most of the evidence relating to Ms D is irrelevant. It is possible it is not. It is clear that the events of 12 November 2012 are potentially important and are disputed. However, as the claimant has no intention of excluding the evidence he advances in relation to Ms D, which must on his own submissions be relevant, we see no good reason for excluding her evidence. To do so would be against the overriding objective and the need to ensure an equal footing. The relevance will ultimately be considered in due course. We refuse the claimant's application.

4.179 We observe that it may be possible to argue that there is inconsistency between the decisions in relation to the treatment of Ms Hay's evidence and Ms D's. We would hope that the differences between the two situations should be clear from our reasoning. Lest we be wrong about that, we should say a little more.

4.180 In both cases, a central allegation is that the evidence advanced is irrelevant to the issues. In that there is similarity.

4.181 In the case of Ms D, the claimant makes multiple allegations concerning Ms D. Ms D chose to give a statement. Mr Michell was not wholly prevented from cross-examining on matters relating to Ms D, or putting to the claimant matters contained in her witness statement. As her evidence

was exchanged in accordance with the tribunal's directions, there was no reason why her evidence should not be admitted, and admission of the evidence must be the expectation. The claimant applied, very late in the day, to exclude Ms D's evidence on the basis of relevance. That application could have been made months earlier.

4.182 It follows that the claimant put evidence before the tribunal about Ms D with the expectation that it may be considered relevant, and proceeded in the knowledge that it may be countered by the witness statement of Ms D. It would be inappropriate to allow the claimant's application to succeed, as that could lead him to gain potential advantage, by a late application, that left his evidence unchallenged.

4.183 It would have been preferable to exclude all irrelevant evidence; however, there was no realistic way of ensuring that any irrelevant evidence given by the claimant was excluded, and it may be argued that it is an implicit tenet of the claimant's argument that the evidence is relevant, despite his express submissions, which appear to suggest the contrary. In those circumstances, even though our decision may lead to the admission of the irrelevant evidence, it was better to preserve the position; that preservation was necessary to maintain an equal footing, in the face of an uncertainty as to relevance.

4.184 In the case of Ms Hay, the position is quite different. The tribunal took a much firmer approach when considering what cross-examination should be permitted; matters concerning her potential evidence were not put directly to the claimant. The primary reason for this was the respondent's own assertion that the claimant's evidence on the point was irrelevant. The respondent could have applied to exclude the claimant's evidence, or to serve evidence from Ms Hay, at any time prior to the hearing. Instead, the application was made late in the day. Even then, had there been an argument that Ms Hay's evidence was being presented because it was relevant to the issues in the case, it may have been appropriate to admit it. However, that was not the basis on which it was advanced. It was advanced, in essence, to counter reports in the press, and that is, potentially, an abuse of the tribunal's procedure. In the circumstances, as there was no basis, even on the respondent's case, for arguing that Ms Hay's evidence was necessary in any manner, a consideration of whether an equal footing was being maintained did not arise.

4.185 On 1 April 2022, the claimant applied for permission to rely on further submissions in addition to the 140 pages already filed. At the hearing the tribunal confirmed no open-ended order would be made. If the claimant wanted to rely on further submissions, he should draft them and apply in the normal way.

4.186 The claimant was requested to provide copies of the dictionary definition of bizarre on which he relied. These were supplied by the claimant after the hearing.

4.187 We sought specific submissions on whether it would be appropriate for us to make findings about the events in America, particularly the events of 12 November 2012. Both parties confirmed that they did not wish to call any further evidence and that we should make the appropriate findings. We gave the parties an opportunity to make further oral submissions, as they saw fit. We also confirmed that we would accept any further written submissions.

4.188 On 15 April 2022, the claimant sent further written submissions about Ms D's evidence, and the findings we should make. We have fully considered those submissions.

4.189 We also sought submissions on whether any protected act had been admitted, and if so the extent of the admission. We specifically sought submissions on whether it was necessary for the respondent to formally plead that any alleged protected act contained false information or allegations which were made in bad faith.

4.190 The respondent confirmed that any concession did not go as far as to concede that evidence, information, or allegations were not false and were not made in bad faith. The respondent made it plain that whether any evidence, allegation, or information was false, and whether it was made in bad faith, was an issue that it wished the tribunal to decide. We therefore sought submissions from both parties. Moreover, we gave both parties an opportunity to file further written submissions both on the question of whether it was necessary to formally plead a false allegation made in bad faith or not, and in any event to make any further submissions, as considered necessary or appropriate.

4.191 The respondent sent an email on 6 April 2022 which contained submissions. The respondent's position was that it was not necessary to formally plead bad faith to rely on section 27(3) Equality Act 2010. The respondent maintained that it was sufficient, albeit not necessary, that the claimant has been given notice of the point. Proper notice is a matter of fact in each case. The respondent relied on the High Court decision of Mr Justice Choudhury in **Jenkinson v Robertson** 2022 EWHC 756 (admin). This concerned an allegation of fundamental dishonesty in the context of a personal injury claim, and therefore was not directly on point. However, it was submitted that the approach of the High Court in that appeal was instructive. We have considered that case, and we note that it reviewed several authorities, including **Howlett and another v Davies and another** 2018 1 WLR 948, CA. Newey, LJ, gave some guidance at paragraph 31 of the Court of Appeal's judgment.

> **31. Statements of case are, of course, crucial to the identification of the issues between the parties and what falls to be decided by the court. However, the mere fact that the opposing party has not alleged dishonesty in his pleadings will not necessarily bar a judge from finding a witness to have been lying: in fact, judges must regularly characterise witnesses as having been deliberately untruthful even where there has been no plea of fraud. On top of that, it seems to me that where an insurer in a case such**

> **as the present one, following the guidance given in *Kearsley and Klarfeld [2006] 2 All ER 303* , has denied a claim without putting forward a substantive case of fraud but setting out "the facts from which they would be inviting the judge to draw the inference that the plaintiff had not in fact suffered the injuries he asserted", it must be open to the trial judge, assuming that the relevant points have been adequately explored during the oral evidence, to state in his judgment not just that the Claimant has not proved his case but that, having regard to matters pleaded in the defence, he has concluded (say) that the alleged accident did not happen or that the Claimant was not present. The key question in such a case would be whether the Claimant had been given adequate warning of, and a proper opportunity to deal with, the possibility of such a conclusion and the matters leading the judge to it rather than whether the insurer had positively alleged fraud in its defence."**

4.192 In considering this matter, we have regard to paragraph 25 of Mr Justice Choudhury's decision. In particular, we note that in general where dishonesty is alleged, the party alleging dishonesty must prove it on the balance of probability.

4.193 We have regard to the Supreme Court's decision in **Ivey v Genting Casinos** 2017 UKSC 67. Lord Hughes JSC said this at paragraph 74

> **74. When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.**

4.194 The claimant sent further submissions, dated 15 April 2022, about Ms D's alleged sexual misconduct. The claimant made extensive submissions as to why the tribunal should find that Ms D committed an act of sexual misconduct on 12 November 2012. He alleged that he reprimanded her immediately, and this led to her becoming emotional and hysterical. He alleged, in the submissions, that he had raised her sexual misconduct on 19 November 2012. He quoted extensively from the High Court findings, which he alleged were in support of his position, albeit he is critical of the High Court's finding in relation to why the interaction in Seattle lasted into the early hours of the morning. The claimant relied heavily on a 29-page Skype conversation and alleged that amounted to an admission of the alleged sexual misconduct.

4.195 We have considered that Skype conversation carefully. We find that in no sense whatsoever, is it supportive of the claimant's assertion that Ms D admitted sexual misconduct of any form. The content of the Skype messages is consistent with the contemporaneous account Ms D gave of the relevant events to the LSE.

4.196 The submissions refer to evidence from Mr Mike Wargel. We have found Mr Wargel's evidence does not assist with what happened on 12 November 2012. The claimant refers to evidence from Mr Rashid El Moslimany , Dr Dina Dommett, and Professor Marnette-Piepenbrock. None witnessed the events of 12 November 2012. We have considered all documents referred to by the claimant in the submissions.

4.197 The claimant submissions from 15 April 2020 invite us to accept that Ms D committed an act of sexual misconduct, namely exposing herself to him on 12 November 2012.

4.198 The claimant sent further submissions concerning "bad faith" on 22 April 2022. It is clear from the submissions that the claimant understood that the respondent was seeking to put in issue whether, in making his alleged protected disclosures, he was acting in bad faith. Those submissions address the point. At paragraph 4 of the submissions he states "to allege that Dr Piepenbrock and Professor Marnette-Piepenbrock were not actually desperately trying to save his high valued career, but instead were trying to harass the LSE to get the LSE to treat them both worse and destroy their lives even more is not only absurd but completely insulting to both Dr Piepenbrock and Professor Marnette-Piepenbrock, who have worked tirelessly in good faith for over a decade to try to resolve the situation and to save Dr Piepenbrock's life and career." The submissions go on to develop the theme that it was the LSE that conducted a decade-long campaign of "discrimination, victimisation, harassment and bullying of an innocent man…" He goes on to make allegations about "the LSE's perjury" and alleges that individuals, including Prof Estrin and Mr Gosling, have lied. The submissions contain multiple, and wide-ranging, allegations of improper conduct, and bad faith, on the part of the LSE's employees, including the destruction of evidence. Allegations of bad faith were also levelled against Mr Michell.

4.199 At paragraph 15 of the claimant submissions he states "The act of bad faith at the centre of this entire lawsuit is Ms D's false and malicious allegations against the innocent Dr Piepenbrock." It is clear the claimant invites us to prefer his evidence on the point. We have no doubt that he understood the allegation about bad faith is made in the context of a dispute concerning his allegation of sexual misconduct by Ms D on 12 November 2012. It follows that there can be no doubt that the claimant fully understood the central importance of his allegation that Ms D made sexual advances on 12 November 2012. It is an essential part of his case before us that his allegation is true and this both explained and justified his subsequent actions. That alleged improper conduct of Ms D is a fundamental issue.

4.200 Whilst it is clear from the above submissions that the central importance of Ms D's conduct - that she falsely denied misconduct, and made malicious, retaliatory, accusations against him - was clearly understood, we were concerned to ensure that the claimant had fully understood the effect of

the respondent's position. We therefore, on 5 May 2022, sent a further invitation to provide submissions as follows:

> **The tribunal wishes to draw to the parties' attention to paragraph 49 of the amended grounds of resistance. This paragraph appears to contain admissions in relation to protected acts. However, the extent of that admission is unclear and was disputed at the hearing.**
>
> **To the extent that the amended grounds of resistance contain admissions, the respondent sought to resile from those admissions during oral submissions. The parties were given an opportunity to make submissions, and were invited to make any further written submissions that they deemed necessary.**
>
> **The respondent sought to put in issue whether the alleged protected acts contained information or allegations which were false and made in bad faith. It was the respondent's position that this was a matter open to the tribunal, regardless of the content of the response form.**
>
> **To the extent that it may be necessary to formally withdraw an admission, the tribunal treats the respondent's representations during oral submissions as an application to withdraw any admission made that any email of the claimant contained a protected act.**
>
> **The parties are invited to give any further submissions they wish to in relation to this matter to include, but not limited the matters set out below:**
>
> > **1. The extent to which the respondent made any admissions in relation to protected acts at paragraph 49 of the amended grounds of resistance.**
> > **2. The extent to which the respondent made any admissions in relation to protected acts other than at paragraph 49.**
> > **3. Any submissions on the application to withdraw an admission or concession.**
> > **4. Whether the alleged protected acts contained false information, or contained false allegations, made, in bad faith.**
>
> **The parties shall send any response by 16:00, 11 May 2022.**

4.201 Both parties provided further submissions.

4.202 On 11 May 2022. The respondent's submissions highlight the difficulty caused by the claimant's inadequate pleading. The respondent's primary position was the victimisation case remained unclear. The submission attempts to understand the victimisation claim by reference to the "outline of the protected acts." This document was provided just before the hearing, and it is not a pleading. The respondent, rightly, points out that the claimant has failed at any stage to set out adequately or at all what are said to be the protected acts which are contained in the various emails. The submissions go on to try and rationalise what was said to be admitted. However, that rationalisation cannot be easily reconciled with the admission itself.

4.203 The respondent maintains the allegation of bad faith does not need to be pleaded and does not need to be set out in the response; albeit, it may be necessary to seek permission to withdraw an admission. There is

suggestion that elements of the emails may amount to a protected act, but that is a nuance which is difficult to ascertain from paragraph 49 of the grounds of resistance.

4.204 Paragraph 49 refers to it being admitted the claimant's allegation of unwanted advances amounted to a protected act. However, the grounds of resistance do not refer to bad faith, whether to admit it or dispute it. When making the admission, there is no reference to admitting the claimant did not act in bad faith, and the admission must be read in light of the over-arching assertion that first, there is bad faith, and second, there is no need to plead bad faith. Bad faith is put in issue. We read any admission as falling short of admitting the claimant did not act in bad faith, and implicitly, any admission of a protected act is subject to a finding that the claimant did not act in bad faith.

4.205 The respondent advanced evidence to the effect that Ms D refuted any allegation that she made any form of sexual advance. That evidence is potentially irreconcilable with an admission that the claimant's allegation about Ms D making unwanted sexual advances could amount to a protected act.

4.206 The claimant's further submission asserts that admissions cannot be withdrawn. He alleges the allegation about bad faith is outrageous. There is no doubt the claimant understands that the question about bad faith attaches to his allegation that Ms D made sexual offences. The claimant continues to argue that he is the innocent victim of the actions of the "Ms D's original bad faith." It follows that the claimant understands the question about bad faith revolves around his allegation that Ms D made unwanted sexual advances to him. It is his alleged rejection of her alleged advances which is the foundation of his assertion of innocence.

4.207 It is for the tribunal to decide the facts. It is well recognised that the tribunal is not obliged to accept a respondent's version of events or a claimant's. [16]

4.208 Having decided the facts, it is necessary to consider the law, and apply those facts. Where contentions or admissions are so fundamentally contradicted by the facts, the admission may have to be questioned. An admission based on a fundamental misunderstanding may need to be set aside, but the parties must be able to make submissions on the facts. If bad faith may be found, it may be necessary to ensure that the parties have understood the matter is in question and have been able to give submissions.

4.209 Taking the respondent's position as a whole, it is clear that the respondent takes the view bad faith is in issue, regardless of any admission. We also

[16] See, e.g., *Kuzel v Roche Products* [2008] ICR 799 esp. para. 53 per LJ Mummery in the context of finding a reason for dismissal.

take the view it is clear the respondent seeks to set aside any admission to the extent that it is needed, if there is a finding of bad faith.

4.210 We do not accept a tribunal cannot set aside an admission. We have regard to CPR 14.1. It is not binding, but it is instructive. Admissions made after the commencement of proceedings can be set aside. We have regards to the guidance in **Braybrook v Basildon and Thurrock University NHS Trust** 7 October 2004 EW HC 3352 (QB) as commended by Brooke LJ in **Sowerby v Charlton** 2005 EWCA Civ 1610. We must always consider the overriding objective. In particular we should consider the following: any application must be justified and made in good faith; what is the balance of prejudice; whether any party has been the author of any prejudice they may suffer; the prospect of success of any issues arising from the withdrawal of admission; the public interest in avoiding satellite litigation and disproportionate use of the tribunal's resources.

4.211 In **Judge v Crown Leisure Ltd** [2005] EWCA Civ 571, CA, Smith LJ gave the lead judgment. The case was concerned with constructive unfair dismissal. The tribunal accepted neither party's factual account of the relevant Christmas party, and its finding of fact was not contended for by either. On appeal, there were three challenges: first, the finding of fact was perverse, as it was not contended for by either party; second, there was a procedural irregularity in that the parties should have been given an opportunity to give further submissions on the tribunal's finding of fact concerning the circumstances of the Christmas party; third, the employment tribunal had misunderstood the relevant law concerning the burden of proving legal intent.

4.212 Both the EAT and the Court of Appeal rejected, categorically, the suggestion that the tribunal could not find that the factual circumstances were those for which neither party contended Smith LJ is put as follows:

> **13. The EAT rejected the argument that it had not been open to the ET to find as a fact that there had been a conversation at the party, as claimed by the appellant, but that its content had not been as specific as the appellant had claimed. That conclusion was plainly right, in my view, and the contention that the ET had not been entitled to find the facts as it did has not been pursued in this court. I say no more about it.**

4.213 The alleged procedural irregularity was the failure to give the parties an opportunity to make submissions on the facts as found by the tribunal in relation to the Christmas party. The Court of Appeal accepted that, in principle, it may be necessary to seek further submissions. It said the following:

> **20 … It is highly desirable that if a tribunal foresees that it might make a finding of fact *which has not been contended for*,[17] that possible finding should be raised with the parties during closing submissions. If the Tribunal does not realise what its findings of fact are likely to be until after the hearing has finished, it will usually be necessary to give the parties the**

[17] Our emphasis.

> **opportunity to make further submissions, at least in writing, although not, in my view, necessarily by oral argument.**

4.214 However, whilst Smith LJ noted the general principle, her acceptance was not without reservations. At paragraph 21 she said the following:

> **21. However, the giving of such an opportunity is not, in my judgment, an invariable requirement. That is so for two reasons. First, paragraph 11 of the Employment Tribunal Regulations gives the ET a wide discretion on procedural matters. It seems to me that that discretion is wide enough to encompass a decision as to the appropriate course to take where this kind of situation arises. *In any event, if the legal effect of the findings of fact that are to be made is obviously and unarguably clear, no injustice will be done if the decision is promulgated without giving that opportunity*. Even if an opportunity should have been given and was not, the consequence will not necessarily be that an appellate court will set aside the decision of the lower court. It will only do so if it concludes that the lower court's application of the law was wrong. [*Our emphasis*]**

4.215 In considering this matter, we have regard to paragraph 25 of Mr Justice Choudhury's decision in **Jenkinson**. In particular, we note that in general where dishonesty is alleged, the party alleging dishonesty must prove it on the balance of probability. We have regard to the Supreme Court's decision in **Ivey v Genting Casinos** 2017 UKSC 67. Lord Hughes JSC said this at paragraph 74 (see above).

4.216 Where a witness's evidence may be called into question, it is important that the witness should be given an opportunity to answer the point.

4.217 **NHS v Saiger and others** 2018 ICR 297, EAT is instructive. HHJ Hand said this at para. 99.

> **99. … it will not usually be a fair procedure for a Tribunal to reach conclusions about a factual scenario if that factual scenario has not been put. If conclusions of dishonesty are to be reached, it will usually be unfair to reach them unless the person likely to be condemned has had an opportunity to deal with them. If a Tribunal is minded to reach a conclusion that is purely inferential and such a conclusion is neither obvious nor has it been advertised in that form at any point in the proceedings, then the Tribunal must give the parties an opportunity to address the matter.**

4.218 **Browne v Dunn**[18] is authority for the proposition that where the context makes a conclusion obvious, it is permissible to reach the conclusion without further reference to the parties. Lord Chancellor, Lord Herschel said the following:

> **… I mean upon a point which it is not otherwise perfectly clear that he has had full notice beforehand that there is an intention to impeach the credibility of the story which is telling. Of course I do not deny for a moment that there are cases in which that notice has been so distinctly and unmistakably given, and the point upon which he is impeached, and is to impeached, is so manifest, that is not necessary to waste time in putting**

[18] *Browne v Dunn* [1893] 6 R 67

> **questions to him upon it. All I am saying is that it will not do to impeach the credibility of a witness upon a matter on which he has not had any opportunity of giving an explanation by reason of there having been no suggestion whatever in the course of the case that his story is not accepted.**

Lord Morris said the following:

> **My Lords, there is another point upon which I would wish to guard myself, namely, with respect to laying down any hard-and-fast rule as regards cross-examining a witness as a necessary preliminary to impeaching his credit. … I can quite understand a case in which a story told by a witness may have been of so incredible and romancing a character that the most effective cross-examination would be to ask him to leave the box. I therefore wish it to be understood that I would not concur in ruling that it was necessary, in order to impeach a witness's credit, that you should take him through the story which he had told, giving him notice by the questions that you impeached his credit.**

4.219 It seems to us that whether a person has been given an opportunity to deal with allegations which can suggest some form of dishonesty is a matter of fact.

4.220 We have found that the admission at paragraph 49 of the amended grounds of resistance is unclear. In particular, it is contradicted by the respondent's own evidence and the position it has adopted in relation to bad faith. We do not accept that the relevant allegation about bad faith, as advanced in these proceedings, is limited. The claimant is right; at the heart of this case is the allegation made by the claimant that Ms D made a false and malicious allegation against him. It is the claimant who raises bad faith on the part of of Ms D, and invites us to find, as a fact, she is lying. It follows that his own conduct is put in issue, by both his own reliance on the assertion that he was an innocent victim and Ms D's denial in her witness statement.

4.221 The respondent's primary position remains that bad faith can be alleged without being pleaded. There is some support for that in the case law, as we have outlined above. However, when bad faith goes to the heart of a protected disclosure, any admission, particularly one that is based on an unclearly pleaded case, must be viewed in the light of the relevant finding of fact. We accept that the respondent, in raising bad faith, has acted in good faith. Whether Ms D was telling the truth about the events of 12 November 2012, the claimant accepts, is a fundamental part of this litigation. Resolution of the allegation the claimant spurned Ms D's sexual advances is central to the victimisation claim, as it calls into question whether any of the acts can be protected. If the original admission is deemed to include an admission that bad faith is not raised, the later raising of bad faith may be inconsistent. To the extent it is incompatible with the admission, it may be necessary to withdraw the admission. The raising of an incompatible argument can be considered an application to withdraw the admission. To hold the respondent to an admission, which may imply an acceptance of good faith, but does not do so explicitly, would be fundamentally unjust in this case. Further, it would introduce a

constraint on our judgment which would be arbitrary, and which would lead to a perverse decision, given our finding of fact that Ms D did not make sexual advances, as relied on by the claimant in support of his allegation that he was innocent; an allegation that ultimately underpins all of the alleged protected acts. Our finding of fact, which is set out below, is irreconcilable with an admission of a protected act, when that alleged protected act is based on the assertion that Ms D was lying, and when we have found that the claimant's allegation was dishonest. To maintain the admission in the light of that finding would be unjust and perverse. Therefore, to the extent it is necessary, we set aside the admission contained at paragraph 49 of the grounds of resistance.

The Facts

5.1 This case was stayed to allow resolution of the claimant's High Court action for personal injury. The High Court action was heard by Mrs Justice Nicola Davies DBE, and judgment was delivered on 5 October 2019.

5.2 In circumstances where there has been litigation between two parties, those parties may be bound by the facts found in the prior case. The finding of fact may not bind third parties, or those who were not parties and who did not give evidence. Findings of fact which are not necessary to support the decision may not be binding. Those facts which are essential to the prior decision cannot normally be disturbed, at least not as between the parties. If there is to be any prospect of their being disturbed, proper reason must be given, which goes beyond the party's unhappiness with the original decision.

5.3 The starting position for this tribunal is that it is bound by the High Court's findings of fact. This then leads to two questions. First, what were the relevant facts found. Second, is there any basis for disturbing any of the findings.

5.4 It is necessary to consider, in some detail, the High Court ruling.

5.5 Mrs Justice Davies says this at paragraph 1:

> **1. The claimant brings this claim for damages for psychiatric injury arising from his employment as a Teaching Fellow at the defendant's Department of Management between September 2011 and September 2014. The claimant was appointed as an LSE Fellow to run the "capstone" course, strategy, organisation and innovation in the department's postgraduate programme the Master's in Management (MiM). On 1 September 2012 he was appointed to the role of Deputy Academic Dean in the new Executive Global Master's in Management (GMiM) programme. At all relevant times Miss D was employed by the defendant as the claimant's graduate teaching assistant (GTA), a post she held from September to 30 November 2012.**

5.6 She then sets out the three causes of action that she will consider as follows:

> **2. The claim is based upon three causes of action:**
> **i) The defendant's vicarious liability for the actions of Miss D who harassed the claimant within the meaning of that term in the Protection from Harassment Act 1997 (the 1997 Act), by making numerous false and malicious allegations against the claimant to staff and students at the London School of Economics (LSE) and to bodies associated with the claimant;**
> **ii) The defendant's Harassment Policy was incorporated into the claimant's contract, the defendant failed to follow the contractual procedure;**
> **iii) The defendant's handling of Miss D's complaint was negligent.**

5.7 Paragraphs 3 to 5 summarise the claimant's case and the defendant's case. Paragraphs 6 to 89 set out a detailed account of the evidence given by the claimant, Professor Marnette-Piepenbrock (his wife), Mr Mike Wargel, Professor Deborah Nightingale, and Dr Dina Dommett. We have considered those paragraphs carefully. Whilst much of the language would be consistent with a simple finding of fact, when the paragraphs are considered as a whole, it is clear that it was not intended as a finding of fact. Occasionally, this is reiterated by phrases such as "it is the claimant's case…" (See paragraph 7).

5.8 Ascertaining the relevant finding of fact is complicated by the fact that much of the history is not disputed. However, it is largely not possible to ascertain from the recital of the evidence given which facts are in dispute and which are not.

5.9 Paragraphs 90 to 157 summarise the evidence of the defendant's witnesses: Ms Joanne Hay, Professor Gwyn Bevan, Mr Kevin Haynes, Mr Daniel Linehan, and Mr Christopher Gosling. In Ms Joanne Hay's section, there is a subsection called "the incident." We do not read that as being a finding of fact, it is a continuation of the recounting of Ms Hay's evidence. As with the claimant's evidence, it does not appear that any of this is intended as a finding of fact. As noted, many facts appear to be undisputed, but it is not possible to ascertain, from this section, what was, and what was not, in dispute.

5.10 At paragraph 158, there is a selection of the claimant's GP notes. It appears that this is a simple finding of fact recording relevant GP entries. Similarly, in several places, other documents – including emails, policies, and WhatsApp messages – are set out. It appears that these sections are a simple finding of fact confirming the existence and content of those documents.

5.11 Paragraphs 159 to 164 refer to the claimant's contact with a consultant psychiatrist, Dr Peter Amies, which commenced on 3 September 2013.[19] Much of this section sets out quotes from the medical records. This appears to be a simple finding of fact, and is binding on this tribunal.

[19] It appears that the first contact may have been on 23 July 2013, but nothing turns on this.

However, Mrs Justice Davies was not endorsing any diagnosis made by, or prognosis given by, Dr Amies. It records what his view appears to have been, at the relevant time, having regard to the documents.

5.12 Paragraph 165 contains reference to further medical records and is a simple finding of fact.

5.13 Paragraphs 166 to 186 record the evidence given by Professor Tom Fahy, the professor of forensic health/clinic director of forensic services at the Institute of Psychiatry in London, he was instructed by the claimant. Again, this is not a finding of fact; it simply sets out the nature of his evidence, albeit a number of points raised appear to be, ultimately, approved in the judgment. We will consider the detail of this, as necessary, in due course.

5.14 From paragraphs 187 to 202 Mrs Justice Davies summarises the evidence of Professor Maden, emeritus professor of forensic psychiatry at Imperial College London, who was instructed by the defendant. It is apparent that there is a significant degree of common ground between the two psychiatrists, particularly in relation to the claimant's unusual reaction to stressful conditions.

5.15 Mrs Justice Davies says this of Mr Fahy's evidence at paragraph 168.

> **168. The impression conveyed by the claimant at interview is of an energetic, highly intelligent, potentially charismatic, somewhat self-aggrandising and emotionally reactive individual. The claimant's references to his 12-year-old son, he spoke of the boy nurturing him, he had discussed the prescription of antidepressant medication with his son and his wife, suggest that he has difficulties in maintaining appropriate emotional boundaries at times of distress. Professor Fahy concluded that the claimant's personality is characterised by major strengths including high levels of energy and motivation but also vulnerabilities that include intense emotional reactivity and, perhaps, difficulty coping with perceived or actual failures or rejection. He found no clinical evidence to suggest that the claimant was likely to become depressed in December 2012 were it not for exposure to significant stress in the workplace.**

5.16 At paragraph 173 she says the following of Professor Fahy's evidence.

> **173. Following his review of the claimant on 14 August 2017 Professor Fahy found little change in his psychiatric condition. He fulfilled the diagnostic criteria for a major depressive disorder with accompanying anxiety symptoms. He remained intensely preoccupied with his claim against the LSE which exerts a psychologically immobilising effect on his day-to-day life. Professor Fahy and the treating clinical team agree that the claimant will not benefit from psychological treatment until the conclusion of the litigation. He would probably benefit from the prescription of antidepressant and anxiolytic medication. The claimant has received little evidence-based treatment.**

5.17 At Paragraph 177 Mrs Justice Davies sets out some areas of agreement between the two professors.

> **177. Professor Fahy and Professor Maden, the psychiatrist instructed by the defendant, agree that the claimant has narcissistic and borderline personality traits, one of which is a tendency to have a catastrophic reaction in the face of criticism or adversity. Another is self-aggrandising, namely a sense of superiority, difficulty coping with actual or perceived rejection. In respect of borderline personality traits they would include coping poorly with the ending of relationships, rapidly switching from idealising people to devaluing them, keeping appropriate boundaries in relationships. Such personality traits can cause problems in the workplace but they can also give rise to charisma and make a person very interesting, they can present as strengths. The claimant does catastrophise, thus once he reaches a position it is difficult for him to get back to one of rational analysis.**

5.18 It appears she accepts this evidence.

5.19 At paragraphs 203 and 204, Mrs Justice Davies considered the claimant's credibility. She had reservations about the claimant's credibility she says the following:

> **203. Professor Fahy and Professor Maden are at one in their view that the claimant is preoccupied by this claim. I agree. It is evidenced by the detail of his allegations, reflected in a 99-page Particulars of Claim. There were occasions when his recollection of events was contradicted by others who had been present. One example is his account of the meeting with Professors Estrin and Bevan when he believed that he was to be offered the appointment of Professor of Practice. I regard the evidence of both Professors as founded on fact, a realistic assessment of the claimant's career and their own knowledge of what could be achieved within the LSE. I accept their account of this meeting to the effect that they had no power to award such an appointment. Further, the claimant did not have the academic credentials, the relevant high quality publications or the practice credentials for such an appointment. If the claimant did believe that such an appointment had been, or was to be offered, I find that this is a reflection of his opinion of himself rather than the professional reality of the situation.**
>
> **204. There is one matter which did raise a real issue as to the credibility of the claimant, namely the evidence of his trip to India in the early part of 2013. This was elicited by Mr Warnock QC in cross-examination. He had identified these facts from the claimant's CV for the Ashridge appointment. In my view the claimant sought to minimise the extent of the trip. He accepted that he went but said it was cut short because of his ill-health. The claimant visited Delhi and Bangalore where he gave talks and/or lectures, however successful or unsuccessful he perceived them to be. This trip took place when the claimant was on sick leave from LSE, when his wife was writing on his behalf stating that he was too ill to attend an interview, when there was no response to requests from the LSE to attend an occupational health assessment. Mr Hogarth QC realistically accepted this to be a "significant omission". It was. I do not regard this omission as wholly undermining the evidence of the claimant but it does call into question how much he was able to do in the early months of 2013, whether he could have responded more positively to the LSE's request for an interview and occupational health assessment and whether he was wholly justified in retiring to his bed and refusing to take part in any communication with the LSE.**

5.20 The claimant had alleged that he was to be offered an appointment of professor of practice; his evidence was rejected on this point, in such a manner that it undermined his general credibility. In particular, he had failed to recount accurately details of the meeting where he alleges he was offered the appointment of professor of practice such that his belief arose out of his self-opinion, and not any objective fact.

5.21 Paragraph 204 raises serious doubts about the claimant's credibility. The claimant had undertaken a successful trip to India in the early part of 2013.[20] However, he withheld that information from Professor Fahy, and Professor Maden and she considered it undermined the claimant's allegation that he was suffering from serious depression time. Whilst Mrs Justice Davies did not consider it "wholly" undermined the claimant's evidence it did raise significant doubts, particularly as to whether, contrary to his evidence, he could have engaged with the LSE at the time.

5.22 In summary, whilst Mrs Justice Davies did not consider it necessary, or appropriate, to take the view that none of the claimant's evidence could be relied on, she approached his evidence with some caution.

5.23 From paragraph 205 to 223 there is an analysis of the evidence. This is intended as a finding of fact, and we should have particular regard to it when reaching our decision. It is appropriate to summarise some of the major points considered.

5.24 The first part considers the nature of Ms D's conduct and her interaction with the claimant. It is noted that Ms D's clothing had caused comment,[21] albeit the evidence on this point also recorded that she dressed like many students, and the finding of fact on this point is limited. However, it is accepted there was evidence that Miss D had "developed something of an infatuation for the claimant" (206). The claimant should have been aware of the need to observe professional boundaries, particularly when embarking upon his trip to America.

5.25 It is noted that no account was given by Ms D as to what happened at the door of the hotel suite on 12 November 2012. As to whether Ms D did appear in front of the claimant in a state of semi-undress, no specific findings were made. This is dealt with at paragraph 207. It is appropriate to set out this paragraph in full.

> **207. The only account which the court has as to what occurred at the door of the hotel suite in Boston is that of the claimant. Miss D has not been called by the defendant. Her 18 November 2012 complaint is silent as to the alleged incident. The claimant alleges that she opened the suite door wearing only a sweater top with little or nothing beneath. The evidence of the claimant, Professor Estrin, Dr Dommett and Joanne Hay as to Miss D's previous conduct and dress does provide an evidential basis**

[20] Whilst the reference is to the early part of the year, it is now common ground that the trip took place in the early summer. Whatever the date, he did not inform the respondent of the trip. He did not tell either Prof Fahy or Prof Maden.
[21] It is unclear if the observation was made by anyone other than Dr Dommet.

> **for finding that if Miss D did behave in a provocative, even sexually provocative manner towards the claimant, it would not be inconsistent with her previous behaviour at the LSE. Miss D had demonstrated that she wished to spend time in the company of the claimant. It may be that in a hotel in Boston, away from the LSE, Miss D saw her opportunity. If that was her aim, she was disappointed. On the claimant's account he regarded her behaviour as wholly inappropriate. Given her previous behaviour and dress as described by witnesses I am not sure that Miss D would have viewed such conduct in the same manner.**

5.26 It is clear from this paragraph that there is no direct finding that Ms D behaved in a provocative manner. We have considered the final sentence. This may be read as doubting that Ms D intended her behaviour to be sexually provocative. It cannot be read as confirmation that she was in a state of partial undress.

5.27 Nevertheless, the High Court accepted that Ms D's conduct in Boston caused the claimant concern. However, Ms Justice Davies's decision is critical of the claimant's behaviour, his having been confronted by what he thought was a sexually provocative act. She says this at paragraph 208.

> **208. I accept that Miss D's conduct in Boston caused the claimant considerable concern. It prompted a phone call to his wife and thereafter a series of conversations with Miss D. If Miss D did behave in the manner alleged then the sensible course for the claimant was to keep a professional distance and seek advice from his LSE department/HR as to the handling of the matter. Given the perceived inappropriate behaviour of Miss D it was imperative for the claimant, the senior colleague, to observe professional boundaries. In his attempt to deal with the matter the claimant had a conversation with Miss D in a public park in the early afternoon of the day of the incident. The claimant tried to discuss Miss D's behaviour but she was rather elusive. Between 6:30 to 8:30pm, in the same park, he attempted to have another conversation with Miss D, she continued to be elusive. On the claimant's account he told Miss D that if she could not behave professionally and communicate in a constructive way to resolve the issues he would no longer be able to work with her, he told her she could not attend his lecture the next day. She remained elusive.**

5.28 At 209 she says the following:

> **209. … Having tried once, on the claimant's account resolved nothing, he should have stopped. To embark upon a further two-hour conversation with Miss D was inappropriate and unnecessary.**

5.29 At 210 she records the claimant had attempted, the following day, to discuss the matter further with Ms D. She says "in his evidence to the court the claimant demonstrated no insight into the inappropriateness of pursuing such lengthy conversations in respect of a junior colleague who, on his account, had behaved in a sexually inappropriate manner."

5.30 At 211, Mrs Justice Davies recalls the events that unfolded when the claimant and Ms D travelled to Seattle.

> **211. Upon arrival in Seattle the claimant proposed to Mike Wargel and Miss D that they should commence a conversation as to how professional**

> **and respectful colleagues treat each other. This began at 12:30am in a hotel suite. To embark upon yet another conversation in the early hours of the morning in a hotel room, a young woman in her twenties with two older men goes beyond inappropriate, it is unprofessional and wrong. The meeting lasted well over two hours. Mike Wargel accepted it was their conversation with Miss D which caused her distress and agitation. The claimant told Miss D he was going to have to end their working relationship. He told her he could no longer stand for her unprofessionalism and mediocrity. It was upon hearing this that the claimant states that Miss D became hysterical and ran after him pleading and in tears. Independent evidence of Miss D's distress is to be found in her contacting her mother, who contacted hotel security and the LSE.**

5.31 At 212, Mrs Justice Davies condemns the claimant's behaviour.

> **212. There is no sensible justification for the claimant's conduct in the early hours of 15 November in the hotel room in Seattle. I am satisfied that there was nothing sexual in the claimant's persistence in requesting these conversations. It was an inability to recognise and respect boundaries, compounded by an absence of insight into the distress which he was causing to a young woman, notwithstanding her alleged conduct which caused these conversations. The explanation for the claimant's conduct is in part provided by Professors Fahy and Maden, namely his personality traits and inability to observe boundaries.**

5.32 This finding demonstrates that Mrs Justice Davies found, as a fact, that the claimant had personality traits, as jointly agreed by Professor Fahy and Professor Maden and that those personality traits partly explained his conduct.

5.33 Paragraph 213 refers to the arrival of security staff at 4:15 AM. They had been called by or on behalf of Ms D who was in a distressed state. Mrs Justice Davies says, " I accept the evidence of Professor Maden that what might seem to be an extreme reaction on the claimant's part is a reflection of his personality." It follows that not all of Professor Maden's evidence was rejected by Mrs Justice Davies.

5.34 From paragraph 215 Mrs Justice Davies considers Ms D's written complaint of 18 November 2012, which is set out in full at appendix 1 to her decision. She explores several disputed facts. She says, "Exactly what was said by the claimant and Miss D in over three hours of conversations in Boston is not clear." (See 216.)

5.35 Of the conversation in Boston, particularly of the subsequent allegation that Ms D's conduct at the door the hotel suite was inappropriate, and sexually provocative, she reaches a clear conclusion, "I find it likely that when the claimant was speaking with Ms D in Boston he did not speak directly about the detail of her alleged conduct." She says -

> **216. …He attempted to deal with the matter in more general terms using words and phrases which are singularly his own with the result that Miss D did not understand what he was trying to say. I regard her Skype messages the next day as reflective of this.**

5.36 Mrs Justice Davies finds that there is nothing in the 18 November 2012 account of Ms D that is significantly different to the account of the claimant or Mr Wardel about the events in the Seattle hotel. Ms D attempted to book a flight. She involved her mother. Security guards attended.

5.37 Mrs Justice Davies is critical of the respondent's failure to ask MS D to observe confidentiality.

> **219. By 22 November 2012 it was known that Miss D was communicating her complaint to fellow students, later it was sent to members of the faculty. No steps were taken to stop this dissemination. It was not until Mr Haynes finally spoke to Miss D on 29 November that she was told the matter should remain confidential. By 19 November Professor Bevan had met and spoken with the claimant. It took a further ten days before Kevin Haynes spoke to the Miss D. No good or even adequate explanation has been given as to why it took so long.**

5.38 Exactly who disseminated what and when is unclear.

5.39 Mrs Justice Davies considers Ms D's complaint of 10 December 2012. She says, "Once Miss D's complaint was filed on 10 December 2012 it was incumbent on the defendant to proceed expeditiously in accordance with the Harassment Procedure."

5.40 Mrs Justice Davies gives limited detail of the obligation under the harassment procedure. It is not clear if she accepts what now appears to be common ground that the correct procedure is the one used for ex-employees. The procedure for ex-employees refers to complaints being presented within four months,[22] whereas the High Court refers to a three-month time scale.

> **232. Within two working days of 19 November the defendant should have attempted to ascertain from Miss D whether she wished to pursue a formal complaint. She should have been told that the matter was confidential and should not be disseminated. Had this step been taken much of the dissemination of Miss D's complaint could have been prevented, this is linked to the claimant's belief that colleagues were avoiding him. The Harassment Procedure states that the formal written complaint must be submitted to a member of the Anti-Harassment Panel no later than three months after the alleged incident. Given this timeframe, notwithstanding the series of identified delays on the part of the defendant, the submission by Miss D of her complaint on 10 December 2012 was within the timeframe of the Harassment Procedure. Once received and the procedure instituted, there should have been disclosure within a matter of days of the written complaint to the claimant. The disclosure should have been of the entirety of the complaint, the redactions were unnecessary. They related to the witness whose name had been given to the defendant by the claimant. The claimant should have been in receipt of the entirety of the written complaint by no later than 19 December 2012. The delay in serving the redacted complaint together with the further delay in serving the unredacted complaint represent breaches of the duty of care which the defendant owed to the claimant.**

[22] Section 13 of the policy.

5.41 At 224 to 230, Mrs Justice Davies deals with the claimant's protection from harassment claim. This further reiterates that no specific findings are made as to what Ms D did when opening the hotel door. Paragraph 227 states, " Whatever it is Miss D did when she opened the hotel door to the claimant in Boston she did not view her conduct in the same serious or inappropriate light as the claimant."

5.42 Mrs Justice Davies found that the lengthy conversations were instigated and led by the claimant (228). She found that "He failed to clearly identify to Miss D exactly what he thought was inappropriate or unprofessional in her behaviour." At 229, Mrs Justice Davies records that the events in Seattle simply increased Ms D's distress.

> **229. It is not difficult to understand why it was Miss D sent her email of 18 November setting out her complaint. I am unable to find that the original complaint was malicious. It was substantially based on events in Seattle which are undisputed. It contained sufficient information of Boston events to show a course of conduct on the part of the claimant which, while well intentioned on his part, was inappropriate and unprofessional. Miss D should not have disseminated the original complaint but no one told her not to. When she was told she stopped.**

5.43 She goes on to record that the trigger to Ms D's complaints was the events in Seattle. She described it as "a legitimate complaint."

5.44 Paragraphs 231 to 234 consider the breach of duty in the context of negligence. Mrs Justice Davies records that there were a series of failures. It is implicit that she accepts the harassment procedure was contractual.

5.45 From paragraph 232, it is possible to identify that Mrs Justice Davies found there were several breaches of duty. First, the formal grievance of 10 December 2012 should have been disclosed "within a matter of days." The delay was a breach. Further, it should have been served in an unredacted form, as the redactions were "unnecessary." She says, "The claimant should have been in receipt of the entirety of the written complaint by no later than 19 December 2012." The further delay in serving the unredacted complaint was also a breach of duty.

5.46 The claimant alleged five other breaches of duty as follows:

> **233. In addition to the above failures the claimant relies on the following in support of his allegation of breach of the common duty of care, namely:**
> **i) The fact that the original complaint by Miss D was not shown to the claimant nor was he told the nature of the complaint until disclosure in March 2013;**
> **ii) Professor Bevan did not tell him of the nature of the complaint, he failed to inform the defendant what the claimant had told him of events in America when he knew the claimant's account differed radically from Miss D's;**
> **iii) Professor Bevan prohibited the claimant from attending the student graduation and party;**
> **iv) He declined to permit the claimant to recruit a replacement GTA;**

> **v) Professor Estrin decided not to give the claimant the promised promotion to Professor of Practice and removed him from his post as the LSE's representative on the Duke Board.**

5.47 At paragraph 234, those breaches of duty are, as we read the judgment, rejected. Mrs Justice Davies confirmed that the claimant, contrary to his evidence, was never offered a promotion to professor of practice.

5.48 At paragraph 235 and 236, Mrs Justice Davies consider the breach of contract allegations, briefly. She accepts the harassment procedure was incorporated as a term of Ms D's contract of employment. She accepts there was a breach of 9(d) which states "The complainant will be interviewed first and the alleged harasser interviewed second. Both parties have the right to be interviewed in the presence of a trade union representative or a friend." In not allowing the claimant to bring his wife as a "friend" the respondent breached contract.

5.49 There is reference to 5(a), which we assume is a reference to the procedure which states:

> **5a. All those approached by the complainant for advice must protect that person's identity. Any disclosure can occur with the express permission of the complainant. Also, the identity of the alleged harasser must not be revealed to any other person.**

5.50 The finding in relation to this is "The identity of the alleged harasser (5(a)) had occurred prior to the invoking of the procedure." Exactly what was alleged to be the breach of contract is unclear from the judgment. The brevity of the treatment is no doubt explained when Mrs Justice Davies says, "By reason of my findings as to breaches of the defendant's duty of care any breaches of contract add little, if anything, to the claim of the claimant." It appears that the finding in relation to 5(a) of the harassment procedure accepts that revealing the claimant's identity before filing a formal grievance was not a breach of contract. As noted above, it is unclear if Mrs Justice Davies accepted the correct procedure was that for ex-employees and she does not explore whether the modified procedure under section 13 of the harassment procedure displaces the procedure for employees; as she found a breach 9(d), it appears she did not.

5.51 From paragraph 237 to 241, Mrs Justice Davies sets out the law in relation to foreseeability. The relevant facts, as they relate to foreseeability, are considered at paragraph 242 to 246 thereafter the evidence of Professor Fahy and Professor Maden is considered. Finally, paragraph 250 reaches conclusions. We can review these matters briefly.

5.52 At 242, Mrs Justice Davies says the following:

> **242. The question for the court is whether the defendant's action or inaction created a foreseeable risk of injury to the claimant against which it should have protected him? Foreseeability depends upon what the employer knows or ought reasonably to know about the individual**

> **employee. If a defendant knows of some vulnerability he may be obliged to take steps to guard against the risk of injury caused by that vulnerability which he would not otherwise be obliged to take. The vulnerability of a claimant will also be relevant when considering causation in its damages context by reason of the "egg-shell skull" rule, namely that if injury to a person was foreseeable without knowledge of vulnerability, then the fact that the consequences are greater because the person had a vulnerability is irrelevant, the defendant is liable for the full extent of the injury.**

5.53 She accepts that Ms D's complaint was serious and had the potential to cause harm. She records at paragraph 243 the following:

> **243. …On the claimant's undisputed account it was on 12 December that he suffered the reaction which led to the development of psychiatric illness. There was subsequent delay by the defendant in its failure to serve the unredacted complaint, however the trigger event had occurred on 12 December. The subsequent delay and the failure to allow the claimant's wife to act as his "friend" would aggravate the illness, on the claimant's case it was not causative of it. The issue is whether these failures on the part of the defendant were such as to give rise to a reasonably foreseeable risk of psychiatric injury. As is clear from the authorities, foreseeability of stress is not enough.**

5.54 There are some key findings which underpinned the claimant case and required resolution by the High Court.

5.55 First, the claimant had alleged he disclosed mental health issues at his appointment interview with Professor Bevan and Professor Estrin. That was rejected. It was found that Dr Piepenbrock did not disclose any depression or mental health issues that occurred as a result of his previous employment or MIT. When he returned on 19 November 2012, he appeared jet-lagged, but showed no signs of suffering from mental health issues. He left on a trip to India on 24 November and returned on 3 December 2012. He worked productively during that week. There was nothing in any of this which alerted the respondent to any potential mental health issues.

5.56 The High Court decision makes no attempt to resolve all the differences between Professors Fahy and Maden. Instead, it identifies what Mrs Justice Davies categorises as follows:

> **247. …The fundamental difference between the two was that Professor Fahy found that the claimant developed a major depressive disorder with accompanying anxiety symptoms. He identified the trigger as being the serving of the complaint on 12 December together with the unnecessary delay on the part of the LSE, a failure to stop Miss D circulating the information, a failure to serve the claimant until two months later with the full content of the report coupled with the background of increased pressure because the claimant no longer had a teaching assistant, he did not know what the complaint actually contained and he thought other people might suspect him of sexual assault or even rape. The Professor accepted that the claimant was not clinically depressed prior to 12 December, he was described as lacking confidence and becoming stressed and apprehensive. His intense reaction to events is also reflective of his emotionally reactive personality. Professor Maden does not accept the diagnosis of a depressive episode, his diagnosis is that of an adjustment**

> **disorder. Critically he does not believe that the claimant's sudden and extreme reaction to the stresses he faced was foreseeable. He accepted that delays would have caused apprehension and stress, as would the failure to contain Miss D's complaints, but he was unequivocal that the development of the claimant's alleged illness was not foreseeable.**

5.57 At paragraph 248, Mrs Justice Davies records that Professor Fahy in his early oral evidence stated that the development of the illness was foreseeable. Professor Fahy conceded in cross-examination that anyone unaware of the claimant's previous episode of collapse in response to the events at MIT would not have expected the severe reaction of depression. It follows that his opinion changed, and he resiled from his original opinion. This was a clear concession made in cross-examination. Mrs Justice Davies did not consider herself bound by his original view as to foreseeability.

5.58 At paragraph 249, Mrs Justice Davies deals with the matter she viewed as the central issue. Professor Maden viewed the claimant's reaction on 12 December as an adjustment disorder, and not as the onset of depressive illness. In this respect, she preferred the evidence of Mr Fahy. She gives succinct reasons.

> **249. Professor Fahy, in reaching his conclusion that the claimant suffered a depressive illness, took full account of the views of treating clinicians and accorded them respect. It appeared to the court that Professor Maden, in reaching his conclusion that the claimant had suffered an adjustment disorder, did not accord to the treating doctors the understanding or respect demonstrated by Professor Fahy. In my judgment the evidence of Professor Fahy was scrupulous in its fairness and balance in a manner in which the evidence of Professor Maden, on occasion, was not. I preferred the evidence of Professor Fahy as to the illness suffered by the claimant, not only because I thought him the fairer witness but because his view accorded with those who were seeing and treating the claimant from December 2012 onwards.**

5.59 The effect of this is that it was accepted the claimant had developed a depressive illness by the trigger events of 12 December 2012. However, as regards the abnormal features of the presentation, there is no comment or resolution. We are bound by the finding that the claimant had a depressive illness from 12 December 2012. Nevertheless, Mrs Justice Davies records clear evidence concerning the claimant's unusual reaction and the effect of his personality, as we have outlined above. Whilst those matters are not central to her key finding, they are matters which may be relevant to our decision.

5.60 Foreseeability is dealt with at the conclusion at paragraph 250.

> **250. I do not find that the development of the claimant's depressive illness should have been reasonably foreseen by the defendant. Prior to November 2012 the LSE had no information that would have put them on notice of a vulnerability on the part of the claimant to mental ill-health. I accept that the events at the LSE from 19 November onwards would have caused foreseeable stress and anxiety to the claimant. I do not accept that the nature of the breaches were of themselves sufficient to create a**

> **foreseeable risk of psychiatric injury. Further, there is nothing in the claimant's conduct prior to his reaction on the night of 12 December which provides any evidential basis for finding that the defendant should have foreseen such a reaction, still less the development of the depressive illness. On the contrary, the claimant was travelling to India for what appears to have been a successful trip. He was communicating with one of the Heads of Department regarding his future work, he was getting on with the job. I find that the severity of the claimant's reaction on 12 December was a reflection of his personality.[23] The defendant had no relevant information as to the claimant's personality or past medical history which would have rendered the development of the claimant's illness reasonably foreseeable. Accordingly, this claim fails, there is to be judgment for the defendant.**

5.61 It follows that the ratio for Mrs Justice Davies's decision is narrow. Whilst breach of duty, the nature of the illness (being depressive illness), and the immediate onset on 12 December 2021 were all identified, the exact causal links were not relevant to the reason for rejecting the claim and the limited exploration of them reflected this. The ratio[24] for the decision was that the onset of the illness was not foreseeable.

5.62 We should summarise the most important findings. First, the claimant did not inform the respondent of his mental health history, following his employment at MIT. Second, nothing in the claimant's behaviour alerted the respondent to any mental health issues, prior to Dr Piepenbrock 's reaction on 12 December 2012. Third, there was no harassment of the claimant by Ms D in presenting her grievance. Fourth, there were two negligent breaches of duty. Fifth, there was one breach of contract. Sixth, the trigger leading to the onset of depressive illness was giving the redacted grievance to the claimant on 12 December 2022 (it is less clear whether the trigger is said to be making the allegation, or the fact that the allegation was redacted). Seventh, the claimant developed a sudden onset depressive illness. Eighth, the respondent could not have foreseen that the breach of duty would lead to the onset of that psychiatric condition.

<u>Ms D</u>

5.63 The High Court's judgment covers much of the relevant history concerning the claimant's trip to the United States in November 2012. We do not intend to repeat the entire background.

5.64 On 16 November 2012, Professor Bevan wrote to the claimant noting that a situation had arisen, and that the circumstances were unclear; he asked the claimant to make contact on his return to the UK to discuss the matter. The claimant's response of 17 November stated:

> **A sad and unfortunate situation has occurred during an otherwise productive research, teaching and LSE Alumni engagement trip to the**

[23] We observe that it is implicit that the joint view of Professor Fahy and Professor Maden of the claimant personality, including his narcissistic traits, is accepted, and relied on expressly.
[24] The key reason for reaching a decision.

> **US, in which I have spent a rather extraordinary amount of time and energy this week trying to resolve.**
>
> **I look forward to discussing it with you when I return to LSE on Tuesday.**

5.65 The claimant made no attempt to give his account of the “unfortunate situation.”.

5.66 On 18 November, Ms D resigned. Her letter gave an account of the relevant events, which is set out in the High Court's judgment. It was not sent to the claimant. Her employment ended on 18 November 2012. She made specific allegations against Dr Piepenbrock, including that, when in Boston, he tried to make her admit that she had feelings for him. She gave a lengthy description of the alleged inappropriate conversations. She alleged Dr Piepenbrock stated she was "unstable and destructive." We do not need to record the full detail of this detailed account.

5.67 Professor Bevan had liaised with Ms Joanne Hay concerning the correct approach and sought advice on the procedure. On 18 November 2012, he sent an email to Ms Hay stating, "I aim to hear Ted's side of the story."

5.68 There is little contemporaneous documentation from the claimant. There is an email of 19 November 2012 to Ms Carolyn Corvi. He stated "I had an extraordinarily difficult trip in Boston and Seattle… and spent most of my time in Seattle with the IISL gang attempting to resolve a rather tricky situation (which still remains unresolved)…" He gave no details. He also wrote to Mr Simon Flemington (a senior LSE staff member) on 20 November 2012 referring to his "difficult trip" in the United States. We note the claimant alleges Mr Flemington was contacted by Ms D, but the claimant’s evidence fails to record his own contact.

5.69 Professor Bevan met with the claimant on 19 November 2012. The claimant now alleges that he raised a grievance against Ms D. No such grievance is pleaded in the particulars of claim. The evidence in support is sparse. In his statement, at paragraph 92, he refers to "filing a formal grievance" against Ms D. He does not set out how it was filed, or the content. At paragraph 118 he states, "I filed a formal grievance against her." He does not give detail. In the same paragraph he states the LSE "refused to investigate my serious grievance against Ms D." He does not say who refused or when. In the hearing, he sought to expand on his oral evidence, he stated that he had referred to her sexual misconduct, but had given no details. Dr Piepenbrock alleged that Professor Bevan had failed to record his grievance.

5.70 There is no contemporaneous document from the claimant which could be construed as any form of grievance against Ms D. In no contemporaneous document does he allege that Ms D sexually harassed him by being partly dressed when she opened her hotel door.

5.71 On 23 November 2012, Professor Bevan sent a report to Ms Hay in which he stated:

> **His version of the story was that [Ms D] had become dependent on him & became hysterical when it looked as if he was leaving her**
>
> **He mentioned three episodes. The first was in the summer when [Ms D] was having problems completing her dissertation & he suggested that she had another supervisor. The second was on this trip in Boston & the third was in Seattle. He suggests that this is a consequence of problems in her family & difficulties with her father. He sees her mother as contributing to [Ms D] having these episodes in Boston and Seattle. He emphasised that he always sought to make it clear that he was not free to have a relationship with her & for this reason invited her to spend thanksgiving with his family. He mentioned that the third person was shocked & alarmed by [Ms D] behaviour in Seattle & that he had made it clear that he still had a duty of care for her in ensuring that she was able to fly home from Seattle. He gave me two emails: one from [Ms D] that talks about problems at home & one from the third person in Seattle.**
>
> **This is the gist of our conversation —which gives a very different account from that of [Ms D].**

5.72 Before us, the claimant alleged that Professor Bevan's account was both negligent and selective and failed to record his grievance. We consider this further below.

5.73 On 22 November 2012, Professor Bevan received an email from Mr Tim Last, regional managing director of the Duke Corporate Education. He referred to the complaint by Ms D and a further allegation made against Dr Piepenbrock by an unnamed individual who was said to be in a "fearful state given her encounters" with Dr Piepenbrock.

5.74 On 24 November 2012, the claimant went to India for a week, returning on 3 December. Whilst the claimant was away, Ms D complained that she had been left off the circulation of an email sent to other MiM students. On 30 November 2012, by email, the claimant denied any involvement. Professor Bevan suggested they speak on 3 December, when the claimant returned. In his statement, the claimant describes this meeting as a "second formal meeting." We do not accept the claimant's description.

5.75 During this period, there were communications initiated by HR, including seeking legal advice, concerning how Ms D's grievance should be handled, given that she was no longer an employee.

5.76 On 10 December 2012, the claimant sent an email to Professor Bevan concerning the meeting on 3 December. It stated "What Ms D is apparently attempting to do is very sad and destructive to the Department of Management, and I therefore appreciate your efforts to help resolve this." He referred to an "independent third party executive" who allegedly witnessed Ms D's behaviour in Seattle. There is no suggestion in this correspondence that the claimant had raised a grievance on 19 November 2012, or at any other time.

5.77 Mr Linehan took over conduct of Ms D's complaint. There was correspondence to clarify the procedure. Ms D lodged a formal complaint on 10 December 2012. This largely repeated the complaints already raised, and gave further detail.

5.78 On 12 December 2012, the claimant asked Professor Bevan if he could attend the graduation ceremony for the Capstone MIM course. We do not need to consider the detail of this here.

5.79 On 12 December 2012, Mr Linehan wrote to the claimant at 14:11 stating Ms D had made a formal complaint of harassment and stating he had been asked to take it forward. He confirmed that there would be interviews and the claimant would have the right to be interviewed in the presence of a trade union representative or a friend. He did not give any detail of the complaint. In his statement, the claimant says he was relieved that the grievance had been filed as his grievance could be dealt with. The claimant alleges he felt betrayed by Professor Bevan, as Professor Bevan had assured him there would be no formal grievance. We find no such assurance was given.

5.80 The claimant worked that afternoon. However, as the evening progressed, he became anxious and depressed. On 12 December 2012, at 23:59, the claimant wrote to Professor Estrin and Professor Bevan, he said, "I feel that I have given everything I can to the LSE and the Department of Management, and at this point, I feel I can give no more." Thereafter, the claimant became depressed and anxious, as found by the High Court; he never returned to the LSE.

5.81 On 14 December, Professor Marnette-Piepenbrock, the claimant's wife, stated that the claimant was ill.

5.82 On 17 December 2012, Professor Estrin enquired whether the claimant's letter was one of resignation. The claimant responded on 20 December 2012 stating, "Apologies for my delay in getting back to you – I remain very unwell (medicated and asleep most days and nights), getting out of bed essentially only for calls from doctors and lawyers." It continued "My note to you and Gwyn last week was not a letter of resignation… my note was meant to let you and Gwyn know that the LSE and Department of Management have seriously damaged the trust and confidence between us…" He indicated that he was willing to teach but unable to.

5.83 Thereafter, the only letter to which the claimant gave his name was on 7 October 2013, when he formally authorised his wife to correspond on his behalf.

5.84 We have considered whether the claimant brought any grievance on 19 November 2012, as alleged in his witness statement and as alleged before us. We have found the claimant be an unreliable witness. We will explore this further below. For the reasons we will come to, we treat his evidence with caution. That does not mean we should reject all of his

evidence on disputed matters. As for his allegation that he brought a grievance on 19 March 2012, we can consider this having regard to the balance of probability.

5.85 The claimant, through his solicitors, brought a formal grievance on 11 March 2013, a document which he also described as his first protected disclosure.

5.86 There can be no doubt that raising a formal grievance about harassment could have been a protected act, such as now is alleged occurred on 19 November 2012. However, the first protected act relied on is the formal grievance of 11 March 2013. The claimant's solicitor, in the extensive letters of 4 February 2013 and 11 March 2013, never suggested the claimant had raised a grievance against Ms D on 19 November 2012. The original pleading never suggested there was a grievance on 19 November 2012. There is no contemporaneous documentation which would indicate there was a grievance on 19 November 2012.

5.87 The claimant has sought to suggest that, in some manner, he was protecting Ms D, and so he gave limited detail of his alleged 19 November grievance. We do not accept the claimant's account. We find, on the balance of probability, that had he raised any grievance against Ms D on 19 November, there would be contemporaneous documentation referring to it.

5.88 It is his case, before us now, that he referred to her sexual misconduct on 19 November 2012, albeit he says he did not give any detail. Given that, on his case, he was prepared to raise her alleged misconduct on 19 November 2012, it is inexplicable that it would not have appeared in any of his contemporaneous documentation, or the solicitor's letter. We reach the conclusion that his allegation that he raised a grievance on 19 November has no foundation. He raised no grievance on that date.

<u>Ms D's grievance</u>

5.89 On 3 January 2013, Mr Linehan contacted Ms D to arrange her interview. She was interviewed, by Skype, on 8 January 2013. The written minutes were produced and sent to her. Ms D dealt with her amendments on 26 January 2013. Ms D was not asked about any alleged sexual misconduct on 12 November 2012, as that allegation had not been made against her.

5.90 On 3 January 2013, Mr Linehan invited the claimant to an investigation meeting in the week commencing 14 January 2013. We will consider some of the relevant correspondence in due course. The claimant never attended an investigation meeting. The claimant never communicated with the respondent concerning his students, and the arrangements for teaching. The claimant did not seek to share any teaching materials or resources. He made no contact at all.

5.91 On 8 January 2013, Professor Marnette-Piepenbrock sent the GP fit note which signed him off work from 18 December 2012 until the end of January 2013, which cited an acute stress reaction. He continued to be signed off work until the end of his employment.

5.92 On 9 January 2013, Professor Marnette-Piepenbrock sent an email to Mr Linehan stating the claimant was extremely unwell "due to the malicious accusations made against him…" She asked for a copy of the complaint. Mr Linehan's response was that he could only discuss the matter with the claimant. Mr Linehan confirmed a copy of the formal complaint would be forwarded in the next few days.

5.93 On 10 January 2013, Mr Linehan sent to the claimant a redacted version of Ms D's grievance together with two supporting documents. The letter does not explain why the document was redacted. It appears that the redaction concerned Ms D's account of the involvement of Mr Wargel. It is unclear who made those redactions, or why. They appear to serve no purpose. However, we have no doubt that the nature of Ms D's allegations was clear. The allegations concerned the events in Boston of 12 November 2012, and the subsequent events in Seattle, starting on 14 November, and which continued into the early hours of the morning. It concluded when Ms D was escorted from the hotel. The claimant could have no doubt that he was required to give an account about his version of what happened in Boston and Seatle.

5.94 On 29 January 2013, the claimant applied for a job at Warwick University.

5.95 The claimant was signed off with depression on 31 January 2013 until 2 March 2013.

5.96 On 1 February 2013 Professor Marnette-Piepenbrock wrote to Professor Estrin and confirmed the claimant remained unwell. She referred to Ms D's "malicious and vexatious complaint." She alleged that that complaint had seriously damaged the trust and confidence between the claimant and the LSE.

5.97 On 4 February 2013, Mr Linehan's email stated he was anxious to progress the investigation and asked how the claimant felt about answering written questions. He confirmed that if that was not acceptable, a face-to-face interview would take place, when the claimant returned.

5.98 The claimant instructed solicitors, Morgan Cole LLP, who wrote to the respondent on 4 February 2013. The letter made numerous allegations. We do not need to record them in detail. It alleged Ms D's statement did not clearly identify any wrongdoing. It asked for clarification of the procedure, when Ms D was no longer a student. It asked what consideration had been given to the possibility the complaint was vexatious. It questioned LSE's involvement, as the US trip was not part of her employment. It asked for "assurances on the above points" and full disclosure of the allegations and underlying written evidence. It alleged

that there was a "real danger that the investigation will be biased in favour of the complainant." It stated:

> **Our client has passed to us your email of 4 February 2013 in relation to possible written questions connected to your investigation. Potentially our client would be willing to assist in this way but before considering any such questions he would like to receive a response to the concerns raised above.**

It did not allege the claimant had filed a grievance on 19 November 2012.

5.99 Implicitly, the claimant was refusing to be interviewed, and any consent to the answering of questions was conditional.

5.100 The unredacted version of Ms D's 10 December 2012 formal grievance was not sent to the claimant until 17 April 2013, albeit the claimant complains that certain documents, which we understand to be Skype messages, were not included. We received no satisfactory evidence for why the respondent failed to deal with the request to send the unredacted complaint prior to 17 April 2013.

5.101 We have no doubt that the claimant understood that he was to respond to Ms D's version of events in Boston and Seattle. Despite the deficiency in sending a redacted version of Ms D's grievance, there was no reason why he could not have given his version.

5.102 The respondent's failure to provide the unredacted version was unhelpful, but it did not prevent the claimant's engagement. It gave the claimant an excuse for not engaging with the investigation. When the unredacted version was sent, he continued to fail to engage reasonably with the investigation. We do not accept that he was so ill that he could not engage. His lack of engagement spanned a period of over seven months. During that time, he was well enough, at times, to apply for work, to undertake interviews, and to travel to India to work. Further, his evidence to us made it plain that the real reason he did not wish to engage revolved around his attitude towards the LSE, and the individuals who held positions within the LSE. He formed an extreme view based on a belief that he was being fundamentally mistreated, and that decisions were being made to dismiss him. It is his complete lack of trust of, and suspicion of, all the employees of the LSE which underpins his response.

5.103 On 21 February 2013, Mr Linehan produced an interim report. This gave details of the investigation to date. It referred to Ms D's complaint and recorded the correspondence with Dr Piepenbrock. It stated that the reason for delay was the Christmas break and the "inability of Dr Piepenbrock to attend for interview due to an acute stress reaction in response to the complaint."

5.104 On 28 February 2013, the claimant was signed off with depression until 30 March 2013.

5.105 On 1 March 2013, Mr Gosling wrote to the claimant requesting the claimant attend an occupational health appointment. He confirmed that the claimant's involvement and participation in the investigation was important. The main purpose of the occupational health report was to explore whether the claimant could participate in the investigation.

5.106 At no time during his employment did the claimant attend any occupational health appointment made by the respondent. During his evidence he explained to this tribunal that he considered any occupational health professional appointed by the respondent would not act independently and that the LSE would dictate any response.

5.107 On 5 March 2013, Mr Linehan asked the claimant for his availability in the week commencing 11 March 2013, as part of the investigation.

5.108 On 11 March 2013, Morgan Cole LLP wrote to the respondent a lengthy letter which contained grievances and is said to be protected act one. That grievance does not refer to any previous grievance of 19 November. It does not specifically allege Ms D acted in a sexually inappropriate manner at any time. We do not need to record the full detail of that letter. It alleges the respondent failed to engage with the claimant by not sending the unredacted complaint. It stated that the redacted version referred to an independent witness. The nature of this allegation is unclear, as the claimant knew who the person was. Nevertheless, it proceeded on the basis that the claimant did not understand the allegations against him, and that the failure to disclose the unredacted version was an act of bullying. It made various allegations concerning the claimant attend the graduation ceremony and the alleged denial of a teaching assistant. It alleged his teaching post had been advertised. It stated that the claimant wished "these issues to be addressed as a grievance." It asserted that the respondent had assumed he was guilty "in relation to evidently malicious harassment accusations." It is that assumption of guilt which appears to be advanced as an allegation of sex discrimination, as "a female colleague in this situation would not have been punished in such a manner." There is nothing in this letter that suggests the claimant made any allegation of harassment against Ms D concerning the events in the United States. There is no agreement in this letter for the claimant to attend at interview, or any offer to provide a response to any written questions.

5.109 At this time, Professor Marnette-Piepenbrock was in Princeton University. On 14 March 2013, Mr Gosling asked when Professor Marnette-Piepenbrock may be able to accompany the claimant to an OH appointment. On 17 March she indicated dates that would be feasible. Relying on those dates, on 18 March 2013, the respondent made a referral to OH and informed Professor Marnette-Piepenbrock. In his email of 18 March 2013, Mr Gosling stated that he did not believe the claimant was being harassed he stated "we simply wish him to talk to Daniel Linehan who is undertaking some preliminary enquiries…"

5.110 On 19 March 2013, the claimant failed to attend the OH appointment. Professor Marnette-Piepenbrock's email of 19 March 2013 alleged that Mr Gosling's email had exacerbated the claimant's ill health and that it compounded the harassment against him. This appears to be advanced as the reason for his non-attendance, as he was to attend a GP and a specialist for resulting chest pains. This is the alleged protected act two.

5.111 On 19 March 2013, Mr Gosling indicated that he would attempt to rearrange the OH appointment.

5.112 On 20 March 2013, the claimant's GP sent a brief letter indicating the claimant was being treated for a depressive episode. It says nothing about his ability to attend an OH interview or be interviewed in relation to Ms D's allegations.

5.113 On 20 March 2013, Professor Marnette-Piepenbrock sent a further letter to Mr Gosling which is now described as protected act three. It takes issue with several matters, including whether the claimant had cooperated in the investigation. It states that he was willing, but unable, to attend an OH appointment given his current health. It states that Professor Marnette-Piepenbrock will contact the respondent to arrange a new appointment, but that she will be away in Princeton University, and would need to accompany him.

5.114 The claimant did not attend any OH interview, despite the respondent's efforts. He had failed to attend the agreed OH appointment. He had not offered any alternative dates.

5.115 On 22 March 2013, Mr Linehan issued his final report. It confirmed that there had been no response from Dr Piepenbrock. It concluded that there was nothing in Ms D's statement which would suggest her motivation was "malicious or vexatious." As the claimant had not given any response, Mr Linehan recorded he would pass the matter to the director of HR for attention.

5.116 On 2 April 2013, the claimant was signed off by his GP until 5 May 2013.

5.117 On 25 March 2013, Ms Lisa Morrow wrote to the claimant to enquire when he would attend an OH appointment. She suggested two dates in April. Professor Marnette-Piepenbrock responded on 29 March indicating those dates may be feasible. Ms Morrow wrote again on 4 April 2013 seeking clarification as to when Professor Marnette-Piepenbrock could accompany the claimant to the OH referral.

5.118 On 15 April 2013, Ms D wrote to the respondent seeking an outcome.

5.119 On 17 April 2013, Ms Morrow sent the unredacted version of Ms D's grievance. She sought clarification about the claimant's attendance at the OH appointment and his willingness to participate in investigatory meeting. She confirmed that Professor Marnette-Piepenbrock could accompany the

claimant and that reasonable adjustments would be contemplated based on any OH advice. She noted that if the matter could not be progressed in the next two weeks, Mr Gosling, who had received Mr Linehan's report, would have to consider what steps to take.

5.120 On 30 April 2013, Professor Marnette-Piepenbrock sent a lengthy email to Ms Morrow. She alleged that Ms Morrow's email of 17 April was harassing. She took issue with the purpose of the OH report. She alleged the treatment by Ms D was a malicious campaign. She complained about the failure to hand over the full allegations at an early stage. She complained about the failure to interview Mr Wargel. She took issue with the suggestion that the claimant may be responsible for any delays. It went on to allege that he had already been judged guilty and continued to be punished. It referred to the LSE's "abusive and harassing behaviour" it stated, "I once again respectfully ask you to follow legal standards." However, it is unclear what was expected. This is alleged to be protected act four.

5.121 On 2 May 2013 the claimant was signed off work until 1 July 2013.

5.122 On 17 May 2013, Professor Marnette-Piepenbrock complained to Professor Bevan of "continuous and systematic harassment and isolation" of the claimant; this is said to be protected act five. There is no indication at all that the claimant was well enough to attend any interview. However, the claimant, during this period, did attend a job interview with Warwick University, on 30 May 2013.

5.123 On 28 May 2013, Ms Morrow wrote to the claimant referring to correspondence with Professor Marnette-Piepenbrock. She confirmed that no dates had been agreed for attendance at the OH appointment. It confirmed that Mr Gosling would proceed to reach decsion based on the information contained in the report from Mr Linehan.

5.124 On 2 June 2013, Professor Marnette-Piepenbrock wrote to Ms Morrow. She referred to the letter of 28 May 2013 and stated it was "relentless and continued systematic harassment and bullying of Dr Piepenbrock and myself." It asserted that Ms D's complaint was based on false information. It did nothing to offer any account from the claimant. This is said to be protected act six.

5.125 On 6 June 2013, Ms Morrow wrote a further letter saying it was regrettable that it had not been possible for the claimant to attend any meetings at the LSE. In relation to his own grievance, she confirmed her intention, as communicated on 17 April 2013, to discuss his concerns at the proposed meeting. She set out several questions for the claimant to answer concerning Ms D's complaint.

5.126 On 10 June 2013, Professor Marnette-Piepenbrock wrote a further lengthy letter. Dr Piepenbrock alleged "Seven months ago, Dr Piepenbrock spurned Ms D's unwanted advances, and she vindictively retaliated by

falsely accusing him of harassment." This was the first time the claimant alleged he had spurned unwanted sexual advances. It is alleged there was clear, independent, corroborating evidence, albeit that evidence is not identified. It is said that the LSE refused to investigate Ms D's "vexatious claims," and assumed the claimant guilty. She complained that he been given two working days to answer questions. It was alleged that he had never been contacted about his formal grievance. Various other allegations were made and then the email states "Our grievances against the LSE continue to grow." This is the first time the claimant alleges that there had been any form of sexual advance by Ms D. That allegation had not been made previously. This is said to be protected act seven.

5.127 On 11 June 2013, Ms Morrow agreed that the response could be filed at the end of the week.

5.128 On 17 June 2013, Professor Marnette-Piepenbrock gave the claimant's account. This is the only substantive account the claimant ever gave the respondent of the events in the United States. The account gave no detail. Instead, it simply alleged the claimant had spurned Ms D's "unwanted advances." It alleged her accusations were malicious. It stated his relationship with Ms D was purely and completely professional. He stated that Ms D had "behaved inappropriately towards Dr Piepenbrock, culminating in her inviting him to a hotel room, and greeting him at the door without her trousers on." It states that he spurned her advances, and that thereafter Ms D immediately initiated a malicious retaliatory campaign. The account fails to say anything about the content of what it is now agreed was a lengthy conversation in Boston which lasted approximately three hours. It says nothing about the nature of the conversation that occurred in Seattle after midnight leading to Ms D leaving after 04:00. In short, it gives no detail at all, apart from the bare allegation that Ms D had invited the claimant to a hotel room and greeted him, at the door, without her trousers on.

5.129 On 18 June 2013, the claimant applied for a job at UCL.

5.130 On 21 June 2013, Professor Marnette-Piepenbrock wrote to Professor Craig Calhoun. This is said to be protected act eight. She alleged that the failure to investigate, the presumption of guilt, and the continued failure to acknowledge the claimant's grievance had made them ill. The email referred to a former BBC employee who, on filing a complaint, alleged it was mishandled and had committed suicide. This email did not say the claimant was suicidal, albeit the claimant now says his suicidal thoughts should be inferred. Mr Calhoun was not involved in the investigation; he was the director of the London School of Economics.

5.131 On 22 June 2013, the claimant went to India to give a series of lectures. He was signed off work with depression at the time. He says he returned on 27 June, as he suffered ill health and the lectures were a failure. We have limited evidence concerning his trip to India and are unable to make further findings.

5.132 On 1 July 2013, the claimant sent a further doctor's note to 1 September.

5.133 On 2 July 2013, Dr Dina Dommett wrote a letter in support of the claimant. The letter commented on Ms D stating that "She seemed determined to follow Ted obsessively, rather than focus on her own career. I witnessed inappropriate obsessive behaviour from Ms D towards Ted." Whilst undoubtedly this letter was written with the aim of supporting the claimant, Dr Dommett revealed an alleged obsession, of which the claimant was aware, and it undermined the claimant's assertion that the relationship was wholly professional.

5.134 5.65 On 2 July 2013, Mr Haynes wrote an email which said of Ms Dommett's email "This isn't a very sensible letter." We accept that he was referring to her inadvertent revealing of the obsessive element of the relationship between Ms D and the claimant, and Dr Piepenbrock's obvious knowledge of it.

5.135 On 15 July 2013, the claimant attended the job interview at UCL.

5.136 On 17 July 2013, Professor Marnette-Piepenbrock sent an email to Mr Michael Barzeley.

5.137 She described him as the claimant's line manager. The purpose of the letter is unclear. It is unclear why she contacted him. The email gives a brief account of the alleged events in November 2012, stating that Ms D had behaved inappropriately. It seems to request that he does something in his future role as Head of Department to resolve the situation; it is unclear what.

5.138 On 19 July 2013, Mr Gosling gave his decision on Ms D's grievance. Having taken legal advice, he chose to find her allegation "not proven." This is not a finding envisaged by the policy and was unique to this case. In evidence, he explained his reason for doing this was that the LSE had been unable to obtain any meaningful response from the claimant, and therefore considered it inappropriate to reach any finding against him. The letter made it clear that he was considering whether there should be formal disciplinary action. Given there was no prospect of interviewing the claimant, his decision was based on the available evidence. He stated "I cannot rule that the claim is necessarily without foundation.… I do not consider that the evidence available to me is such that the complaint must be upheld." He confirmed that as the modified procedure was being used for ex-employees, there was no appeal, and the matter was closed.

5.139 On 24 July 2013, Professor Marnette-Piepenbrock wrote a lengthy letter to twelve individuals at the LSE, many of whom were not involved in either Ms D's grievance or the claimant's grievance. The letter adopted a strong and confrontational tone, albeit it started by thanking all the recipients for their support. It went on to say "It has now been clearly demonstrated and documented that Ted spurned the inappropriate unwanted advances of a

sadly unstable former LSE student… Because of her harassing indiscretions, Ted had no choice but to expel her from his global network, the International Institute for Strategic Leadership (IISL) an organisation she is obsessed with." This is an allegation which had never been made previously. Later it states, "Ted's courageous ethical actions to stop her harassment caused the unstable woman to have an emotional breakdown at the thought of losing Ted and the IISL." It suggested there was conclusive eyewitness evidence. We find none of those alleged facts or conclusions could be gleaned from Mr Gosling's outcome letter, which made no findings against Ms D, or in favour of the claimant, and it specifically addressed the alleged independent evidence and found it be of no relevance.

5.140 The claimant maintains that this letter is an appropriate and reasonable response to Mr Gosling's decision. We find the response was confrontational and irrational. In no sense whatsoever could the propositions, as advanced by Professor Marnette-Piepenbrock's letter of 24 July, be objectively viewed as a fair or reasonable summary of Mr Gosling's letter.

5.141 The letter of 24 July 2013 asserts that the claimant was initially punished publicly and held to be guilty, and he remained unwell and on sick leave. Professor Marnette-Piepenbrock goes on to thank the recipients for their support and express the view that she looks forward to the damaged trust and confidence being repaired so that Dr Piepenbrock can return to work. This letter 24 July 2013 is said to be protected act nine.

5.142 Ms D's grievance was, in effect, dealt with by this stage. We will next consider the nature of the claimant's grievances, and how they were approached.

Protected acts

5.143 The respondent did not find managing Professor Marnette-Piepenbrock's correspondence to be straightforward. The volume and frequency of her correspondence increased dramatically as time progressed. Further, she sought to engage individuals who had no direct involvement with the claimant's grievances. We consider this further below.

5.144 Some of the respondent's internal correspondence, between various employees of the LSE, contained commentary on her approach, which was never intended to be shown to the claimant, but which Dr Piepenbrock saw following data access requests. Some of that correspondence is said to be victimisation, to the extent we need to consider the detail, we shall do so when we consider the matters alleged to be detrimental treatment. It is enough to observe here that much of the correspondence to which Professor Marnette-Piepenbrock put her name was intemperate and confrontational. For the reasons we will come to, we have concluded that the claimant was involved in producing and agreeing the correspondence sent by Professor Marnette-Piepenbrock to such a

significant extent, it should be treated as being from Dr Piepenbrock, whether solely or jointly with his wife.

5.145 Much of the subsequent correspondence written in the name of Professor Marnette-Piepenbrock is relied on as being protected acts. We should consider the most important documents.

5.146 On 2 September 2013, Professor Marnette-Piepenbrock wrote to Professor Estrin. Part of the letter states the claimant was not made ill by the "malicious allegations of an unstable former student, as he always knew that her allegations would always be revealed to be false once an investigation took place." It alleged the investigations "proved [his] innocence." It alleges he was made ill by "LSE's harassing, bullying and discriminatory behaviour against him: beginning with the presumption of his guilt and public punishment." It follows that this letter pursues the theme which was clearly stated in the email of 24 July 2013. It is said to be protected act 10.

5.147 On 6 September 2013, Professor Marnette-Piepenbrock wrote to Mr Gosling (protected act 11). This email developed a similar theme, alleging the claimant was made ill by the LSE's "harassing, bullying and discriminatory behaviour." It is said to be the presumption of his guilt prior to investigation "culminating with your disingenuous claims that Dr Piepenbrock never gave his testimony" which caused his illness. That latter point alleging a disingenuous claim, has no substance. Dr Piepenbrock never gave testimony. He failed to attend at any interview as requested. We find there were times he could have attended but chose not to. To the extent that he eventually answered any questions at all, his account was entirely inadequate. The reality is he never cooperated with the investigation. This allegation, that Mr Gosling's assertion of the claimant's lack of cooperation is without merit.

5.148 We also observe that the email of 2 September 2013 does nothing to say in what manner his guilt was presumed prior to his becoming ill. On 12 December 2012, the claimant was told of an allegation. At that time, there was no basis for believing that the respondent had found him guilty. It was his own case that he had been assured by Professor Bevan that there would be no formal complaint. That could only be interpreted as support for the claimant, and if anything, a pre-judgment that he was not guilty. There is nothing in the email of 12 December 2012 which notified the claimant of the formal complaint that would indicate he had been judged guilty. The claimant points to the change in behaviour of colleagues. The claimant may have found the alleged conduct of various colleagues unwelcome, but there is no reason to believe that they were decision makers, or would influence decisions makers. Ms D had disseminated some information about the events in the United States. It is also apparent the claimant had communicated to various individuals that there had been difficulties. The evidence does not reveal any basis for his forming a belief that he had been prejudged as guilty. At the point the

claimant became ill, there was no rational basis for his believing he had been judged guilty.

5.149 On 10 September 2013, Professor Marnette-Piepenbrock sent a further complaint (alleged protected act 12). This was sent to Professor Calhoun, who was not involved in the grievance. This continued the theme of the claimant being an innocent victim of an "unstable, infatuated former student" who was said to have "retaliated" when the claimant "spurned her unwanted advances." It continued with the allegation that the claimant had been punished. At this stage the allegations became increasingly lurid and the interpretation of events increasingly difficult to reconcile with reality.

5.150 On 20 September 2013, further alleged grievances were sent to Professor Calhoun and Ms Susan Scholefield (alleged protected act 13). This email starts with the allegation that there has been “systematic harassment, bullying and discrimination against an innocent and award-winning faculty member in their unethical and unlawful investigation of the false and malicious allegations made against him by an unstable former LSE student." On the basis of that assertion, the email develops and makes various further allegations about alleged “unethical” behaviour, although it is difficult to understand what is the essence of the complaint. It does state, reasonably, that Dr Piepenbrock's grievance had not been dealt with for over six months. However, the allegation that Mr Gosling "refused to acknowledge" the grievance is not explained, and what is said to be the refusal remains obscure.

5.151 On 30 September 2013, Professor Marnette-Piepenbrock made a further complaint of wrongdoing (alleged protected act 14). It is difficult to identify what is said to be the protected act. There is reference to the claimant looking "forward to the LSE working to repair the damage it is causing to his trust and confidence."

5.152 On 7 October 2013, the claimant wrote to the respondent authorising Professor Marnette-Piepenbrock to correspond on his behalf. This is said to be protected act 15. His email states he is suffering from psychiatric injury. He states that clinical psychologists and psychiatrists had "determined my personal injury to be unambiguously caused by the LSE following the false and malicious accusations of an unstable, vengeance-stalking LSE employee in her illegal defamation of character campaign, and significantly worsened by the LSE’s subsequent unlawful harassment, bullying and discrimination against me." We would note that the claimant has shifted his position. He is now putting the cause of his condition as the false and malicious accusations of Ms D. That is directly contradictory to the previous correspondence. The alleged harassment of the LSE is put forward now as exacerbating the original injury.

5.153 During his evidence, we asked the claimant to clarify his involvement with the emails written by his wife. He confirmed that he had been aware of all the emails and had agreed with, and ultimately authorised, all the content.

He denied drafting them and sought to make a distinction between his involvement, which he claimed fell short of drafting the documents, and his being the effective author. He confirmed that the process undertaken between he and his wife for completing this letter of authority, which clearly goes beyond a simple authorisation and contains serious accusations, was the same process by which all the other emails, prepared by Professor Marnette-Piepenbrock, were produced and sent. We asked the claimant to confirm why he felt able to put his name to this document, whereas he could not put his name to the others. The claimant gave no satisfactory explanation. His involvement may have varied. However, we have no doubt that his involvement was such that he not only knew what the content was, but he had significant input and he authorised it. We have no doubt, having regard to the nature of the language employed at the time and subsequently repeated in documents drafted for these proceedings, that at times he was the primary author. His input was such that there was no reason at all why he should not have put his name to the emails sent on his behalf by Professor Marnette-Piepenbrock. We find he was the effective author and the driving force, albeit Professor Marnette-Piepenbrock put her name to the emails. The reality is that the claimant was corresponding directly with the respondent, using his wife's identity. The respondent could not have known at the time that these emails were, effectively, written by the claimant.

5.154 On 14 October 2013, Professor Marnette-Piepenbrock wrote to Ms Scholefield. This is said to be protected act 16. This letter thanks Ms Scholefield for acknowledging the claimant's grievance and says it is a further grievance "after 298 days of abusive isolation." It confirms that the grievance in question was 11 March 2013. (There is no suggestion whatsoever that the grievance was first instigated on 19 November 2012.) Thereafter, it makes various allegations. It refers to "the unstable LSE employee" and her "false and malicious allegations." It refers to the future conduct and the potential satisfactory conclusion, albeit that any such conclusion would "require investigations to be ethically carried out, blame to be properly assigned and redress to be fairly given." There can be no doubt that what the claimant envisages was that Ms D should be found to have made false and malicious allegations; anything short of that would not be satisfactory to the claimant, and the suggestion that the claimant is in some manner willing to participate in the process, or is actively seeking resolution, must be viewed in the light of his insistence that as a prerequisite, matters will be resolved, fundamentally, and in his favour such that Ms D would be subject to the approbation he envisages. It follows that this grievance is based on the assertion that Ms D made false and malicious allegations. We would note that Mrs Justice Davies's findings make it plain that in no sense whatsoever could Ms D's allegations be seen as malicious. That fundamental finding led Mrs Justice Davies to reject the personal injury claim based on an allegation that her action amounted to harassment.

5.155 On 23 October 2013, Professor Marnette-Piepenbrock wrote to Ms Scholefield (protected act 17). The email thanks Ms Scholefield for

"ethically keeping lines of communication open" but then states that her proposed course of action "only serves to worsen an already oppressive and unacceptable situation." The remainder of the letter is difficult to understand. There is reference to the delay in proceeding with the claimant's grievance, and, undoubtedly, that was a fair point. The email alleges wrongdoing by Professor Calhoun, alleging in some manner he had failed to acknowledge the grievance in an email of 18 October 2013. It is difficult to understand this, as Professor Calhoun was not involved in the grievance. Nevertheless, it is said to be a formal grievance. There is reference to the "harassment case" being "unethically closed." This appears to refer to Mr Gosling's letter 19 July 2013. However, that letter was not concerned with the claimant's grievance. It was concerned with Ms D's grievance. Moreover, in Professor Marnette-Piepenbrock's email of 24 July, she interpretated the letter of 19 July 2013 as being wholly supportive of the claimant's position. There is also reference to Mr Gosling denying the claimant's lawful right of appeal. However, the matter dealt with in 19 July 2013 was Ms D's grievance, for which there was not appeal. The reality is much of this letter is impossible to understand and appears to demonstrate an approach which is increasingly inconsistent, irrational, offensive, and confrontational.

5.156 On 8 November 2013, Professor Marnette-Piepenbrock sent an email which is said to be protected act 18. This continued with the theme that Dr Piepenbrock had been "illegally stalked, harassed and maliciously defamed by an unethical LSE employee." She referred to him as innocent. Its primary purpose appears to be to forward a further letter from Dr Piepenbrock's GP. This letter refers to the delay as having a negative impact. To the extent the email refers to there being a delay in dealing with the claimant's grievance, it is reasonable. However, it appeared that the suggestion had become that the original grievance concerned Ms D, which it did not.

5.157 On 25 November 2013, Mr Webb sent the outcome of the claimant's grievance and gave him five days to appeal. We consider the detail of this below.

5.158 On 28 November 2013, Professor Marnette-Piepenbrock appealed the grievance outcome. This is alleged to be protected act 19. It states that the grievance outcome has "further exacerbated and compounded his growing grievance and the likelihood of legal action." It alleges the report contributed to long term systematic abuse. It states he wishes to appeal the findings of Mr Webb's investigation. and alleges the five days to appeal was "harassing, oppressive and complete unacceptable."

5.159 On 6 December 2013, Ms Scholefield extended the time for filing the grounds of appeal.

5.160 On 13 December 2013, Professor Marnette-Piepenbrock sent what is alleged to be protected act 20. This email complained about the time taken to investigate the claimant's grievance. It refers to occupational

health, but what is intended is obscure. If falls short of agreeing to attend an occupational health appointment. It alleges the claimant would participate in external mediation but places conditions on it which included: a neutral evaluation, an independent appeal, and an independent workplace investigation. The effect is there should be some sort of external, independent investigation which would attribute blame or responsibility, before the claimant would engage in external mediation. The reality is that the claimant was putting in place unmanageable and unreasonable conditions, such that in no sense whatsoever was this an acceptance. It is unclear what is said to be protected act.

5.161 On 26 January 2014, Professor Marnette-Piepenbrock sent what is said to be protected act 21. This concerned the possibility of meeting with Ms Scholefield to resolve matters. It stated, "In spite of the LSE's continued inhumane abuse, Dr Piepenbrock and I are willing to meet with you alone in our home in Oxford on Friday 7 February between 13:00 and 17:00." There is reference to "a serious breach of the implied term of trust and confidence." It is difficult to see what is said to be the protected act.

5.162 It may be helpful to set out the context in which this letter was written. Ms Susan Scholefield was employed by the London School of Economics in the role of the school secretary and chief legal officer. She rarely managed her own correspondence and her private office consisted of three of four teams with a total of 20 to 30 staff. The deputy secretary was Mr Andrew Webb. Mr Kevin Haynes was the head of legal. Ms Scholefield believed that HR were dealing with the grievances. She had little involvement until around 10 September 2013. She instructed Andrew Webb to carry out the grievance investigation in October 2013. She was involved in extending the time for appeal against Mr Webb's subsequent findings on the claimant's grievance. Her main involvement concerned possible mediation with the claimant. She first proposed mediation on 6 December 2013. Professor Marnette-Piepenbrock’s response of 13 December, included conditions which she thought neither appropriate nor necessary. Ms Scholefield reiterated the offer of mediation on 18 December 2013 and proposed a meeting. She asked for a response by 2 January 2014. Professor Marnette-Piepenbrock wrote on 21 December 2013, by the offer of mediation was not accepted. Thereafter she proposed meeting with Dr Piepenbrock and Professor Marnette-Piepenbrock; she would be accompanied by her executive assistant Ms Hilary Weale. The meeting did not take place because the letter, which we will come to, of 6 February 2014 insisted that Ms Scholefield should meet Professor Marnette-Piepenbrock and Dr Piepenbrock alone at their home. Ms Scholefield subsequent email of 4 February left open the possibility of meeting at a neutral venue accompanied by her colleague. She found a hotel within yards of the claimant's property. We accept Ms Scholefield's evidence, which was to the effect that she believed it necessary to have a witness, and she wanted to be in a neutral situation, so that anyone could leave if necessary. In any event, a neutral venue would be more conducive to negotiation.

5.163 On 6 February 2014, Professor Marnette-Piepenbrock sent an email said to be protected act 22. This email stated that it was Ms Scholefield who had "inexplicably" changed her mind and refused to meet with the claimant in his home. This decision is said to be "yet another clear example of the continued deception, obfuscation, stonewalling, harassment, and psychological abuse that you and the LSE continue to inflict upon an innocent, award-winning LSE employee and his family…" It then goes on to make various accusations about "precisely the same thing" occurring the previous summer when it was alleged to be a refusal to "investigate the illegal, malicious and gross misconduct of a vengeance-stalking LSE employee who sadly experienced unrequited love towards Dr Piepenbrock who ethically spurned the egregiously inappropriate unwanted advances of the unstable stalker." The email went on to refer to "alarming and growing pattern of serious ethics breaches" said to be "called out in the Woolf enquiry." It referred to the grievance against her and Professor Calhoun. We do not need to record the full content. We find this email is abusive. Ms Scholefield had made it clear she would meet with Dr Piepenbrock and Professor Marnette-Piepenbrock, provided she had a witness. Given the nature of the correspondence, any reasonable person would have had concerns about meeting Dr Piepenbrock and Professor Marnette-Piepenbrock alone or at their home. The language used by Professor Marnette-Piepenbrock was offensive and hostile. We observe that Professor Marnette-Piepenbrock's correspondence remained underpinned by the allegation that the claimant was the innocent victim of harassment by Ms D.

5.164 On 7 March 2014, there is a series of emails which collectively the claimant refers to as protected act 25.[25] Those 39 alleged protected acts were not identified in the claim form. They were not identified until immediately before the hearing when the claimant filed a document which purported to clarify the protected acts relied on. Moreover, none of those emails is referred to in the claimant's evidence.

5.165 On 30 May 2014, Professor Marnette-Piepenbrock sent an email to Mr Calhoun said to be protected act 23.[26] It referred to his imminent departure and stated he was ultimately responsible for Mr Gosling's "unethical" actions. It referred to 11 March 2013 grievance and then further grievances which appear to be largely against Mr Gosling concerning the deletion of emails. It referred to the data access requests. The purpose of the email is unclear. It is premised on the assertion that the claimant is innocent, clearly this is a reference to his allegation that he was harassed by Ms D.

5.166 On 6 August 2014, Professor Marnette-Piepenbrock sent a further email, said to be protected at 24. This email contained numerous allegations. It starts with the assertion that the claimant is innocent. It alleges that he has been isolated and bullied "never once initiating a single

[25] In the issues the claimant refers to there being 39 emails, but we calculate that there appear to be 47 emails which could legitimately be seen as PA 25.
[26] Mistakenly referred to in the respondent's chronology as part of PA 25.

communication to Dr Piepenbrock out of concern for his health and well-being." We find that allegation cannot withstand even the most cursory consideration of the documentation. The main theme appears to be alleged isolation and bullying of the claimant. It appears it is envisaged as a grievance against Mr Barzelay. It is unclear what it is envisaged to be the grievance, or what action is envisaged. It appears to be a development of the themes in the other alleged protected disclosures.

The claimant's grievance

5.167 There was delay in dealing with the claimant's grievance filed on 11 March 2013. The grievance was not acknowledged at the time, and the explanation we have for that is limited. Mr Andrew Webb was the deputy secretary and director of governance, legal and planning division. His role involved overseeing the LSE's legal section. Ms Scholefield nominated Mr Webb to deal with the grievances. Mr Webb had not previously been involved, albeit he had a high-level awareness, given his position.

5.168 Mr Webb wrote to Dr Piepenbrock on 26 October 2013 to introduce himself and to confirm the procedure to be adopted. This email confirmed he would endeavour to complete the investigation within 10 days. He would work from the documents received to date, which he identified. It was clear from this letter that he did not propose to meet with the claimant, and we accept his evidence that he considered meeting impracticable, having regard to the claimant's failure to engage with the LSE and his reported state of health. The desirability of interviewing him was weighed against the risk of causing further harm, as envisaged by Professor Marnette-Piepenbrock's correspondence. He considered contacting 0H, but noted the failed attempts to obtain an OH report and the unlikelihood of the position changing. At no time did the claimant object to the procedure Mr Webb proposed. At no time did the claimant request to be interviewed.

5.169 Mr Webb considered the grievances contained in the letters from Morgan Cole of 4 February 2013 and 11 March 2013. In addition, he took into account grievances raised by Professor Marnette-Piepenbrock on 10 September 2013, 20 September 2013, and 14 October 2013.

5.170 Mr Webb obtained statements from relevant individuals, including Mr Linehan, Ms Hay, and Professor Bevan and Professor Gosling. He had extensive documentation from Professor Marnette-Piepenbrock. He focused on the letters from Morgan Cole LLP.

5.171 On 25 November 2013, Mr Webb submitted his report to the claimant. He upheld several grievances and noted where improvements could and should be made. He rejected several grievances. In his statement, at paragraph 19, he describes his main findings as follows:

> **19.4 I did not uphold the allegation that Dr Piepenbrock had been presumed guilty of the allegations brought by Ms D. In relation to the following specific allegations:**

19.4.1 I did not uphold that Dr Piepenbrock was instructed not to attend the degree ceremony by Professor Bevan and that this was embarrassing for Dr Piepenbrock and damaging to his reputation. From my investigation, I formed the view that, on the balance of probabilities, whatever was said to Dr Piepenbrock about his attendance at the degree ceremony and following reception was intended to be in the nature of advice rather than an instruction. (I refer the tribunal to the High Court's findings at paragraphs 233 and 234 of its judgment (pages C762) that Professor Bevan's "concern as to [Dr Piepenbrock's] attendance at the graduation and party at a time when Ms D and her parents would be present was not unreasonable".)

19.4.2 I did not uphold that there had been an irrevocable decision to deny Dr Piepenbrock teaching assistance due to the allegations made by Ms D. From my review of the evidence and the circumstances, it seemed likely to me that a decision would have been made on teaching assistance on Dr Piepenbrock's return to work taking all the factors into account at that time. I therefore concluded that, on the balance of probabilities, had Dr Piepenbrock returned to work, it was likely that he would have been provided with teaching assistance. (I again refer the tribunal to the High Court's findings at paragraphs 233 and 234 of its judgment (pages C762), which are consistent with my decision on this point and which reaffirm that the LSE's stance regarding teaching assistance was perfectly reasonable.)

19.4.3 I did not uphold that Dr Piepenbrock had been promised in August 2012 and subsequently denied a promotion to Professor of Practice, or that the "clinical professor" track had been closed off to Dr Piepenbrock by the appointment of Dr Sandy Pepper as Professor of Practice. I found that this point of grievance was indicative of a breakdown in communication between the LSE and Dr Piepenbrock during the period of his absence. In light of the competitive process by which promotions were made in the LSE, of which both Professor Bevan and Professor Estrin as experienced heads of department would be well aware, I found on balance that they would not have suggested that they were able to promise Dr Piepenbrock a promotion and that this point could not be upheld. (Please see further the High Court's findings at paragraph 203 its judgment (pages C754), which accord with the outcome I reached.)

19.4.4 I did not uphold that the Department of Management had advertised Dr Piepenbrock's post in 2013 - 2014. I found that the position regarding Dr Piepenbrock's ineligibility for further employment under the LSE Fellowship Scheme was set out in his letter of appointment and had not changed.

19.5 I recommended that, on receipt of a cheque and an authorisation from Dr Piepenbrock, the LSE's Data Protection team should be asked to process the outstanding data subject access request made by Dr Piepenbrock. In addition, I recommended that steps were taken within the LSE to review how data subject access requests received in such circumstances should be handled in the future.

19.6 I found that the LSE had no choice but to investigate the complaint of harassment made by Ms D and that it would have been better for Dr Piepenbrock to have responded to such allegations. In respect of Dr Piepenbrock's claim of bullying by the LSE, I did not find any evidence which demonstrated that those who dealt with the harassment allegation

> **acted with the intention of being "offensive, intimidating, malicious or insulting", or that they "abused or misused power" through means that "undermined, humiliated, denigrated or injured" Dr Piepenbrock (as per the definitions of harassment and bullying in the ACAS Guide). But, I was cognisant of the alleged impact of the way the case had been handled on the individual. It was clear that there were aspects of the LSE's handling of the case as a whole which might have been dealt with much better and which might have helped to move things forward more expeditiously. However, I did not believe that it amounted to bullying.**
>
> **19.7 I recognised that having a separate anti-harassment panel posed unhelpful difficulties in dealing with the complaint against Dr Piepenbrock. The LSE had implicitly acknowledged that "the Harassment Procedure", which was used in Dr Piepenbrock's case needed to be improved by integrating the processes for handling harassment into the grievance procedures. In my view, this would help to achieve a more holistic oversight and control of the various strands of activity involving in dealing with harassment claims, and would address the problems of co-ordination between the investigation of the grievance by a team outside the Human Resources Division and the attempts of members of the Human Resources Division to deal with the grievance as an issue of management, which affected Dr Piepenbrock's case.**
> **19.8 I recommended that further steps were taken to facilitate Dr Piepenbrock's attendance at an occupational health assessment so that the LSE would have access to advice on how to support his return to work for the remainder of the duration of his contract of employment.**
> **19.9 I also recommended that on his return to work, the Head of the Management Department arranged to meet with Dr Piepenbrock to discuss the advice of occupational health, together with options for continuing and developing Dr Piepenbrock's academic career.**

5.172 We have considered the report, it is careful, thorough, and balanced.

5.173 On 28 November, Professor Marnette-Piepenbrock emailed Ms Scholefield stating that the investigation and report had "exacerbated and compounded" her husband's grievance and the likelihood of taking legal action.

5.174 On 5 December 2013, Mr Webb gave a proposed response. Ms Hilary Weale (executive officer to the school secretary) sent him a draft response. Mr Webb did not believe that he needed to be consulted about the response he responded by saying "Thanks, but to be honest, I don't really give a zebra's what we say to Piepenbrock or his Mrs: it's really Susan who needs to be okay with it because she is handling the appeal."[27] He did not intend this email to be seen by the claimant, and now accepts that it was curt and rude to Ms Weale. In his statement he says, "It was a (perhaps overly frank) observation that -after some considerable time - my role in the process had come to a conclusion and I was not the person to ask for an 'okay'."

5.175 On 22 December 2013, he was forwarded a further email from Professor Marnette-Piepenbrock by Ms Scholefield he referred to the tone adopted

[27] Mr Webb explained to us that the reference to "zebra's" is a literary allusion to correspondence between Philip Larkin and Kingsley Amis. The word omitted is 'turd.'

as “the usual measured, eirenic conciliatory tone". He says this "This comment was a perhaps ill-judged attempt to employ irony in the face of the visceral tone used by Dr Marnette-Piepenbrock in her email to the LSE. It was not made because Dr Piepenbrock had done a ‘protected act’. Rather, it was because of the emotive and intemperate tone Dr Marnette-Piepenbrock chose to adopt."

5.176 Mr Webb's involvement thereafter was limited; we do not need to consider it further at this point.

5.177 On 28 November 2013, Professor Marnette-Piepenbrock raised an appeal (alleged protected act 19). She alleged that the appeal period of five days was "harassing, oppressive and completely unacceptable." We accept Mr Webb's evidence that he referred to 5 days because that was the standard procedure.

5.178 On 6 December 2013, Ms Scholefield extended time; the grounds of appeal which were to be sent by 2 January 2014.

5.179 On 13 December 2013, Professor Marnette-Piepenbrock raised further complaints. We have already considered this letter.

5.180 The claimant did not send his points of appeal by 2 January 2013. Ms Scholefield sought to enter into mediation; we consider this elsewhere. The mediation did not proceed because Professor Marnette-Piepenbrock and the claimant unreasonably insisted on Ms Scholefield meeting them in person, at their home, and without any colleague accompanying Ms Scholefield. Thereafter, numerous further grievances were filed which we will look at in greater detail when we consider protected act 25.

5.181 There was delay in proceeding with the claimant's grievance appeal. We have no doubt that the approach taken by Professor Marnette-Piepenbrock, including the filing multiple grievances, and failing to state the grounds of appeal, either caused or contributed to the delay.

5.182 The appeal panel consisted of three lay governors, Mr Alan Elias's, solicitor JP, Dr Wendy Momen, MBE JP, Ms Bronwyn Curtis OBE. The appeal panel met on 15 July 2014. The report set out a detailed summary of the matters constituting the claimant's grievance, as considered by Mr Webb. It recorded the claimant's failure to set out detailed grounds of appeal. It noted that there were grievances against Mr Webb, Mr Gosling, Professor Estrin, Professor Calhoun, and Ms Scholefield. The initial report attempted to codify those grievances.

5.183 Professor Marnette-Piepenbrock attended, confirming that Dr Piepenbrock was too ill.

5.184 On 25 July 2014, Mr Garry Piepenbrock wrote alleging that the actions LSE made his parent’s ill.

5.185 Professor Marnette-Piepenbrock's email of 25 July 2014 referred to Mr Garry Piepenbrock's email and went on to make allegations which included the LSE continued to harass Dr Piepenbrock who had "spurned the unwanted advances from an obsessive, lovestruck LSE graduate teaching assistant…" It is said that her allegations were "false and malicious."

5.186 The appeal panel's report was published on 29 July 2014. It is apparent that they specifically considered 27 emails from 23 October 2013 to 27 June 2014, the vast majority of which were described as grievances. We do not need to set out all the conclusions. We should summarise the main findings. The panel found no evidence of a campaign, by the LSE, of discrimination, harassment, bullying, isolation, or victimisation of the claimant. It did not uphold the appeal against Mr Webb's report. It noted that a number of grievances had been upheld by Mr Webb, and supported his conclusion. Grievances against Mr Gosling and others were upheld to the extent found by Mr Webb. Complaints against Professor Calhoun, Ms Scholefield, and Professor Estrin were dismissed. The report gave recommendations concerning some failures, and offered reimbursement of reasonable legal costs of Morgan Cole LLP, by way of a "goodwill gesture." The report set out supporting reasons for the decision. It stated that if the claimant were dissatisfied with the conclusions or recommendations, he could appeal to a panel comprising the chair of the court and council, and two independent lay governors. He was given five working days, which was the standard period allowed.

5.187 On 4 August 2014, Professor Marnette-Piepenbrock responded to the report. This email contains extremely strong language. She made numerous allegations, including that she had been lied to. It took issue with the five days allowed for the appeal. It alleged there had been governance failures and that the claimant's evidence had been ignored. It follows she did not accept the outcome.

5.188 On 11 August 2014, Mr Calhoun issued an apology by letter. It acknowledged the following; the delay in providing the claimant with details of Ms D's complaint; the delay in acknowledging his grievance of 11 March 2013; giving the appearance of periods of inactivity; and Ms Scholefield's delay in correspondence with Professor Marnette-Piepenbrock.

5.189 In response, LSE convened a further appeal hearing which comprised of Mr Richard Goeltz, Mr Daleep Mukarji, and Mrs Angela Camber, all of whom were lay governors. That panel initially met on 12 December 2014, and reached provisional conclusions having reviewed the documentation. It concluded, provisionally, there was no new information provided and that the LSE procedures had been applied correctly; thereafter, it adjourned to allow the claimant an additional opportunity to obtain and forward documents.

5.190 That panel met again on 24 February 2015. Neither the claimant nor Professor Marnette-Piepenbrock attended, although Professor Marnette-Piepenbrock confirmed her non-attendance by email of 20 February 2015 in which she confirmed she would not attend until "the LSE provided the DPA SAR information." The panel found it was not its function to rule on issues related to data protection requests. The claimant had been warned that it would proceed, even in the absence of attendance. The panel considered its remit and asked whether any new information had been made available.

5.191 The panel considered the points raised by Professor Marnette-Piepenbrock on 4 August, including whether Mr Mordue (a legal advisor) would attend. It identified what appeared to be the current grievances to be considered. The appeal was rejected, as there was no new information, the procedure had been applied correctly, and a reasonable person would have reached the same conclusion as the grievance panel.

5.192 On 13 March 2015, Mr Goeltz , on behalf of the panel, wrote to the claimant explaining the decision and enclosing the report. The letter summarised the decision. No further action was taken in relation to any grievance.

<u>Protected act 25 (and other grievances against Professor Calhoun)</u>

5.193 The claimant's approach to this employment tribunal claim has created significant difficulties identifying the issues. In the issues protected act 25 was recorded as "7 March 2014 – 10 October 2014, by 39 emails from his wife to Professor Calhoun." The claim form failed to set out which emails were referred to. At no time did the claimant apply to amend to give details of those emails. That remained the position until shortly before the hearing. On 1 March 2022, he sent a document referred to as an "outline of the protected acts." That document referred to 39 separate emails from the following dates in 2014: 7, 10, 11, 12, 17, 18, 19, 25, 27, 28 and 31 March, 4, 9, 11, 21 and 29 April, 9, 16, 30 May, 6, 13, 20, 24, 26, and 27 June, 25 July, 15, 15 August (2 on the same day) 22, 22 August (2 on the same day), 23, 25, and 31 August, 5, 12, 15, 25, and 25 September (2 on the same day) and 10 October. Whilst 39 were identified by the claimant, the respondent, in its chronology, appears to identify 46 emails which concerned grievances against Professor Calhoun, and which the respondent had treated as part of PA 25. The grievances against Professor Calhoun of 28 February and 4 March 2014, both pre-date 7 March. It is unclear why these are not relied on by the claimant. Professor Marnette-Piepenbrock's email of 14 April 2014 has a subject line "grievance against you – 14." It is not clear why it is not relied on. Professor Marnette-Piepenbrock's email of 30 September 2014 is said to be "grievance against you 21.5" it is not clear why that is not relied on. The allegations against Professor Calhoun continue after 10 October 2014. There are grievances directed against Professor Calhoun on 19 and 28 October, 16 November, and 9 and 10 December. They continue into 2015 on 26 January 2015 and the final grievance against Professor

Calhoun (described by Professor Marnette-Piepenbrock as number 33.1) is on 16 February 2015.

5.194 All the emails relied on by the claimant appear to be allegations against Professor Calhoun, albeit it is not always clear that is the primary intent.

5.195 The first email of 15 August 2014 is directed to Mr Seehra and does not in itself appear to be a grievance against Professor Calhoun.

5.196 We have considered all these documents. We do not need to consider them in detail. An immense number of emails purporting to be grievances against Professor Calhoun were sent in. The relevant emails appear to start on 28 February 2014 and continues to 16 February 2015. There are more than 39 and the total number is certainly in the mid-40s.

5.197 As noted, we do not need to record the full detail of all those alleged protected acts. The essential allegations are largely repetitive, and it will suffice for our purposes to give some illustrative examples. The first relevant email of 28 February 2014, addressed to Professor Calhoun, says "As you are ultimately responsible for the LSE's illegal systematic campaign to destroy an innocent man's life and career, the list of grievances against you continues to mount, and it is now 129 days since Dr Piepenbrock filed a formal grievance against you." Beyond that which is implied, it does not identify any specific complaints.

5.198 The alleged protected act of 4 March 2014 continues in a similar manner and once again holds Professor Calhoun "ultimately responsible." It alleges it is improper to direct OH not to establish the cause of the claimant's ill health. It states, "After 448 days of Dr Piepenbrock's LSE inflicted illness, for the LSE to explicitly mandate that the causes of Dr Piepenbrock's ill health shall not be established is egregiously unethical and violates the most fundamental tenets of the Hippocratic Oath."

5.199 The email of 7 March 2014 once again holds Professor Calhoun "ultimately responsible for the LSE's illegal systematic campaign."

5.200 By 6 June 2014, the description of the claimant's condition began to change. It states, "I remain authorised to speak on Dr Piepenbrock's behalf while he is ill, due to the LSE's illegal 569-day campaign of defamation, harassment, bullying, isolation, discrimination and victimisation against an innocent, ethical, award-winning and now disabled faculty member." It is at this point the claimant consistently starts to include express reference to his alleged disability. It refers to a failure to "ethically provide occupational health" reports. This allegation is without foundation. It was the claimant's unreasonable approach which prevented his attending at occupational health appointment arranged by the respondent. We note the claimant provided an occupational health report from his own consultant, Dr John Spiro, following a self-referral, dated 8 May 2014. We have considered that report. The report is limited and does not address fundamental questions relevant to the respondent's

management of the claimant. It does little more than suggest reasonable adjustments should be considered.

5.201 By 21 April 2014, the grievances against Professor Calhoun start to refer to Ms D, expressly. Undoubtedly, the previous reference to innocence is a reference to his being innocent of any harassment of Ms D, and hence her involvement was implied. The email of 21 April 2014 is at least five pages long. It alleges that HR "commits perjury to occupational health provider in 2013." This appears to refer to the reason for absence being said to be "non-work-related stress." His concern was addressed at the time, and he was invited to give his account to occupational health. In any event, work-related stress tends to refer to the stress caused by work. It has been the claimant's case, variously, that the alleged malicious allegations of Ms D caused injury and the injury was caused by the failure of the respondent's breach of duty. Neither is work-related stress. As for Ms D, it refers to "the false and malicious complaint against Dr Piepenbrock by the spurned teaching assistant…" We do not need to record all the allegations made in this email.

5.202 The email of 27 June 2014 contains the following: "Second, the unstable, vengeance stalking GTA's false and malicious allegations of harassment were clearly not the original cause of Dr Piepenbrock's illness. If they were, Dr Piepenbrock would have gone on sick leave on 16 November 2012, as Ms Scholefield falsely alleged." It carries on "While it was definitely awkward and embarrassing for him to have to spurn her unwanted advances (e.g. when she invited him to her room without her trousers on), he did not feel ill in any way, only sad to see such a talented, but emotionally unstable woman spin out of control when he told her that he could not work with her anymore. Apparently unrequited love is an extraordinarily destructive thing at the hands of a terribly unstable woman with a sad history of self-reported family abuse. Dr Piepenbrock has a 100% clear conscience because he is completely innocent of any alleged wrongdoing." We do not need to set out the remainder of this email. There are references to violation of the ethics code, grievances against Professor Estrin, grievances against Ms Scholefield and numerous other matters said to be contraventions of the respondent's duty in relation to its handling of the claimant's absence, the correspondence with OH, and the approach to grievances. The essence of the complaint is that the claimant is an innocent victim, first of the malicious allegations of Ms D and thereafter of the actions of the respondent, which have at their heart the intention of harassing him and ultimately dismissing him. The remainder of the grievances against Professor Calhoun continue in a very similar manner. Much of their content is repetitive.

5.203 The final email in this series of grievances brought against Professor Calhoun is dated 16 February 2015. This email largely concerned an allegation that the claimant could not be expected to engage with an appeal meeting chaired by Mr Richard Goeltz because it is alleged there had been a failure to comply with the data access request. The email at its end, states, "Your continued bullying of Dr Piepenbrock in spite of the

aforementioned warning demonstrates complete disrespect of the LSE governing body by the LSE director. This continued illegal campaign of defamation, harassment, bullying, isolation, discrimination and victimisation against an innocent ethical award-winning academic must finally end and the relevant legal transgressions addressed and redressed." It follows that whilst the theme of this email revolves around data access, that action is said to be part of a continuing seamless campaign of harassment. Underpinning that is the assertion that the claimant is innocent. That reference to innocence can only be a reference to the events concerning Ms D. It proceeds on the basis that the claimant's actions in relation to Ms D were not blameworthy, and in that sense innocent. It goes beyond a simple assertion that his actions were nonsexual. Further, it cannot be understood outside of the context that the claimant had consistently campaigned for a recognition of his innocence by requiring the respondent to condemn Ms D. This is the request for redress. This is graphically illustrated by the consistent use of the fundamentally offensive and derogatory terms employed to describe Ms D.

The events of 12 November 2012

5.204 As noted, Mrs Justice Davies declined to decide, as a fact, what occurred at the door of Ms D's hotel room on 12 November 2012. We have considered carefully whether the events of 12 November 2012 are relevant. Both sides maintained that it is relevant to make an appropriate finding of fact. The claimant has presented extensive evidence. The respondent relied on a statement of Ms D, albeit Ms D has not been called. We have ruled that statement may be admitted. During submissions, we were careful to explore with the parties whether they invited us to decide based on the evidence as presented. Both parties were absolutely clear that they had presented the evidence they wished to, and it was for us to make a decision, should we decide it was relevant.

5.205 We have concluded that it is relevant. It is impossible to read the totality of this documentation, as we have, without concluding that the most significant driving force behind the claimant's conduct is his assertion that he is the innocent victim of a malicious and false allegation made by Ms D concerning the events in Boston and Seattle. As to the exact nature of those events, his evidence is extremely poor. There can be no doubt that his behaviour was wrong. That was found by the Mrs Justice Davies and we are bound by that finding. Had Mrs Justice Davies not made the finding, we would have done so. We concur with, and support, Mrs Justice Davies's finding as to the inappropriateness of the claimant's behaviour towards Ms D. Put at its very lowest, his conduct to her in both Boston and Seattle was entirely inappropriate, wrong, and unprofessional. It is against that background the claimant seeks to justify his actions. The basis of that justification is that, rather than his behaviour being inappropriate, his behaviour was reasonable and appropriate and explained by his legitimate need to confront Ms D about her alleged inappropriate sexual misconduct. His alleged reason for pursuing those

lengthy conversations in Boston and Seattle (being around three hours on a park bench in Boston, and thereafter up to four hours following midnight when in Seattle) is founded on an allegation that Ms D made unwanted sexual advances to the claimant by inviting him to the room she was using in Boston and thereafter propositioning him by appearing without her trousers on.

5.206 Dr Piepenbrock asks the tribunal to believe that, in some form of principled deference to protecting her reputation, he made no written grievance about this. This despite the fact that approximately seven hours of conversation was dedicated to the alleged inappropriate sexual advances over two separate discussions whilst in America. This despite the fact that he now alleges he raised a formal grievance against her on 19 November 2012, which he expected the respondent to deal with. This despite the fact that she filed a grievance against him which he considered, at the time, to be malicious and untruthful. On his case, in the face of that alleged malicious grievance, he still maintained his silence. That silence, at least the silence in writing, was maintained until Professor Marnette-Piepenbrock referred to Ms D's alleged advamces in June 2013. Thereafter, allegations against Ms D gained momentum following Professor Marnette-Piepenbrock's letter 24 July 2013.

5.207 In reaching our decision, we have regard to the claimant's credibility which we will explore elsewhere. Suffice it to say we have found the claimant to be an unreliable witness. The claimant's behaviour towards others is characterised by extreme reactions. In the case of Ms D, he asks us to accept that, despite realising she had made, on his case, and by way of retaliation, malicious and untruthful allegations against him, which could be career threatening, he chose not to reveal the nature of her sexual advances, until some seven months later. This is entirely inconsistent with the way Dr Piepenbrock behaves. It is also inconsistent with his own perception of the way he behaves. On the claimant's case, he has an overwhelming need to challenge untruths. On his case, as Ms D was entirely in the wrong for making unwanted sexual advances, and he was entirely in the right because he spurned her advances, the claimant somehow controlled his impulse to challenge the alleged malicious lies and maintained his silence.

5.208 We cannot ignore Dr Piepenbrock 's behaviour towards Ms D, as illustrated by the totality of the evidence. EJ Hodgson considered the IILS website in the strike out decision of 4 March 2020. The claimant's vilification of Ms D on that website should properly be described as malicious. The website relies on several themes, one of which is the alleged inappropriate and sexualised way Ms D behaved towards others. This would include both her alleged actions and her mode of dress. The claimant included numerous pictures. Some of which we now understand were not of Ms D, but on the website clearly appear to represent themselves as being of Ms D. Some of the pictures were of Ms D. At least two of the pictures show Ms D, or someone held out to be Ms D,

wearing a bikini. In one of them she is also wearing a T-shirt. One is on the beach. One appears to be on a sunbed next to a pool.

5.209 There is nothing remotely unusual about a woman wearing a bikini, whether with or without a T-shirt, whilst enjoying the sun. As for the beach photograph, he refers to Ms D as having a "penchant for proudly displaying her oversized underwear in public." The photograph shows a woman, presumably Ms D wearing a normal bikini top, whilst sat on a beach.

5.210 In the photograph where Ms D appears to be sitting on a sun bed near a pool, Ms D is wearing a T-shirt over a bikini, the caption reads "penchant for revealing her undergarments in public." No reasonable person could accept that the description is appropriate. It demonstrates that the claimant is viewing what appear to be innocuous holiday snaps in an extreme and sexualised way.

5.211 There were numerous other pictures on the website, most of which had inappropriate captions. Those pictures include Ms Hay, who is also vilified, quite improperly, on that website.

5.212 We should describe one further picture which perhaps illustrates the unreliable nature of the claimant's perception of Ms D. There is picture of two young men, probably students, and Ms D. They appear to be in some form of student common room and are sitting on three normal chairs. In the centre is a young man, seated to his right is another young man, and on the left is Ms D. The central figure has his right arm around the shoulders of the man to his right. Ms D's right arm is loosely placed across the central figure's back. She is sitting away from him and leaning in slightly. There is nothing remotely inappropriate about the picture. There is nothing remotely sexual about it. It shows three young people, who are either acquaintances or friends, posing for a picture. Ms D is wearing a jumper which is long enough to cover her bottom. On her legs she has what appear to be trousers or thick black leggings. She wears calf length boots. There is nothing about her dress or appearance that is out of the ordinary. She is dressed in a distinctly average way for someone of her age. The caption reads "characteristically draped over male students, exhibiting her extremely short 'micro' skirts, thigh length boots and doglike devotion.'" No reasonable person could accept that is a fair description of that photograph.

5.213 It follows that whatever else we may say about the claimant's evidence, we must doubt his ability to judge what should be seen as commonplace normal behaviour and dress, and what may be seen as inappropriate sexualised behaviour, or inappropriately sexualised clothing.

5.214 Much of the claimant's interaction with the respondent was driven by his relentless campaign to establish his innocence and the assertion that the respondent should, in some manner, find he was the victim of a malicious and false accusation. His notion of innocence is founded on the assertion

that on 12 November 2012 Ms D made unwanted sexual advances which he then spurned. The allegation underpins many, and possibly all, of the alleged protected acts. If those alleged protected acts were based on false information made in bad faith, the act may not be protected. It follows that the finding of fact is relevant.

5.215 We have found that the claimant raised no grievance on 19 November 2012. It was not a case of his giving limited detail of the alleged sexual misconduct; he alleged no sexual misconduct at all; he raised no grievance. On 19 November 2012, it was clear to the claimant that the events in question were those in the United States. He knew there had been difficulties. He had described the situation as extraordinary. He knew that it appeared that Ms D had been escorted from a hotel room by security guards around 4:00 in the morning because she had alleged she was afraid of Dr Piepenbrock and Mr Wargel. She returned to her mother in New York and the flight was paid for by the LSE. The LSE had authorised payment of the flight following Ms D making contact. These were extraordinary circumstances.

5.216 The claimant suggests he could not give an account of the events in the USA because of the respondent' failure to provide a full copy of her grievance. We reject that assertion. The claimant knew that there had been, on his case, extraordinary events, and he should explain them. He knew that he needed to provide an explanation. There was nothing to stop him giving his full explanation at any time. Moreover, on his own case, he started a grievance based on Ms D's alleged inappropriate conduct. In those circumstances, the onus was on Dr Piepenbrock to lodge his written grievance, giving his account. He did, ultimately, lodge a grievance on 11 March 2013 through his own solicitor. That grievance incorporated the content of two lengthy letters, the first being 4 February 2013. Neither letter suggested that Ms D had sought to proposition the claimant and he had spurned her advances. We unequivocally reject the assertion that in some manner he was reluctant to make that allegation because he was protecting Ms D's reputation. His later vilification of her, and others, on a public website, demonstrates his willingness to seek to destroy her reputation.

5.217 It is clear from the claimant's website that his perception about the propriety of Ms D's dress and her intentions, as based on what she wears, is seriously distorted and unreliable.

5.218 We are conscious that we have not heard from Ms D. We must consider what weight we can give to her written evidence.

5.219 **Wisniewski (a minor) v Central Manchester Health Authority** [1998] EWCA 596 is often cited as authority for the proposition that an adverse inference may be drawn from the absence of a witness. In that case, Brooke LJ considered the relevant authorities and derived the following principles

> **(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.**
>
> **(2) If a court is willing to draw such inferences they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.**
>
> **(3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.**
>
> **(4) If the reason for the witness's absence or silence satisfies the court then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified.**

5.220 In **Efobi v Royal Mail Group Ltd [2021] UKSC 33**, Lord Leggatt said:

> **The question of whether an adverse inference may be drawn from the absence of a witness is sometimes treated as a matter governed by legal criteria, for which the decision of the Court of Appeal in [Wisniewski] is often cited as authority. Without intending to disparage the sensible statements made in that case, I think there is a risk of making overly legal and technical what really is or ought to be just a matter of ordinary rationality. So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole. All these matters are inter-related and how these and any other relevant considerations should be assessed cannot be encapsulated in a set of legal rules." (paragraph 41)**

5.221 We have no doubt that the nature of the claimant's treatment of Ms D has inhibited Mr D's willingness to give evidence. The potential effect of his action (in particular the risk of undermining a fair hearing) in vilifying Ms D and others on his website was explored in the previous strike out application. We also have regard to what documentation should reasonably have existed, given the claimant's account to us of his alleged action, particularly his allegation that he raised her behaviour on 19 November 2012. In reaching our finding of fact on the events of 12 November 2012, the dispute can largely be resolved on the balance of probably having regard to the contemporaneous documentation. Ms D's failure to give oral evidence is not significant given the available contemporaneous evidence supports her account and is inconsistent with the claimant's.

5.222 It is not possible for us to say exactly what happened on 12 November 2012 at her hotel door. Ms D's evidence is that nothing happened. We have considered whose account to prefer. We have no doubt that had Ms D behaved in an unwanted and sexually provocative manner which led to the claimant spurning her advances, he would have raised that behavior immediately as a defence to what he now says are malicious allegations; he did not do so. We accept Ms D's evidence.

5.223 We have no reason to believe that the claimant did not go to her room and that she did not answer the door. However, whatever she was wearing, in no sense whatsoever was she acting in an unwanted sexually provocative manner.

5.224 The claimant's description of the events of 12 November 2012 has become more graphic over time. The initial description revolved around Ms D not wearing trousers. In his witness statement before us, the claimant spent several pages speculating about whether he saw Ms D's underwear or her pubic hair. In his oral evidence any doubt was forgotten, and he stated, on several occasions, that he saw her vagina. We have no doubt that if that had been his perception at the time, it would have formed a specific grievance which would be made no later than his written grievance on 11 March 2013. He did not make that grievance, because the alleged sexual advances he now describes did not occur.

<u>The claimant's contract and his dismissal</u>

5.225 By letter of 18 August 2011, the claimant was offered an appointment with the London School of Economics and Political Science as an LSE fellow in management. The appointment commenced on 1 September 2011. The appointment letter of 18 August 2011 records the purpose is "to allow you to gain experience in teaching in a university environment to improve your career opportunities in the higher education sector." It states specifically:

> **The rationale of the LSE Fellowship Scheme is to allow Departments/Institutes/Centres to appoint promising scholars who are not yet suitably qualified for a lectureship, to contribute to teaching and further their research activities. An LSE Fellowship is intended to be an entrée to an academic career and as such, the maximum period appointment is normally three years.**

5.226 The appointment was subject to a six-month review and was for a fixed term, expiring on 2 September 2012.

5.227 The claimant lacked academic publications, a prerequisite to a permanent lecturer's position. The claimant's appointment was not the first direct rung to becoming a tenured or permanent lecturer or professor. The department of management needed teachers. The role to which the claimant was employed focused on teaching; it had a teaching obligation beyond that which would be expected for those academics on track to become permanent academic staff. That does not mean the claimant did

not have time to undertake research, or to write papers, or to seek to be published. This was a teaching role which had some time allocated for his own research. It is, exactly as the appointment described, an entrée. Had the claimant published in recognised academic journals, he would have been in a position to seek appointment with a view to becoming a permanent lecturer.

5.228 It is rare for the employment of those on fixed term teaching contracts to be extended beyond three years. In the period from 2007 to 2013, a total of 42 teaching fellows had contracts for a total of three years or fewer.[28] Only three teaching fellows had their contracts extended beyond three years. For two, the reason for extension was maternity leave. In the third case, a new appointment pulled out at the last moment, and this led to a special agreement to extend the three-year period for a further two years.

5.229 The offer of employment refers to the claimant as a fellow in management. However, we have no doubt that his appointment was to a position described in Professor Estrin's statement as "teaching fellows." Professor Estrin's loose use of the term does not change the nature of the claimant's appointment.

5.230 On 29 May 2012, the claimant's contract was extended for a further two years, until 2 September 2014.

5.231 His first year's teaching went well, and on 25 June 2012, he was awarded an LSE teaching prize in recognition of his contribution that year. The claimant did not publish in any academic journal in that time. He has given no adequate explanation for that failure, and we view with considerable caution his suggestion that he was bound to publish given more time. Professor Estrin accepted that the claimant's teaching was, on the whole, well received and he appeared to be popular with students. It was clear the Professor Estrin wished Dr Piepenbrock to continue teaching. Dr Piepenbrock 's teaching was not entirely without difficulty, and there was conflict with at least one student on the executive course (GMiM), which caused legitimate concern. However, we do not need to record the detail of that.

5.232 The claimant alleges that, on 20 August 2012, he was offered, in the future, a further position, being professor of practice. That claim was rejected by the High Court. No such promise was made.

5.233 The claimant accepted an appointment as Deputy Academic Dean of the executive masters in management (GMiM) for a fixed term from 1 September 2012 to 31 August 2013. Ultimately, as the claimant was absent for much of that period, his input into that role, which contained a considerable amount of administration, was limited and the appointment

[28] We accept that the claimant role was viewed as a teaching fellow's role. The terminology employed has not been consistent; however, the treatment has been consistent, and in practice there was no doubt or confusion. We reject any assertion that the claimant was employed with a view to becoming a tenured lecturer, he was not.

was not renewed. We will consider this further when considering the discrimination because of something arising in consequence of disability claim.

5.234 The claimant started his absence immediately after 12 December 2012, when he was told of Ms D's complaint. On 12 December 2012, at 23:59, the claimant wrote to Professor Estrin and Professor Bevan, he said, "I feel that I have given everything I can to the LSE and the Department of Management, and at this point, I feel I can give no more."

5.235 As noted above, the claimant wrote a further email on 20 December 2012 stating, "Apologies for my delay in getting back to you – I remain very unwell (medicated and asleep most days and nights), getting out of bed essentially only for calls from doctors and lawyers." It continued "My note to you and Gwyn last week was not a letter of resignation… my note was meant to let you and Gwyn know that the LSE and Department of Management have seriously damaged the trust and confidence between us…" He indicated that he was willing to teach, but unable to.

5.236 Thereafter, he sent no letter, or email, in his own name prior to his dismissal, save for the email of 7 October 2013, when, amongst other things, he confirmed that his wife could correspond on his behalf. During that entire period, at no time, did he attend the faculty, enquire about his students, discuss how the teaching should be covered, provide any teaching materials, or offer any assistance whatsoever. His professional interaction with the department ceased completely.

5.237 Various attempts were made by the respondent to secure an occupational health report. For the reasons we have explored elsewhere, we are satisfied that the claimant behaved in a manner which frustrated the process. Ultimately, he refused to attend any occupational health appointment; he did send his own occupational health report, but in no sense whatsoever was it sufficient or adequate.

5.238 His contract was not extended beyond 2 September 2014.

5.239 In the period from 12 December 2012 until this dismissal, the claimant raised and pursued numerous complaints, allegations, and grievances.

5.240 Following the outcome of Ms D's grievance, communicated on 19 July 2013, there was some indication the claimant may return to teaching, and that was the understanding of Professor Estrin and others in the department. Steps were taken to seek direct contact with the claimant, on the assumption that arrangements would need to be made confirming courses in which he would teach. However, the claimant failed to engage in any meaningful way, instead, through Professor Marnette-Piepenbrock, he raised various complaints and grievances. We do not need to consider the detail of those complaints here. Dr Piepenbrock never committed to returning to work at that time, or any other time. Despite all efforts made to plan for his return, Dr Piepenbrock did not engage positively and

instead pursued various grievances and complaints, as he deemed appropriate.

5.241 The medical evidence available is limited. The claimant frustrated all the respondent's attempts to obtain independent occupational health evidence. The claimant did submit doctor's notes for the entire period, which consistently recorded that he had depression and was unable to work. He also supplied other reports. There are a number of letters from his GP, Dr Hardwick, including letters of 20 March 2013, 1 November 2013, 21 March 2014. The GP letters were of limited value. The GP letter of 20 March 2013 records that Dr Piepenbrock is being treated for a depressive episode, but gives no indication as to when he may recover or return. It states the depressive episode "appears to be in reaction to his treatment by his employers following an accusation by a student." It is unclear why this this comment is made; it does nothing to explain when, and if, he would be able to return to work. Dr Hardwick's letter of 1 November 2013 confirms the continuing depressive episode and alleges the LSE's delay "progressing the situation and resolving" has a continuing negative effect. It does nothing to establish if, or when, the claimant is likely to return. There is a letter from Dr Peter Amies, a consultant psychiatrist, dated 31 December 2013. Dr Amies confirmed he had been treating the claimant since 23 July 2013 and gave a medical diagnosis of severe depressive episode without psychotic symptoms. He again alleges that the symptoms had been worsened by "ongoing stress resulting from the fact that the employer does not seem to have taken sufficiently active steps to resolve the situation." It is unclear what he means by this. His report states the claimant "is willing to discuss how occupational health might be involved in this." It says Dr Piepenbrock is not well enough to attend a meeting in London but is well enough to be interviewed by an occupational health physician, whether in person, or by telephone. This letter does nothing to give any prognosis about when the claimant is likely to return.

5.242 Dr Amies wrote again on 13 March 2014. This letter accuses the LSE of making no occupational health arrangements. It expresses increasing concern about the delays and is implicitly critical of the LSE. No doubt Dr Amies had reached his view on based on information provided by the claimant, which he appears to have accepted as a true account. Dr Amies showed no insight into the complexities of the situation, and it is likely his criticism reflects the account given by the claimant, which appears to have been incomplete and inaccurate. Whatever the position, the letter does nothing to assist with identifying when the claimant is likely to be able to return to work.

5.243 On 21 March 2014, Dr Hardwick wrote a further letter. She stated the claimant's "current depression has been directly caused by the stress around this grievance and the lack of resolution of this case is perpetuating his depressive symptoms." It does not address when the claimant is likely to return to work.

5.244 On 20 May 2014, Dr Spiro sent an occupational health report which had been commissioned privately by the claimant and for which input from the respondent had not been invited. The report gives a detailed synopsis of the account given by the claimant concerning his relationship with Ms D. It confirms that he has been away from work for nearly 18 months with "serious mental illness." It is written to the claimant, and it states, "Your own concern is to try and resolve matters as you recognise that without doing so, both your health and career are held in a very difficult situation with no way forward likely and increasingly difficult for yourself." His view is based on an assumption that the LSE had not taken active steps to investigate or resolve the difficulties. It is clear to us that Dr Spiro did not have a full, detailed, or accurate understanding of the circumstances. The purpose of the letter is unclear. It largely recites the account given by Dr Piepenbrock to Dr Spiro. Dr Spiro states "We discussed your health otherwise which had been unremarkable in the past." At one point he says, "You indicated you had not previously suffered with any significant mental health." The claimant had not given a truthful account. The claimant had not given a full or detailed history. It is inconceivable that had Dr Piepenbrock mentioned the previous depressive episode in 2010, Dr Spiro would not have mentioned it. Dr Spiro also referred to his expectation that the employer's own occupational health service would have been involved, but that in some manner the claimant had not been referred. This view does not represent a reasonable summary of the true position. We have no doubt that Dr Spiro was misled by the claimant. The purpose of his letter is unclear. He says, “I stated that I would prepare this summary as I see the situation for you to use as you see appropriate." This letter does nothing to assist the respondent in understanding the claimant's illness, or when he is likely to return. Its use is further limited as it is obviously based on an inadequate, incomplete, and in part untruthful, account given by the claimant.

5.245 Mr Indi Seehra was the LSE’s director of human resources. He confirmed the claimant's role as an LSE fellow was predominantly a teaching role and was a "career development post." At the material time, he believed that only in very exceptional circumstances could the post be extended beyond the normal three years.

5.246 Mr Seehra wrote to Dr Piepenbrock on 19 August 2014 to remind him that his LSE fellowship in the management department was due to expire on 2 September 2014. He confirmed the LSE fellowship scheme stipulates a three-year period. He stated his belief that the claimant was unable to meet with the school or communicate directly because of his ill-health. He stated he was happy to meet with Professor Marnette-Piepenbrock or to receive written comments. He invited the claimant to apply for any vacancies.

5.247 The claimant did not inform the LSE that he had applied for, been offered, and accepted, a role at the Ashridge Business School. The closing date for the Ashridge application was in February 2014, the claimant was due to start in September 2014. The claimant has provided, during these

proceedings, limited detail of these applications, or his acceptance, despite there being an order for specific discsclsure.

5.248 On 25 August 2014, Professor Marnette-Piepenbrock wrote to Mr Seehra. He treated her email as representations for why his contract should be extended beyond 2 September 2014. Mr Seehra responded on 27 August 2014. He noted the claimant remained medically unfit for work, and there was no information to suggest he would be fit to return to work in the foreseeable future. He noted the occupational health report obtained by Dr Piepenbrock personally, and he noted that Dr Piepenbrock would not be fit to return to work unless his grievances were resolved to his satisfaction. He noted there had been further grievances, and it was difficult to see how trust and confidence could be re-established given Dr Piepenbrock's grievances and his continued non-acceptance of the grievance panel's decision.

5.249 Mr Seehra offered Professor Marnette-Piepenbrock a further opportunity to meet. In those circumstances he would defer a final decision until 3 October 2014, to allow time for that meeting to take place. This was conditional upon Professor Marnette-Piepenbrock confirming, no later than 2 September 2014, her willingness to meet with Mr Seehra. He also proposed an alternative, which was for Professor Marnette-Piepenbrock to give clarification in writing. In particular, Professor Marnette-Piepenbrock needed to confirm if Dr Piepenbrock would be in a position to return to teaching in the foreseeable future, and whether Dr Piepenbrock accepted mutual trust and confidence had not irretrievably broken down.

5.250 Mr Seehra received no substantive response to the email of 27 August 2014, either confirming a willingness to meet, or providing the clarification sought.

5.251 Mr Seehra, in all the circumstances, took the view that Dr Piepenbrock's employment should be treated as terminated with effect from 2 September 2014. A further right of appeal was offered in the letter of 27 November 2014. Dr Piepenbrock was asked to give his grounds by 3 December 2014. No appeal was lodged.

5.252 Mr Seehra sets out his reason for dismissal particularly at paragraph 34.

> **34…The reason that I took the decision not to renew or extend Dr Piepenbrock's LSE Fellowship and therefore to dismiss him was because:**
>
> **34.1 the LSE Fellowship Scheme stipulated that the maximum period for which an LSE Fellowship could be held was a period of three years and on 2 September 2014 Dr Piepenbrock would have held this position for three years;**
>
> **34.2 there were no exceptional circumstances which would justify extending Dr Piepenbrock's post to four years. Such an extension required the approval by the Vice-Chair of the Appointments Committee. No application, either from Dr Piepenbrock or from his department, had been made to the Vice-Chair to the Appointments Committee;**

34.3 in any case, there was apparently no real prospect of Dr Piepenbrock returning to work. Dr Piepenbrock seemed from what I was told to be medically unfit to return to work at the LSE in the foreseeable future. Trust and confidence between Dr Piepenbrock and the LSE had also seemingly broken down.

The law

Unfair dismissal

6.1 Section 98 Employment Rights Act 1996 provides:

> **98(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—**
>
> > **(*a*) the reason (or, if more than one, the principal reason) for the dismissal, and**
> > **(*b*) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.**
>
> **(2) A reason falls within this subsection if it—**
>
> > **(*a*) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,**
> > **(*b*) relates to the conduct of the employee,**
> > **(*c*) is that the employee was redundant, or**
> > **(*d*) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.**
>
> **(3) In subsection (2)(*a*)—**
>
> > **(*a*) 'capability', in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and**
> > **(*b*) 'qualifications', in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.**
>
> **(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—**
>
> > **(*a*) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and**
> > **(*b*) shall be determined in accordance with equity and the substantial merits of the case.**

6.2 Under section 98(1)(a) of the Employment Rights Act 1996 it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal. Under section 98(1)(b) the employer must show that the reason falls within subsection (2) or is some other substantial reason of a

kind such as to justify the dismissal of an employee holding the position which the employee held. At this stage, the burden for showing the reason is on the respondent.

6.3 In considering the fairness of the dismissal, the tribunal must have regard to the approach summarised in **Iceland Frozen Foods v Jones [1982] IRLR 439**. The starting point should be the wording of section 98(4) of the Employment Rights Act 1996. Applying that section, the tribunal must consider the reasonableness of the employer's conduct, not simply whether the tribunal considers the dismissal to be fair. The burden is neutral. In judging the reasonableness of the employer's conduct, the tribunal must not substitute its own decision as to what was the right course to adopt for that of the employer. In many, though not all, cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view and another quite reasonably take another view. 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. If the dismissal falls within that band, the dismissal is fair. If the dismissal falls outside that band, it is unfair.

6.4 Discrimination arising from disability. Section 15 Equality Act 2010 provides:

> **15(1) A person (A) discriminates against a disabled person (B) if—**
>
> **(a) A treats B unfavourably because of something arising in consequence of B's disability, and**
> **(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.**
>
> **(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.**

6.5 In **Pnaiser v NHS England** [2016] IRLR 170, EAT, Simler P at [31] gives guidance on the general approach to section 15. In summary, we need to consider the following: was there unfavourable treatment and by whom; what caused the treatment - what was the reason for it – this is likely to involve a consideration of the thought processes, conscious or subconscious of the alleged discriminator; a discriminatory motive is not necessary; was the reason for the treatment the 'something' arising in consequence of the claimant's disability - this stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator; the knowledge requirement as to the disability itself does not extend to the 'something' that led to unfavourable treatment.

6.6 Section 15 requires the tribunal to isolate the 'something' in question and to establish whether the ‘something’ was caused by the disability and if that ‘something’ caused the unfavourable treatment (a two-stage test): In

Basildon & Thurrock NHS Foundation Trust v Weerasinghe [2016] ICR 305, Langstaff, P said this at paragraph 26.

> **26 The current statute requires two steps. There are two links in the chain, both of which are causal, though the causative relationship is differently expressed in respect of each of them. The tribunal has first to focus on the words "because of something", and therefore has to identify "something"—and second on the fact that that "something" must be "something arising in consequence of B's disability", which constitutes a second causative (consequential) link. These are two separate stages. In addition, the statute requires the tribunal to conclude that it is A's treatment of B that is because of something arising, and that it is unfavourable to B.**

The 'justification' test (section 15(1)(b) Equality Act 2010)

6.7 The classic test was set out in **Bilka-Kaufhas GmbH v Weber Von Hartz** (Case 170/84) [1984] IRLR 317 in the context of indirect sex discrimination. The ECJ said that the court or tribunal must be satisfied that the measures must "correspond to a real need … are appropriate with a view to achieving the objectives pursued and are necessary to that end" (para 36). This involves the application of the proportionality principle. It has been emphasised that the reference to "necessary" means "reasonably necessary": see **Rainey v Greater Glasgow Health Board (HL)** [1987] ICR 129 per Lord Keith of Kinkel at pp 142-143.

6.8 The principle of proportionality requires an objective balance to be struck between the discriminatory effect of the measure and the needs of the undertaking. The more serious the discrimination, the more cogent must be the justification for it: **Hardys & Hansons plc v Lax** [2005] IRLR 726 per Pill LJ at paras 19-34, Thomas LJ at 54-55 and Gage LJ at 60.

6.9 It is for the employment tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the employer's measure and to make its own assessment of whether the former outweigh the latter. There is no 'range of reasonable response' test in this context: **Hardys & Hansons plc v Lax** [2005] IRLR 726, CA.

Victimisation

6.10 **Anya v University of Oxford**, CA 2001 IRLR 377 is authority for the proposition that we must consider whether the act complained of actually occurred.[29] If the tribunal does not accept that there is proof on the balance of probabilities that the act complained of in fact occurred, the case will fail at that point. Sedley LJ said this -

> **9 This reasoning has been valuably amplified by Mummery J in *Qureshi v Victoria University of Manchester* (EAT 21 June 1996), a decision which Holland J in the present case in the Employment Appeal Tribunal**

[29] This applies generally in the context of discrimination, to include allegations of victimisation, less favourable treatment, harassment, and unfavourable treatment.

understandably described as 'mystifyingly unreported'. It is therefore worth quoting at length from Mummery J's judgment.[30]

> **..**
>
> **The industrial tribunal only has jurisdiction to consider and rule upon the act or acts of which complaint is made to it. If the applicant fails to prove that the act of which complaint is made occurred, that is the end of the case. The industrial tribunal has no jurisdiction to consider and rule upon other acts of racial discrimination not included in the complaints in the originating application. See *Chapman v Simon* [1994] IRLR 273 at paragraph 33(2) (Balcombe LJ) and paragraph 42 (Peter Gibson LJ…**

6.11 Victimisation is defined in section 27 of the Equality Act 2010.

> **27(1) A person (A) victimises another person (B) if A subjects B to a detriment because--**
>
> **(a) B does a protected act, or**
> **(b) A believes that B has done, or may do, a protected act.**
>
> **(2) Each of the following is a protected act--**
>
> **(a) bringing proceedings under this Act;**
> **(b) giving evidence or information in connection with proceedings under this Act;**
> **(c) doing any other thing for the purposes of or in connection with this Act;**
> **(d) making an allegation (whether or not express) that A or another person has contravened this Act.**
>
> **(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.**
> **…**

6.12 Prior to the Equality Act 2010 the language of victimisation referred to less favourable treatment by reason of the protected act. Under the Equality Act 2010, victimisation occurs when the claimant is subject to a detriment because the claimant has done a protected act, or the respondent believes that he has done or may do the protected act.

6.13 We should exercise some caution in considering the cases decided before the Equality Act 2010. However, those cases may still be helpful.

6.14 When considering victimisation, it may be appropriate to consider the questions derived from Baroness Hale's analysis in **Derbyshire and Others v St Helens Metropolitan Borough Council and others 2007 ICR 841**. It is not necessary to consider the second question, as posed in **Derbyshire** below, which focuses on how others were or would be treated. [31]

> **"37. The first question concentrates upon the effect of what the employer has done upon the alleged victim. Is it a 'detriment' or, in the terms of the Directive, 'adverse treatment'? But this has to be treatment**

[30] We have included only part of the extensive quote.
[31] This point was affirmed by the EAT in *Woodhouse v West North West Homes Leeds Ltd* [2013] IRLR 733, EAT

> **which a reasonable employee would or might consider detrimental… Lord Hope of Craighead, observed in *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] IRLR 285 at 292, paragraph 35, 'An unjustified sense of grievance cannot amount to "detriment"'.**
>
> **40. The second question focuses upon how the employer treats other people…**
>
> **41. The third question focuses upon the employers' reasons for their behaviour. Why did they do it? Was it, in the terms of the Directives, a 'reaction to' the women's claims? As Lord Nicholls of Birkenhead explained in *Khan*'s case [2001] IRLR 830, 833, paragraph 29, this**
>
> > **'does not raise a question of causation as that expression is usually understood ... The phrases "on racial grounds" and "by reason that" denote a different exercise: why did the alleged discriminator act as he did? What, consciously or unconsciously, was his reason? Unlike causation, this is a subjective test. Causation is a legal conclusion. The reason why a person acted as he did is a question of fact.'"**

6.15 Detriment can take many forms. It could simply be general hostility. It may be dismissal or some other detriment. Omissions to act may constitute unfavourable treatment. It is, however, not enough for the employee to say he or she has suffered a disadvantage. An unjustified sense of grievance is not a detriment.

6.16 The need to show that any alleged detriment must be capable of being objectively regarded as such was emphasised in **St Helens Metropolitan Borough Council v Derbyshire 2007 IRLR 540** (see above). Detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to his detriment. The detriment cannot be made out simply by an individual exhibiting mental distress, it would also have to be objectively reasonable in all the circumstances.

Bad faith

6.17 Where the allegation, evidence or information is false it will not be protected, if made in bad faith. In **Saad v Southampton University Hospitals NHS Trust** [2018] IRLR 1007, the EAT gave guidance as to how a tribunal should approach the question of bad faith. The consideration of bad faith requires a consideration of the employee's honesty. Whilst positive findings of some collateral purpose such as some ulterior motive or wish to achieve a different result may be relevant, we do not read the judgment as authority for the proposition that a collateral purpose must be found before bad faith can be inferred. Instead, it is authority for the proposition that a tribunal should not assume an ulterior motive is evidence of dishonesty. We note the following paragraphs from **Saad**:

> **47. Turning specifically to sub-s 27(3) EqA, the language is now different from that formerly used in the whistle-blowing protections under the ERA, in that the EqA now uses the term 'bad faith' rather than 'not made in good faith', as appeared in the legacy legislation considered in Street. It is not suggested that this is a material distinction. What is significant, however, is**

> **the fact that sub-s 27(3) EqA (as was also the case in the legacy statutes) has no prior stage where the ET has first to determine whether the employee believes in what they are saying (the evidence or information they are giving or the allegation they have made). The ET is simply required to find whether that evidence, information or allegation is true or false; if false, it must then determine whether it was given or made by the employee in bad faith. And that must mean that it has to determine whether the employee has given the evidence or information or made the allegation honestly…**
>
> **49. I do not rule out that the employee's motivation for making the allegation in issue might be relevant to the ET's determination of bad faith for sub-s 27(3) purposes. … There are, however, good policy reasons for exercising caution when having regard to the existence of a collateral motive in the context of a claim of unlawful victimisation under the EqA. An employee might, for example, feel reluctant to raise a complaint of discrimination, notwithstanding the fact they genuinely believe they have suffered less favourable treatment because of a relevant protected characteristic...**
>
> **50. When determining whether an employee has acted in bad faith for the purposes of sub-s 27(3) EqA, the primary question is thus whether they have acted honestly in giving the evidence or information or in making the allegation… the employee's motive in giving the evidence or information or in making the allegation may also be a relevant part of the context in which the ET assesses bad faith… but the primary focus remains on the question of the employee's honesty.**

Reasons for unfavourable treatment.

6.18 When the protected act and detriment have been established, the tribunal must still examine the reason for that treatment. Of course, the questions of reason and detriment are often linked. It must be shown that the unfavourable treatment of a person alleging victimisation was because of the protected act. A simple 'but for' test is not appropriate.[32]

6.19 It is not necessary to show conscious motivation. However, there must be a necessary link in the mind of the discriminator between the doing of the protected act and the treatment. If the treatment was due to another reason such as absenteeism or misconduct the victimisation claim will fail. The protected act must be a reason for the treatment complained. It is a question of fact for the tribunal. **Chief Constable of West Yorkshire police v Khan 2001 IRLR 830 HL** is authority for the proposition that the language used in the Sex Discrimination Act 1975 is not the language of strict causation. The words by reason that suggest that what is to be considered, as Lord Scott put it, is "the real reason, the core reason, the causa causans, the motive, for the treatment complained of that must be identified." This in our view remains good law.

6.20 It is not necessary for a person claiming victimisation to show that unfavourable treatment was meted out solely by reason of his or her having done a protected act.

[32] See, e.g., *Chief Constable of Greater Manchester Police v Bailey* [2017] EWCA Civ 425

6.21 Lord Nicholls found in **Najarajan v London Regional Transport 1999 ICR 877**, HL, that if the protected act has a significant influence on the outcome of an employer's decision, discrimination will be made out. It was clarified by Lord Justice Gibson in Court of Appeal in **Igen and others v Wong and others 2005 ICR 931** that in order to be significant it does not have to be of great importance. A significant influence is an influence which is more than trivial.

6.22 There may be cases where there is a connection between the employer's acts and the protected act. See, for example, **Martin v Devonshires Solicitors** [2011] ICR 352, EAT, where it was found the protected act was only part of the background and the employer's action was separable from it. A tribunal should be alert to spurious defences by employers on these grounds. **Devonshires** was approved in principle by the Court of Appeal in **Page v Lord Chancellor** [2021] EWCA Civ 254, [2021] IRLR 377.

6.23 Where the purpose of grievance is to harass the employer, the claim of victimisation may fail. We see this as, primarily, a question of the reason for the treatment. See, e.g., HM **Prison Service v Ibimidun** [2008] IRLR 940, EAT.

Subconscious motivation

6.24 The House of Lords in **Nagarajan** rejected the notion that there must be a conscious motivation in order to establish victimisation claims. Victimisation may be by reason of an earlier protected act if the discriminator consciously used that act to determine or influences the treatment of the complainant. Equally the influence may be unconscious. The key question is why the complainant received the treatment.

6.25 Section 136 Equality Act 2010 refers to the reverse burden of proof.

> **Section 136 - Burden of proof**
>
> **(1) This section applies to any proceedings relating to a contravention of this Act.**
> **(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.**
> **(3) But subsection (2) does not apply if A shows that A did not contravene the provision.**
> **(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.**
> **(5) This section does not apply to proceedings for an offence under this Act.**
> **(6) A reference to the court includes a reference to--**
> **(a) an employment tribunal;**
> **(b) …**

6.26 In considering the burden of proof the suggested approach to this shifting burden is set out initially in **Barton v Investec Securities Ltd [2003] IRLR 323** which was approved and slightly modified by the Court of Appeal in **Igen Ltd & Others v Wong [2005] IRLR 258.** We have

particular regard to the amended guidance which is set out at the Appendix of **Igen**. We also have regard to the Court of Appeal decision in **Madarassy v Nomura International plc [2007] IRLR 246.** The approach in **Igen** has been affirmed in **Hewage v Grampian Health Board 2012 UKSC 37.** However, it is well established that where the reason is clear, it may not be necessary to wrestle with the reverse burden.

Other matters

6.27 Paragraph 22 of the respondent's submission state.

> **22. The victim must be 'subjected' to a detriment for having done a protected act. As to this, see De Souza v. Automobile Association [1986] ICR 514, CA which addressed (in the context of a direct race discrimination claim) the situation where the individual claiming a detriment contrary to RRA s.4(2) was not intended to overhear a racial insult, and could not reasonably have been in expected to become aware of it in some other way. The court (May LJ) held**
>
> > **"I … do not think that she can properly be said to have been "treated" less favourably by whomsoever used the word, unless he intended her to overhear the conversation in which it was used, or knew or ought reasonably to have anticipated that the person he was talking to would pass the insult on or that the employee would become aware of it in some other way".**
>
> **The same principle which was applied to "treated" also, it is submitted, ought to apply to "subjected to."**

6.28 We have not needed to consider whether these principles are still good law and apply in this case. We have not needed to place reliance on this principle, and it forms no part of our reasons. It is no part of our reasoning that any employee did not intend the claimant to read the internal correspondence. It may now be arguable that it must always be anticipated that an employee may read internal communications, following a subject access request.

6.29 We will consider the law as it relates to defining disability in our conclusions.

6.30 We have not needed to consider if any claim is out of time.

Conclusions

Disability

7.1 When did the claimant become disabled? In considering this question, we have regard to all the medical evidence. No specific expert evidence has been produced for the tribunal proceedings. We have some evidence from those treating the claimant. We have regard to all of the medical evidence submitted in the High Court. The High Court considered that evidence in detail, and we have outlined the relevant findings above. We

have not heard from those experts who gave evidence to the High Court and it is not necessary for us to set out, in detail, the evidence or the dispute between the experts. It would be unnecessary and disproportionate for us to do so. We have had regard to the totality of the evidence in reaching our conclusions.

7.2 When considering whether the claimant had a disability, and if so when he became disabled, we must be satisfied that he had a physical or mental impairment and the impairment had a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.

7.3 Before us, the claimant sought to argue that both Professor Maden and Professor Fahy were fundamentally wrong in their diagnosis. Both agree that the claimant had narcissistic and maladaptive personality traits. He alleges that they were wrong and that they failed to consider, and diagnose, autism. He argues that it is autism which defines his reactions and that the opinions of both Professor Maden and Professor Fahy should be rejected.

7.4 In support of the assertion he is autistic the claimant relies on the "diagnostic assessment report" of Dr Martin Pearson of 26 June 2019. That report was not prepared for the purpose of these proceedings. It postdated the High Court proceedings. Dr Pearson is a clinical psychologist. We have limited details of his qualifications and background. It is unclear whether Dr Pearson believed he was producing a report for the purposes of litigation. On balance, it appears that that was not the purpose of his report, albeit the claimant specifically asked him to "provide an opinion regarding the foreseeability of the consequences of the above-mentioned workplace incident, in connection with ongoing court proceedings."[33] He does give an opinion based on the account given to him by the claimant. We cannot accept that Dr Pearson's opinion is an expert opinion for the purposes of this litigation. Instead, we treat him as a treating doctor.

7.5 Dr Pearson's investigation was limited. It was based on face-to-face sessions with Dr Piepenbrock and his wife, a semi-structured interview, and an initial screening questionnaire. He appears to consider none of the claimant's GP records. He did not consider the reports of Professor Maden or Professor Fahy. He did not consider any witness statements. Based on this limited information, he concluded "Dr Piepenbrock presents with differences and difficulties that meet criteria for a diagnosis of Asperger's Syndrome (Gillberg et al. 2001). Criteria also met for a DSM—5 diagnosis of Autism Spectrum Disorder, without intellectual or language impairment, – level I (299.00)."[34] The report explores how people with autism may tolerate wrongdoing and he comments on the claimant's reported reaction to the events of 2012 leading ultimately to the High Court proceedings. It states "Despite Dr Piepenbrock's extraordinary

[33] This appears to be a reference to the High Court action which had concluded, subject to any appeal.
[34] For the ease of reference we will refer to this diagnosis collectively as ASD or autism.

abilities, he remains vulnerable to being overloaded and unable to cope with unpredictable, unstructured, and ambiguous situations involving interaction with other people…" There is then some guidance given to considerations which are "likely to be helpful " in the context of court proceedings including clear communications and relevant arrangements. As for the litigation, Dr Pearson says the following:

> **Dr Piepenbrock has asked me to provide an opinion regarding foreseeability of the consequences of the above-mentioned workplace incident, in connection with ongoing court proceedings. What follows is based entirely on his account of what happened which was provided during this assessment, as I have otherwise had no involvement with this case.**

7.6 It is perhaps surprising that Dr Pearson volunteered an opinion when he must have realised that he did not have access to any of the relevant paperwork, including the opinions of other medical experts. From his account of the claimant's description of the relevant events, it is apparent that the claimant's account was incomplete and misleading.

7.7 We treat Dr Pearson's report with some caution. Both Professor Maden and Professor Fahy accepted the claimant had narcissistic traits. If that agreement was ever brought to Dr Pearson's attention, it is not evident in the report. There is no attempt to analyse whether any of the claimant's behaviour may be attributable to anything other than autism or ASD. Further, several observations made by Dr Pearson are not clearly supported by the claimant's presentation before the tribunal. For example, it is suggested that he has difficulty understanding sarcasm. Some of the detriments in this case concern sarcasm, and the claimant appears to have no difficulty recognising it. There is suggestion that he has difficulty with metaphor, but that is not consistent with his use of language before us. At times he described his reactions using metaphorical language. For example, he sated "I am a flower put me in an oven and I wilt." He also stated the LSE was an oven. This is metaphorical language. We are not medical practitioners, and we acknowledge the need for extreme care when considering our own observations. However, we are in a position to consider whether it appears the claimant has given a full or accurate account of his history to a medical practitioners and whether he has provided each medical practitioner with the opinions of other medical practitioners. It is clear that he did not give a full disclosure to Dr Pearson. His account appears to have been selective to the point of distortion. In particular, his failure to set out in detail those behaviours that both Professors Fahy and Maden identified when considering if the claimant showed narcissistic traits is concerning. The accuracy of a medical diagnosis relies on the presentation of an accurate history. We are satisfied that Dr Pearson was not in receipt of the full picture.

7.8 It is clear from the medical evidence, and the facts of this case, that the claimant, when challenged, can fundamentally change his view of a person leading him to vilify the individual. In the case of Ms D, this is included an obsessive campaign against her, including seriously

inappropriate publications on a public website. The sudden onset of intractable hostility is a feature of the claimant's behaviour, but this is not analysed by Dr Pearson. It would appear the claimant did not bring this behaviour to Dr Pearson's attention. It is likely Dr Pearson knew nothing of it. This rapid fundamental change of perception is a behaviour pattern, and it may be relevant when considering if there are narcissistic traits, autism, or ASD. A report that makes no mention of it must be treated with caution.

7.9 Further, the High Court's decision was based, at least in part, on a finding about the claimant's personality.[35] When referring to the claimant's personality, Mrs Justice Davies clearly had in mind narcissistic traits and an adjustment disorder based on maladaptive personality traits. At least in part the atypical presentation of depression on 12 December 2012 is attributed to his personality characteristics. It follows that, at the very least, a finding the claimant had narcissistic traits is a fundamental part of the High Court's decision and the reasoning for finding that the claimant became depressed, despite his atypical presentation.

7.10 The claimant invites us to reject the opinions of Professor Maden and Professor Fahy and find that he does not have narcissistic personality traits, but instead is autistic, and that this, in some manner, explains his behavior. We cannot make that finding, not least because it would contradict the findings of the High Court. We have considered above, briefly, when it may be permissible to go behind a finding. This is not one of those occasions. The finding of narcissistic personality traits was a fundamental finding.

7.11 It is not part of our role to decide whether the claimant is autistic. We must be satisfied that the claimant has an impairment, and that impairment has an effect on day-to-day activity. However, given the challenge to Mrs Justice Davies's findings, we have given consideration to the report of Dr Pearson.

7.12 It is the claimant's case that after 12 December 2012, the claimant went into an immediate and debilitating depressive state, which has, essentially, lasted to date. It is his case that he spent the vast majority of that time unable to function normally and that he has slept during the day and remained awake at night in a state of anxiety and rumination.

7.13 We do not accept that the depression has been undifferentiated and consistent throughout that time. There were periods when the claimant was able to function in a way that is inconsistent with the depression he describes. He applied for jobs. He attended interviews. He was able work. He gained employment at Ashridge. He worked at Ashridge. The medical evidence indicated at times he was objectively minimally depressed or not depressed at all (see, e.g., Professor Maden's evidence

[35] See, e.g., par 250 of the High Court judgment.

which explores the records of the claimant's BDI score[36]). In July 2013, it appears he was either not depressed or minimally depressed.

7.14 The High Court found that the claimant became depressed on 12 December 2012 (as opposed to a reactive disorder). The exact definition matters little to us. He developed some form of depression or anxiety. He had had a previous episode following the events at MIT in 2010. The nature of his underlying personality, or any ASD, is of little relevance. Dr Iles noted that, clinically, it is the depression and anxiety which is treated. Generally, any underlying personality trait, or ASD, is not necessarily analysed. The impairment is the manifestation as depression and anxiety. Dr Ilse's stated narcissistic personality traits, and ASD were not necessarily mutually exclusive, but the evidence on this point is limited.

7.15 We are satisfied that the claimant developed anxiety and depression after 12 December 2012. There had been a previous lengthy episode in 2010. The depression was sufficiently serious to fundamentally affect his day-to-day activity. The distraction, poor concentration, and anxiety left him unable to function normally such that he was unable to engage in normal activities, such as work and general social interaction. However, we do not accept that the effects remained constant and consistent from December 2012 and to the present day. There were times when he had either recovered or largely recovered. Nevertheless, the depression and anxiety constituted an impairment for the purposes of the Equality Act 2010.

7.16 When did that impairment became long-term? The medical evidence confirms the claimant suffered a depressive episode in 2010, following his involvement with MIT. The trigger was said to be the plagiarism of the claimant's work by an academic colleague. We have considered the report of Professor Maden from 15 December 2017. Both parties invite us to accept paragraph 376 of his report which states "If it is now accepted that he has had three episodes of mood disorder, the lifetime prognosis for a further episode is probably above 75%. After the 2010 episode it was about 50%." The 2010 episode concerns the depressive illness brought on as a result of the events at MIT. Professor Maden's evidence is the chance of a further depressive episode was about 50% after the 2010 episode. Schedule 1 EQA 2010 part 1 provides that the effect of an impairment will be treated as long-term in a number of circumstances, which include when it has lasted for 12 months, or is likely to last for 12 months. Further, it will be treated as continuing to have the effect if the effect is likely to recur. When considering whether something is likely to recur, it is not necessary to approach it as a simple 50% test. Professor Maden's evidence is the likelihood was about 50%. This is supported by Professor Fahy. The way the claimant's depressive illness presented in 2012 was atypical. That atypical presentation underpinned the different

[36] BDI is the Beck's Depression Inventory. By 23 July 2013, his score was 12/63, being a significant reduction from previous levels. A score between 14 – 19 denotes mild depression. A score of 12 is minimal depression and inconsistent with his description to us of debilitating depression.

views taken by Professors Maden and Fahy as to the correct diagnosis, and whether it was a depressive episode or an adjustment disorder. As we read the evidence, it appears to be common ground that the claimant had a vulnerable personality. The essence being that he was prone to episodes of what Mrs Justice Davies found to be depression following adverse events in his personal life. In the case of MIT, it appeared to be a reaction to the alleged use of his work. The event in 2012 followed his being informed of the grievance against him.

7.17 In reaching our conclusions, we have in mind the claimant has a vulnerable personality. The life events which occurred in 2010 and 2012 were different, but each led to depression. We find the claimant copes poorly with life events which he finds challenging. This appears to be, at least in part, a product of his personality, and whether that relates to narcissistic traits or autism, matters not. Those personality traits existed in 2010, and must be seen as a vulnerability. We find it is likely that numerous different life situations may be trigger a depressive episode for the claimant, particularly given the atypical presentation in 2012.

7.18 It is inevitable that individuals will face significant upsetting events. The claimant is no different. The question is what is the likely reaction? The evidence points to the claimant having severe reactions to life events. In our view that must have been apparent in 2010. Professor Maden says the chance is about 50% of further depressive episodes. It seems to us that is an optimistic view. It was always inevitable there would be further challenging life events after 2010. There is no credible evidence to suggest the claimant would not react in a similar way. We find, therefore, that after the first episode of depression, caused by the events at MIT, it was likely there would be further episodes. It follows that it was likely the depressive episodes would recur. We find the claimant was disabled by reason of impairment, which manifested itself as depression and anxiety, before he became an employee of LSE.

7.19 If we were wrong in that conclusion, we would find that when the depression did recur in December 2012, the fact that a further significant depressive episode had been precipitated by a life event demonstrates, at that point, even if the episode may later resolve, it would be likely to recur. Therefore, he would have become disabled when the episode commenced in December 2012. By July 2013, he had a period when he was not depressed (as early as 23 July 2013 he had a BDI score which was inconsistent with significant depression). However, for the reasons already explored, it was almost inevitable that he would have further episodes, and he would have been disabled at that point if not before.

7.20 The respondent's case is that the claimant was not disabled until the episode, starting 12 December 2012, had lasted for a year. However, given that we find there was, at the very least, recovery in July 2013, we are not satisfied that the depressive episode lasted for a year. If we were wrong and it did last a year, at the very latest, he was disabled from no later than 13 December 2013.

The claimant's credibility

7.21 When considering the claimant's credibility, we have had regard to all of the evidence; we set out our conclusions below. We do not propose to refer to all the evidence we have taken into account.[37]

7.22 The respondent invites us to accept that the claimant is not a credible witness, and his behaviour is characterised by untruthfulness, invention, and the creation of an unjustified narrative.

7.23 It is convenient to present our conclusions thematically.

7.24 We have not found the claimant to be a reliable or credible witness. We have concluded the claimant has demonstrated behaviour which is manipulative and dishonest. His approach to individuals who he believes have wronged him is frequently malicious and actively destructive. We should outline our reasons for coming to these conclusions.

7.25 The claimant has persistently since 2012 behaved manipulatively. The claimant's interaction with the medical profession provides a clear illustration. Leading up to his dismissal, the claimant interacted with a number of medical professionals which included his GP, Dr Spiro, and Dr Amies. We have explored the relevant correspondence when considering the events leading up to his dismissal. For the reasons already given, the claimant's account, to various medical practitioners, about both his health and his interaction with the respondent was materially inaccurate. By way of illustration, he failed to tell Dr Spiro of his previous relevant medical history concerning his depression following the events at MIT. Mr Michell sought explanation from the claimant about his failure to make material disclosures to medical practitioners. The claimant suggested that, in some manner, his failure could be explained by the failure of medical practitioners to ask relevant questions. There was suggestion that this may be because of his extreme literal interpretation, which, in turn, is explained by autism. We do not accept the claimant's evidence. There can be no doubt that Dr Spiro sought to ascertain whether there was any previous relevant medical history. We find, on the balance of probability, that the claimant deliberately withheld his relevant medical history. We have no doubt this demonstrated manipulative behaviour.

7.26 That pattern of withholding information from medical practitioners continued during the High Court proceedings. Most notably, and as observed by the High Court, the claimant failed to inform either Professor Maden or Professor Fahy of his employment at Ashridge Business School. We do not accept that this was some form of oversight because he was not asked a specific question. We have no doubt this was deliberate concealment.

[37] See, e.g., *DPP Law v Greenberg* 2021 EWCA Civ 672 at para 57.

7.27 We have considered the opinion of Dr Pearson, and we do not need to repeat the detail here. The claimant's account, as given to Dr Pearson, was materially defective and this is consistent with manipulative behaviour.

7.28 It follows that we found a pattern of deliberate concealment which we find on the balance of probability to be manipulative. Whilst for the purpose of this decision we have illustrated the claimant's propensity for manipulation by reference to the medical evidence, we find that the behaviour is widespread and not limited to his interaction with medical practitioners.

7.29 We found that the claimant has behaved dishonestly. There are numerous examples. We set out a number of illustrations below. The claimant alleged before us that he raised an oral grievance concerning Ms D on 19 November 2012. We considered this this and found the allegation to be untrue. We find this allegation to be dishonest.

7.30 In September 2014, the claimant commenced employment at Ashridge. The circumstances surrounding this employment illustrate further dishonesty. At no time during his employment with the respondent did the claimant indicated he was applying for employment, or had accepted employment. Instead, he maintained that he was ill and not able to undertake gainful employment. We find this went beyond simple omission. It was a deliberate and dishonest attempt to conceal from the respondent the fact that he had gained new employment.

7.31 We are not satisfied the claimant has given either full of frank disclosure in relation to his dealings with Ashridge. We have considered the few documents we have been provided with. In particular, we have reviewed the claimant's letter of application to Ashridge. He applied on 28 February 2014. That letter is misleading. At the time he was employed by the LSE and he was on long-term sick leave. There is nothing in the letter of application to indicate that the claimant was ill and on long-term sick leave. Instead, the letter indicates that he is flexible and adaptable and able to engage in international travel. It is misleading about the claimant's current salary. The summary of his executive education refers to his activity "over the past 10 years" and read in context, it would suggest his teaching activities were continuing, when in fact he was on long-term sickness absence. The letter of appointment, dated 9 July 2014, states that the job offer is "subject to evidence of good health" it refers to and enclosed medical declaration to be completed. That medical declaration has not been disclosed. Had the claimant disclosed his current medical condition, we have no doubt it would have generated some documentation, which should have been disclosed. We are not satisfied that the claimant has given full or frank disclosure of his interaction with Ashridge.[38] On the balance of probability, we find he misled Ashridge as

[38] As well as being subject to a general duty to disclose all relevant documents, the claimant was ordered to provide specifc disclosure of relevant Ashridge documents by order of 16 October 2020.

to his condition, otherwise he would produce that documentation as was part of these proceedings. The claimant has sought to suggest that the documentation is only relevant remedy. That has never been the respondent's position, or the tribunal's. All documents relevant to both remedy and liability should have been disclosed.

7.32 We have concluded the claimant made malicious and unfounded allegations against several individuals. We will consider his interaction with three individuals, by way of illustration. We have explored the claimant's behaviour towards Ms Joanne Hay. There were no allegations against her in the original claim form. It is clear that the claimant has made serious allegations of sexual misconduct against Ms Hay after he formed the belief that she had been material involved in the Daily Mail article in or around 2018. He alleged he was too scared to raise allegations against Ms Hay earlier. That explanation is fanciful. The claimant made allegations against Ms Hay as a retaliation because he blamed her for the Daily Mail article. Had he believed that she was the orchestrator of a campaign against him, and somebody who had seriously sexually harassed him, those allegations would have been made no later than late 2012 or early 2013.

7.33 Similarly, the claimant chose to raise serious allegations against Professor Estrin in his witness statement. He accused Professor Estrin of serious sexual harassment of Ms D. Those allegations were not supported at any time by Ms D. They were not made contemporaneously. They were not made in the claim form. They did not appear until the claimant's witness statement. Further, they were not pursued against Professor Estrin during cross-examination. We have concluded, on the balance of probability, that these are malicious allegations designed to undermine the reputation of Professor Estrin.

7.34 The claimant's propensity for malicious allegation is most clearly illustrated by his behaviour towards Ms D. Prior to the trip to America, the claimant had a high opinion of Ms D, and was happy to engage her as a teaching assistant. He sought her friendship and introduced her to his family. He was happy to accept nominations from her, both in relation to internal and external awards. Following the events in America, his attitude to her changed. His antipathy to her has deepened over the years to the point where it has become obsessive and destructive. We have considered the claimant's account of the events of 12 November 2012 and made what findings we can. We have rejected the claimant's account. The claimant has sought to persuade us that he was a victim of Ms D's sexual harassment and that he spurned her unwanted advances. We do not accept that account. We have set out our reasons for not believing the claimant and we do not need to repeat them. For the reasons we will come to, the claimant alleged, even by February 2013, that Ms D's account was malicious. In those circumstances, it is even more surprising that he failed to make any allegation of alleged sexual misconduct until June 2013. The claimant's antipathy towards Ms D deepened and intensified with time. This led to extreme and indefensible behaviour,

which is most graphically illustrated by the claimant's vilification of Ms D in his IILS website, a website which became dedicated to the destruction of Ms D's reputation, along with others, including Mr Michell and lawyers from Pinsent Masons, rather than being some form of serious academic site. Had that website not been brought to the attention of the tribunal, we have no reason to believe that the claimant would have taken it down had he not believed its maintenance may lead to his claim being struck out. We find the allegations made against Ms D are further examples of dishonesty.

7.35 The claimant appears to have little insight into his own behaviour. Mrs Justice Davies carefully considered the claimant's behaviour in America and came to conclusion that "To embark upon yet another conversation in the early hours of the morning in a hotel room, a young woman in her twenties with two older men goes beyond inappropriate, it is unprofessional and wrong." Whilst the claimant has formally accepted that he is bound by the finding of the High Court, before us, he has shown no insight into his own behaviour, or the wrongness of it. Instead, he has sought to maintain that it was Ms D who behaved wrongfully and maliciously, and that his own behaviour is both explained and justified by the alleged events of 12 November 2012, and Ms D's subsequent alleged malicious allegation. Mrs Justice Davies considered whether Ms D's action was malicious in the context of deciding whether she could be said to have harassed the claimant and came to the conclusion that her actions were not harassment. Not only are we bound by those findings, but we also entirely endorse them. We would have come to the same finding independently.

7.36 The claimant sought to maintain before us that the effects of the depressive illness has been consistent since 2012. We do not accept that he has been frank with us. There is clear medical evidence of either recovery or near recovery in the summer 2013. The circumstantial evidence in the form of lecture tours, and later the obtaining, and holding down, of a job at Ashridge Business School indicates full or partial recovery. We do not need to consider the minute detail of this. The reality is that we do not accept the claimant is an accurate historian.

7.37 The claimant's propensity for self-aggrandisement was recorded in Mrs Justice Davies's judgment. We have no doubt that the claimant has a propensity for overstating his own achievements and abilities. We do not need to consider this in further detail. We observe, it is important because it demonstrates a lack of objectivity.

7.38 The medical evidence in the High Court indicated the claimant had narcissistic traits. We have no doubt that our findings, as set out above, are consistent with that medical evidence. We find the claimant is not a reliable witness and his behaviour is characterised by manipulative and destructive traits. That does not mean we reject the entirety of his evidence. However, given the nature of our findings about the claimant's

behaviour, we treat his evidence about events with caution, and we treat his interpretation of events as potentially unreliable.

Protected acts

7.39 The claimant identifies 24 specific emails said to be protected acts 1- 24. In addition, there are at least 39 other emails said to be protected act 25. We found that the effective author of all those emails was the claimant, albeit he only put his name to one.

7.40 The claimant alleges that the email from Morgan Cole of 11 March 2013 was the first protected act. It is unclear why earlier alleged acts are not relied on, as we have noted above. Further, which emails are said to constitute protected act 25 is unclear and we consider that above. There are at least 39. Potentially there are more.

7.41 We have considered whether the respondent made any formal admission that any specific email constituted a protected act. We addressed this during the submissions and we invited further submissions and we have considered this above. We are satisfied that the respondent does not now concede that the information or allegations in the alleged protected acts were not false and were not made in bad faith. The truth of the allegations and whether they were made in bad faith is in issue. To the extent it is necessary, we have gvien permission to withdraw the concession

7.42 We accept it is for the claimant to satisfy us the communications on which he relies are protected acts. However, as explored above, we take the view that alleging false information and bad faith is a positive assertion and the respondent must bear the burden of proving those assertions.

7.43 The respondent's submissions on the alleged protected acts are set out at 73 and 74. It may be helpful to set the out in full.

> **73. It is first for C to satisfy the ET that the communications on which he relies amounted to protected acts. See paras 10 & 11 above. However:**
>
> **a. In almost every instance, C's case as to why each so-called protected act was in fact 'protected' remains wholly unclear. (The 'Outline of Protected Acts' document provides only limited assistance.)**
>
> **b. Many of the emails said to contain alleged protected acts do no such thing.**
>
> **c. Even though words such as "discrimination" and harassment are used in many of SMP's emails:**
>
> **i. Many of the documents in question give no indication or explanation as to what is meant by "discrimination", "harassment". etc See paras 10 & 11 above.**
>
> **ii. Almost all of the pre-June 2014 'protected acts' which refer to 'discrimination' seem (if anything) concerned with unfairness (though some assert unfairness due to sex). See para 11 above.**
>
> **iii. Most of the documents take issue – in strident/offensive/overly repetitive/obviously misconceived terms- with matters which are not discrimination-related at**

all, but instead concern lying, perjury, defamation, breach of contract, breach of DPA etc. Any 'protected act part' is peripheral, at best.

iv. In so far as R responded to any email/letter which happened to contain a protected act -as to which, see below- the cause was not any 'allegation of breach of EqA'. Rather, it was:

1. the fact that SMP continued to be the apparent messenger;

2. the wholly unreasonable, unpleasant, inaccurate, self-aggrandising and peculiar content;

3. the incessant barrage which the so-called protected acts represented;

4. the obstructive stance taken in the documents towards simple issues such as OH referral /mediation/house visits /meetings etc;

5. the refusal to take instruction regarding where and to whom to send grievances and other communications (e.g. not to CC).

d. Most of the alleged protected acts came after most of the events C claims as s.27 EqA detriments.

74. R accepts at para 49 of the AGoR that a few of the emails on which C relies were, at least in (generally, trivial) part, protected acts for s.27 EqA purposes. See [A743/743]. As to those referenced in the AGoR:

a. SMP's 2.6.13 email [H831/4751] refers to Ms D retaliating against C for "spurning of her unwanted advances". The email also complains of "relentless and continued systematic harassment and bullying"; R's "shocking" refusal to deal with grievances thereby "compounding its systematic institutional mistreatment" etc.

b. SMP's 10.6.13 email [H8274747] makes the same "spurning" reference. But its wrath focuses on other things.

c. SMP's 21.6.13 email [H854/4738] refers to "unwanted sexual advances" (in the case of a BBC employee). But the complaint is essentially about R's "failure to expeditiously investigate this case".

d. SMP's 24.7.13 email [H961/4845] talks of Ms D's "unwanted advances". But with its Congreve quotes ("a woman scorned" etc), odd references to "Ted's courageous ethical actions", its hyperbole, and its long list of recipients, the striking part of it is most definitely not any 'protected act'.

e. SMP's 13.12.13 email [H1257/5142] makes the assertion – for the first time- that R's alleged "failure to acknowledge, accommodate and mitigate [C's] serious illness... is yet another clear example of systematic disability discrimination and harassment". (underlining added). Yet the rest of the email gets SMP's real focus. It contains all sorts of other inappropriate demands/complaints e.g. for neutral evaluation etc prior to any mediation coupled with (inapt) complaints of "oppressive and unacceptable" delay regarding mediation.

f. As to "PA25":

i. Several postdate the EDT.

ii. Almost all are also written in unrelentingly inappropriate and repetitive terms/concerned with non-EqA (and false or misguided) complaints. E.g. see [H1377/5261]; [H1468/5352]; [H1480/5346]; [H2465/6430] etc .

iii. Some of the dozens of SMP's post-June 2014 "PA25" emails to CC refer to discrimination against "now disabled " C. E.g. see [H2337/6221]; [H2382/6266]; [H2403/6287]; [H2411/6295]; [H2425/6309]; [H2431/6351];

[H2440/6324]; [H2503/6387]; [H2433/6317]. Even then, though, what is striking and inapt about those emails is their other (repetitive, insulting; misconceived; peculiar) content, such as accusations of lies/perjury/'refusal' to provide OH services etc, rather than any possible 'protected act' element.

iv. Moreover, several of those emails allege C's health was worsening in e.g. July-September 2014. See para 38(m)(iii) above. If such allegations are said to be a protected act, they were false and surely made in bad faith.

v. Most of the "PA25" emails do not make any such reference. E.g. [H1395/5279]; [H1422/5306]; [H1430/9763]; [H2546/640]; [H2601/6485].

7.44 For the reasons we will come to, it is convenient for us to consider first those emails said to be protected acts which postdate 24 July 2013. Thereafter, we will consider those which are earlier.

7.45 We do not propose to set out our conclusions for each email individually. We have carefully considered them all. We accept that many of the emails give no indication as to what is meant by discrimination or harassment. Many appear to be concerned with unfairness. Many are strident, offensive, and repetitive. Many are concerned with multiple matters, including allegations of perjury, defamation, and breaches of data requests.

7.46 The respondent puts in issue whether any protected acts were in fact false and not made in good faith. The respondent specifically invites us to find that the claimant was the author of the alleged protected acts, and we find he was.

7.47 When considering the correspondence, it was clear to the tribunal that Professor Marnette-Piepenbrock's email of 24 July 2013 marked an escalation in terms of the language used, the nature of the allegations, the individuals included, and the degree of hostility. That hostility did not lessen at any time. The email of 24 July 2013 contained several key themes. It alleged that in finding Ms D's grievance unproven, the respondent clearly demonstrated the claimant had "spurned the inappropriate and unwanted advances of a sadly unstable former LSE student." It refers to the claimant's "courageous ethical actions to stop her harassment." It stated that her complaint was an act of retaliation and was "vengeful and malicious defamation of character… based on false information." It alleged there were eyewitnesses, but what they were alleged to have witnessed was unclear. It alleged that the investigation had determined the claimant's "innocence," and that he had been initially presumed "guilty" leading to him being punished "publicly prior to the investigation." In that context it states, "This harassment, bullying and unlawful discrimination, resulted in Ted being very unwell and currently on sick leave."

7.48 In our finding of fact, we have illustrated how these themes were repeated and developed over numerous emails which continued during the course

of the claimant's employment. We find the essence of the allegations remained the same. The claimant alleged Ms D allegations against him were false and malicious. The claimant alleged that she harassed him. The claimant alleged he was judged guilty and punished publicly prior to the investigation. As his emails progressed, it became increasingly clear that the claimant was seeking complete vindication, which included some form of finding from the respondent that Ms D acted maliciously or vexatiously.

7.49 It is for the claimant to plead what is said to be the protected act. In this case, it would appear the claimant alleges that it was either doing something for the purposes of the Equality Act 2010 (the act), or making an allegation, express or otherwise, that someone had contravened the act. The reference to "harassment, bullying and unlawful discrimination" would appear to be a reference to someone contravening the act. However, who that person was, or when it occurred, is less clear. Section 27 provides that the giving of false evidence or information, or making a false allegation, is not a protected act if the evidence and information is given, or the allegation is made in bad faith. What constitutes bad faith may be unclear. Each case must be considered on its facts. Deliberate dishonesty is likely to lead to a finding of bad faith. We have been directed to no clear guidance on what would constitute giving false evidence or information, or making a false allegation. In any letter or email, some information may be well founded, and some false; however, it may not follow that true information and false information must be considered discreetly, particularly if they are part of a more general allegation. We take the view that each case must be assessed on its merits and the full factual circumstances considered. Allegations which may have some truth, but which are inextricably bound up with allegations that do not, may form part of an allegation that should be found to be false.

7.50 We are hampered in this case by the claimant's approach. What is said to be the protected information is not identified adequately in his claim form. It is not set out adequately in his witness statement. For example, his witness statement says nothing about the emails said to constitute protected act 25. Prior to the start of the proceedings, the claimant filed a document entitled "outline of the protected acts." This document is of little assistance. We considered the claimant's submissions carefully. They do little, if anything, to assist. They quote parts of the relevant emails, without attempting to clarify why each parts identified is said to be a protected act, and without capturing or acknowledging the themes.

7.51 As for the email of 24 July 2013, the claimant’s submissions place emphasis on the alleged presumption of his guilt and punishment prior to the investigation. As to what this punishment was, the email is silent. It is likely that the punishment is said to be refusal to allow him to attend at graduation, the removal of his teaching assistant, and the restriction on his recruitment from the student body.

7.52 We do not accept that these allegations can be taken in isolation. The main thrust of letter 24 July 2013 concerns the claimant's alleged innocence. That is founded on an allegation that the claimant was found by the respondent to be innocent and that Ms D had filed a malicious allegation against him. Those allegations are fundamental prerequisites to the allegation that the claimant was punished, and presumed guilty. It is necessary to consider each of these elements.

7.53 The respondent did not find the claimant to be innocent. It found the allegations to be unproven. His allegation that he was found innocent is false, as it was not the finding of the investigation into Ms D's grievance. Even if there had been a finding of innocence, we would have reservations as to the truthfulness of his asserting his innocence. His behaviour to Ms D was inappropriate and unprofessional. Even if Ms D had harassed him in the manner he claimant now alleges, and we found that she did not, her alleged action would not, in any sense, have justified his subsequent action. That action included an extensive conversation with her in Boston, in a park, when, allegedly, the claimant told her how inappropriate her behaviour was. Even on his own case, that took hours. It is inconceivable that the claimant, acting professionally, could have, or should have, taken that approach. Even taken at its height, the claimant's admitted behaviour was entirely inappropriate and wrong. That behaviour continued in Seattle during the events of the early hours of the morning, which ultimately led to the LSE's intervention and her being rescued by security staff from security staff when she felt intimidated by the claimant and Mr Wargel. We have no doubt that the claimant's behaviour on those occasions was totally inappropriate and unprofessional. Any claim of innocence must be viewed in that light.

7.54 It is alleged that Ms D's allegation was malicious. That cannot survive the finding of the High Court. We do not have to resolve whether the claimant had an inappropriate discussion with Ms D concerning her attractiveness, or her behaviour. We observe that the claimant has never given any adequate account of the content of the conversation, instead he has relied on brief generalisations, which do nothing to capture the totality of conversations which must have occurred. In this context we cannot ignore the claimant's credibility. His perception of events is unreliable. To the extent he has given any detail it is likely to be incomplete and misleading; it is likely to contain elements of deception and invention. On the balance or probability his generalisations are unlikely to reflect the reality of the discussions. It is likely that Ms D's account is largely accurate. We have no credible contrary account from the claimant. We have no doubt she had appropriate grounds for making a serious complaint.

7.55 We do not accept that there is evidence that the claimant was presumed guilty. When allegations of sexual harassment are made, an employer is put in a difficult position. It is necessary to protect the person who has made the allegation. It is necessary to protect the person against whom the allegation has been made. In doing so, it may be necessary to strike a balance. The respondent was right to be concerned that there may be

difficulties if the claimant attended a graduation ceremony. We do not accept that he was simply told that he could not attend. There was discussion. There was negotiation. The respondent was entitled to presume that he would have seen the difficulty and his professionalism should have led him to engage positively with that discussion. It was the claimant who failed to engage with the discussion, not the respondent that imposed absolute conditions. It was clear that Ms D was not continuing as the claimant's teaching assistant. She had resigned. It was the claimant's behaviour that caused her resignation. Again, the respondent was put in a difficult position. There had been a degree of dissemination of the circumstances by both the claimant and Ms D. It was never suggested the claimant should have no teaching assistant, but concern was expressed, legitimately, about whether it was appropriate to recruit from the student body. This was an ongoing matter, and one which needed to be resolved. The claimant asks us to believe that the respondent's attempts to handle this difficult and sensitive scenario indicates that he had been assumed guilty and constituted a punishment. We find in it neither demonstrated a belief in guilt, nor constituted punishment.

7.56 Professor Estrin's evidence was that he was not contemplating dismissing the claimant. Ultimately, Mr Goslng's finding of not proven was exceptionally generous, given there was ample evidence to find that the claimant had behaved inappropriately. It is inconsistent with any prejudgment of guilt.

7.57 We find it is not possible to separate the allegation that he was presumed guilty and publicly punished from the claimant's allegation that he was innocent and Ms D's actions were malicious. The claimant does not make a distinction. The email of 24 July 2013, is premised on the assertion or allegation that Ms D made a malicious allegation of harassment against an innocent man. It is in that context that the reference to presumption of guilt and public punishment must be understood. We take the view that there is, essentially, a single allegation which has multiple assertions attached. That allegation is one of innocence and it is false. It is underpinned by the allegation that Ms D's actions were malicious. They were not. Reading the totality of the correspondence makes it clear that the principal reason why the claimant says Ms D allegation was malicious is because he represents himself as the innocent victim of her sexual advances, which he spurned. That fundamental allegation underpins the entirety the relevant correspondence, and it is untrue. We must consider whether it was made in bad faith, and to do this we will consider whether it was dishonestly made.

7.58 It has been no part of the claimant's case before us that any personality trait, whether viewed as a narcissistic trait, or more generally as an ASD development issue prevents the claimant understanding the difference between right and wrong. We have considered the guidance in **Ivey**. We must first consider the claimant's subjective knowledge and belief as to the facts. We have concluded, on the balance of probability, that the claimant consciously formulated a false account of the events on 12

November 2012, in which he sought to present Ms D as a sexual predator and paint himself as an innocent victim. We find that he knew that this was not true. Viewed objectively, his conduct was dishonest.

7.59 We found that had Ms D behaved in the manner now alleged by the claimant the claimant would have raised her conduct at a much earlier stage, and in much more detail. We have reached the conclusion, on the balance of probability, that the claimant's allegation of spurned sexual advances is dishonest. That dishonesty taints the entirety of his alleged disclosure of information, and his assertion of innocence. That dishonesty leads us to find the assertion that he was an innocent victim was made in bad faith.

7.60 As the essence of the claimant's complaints is a false allegation made in bad faith, we cannot find this the email 24 July 2013 was a protected act. We do not need to consider the details of the emails which followed. They are largely repetitive and develop the same themes. They are all underpinned by the same basic allegation which is that the claimant was an innocent victim who spurned the sexual advances of Ms D; none is a protected act. Each is founded on a false allegation made in bad faith. We concluded the primary purpose of those emails was to harass the respondent.

7.61 Many of the emails contain alleged grievances. During submissions we explored with the parties whether there is a definition of a grievance. No specific case law has been identified. We referred to the ACAS Code (2019). The code itself is not binding, but it may provide some useful guidance. Under the heading "What is a grievance" the code states the following:

> **Anybody working in an organisation may, at some time, have problems or concerns about their work, working conditions or relationships with colleagues that they wish to talk about with management. They want the grievance to be addressed, and if possible, resolved. It is also clearly management's interest to resolve problems before they can develop in the major difficulties for all concerned.**

7.62 It follows the essence of the grievance is the identification of a problem at work, which the employee wishes to talk about with management, and which the employee wishes to have resolved. We do not accept that the claimant, in any meaningful way, wished to negotiate with the employer to find a way to return to work. Instead, what he required was completely unreasonable and unjustified. He wanted some form a categorical finding that Ms D was vexatious and he was innocent. Even then, had that been found, we doubt that the claimant intended to return to work. His own correspondence suggested by July 2013 he believed he had been proved innocent, and yet the resolution that he continued to seek throughout was a declaration of innocence.

7.63 There was no reason why the claimant should not have engaged with the respondent with a view to returning to work, had that been his intention.

As to what the claimant's intention was, that is less clear. We are satisfied that his correspondence, through Professor Marnette-Piepenbrock, was not a genuine attempt to address a key issue with a view to returning. His position is most graphically illustrated by the claimant's email of 12 December 2012, which is perhaps the clearest statement of his true position when he simply says “I can give no more.” The reality is that he did not engage with the respondent in any professional way thereafter; his interaction was not consistent with his seeking to return to work.

7.64 The possibility remains that the emails prior to 24 July 2013 were protected acts. As noted, there was an escalation of inappropriate language after 24 July and the claimant's position became more deeply entrenched.

7.65 The first alleged protected act was Morgan Cole's email of 11 March 2013. The respondent was criticised by the High Court for its failure of procedure, including dealing with the claimant’s grievance sooner. We support those findings. The claimant should have been given Ms D's formal complaint at an early stage. There was no reason to redact that complaint. These allegations about redaction and delay were legitimate grievances. However, it would not be right to say the claimant did not understand that he was required to give an explanation for the events in America. On his own case, he had made a complaint himself, and he should been obliged to set out a detailed account in his own complaint. The reality is we found that he has not been truthful about making a complaint. In any event, he knew that he was in a position of responsibility. He knew Ms D’s complaint concerned what he himself described as extraordinary circumstances in America. There was no reason why he should not have given an explanation.

7.66 It is not every grievance, complaint, or concern, whether raised by an employee or on his behalf by representatives, which will be a protected act. It must be something, at the very least, which is done for the purpose of or in connection with the Equality Act 2010. It is in that context that we consider the letter of 11 March 2013. The letter raises concerns about whether the claimant had been refused attendance at the graduation ceremony; it says that this was "highly embarrassing" for the claimant. This falls short, in our view, of a specific allegation for the purposes of the Equality Act 2010. It also acknowledges that the claimant was unwell on the day of the graduation. The implication is that he would not have been well enough to attend, albeit it is alleged that was not the reason for his non-attendance. It also follows that, had the claimant been well, he may well have initiated further discussions himself. It is implicit that the matter was under discussion. There is reference to his teaching assistant and this appears to contain a false allegation. The claimant was never told that he could not have another teaching assistant. To the extent it is suggested that he was told that he could have no teaching assistant, this is a false allegation. In any event, it falls short of saying that this is a complaint pursuant to the Equality Act 2010. If this were a letter written by the claimant himself, it may be easier to infer a complaint. But this is a

letter written by a lawyer, and it is reasonable to expect a degree of precision. There is reference to Gwen O'Leary, but this appears to be in the context of a request for data pursuant to the Data Protection Act. We cannot read this as something done pursuant to the Equality Act 2010. The claimant asked for these to be dealt with as grievances. There is also reference to the letter of 4 February 2013, but it is not alleged it contained any protected act.

7.67 The letter does contain a clear reference to the Equality Act 2010. This is after the request to include the other matters as grievances. It states "I have also advised him that the assumption of guilt in relation to evidently malicious harassment accusations would, on current information, amount to sex discrimination…" It is this reference we find which could be a protected act, as the assertion that a matter could be sex discrimination must be an action taken in connection with the Equality Act 2010

7.68 It is necessary to consider whether the allegation is false and made in bad faith. Viewed in complete isolation, it may be possible to argue there could be doubt as to whether the allegation was false and made in bad faith. However, we do not consider that to be the appropriate approach. It is necessary to consider all relevant facts. The assertion of sex discrimination, which is an allegation, is underpinned by two allegations. The first is there was an assumption of his guilt. The second is Miss D's allegation of harassment was malicious. The allegation of malice is an integral part of the assertion of the assumption of guilt.

7.69 The allegation of malice against Ms D was a false allegation, for the reasons we have already given. The allegation that there was an assumption of guilt had no foundation. It follows that the two points advanced in support of the allegation of sex discrimination were false allegations. We cannot ignore the totality of our finding when considering whether these were made in bad faith. The assertion that Ms D made a malicious allegation of harassment was untrue. For the reasons we have already given, the claimant knew it was untrue. In the circumstances we find that the allegation was made in bad faith. The allegation concerning assumption of guilt cannot be divorced from the allegation of malicious harassment.

7.70 The grievances raised were not allegations of sex discrimination. If they were, they rely on the same false allegations concerning malicious harassment and would be made in bad faith.

7.71 We have considered the other alleged protected acts leading up to the email of 24 July 2013. They are all founded on the same basic allegation which is that the claimant is the innocent victim of sexual harassment by Ms D. They are all based on the same false allegation. In each case there is bad faith. We therefore find that there are no protected acts.

7.72 The victimisation claim is advanced only on the basis of protected acts. The claimant has not alleged the respondent believed there would be a protected act. It follows that the allegation of victimisation must fail.

7.73 We will consider the alleged acts of victimisation, lest we be wrong about there being no protected acts. However, first we will consider the claim that the dismissal was unfair.

Unfair dismissal

7.74 The claimant was employed under a fixed term contract as an LSE fellow to run the "Capstone" course from 1 September 2011. The fixed term was extended on 2 May 2012 for a further two years until 2 September 2014, when it expired without renewal. Under section 95(1)(b) Employment Rights Act 1996 the expiry of the fixed term contract, without renewal, is deemed a dismissal. The effective date of termination was 2 September 2014.

7.75 The respondent accepts it dismissed the claimant and says the dismissal was fair. It is for the respondent to show the reason, and if more than one the principal reason, for the dismissal. The respondent alleges that it had a potentially fair reason for dismissing the claimant, which is either 'some other substantial reason' S.98(1)(b) Employment Rights Act 1996 or capability or conduct for the purposes of S.98(2).

7.76 In **Abernethy v Mott, Hay and Anderson** [1974] ICR 323 the Court of Appeal held, "A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee."

7.77 As will be apparent from the finding of fact, there was a lengthy history leading up to the dismissal.

7.78 It is the respondent's case that Mr Seehra reviewed all the relevant history, sought to contact and engage with the claimant, and thereafter took the decision to dismiss. The claimant appears to advance two broad arguments. First, that Mr Seehra should not have taken the decision to dismiss him. Second, the decision was made by others.

7.79 As for the second argument, the claimant alleges that the decision to dismiss came from the department of management. He points to the involvement of Professor Estrin and Professor Bevan, who the claimant says had overall responsibility for deciding whether his contract should be renewed. He notes that Professor Barzelay was head of the department of management from September 2013 to September 2014 and was responsible for the department at the time his contract was not renewed. He points to the failure of Professor Barzelay, or anyone else from the department of management, to seek an extension of his contract.

7.80 In addition, the claimant's submission state Ms Joanna Hay "seems to be the person who the documentary evidence shows was behind the decision not to renew…" This is consistent with his general contention that Ms Hay orchestrated some form of campaign.

7.81 We do not accept the claimant's contention that Professors Estrin, Bevan, and Barzelay were responsible for the dismissal. His case appears to be based on a misunderstanding. The department of management had the right to make submissions to the effect that his contract should have been renewed. The three years could be extended, albeit such extensions were rare. We have information from 2007 – 2013. There were two renewals for individuals on maternity leave, and one to accommodate a business need when a teacher cancelled at short notice. Neither situation applied to the claimant. The reality is that the department needed to have in place a teacher for a course. The claimant was not in a position to teach. His position is not comparable to someone returning from maternity leave who isready to teach. We accept that no one in the department believed there was any business case for extending the claimant's contract, as there was no prospect of his teaching. It follows that the department did not request an extension. There was no reason to do so.

7.82 It is unclear why the claimant believes Ms Hay was responsible for the decision. His contention appears to be based on an assertion that, in some manner, Ms Hay was orchestrating his dismissal. There is no evidence for this. We reject his contention.

7.83 Mr Seehra was director of human resources. We accept his evidence that he took the decision to not extend the fixed term. In reaching his decision, he considered all the relevant circumstances. He was aware of the guidance on employing LSE fellows and teaching fellows. He was aware that the LSE fellow position was a career development post, which allowed aspiring academics an opportunity to gain experience in teaching. At the time, he believed that only in exceptional circumstances could the appointment be extended to 4 years. He was aware the claimant's post had been extended to the normal maximum of 3 years.

7.84 On 19 August 2014, Mr Seehra wrote to the claimant confirming that his contract was due to expire on 2 September 2014. He confirmed that he would have been employed for the maximum period of three years and he noted the claimant remained on sick leave. He confirmed his understanding that the claimant was unable to meet with him due to ill health. At the time, Mr Seehra had no idea the claimant had in fact accepted employment at Ashridge Business School. He offered to meet with the claimant's representative or to receive any written comments. He confirmed it was in the interests of the claimant to apply for further work and provided information about how to access vacancies.

7.85 On 25 August 2014 he received comments from Professor Marnette-Piepenbrock, which he treated as representations as to why the contract should be extended beyond 2 September 2014.

7.86 Mr Seehra responded on 27 August 2014 and noted the claimant remained medically unfit to return to work and there was no information indicating he would be able to return to work within the foreseeable future. He considered the claimant's own occupational health report, which indicated the claimant would not be fit to return to work until his grievances were resolved to his satisfaction. He took the view that resolution of the claimant's grievances to the claimant's satisfaction was unrealistic, given the outcome of the original grievance, subsequent appeals, and the claimant's refusal to accept the respondent's decisions.

7.87 Mr Seehra noted there had been further grievances. On 27 August 2014, he offered to extend the claimant's contract temporarily to 3 October 2014 to allow Professor Marnette-Piepenbrock to meet with him and make further representations. He clarified he sought representations as to when the claimant would be fit to return to work, and whether Dr Piepenbrock believed that the mutual trust and confidence had irretrievably broken down. He received no substantive response to his email of 27 August 2014. The claimant did not confirm his willingness to meet. The claimant did not provide the clarification sought.

7.88 Mr Seehra concluded that the claimant's employment should be treated as terminated with effect from 2 September 2014. That decision was confirmed by Mr Seehra's letter of 27 November 2014 (H2699), which also confirmed the right to appeal. The claimant lodged no appeal. Mr Seehra delayed sending the formal letter confirming the termination because of the respondent's attempt to take forward various grievances, and we should sketch in the main events to set them in context.

7.89 Mr Seehra considered the outcome of the claimant's grievance, and the subsequent appeal against Mr Webb's decision, as set out in in his report of 25 November 2013. He noted the appeal panel gave its outcome on 29 July 2014 and did not uphold the majority of the claimant's grievance and appeal. He noted the claimant had sought an extension for filing his grievance by saying he had difficulty complying with the timeframe. He was aware that on 4 August 2014, the claimant, through Professor Marnette-Piepenbrock, had lodged a further grievance against Mr Elias. On 14 August 2014, he requested full particulars of the claimant's grievance appeal. On 27 August 2014, Mr Seehra offered to extend the deadline to 5 September 2014. By 5 September 2014, no grounds of appeal had been received. Despite having no grounds of appeal, on 13 October 2014 the claimant was asked to attend an appeal panel on 27 October 2014. Following requests by the claimant, the hearing was delayed until 12 December 2014. The claimant did not attend. The hearing was reconvened on 24 February 2015. The claimant failed to attend. The respondent's attempts to engage the claimant in the appeal process explains why formal notice confirming the expiry of the fixed term was delayed.

7.90 We accept Mr Seehra's summary of his reasons for dismissal which are broadly as follows: the maximum three-year period had expired; there were no exceptional circumstances justifying extension; and there was no real prospect of Dr Piepenbrock returning to work for two reasons – first, he was medically unfit and second, Dr Piepenbrock had no trust and confidence in the respondent. We accept that he held the relevant beliefs honestly. Those reasons relate to both capability and conduct. We accept that Mr Seehra took the decision to dismiss for the reasons he has given. The totality of the beliefs that he held constitute some other substantial reason and are a potentially fair reason. We do not need to consider the alternative reasons advanced being conduct or capability. The substantial reason has elements of both capability, in the sense the claimant could no longer perform his duties, and conduct, in the sense that he was not engaging actively with the respondent. The totality of the reason constitutes a substantial reason.

7.91 We must consider whether the respondent acted fairly in treating that reason as a sufficient to dismiss and we have regard to section 98(4). The burden is neutral. We must consider, having regard to all the circumstances, including the size and administrative resources of the employer, whether it acted reasonably or unreasonably in treating the reason as sufficient to dismiss. We remind ourselves that we must not substitute our view and that there may be a range of responses in which one employer may decide to dismiss and another may not.

7.92 The claimant is critical of the respondent’s approach and advances several arguments which are essentially about fairness. In his submissions, the claimant refers to the LSE's code of practice on department governance. He alleges that, in some manner, Mr Seehra either in the way that he conducted the procedure, or by taking the decision, violated the code. This was not a matter explored in cross-examination. We do not accept the claimant's argument.

7.93 Extension of the contract was primarily for human resources. The department could have made representations for renewal, had there been an appropriate business reason for doing so. The department had no obligation to make that request.

7.94 We accept the respondent's evidence that renewal beyond three years was exceptional, and we reject the claimant's contention that it was not. We reject the claimant’s contention that the contract should have been extended for a period equivalent to his sick leave. The claimant's position appears to be based on two misconceptions. First that the purpose of the contract was to permit the claimant to gain teaching experience. This is wrong. The contract provided him with an opportunity; the purpose was for him to teach. If he was not able to teach, he was not able to fulfil the principal purpose of the contract. Second, that the purpose was to facilitate his research. This is wrong. The role provides an opportunity both to gain teaching experience and to have some time to undertake research. Research was not the primary purpose, and it was not a

requirement of the respondent. We heard evidence that it was rare for someone who is engaged primarily as a teacher to transfer onto a track which would lead to a tenured position. It appears the claimant failed to recognise the distinction.

7.95 The claimant does not allege there was an alternative position he could have been offered. Instead, he states that he should have been "allowed to fulfil his LSE fellows contract by conducting the research that he was contractually promised he could do, in an extension of his contract." This argument is misconceived. The purpose of the contract revolved around teaching. The claimant appears to envisage that he should have been paid, without contributing any teaching, to undertake research. That would have been a completely different contract.

7.96 The claimant disputes the respondent's contention that the claimant was unwilling to return to work until his complaints had been resolved to his own satisfaction. It is difficult to understand the claimant's argument on this point. The evidence available to the respondent at the time is consistent with the conclusion that the claimant would not return to work until his complaints were dealt with to his satisfaction. Mr Seehra was entitled to conclude that there was no prospect whatsoever of the claimant's complaints being resolved to the claimant's satisfaction. The respondent, at the relevant time, did not know that the claimant had, in fact, accepted alternative employment. The claimant did not return to the respondent's employment, despite being well enough to start employment elsewhere.

7.97 His evidence to us was that he considered the entire LSE organisation was "unethical" and was some form of "harassment machine." We have no doubt the claimant had completely lost trust and confidence in the respondent. The reality is to return to the respondent's employment he envisaged that the entire organisation would change in some manner so that it became acceptable to the claimant. The respondent did not know the detail of this at the time. However, it was sufficiently clear that there was no prospect of reaching a resolution which would be satisfactory to the claimant.

7.98 This dismissal was, at least in part, based on the claimant's absence. It is well recognised in the case of long-term absence that it is appropriate to seek medical evidence to establish the nature of the illness, the prognosis, and whether the employee would be able to return to work, in any capacity, and if so when. The medical evidence available to the respondent was limited. The claimant does not specifically allege that the failure to obtain further medical evidence was unfair. The respondent had made numerous attempts to obtain its own occupational health report. All those attempts were frustrated by the claimant's failure to cooperate. Mr Seehra was entitled to conclude that there was no prospect, whatsoever, of the respondent obtaining any further medical evidence.

7.99 Mr Seehra was entitled to consider the medical evidence which was available. The available evidence was consistent with the finding that the claimant had a serious mental health condition such that there was no prospect of his returning to work. The reality was, although this was unknown to Mr Seehra, the claimant could have returned to work. He was not so ill that he could not work. This is illustrated by the fact that he had accepted, and then commenced, full-time employment with Ashridge Business School. Mr Seehra did not knew nothing of Ashridge.

7.100 Mr Seehra had ample grounds on which to conclude that the mutual trust and confidence had broken down. He was aware that there were some procedural difficulties with the respondent's approach. Nevertheless, Ms D's grievance had been found to be unproven. The claimant's grievance had been dealt with. The claimant did not accept the grievance outcome. There was no prospect of his accepting the grievance outcomes. Mr Seehra concluded that this demonstrated the claimant no longer had trust and confidence in the respondent; he was entitled to reach that conclusion. He was also entitled to conclude that the respondent had taken all reasonable steps to resolve the claimant's grievances.

7.101 The claimant suggests there had been no proper consultation. That submission is without merit. It is difficult to see what else Mr Seehra could have done. The claimant's actions over a period of years had made it plain that he would not correspond with the respondent. He would not meet with the respondent. Mr Seehra offered to meet with Professor Marnette-Piepenbrock. Had the claimant wished to meet with Mr Seehra, there is no doubt Mr Seehra would have agreed to meet him. The claimant was given numerous opportunities to make written representations. The claimant was invited to apply for vacancies. The reality is the claimant did not engage in any meaningful or constructive way with the process. The suggestion there was no consultation is without merit. It was the claimant who chose not to engage with the respondent.

7.102 Mr Seehra was faced with the stark reality of an employee who had come to the end of the natural period of his fixed term employment, who demonstrated no prospect of returning to work, and who behaved in a way which demonstrated he fundamentally had no respect for, or trust and confidence in, the respondent. It is difficult to see what else he could have done. The dismissal was fair

<u>Section 15 Equality Act 2010 - discrimination because of something arising in consequence of disability</u>

7.103 We next consider the section 15 claim.

Allegation five [16.5]: failing, on 2 September 2014, to renew the claimant's employment contract

7.104 We have considered the question of unfair dismissal. It is convenient to consider, first, whether the dismissal was discrimination because of something arising in consequence of disability. It is necessary to consider each of the allegations of discrimination because of something arising in consequence of disability singularly.[39] However, in reaching our decision in relation to each allegation, we have had regard to the totality of the evidence, not simply the evidence which is most directly relevant to each event.

7.105 It is necessary to identify the treatment. If the treatment is made out as having occurred at all, it is necessary to ask whether it was unfavourable. Unfavourable treatment may not be wholly analogous with concepts such as disadvantage or detriment, but it is unlikely that attempting to draw narrow distinctions would be helpful. To assess something as unfavourable, there must be "an objective sense of that which is adverse as compared to that which is beneficial". The disabled person's belief that he or she should have been treated better, may not be sufficient to establish unfavourable treatment.[40] If unfavourable treatment is established it is necessary to consider two further steps, which are both causal. First, we must identify what is the something arising in consequence of disability. Second, we must consider if that something arising provides a causative link to the alleged unfavourable treatment. Thereafter, it is necessary to consider whether the treatment was a proportionate means of achieving a legitimate aim.

7.106 We have found that the claimant was disabled. There is a question as to whether the respondent could reasonably have been expected to know the claimant was disabled. For the reasons we will come to, we do not need to finally resolve the point. However, it is difficult to see how the respondent would have known the claimant was disabled in December 2012. Whilst we found the claimant was disabled, he told the respondent nothing about his previous history, and there was no reason to believe at that time that he was disabled. Obtaining medical evidence should have put the respondent on notice that the claimant was disabled, as it should have identified his previous history. The respondent did take active steps to obtain medical evidence, and those attempts were actively frustrated by the claimant. To the extent the claimant later submitted medical evidence of his own, it was misleading. For example, the report of Dr Spiro stated there was no previous relevant history. That was misleading. After the claimant had been absent for a year, the respondent should have realised that, at least by that stage, he was disabled, but that did not occur until late 2013.

7.107 The respondent should have learned of the claimant's previous mental health history at an earlier stage. Its failure to do so is largely caused by the claimant's lack of cooperation. The information provided by the claimant was misleading. It is arguable that the respondent could not

[39] We will refer to them as section 15 claims.
[40] See, e.g., Langstaff J *Basildon & Thurrock NHS Foundation Trust v Weerasinghe* [2016] ICR 305, EAT.

have been, reasonably, expected to know of the disability until one year had elapsed, albeit the continuing absence put the respondent on notice of the possibility.

7.108 We now turn to consider each of the allegations. We first consider whether the dismissal amounted to discrimination because of something arising in consequence of disability. The claimant advances approximately eleven matters as arising in consequence of his disability. We do not need to consider each of those separately. The disability manifested itself, for the purposes of this enquiry, as anxiety and depression. This led to the claimant being absent from work. It is his contention that he was unable to return to work because of illness. Therefore, to some extent, his absence arose in consequence of his disability. The picture is complicated, because at the time that he was dismissed, he was not absent in consequence of depression. It is clear he was capable of working and was misleading the respondent.

7.109 The claimant has not sought to suggest that his disability caused him to lose trust and confidence in the respondent. He alleges the position he adopted was reasonable and rational, and objectively justified. His lost of trust, on his case, does not arise in consequence of his disability. Nevertheless, the absence, and the assumed inability of the claimant to resume teaching within a foreseeable period formed an important part of the reason for dismissal. Mr Seehra believed that the claimant's absence, and inability to perform his duties, was a result of depression, and therefore a matter arising in consequence of disability, even though the reality was the claimant was capable of working at the time he was dismissed.

7.110 The issues record the claimant's allegation that one matter arising in consequence of disability was as follows, " The claimant's behaviour being his inability to perform some functions, especially given his need for his reputation and teaching resources." It is not clear what is intended. However, having explored the matter during the hearing, and in submissions, we do not take this to mean that the claimant's perceptions were fundamentally affected by his disability, it must be viewed in the context of depressive illness, and his inability to perform his duties because of depression. We are reinforced in this view having considered the claimant's written submissions. The written submissions state "Dr Piepenbrock was continuously absent and signed off work by his GP for 20.5 months for chronic depression and anxiety. His absence therefore clearly arose from his disability…"

7.111 There can be no doubt that dismissal could be unfavourable treatment. The something arising in consequence of disability was the past and continuing absence. The past and continuing absence, which Mr Seehra believed arose out of disability, was a material reason for his decision.

7.112 There is a difficulty with this case. Mr Seehra proceeded on a fundamental misunderstanding caused by the claimant's deliberate

omission of relevant facts. The claimant could have, and should have, told the respondent that he was capable of working. That must have been the position because he started working for Ashridge Business School. The nondisclosure of information was deliberate and unjustified. It is arguable that the language of section 15 requires both subjective and objective consideration of the reason for taking a decision. Subjectively, the claimant's absence was believed to be a matter arising in consequence of disability. If a subjective test is applied, the causational link is made out. Objectively, the claimant continuing absence was not because of something arising in consequence of disability.[41] The depression had sufficiently resolve to allow him to return to work. If an objective test is applied, it is arguable that the causational link is not made out in this case.

7.113 Mr Seehra's subjective belief, that the claimant's absence arose because of disability, was objectively wrong. It is arguable that his reason was not the absence itself, but his reliance on a dishonest representation. We do not need to finally decide this, and it is not a matter which has been specifically argued before us.

7.114 We must consider whether the respondent has shown that the treatment is a proportionate means of achieving a legitimate aim. To consider this, we must assume that the treatment, being dismissal, was unfavourable, and that his past and continuing absence arose in consequence of disability and that the 'something,' being the absence, was a material part of the decision.

7.115 The claimant alleges that his absence was an exceptional circumstance justifying the extension of his contract. He alleges his illness was because of the respondent's breach of duty, which should have been considered. He alleges some individuals in HR, who were not the decision makers, supported an extension of his contract. He argues extension would have allowed him to fulfil his "research opportunities that he was contractually promised."

7.116 The claimant does accept the basic legitimacy of the respondent's aims, which can be summarised, for these purposes, as follows: to use its charitable funds for the delivery of its charitable objectives, which would include teaching; maintaining its reputation for providing quality teaching; using its financial and other resources efficiently and effectively. It is less clear if the claimant states that dismissal would not have achieved those legitimate aims. He does say that there were less discriminatory means of achieving the aims. His arguments can be summarised briefly: employing him would have cost the LSE nothing; he would have been able to undertake research; and the respondent could have made arrangements to cover his teaching. His argument falls short of suggesting that he would have been able to return to teaching at any time.

[41] In his oral evidence the claimant advanced the argument that he would have returned if the employer behaved ethically, but he did not concede that he was well enough to return or suggest he would have become ill had he returned.

7.117 It follows the claimant's main argument is that there was no cost to the respondent. This is supplemented by an argument that solely aiming to reduce costs cannot satisfy the test. In his submissions, the claimant emphasises the wealth of the respondent and its ability to sustain the claimant's salary. The claimant also refers to his alleged aptitude for teaching, albeit it is unclear how this is said to be relevant, when it does not appear to be any part of the claimant's case that the respondent should have realised he would be able to resume teaching. It does appear to be the claimant's case that he would have continued teaching had, in some manner, the respondent organised itself, or acted, in a fundamentally different manner.

7.118 In any event, he says the means employed were not proportionate. In this section, he appears to rely on three points: first, that the LSE caused the claimant's disability; second the effect on the LSE, presumably financial, was minimal; and third that he "could and would have been able to return to work". The latter point is difficult to reconcile with the remainder of the submissions, and the evidence as presented. The LSE could not have understood, given the claimant's lack of response, that he believed he could return to work.

7.119 The respondent submits that the dismissal was a proportionate means of achieving a legitimate aim. The respondent submits that it was reasonable to take the view there was no prospect of the claimant returning to work and undertaking any teaching. Fundamentally, the claimant had lost trust and confidence, and to the extent that he purported to be seeking a resolution through his grievances, his actions were disingenuous, oppressive, and harassing. His primary role was teaching, and there was no prospect of his continuing to do so. The respondent needed a dependable, high-quality, and consistent teaching resource, which it could provide to its students and advertise in advance to facilitate student choice. All employees had a collegiate responsibility and should be able to engage in an interactive and mutually supportive manner. The claimant could not be depended on to teach, or to operate within the LSE in a collegiate, interactive, or supportive manner. Keeping the claimant on the books may have had a small financial cost, but it did have a cost. Moreover, departments had budgets and employing the claimant restricted the department's ability to recruit and it inhibited appointments. The post was for a limited period and designed to provide teaching for the LSE, and an opportunity for the individual to gain experience and undertake research. This was consistent with the charitable objectives. Maintaining the claimant in post limited the opportunities for others.

7.120 In addition to saying the dismissal was justified. The respondent submissions doubt that the dismissal had any discriminatory effect, largely because the claimant had failed to engage with the respondent when consulted, and he had already accepted work elsewhere. That is a strong argument, and may be a complete answer to this part of the claim. However, we do not need to reach a final decision on this.

7.121 When considering what can be termed broadly the justification defence, it is necessary to take it in stages. The unfavourable treatment was dismissal. The aims have been identified, as set out above. There is no dispute the aims – using charitable funds for the delivery of its charitable objectives, which would include teaching; maintaining its reputation for providing quality teaching; using its financial and other resources efficiently and effectively – are legitimate.

7.122 We must ask whether the dismissal was a means of achieving the aims. It is necessary to view this in context. The department of management was part of the LSE. It fulfilled at least two broad functions. The first was teaching students. The second was contribution to the academic world generally, through research and publication. The claimant was not involved in the second part, whilst he may have aspirations to contribute, he had no history of publication, and he had not published anything in his first year. Whilst part of his role envisaged that he would have the opportunity to undertake research, he had no obligation to do so, the respondent had no expectation that he would publish in any respected peer-reviewed journals. Therefore, from the respondent's perspective, it required the claimant to provide quality teaching.

7.123 The charitable objectives no doubt included the provision of teaching. High quality consistent teaching supported the LSE's reputation.

7.124 It is not surprising that the LSE has a departmental structure. It is not surprising that, within that structure, the departments must justify expenditure. The LSE's financial resources were considerable, but that was no reason for using them wastefully or inappropriately. The effect of keeping the claimant, within the context of the respondent's structure, would have been to inhibit the department's ability to identify and employ another individual on a permanent basis. That does not mean that steps could not be taken to provide some form of substitute or replacement; that is what the respondent did. But the position is unsatisfactory, not least of all because of the need to confirm the identity of the teachers in advance. Had the claimant remained employed, the department would have either had to assume that he could not teach, and therefore not advertise his potential teaching at all, or indicate he would teach, and risk misrepresenting the true situation to potential students. Dismissing the claimant was clearly a part of the means for resolving the difficulty. The new teacher could be secured, on a permanent fixed term contract, to teach the course. That person could be advertised in the LSE's promotional literature. The charitable objectives would be fulfilled. The LSE would be in a position to state who would be teaching the courses, which would potentially improve its reputation and ensure consistent delivery and appropriate use of resources. Dismissing the claimant was part of that process it was part of the means of achieving the aims.

7.125 We must consider whether the respondent acted proportionately. In doing so, we must reach our own judgement based on a detailed analysis of the

working practices and business considerations involved. The mere existence of other options does not mean that the steps taken were disproportionate. We must consider the discriminatory effect of the means adopted and balance that against the reasonable needs of the employer.

7.126 The apparent discriminatory effect was to prevent the claimant from returning to work by dismissing him. As noted, for the purpose of this analysis, we will ignore the fact that is arguable there was no discriminatory effect at all, because the claimant was already committed to working elsewhere, and was misleading the respondent by failing to inform the LSE that he was able to return to work. The discriminatory effect is further complicated by the fact that the claimant's contract had come to an end, and would have ended even had he been teaching for the previous two years. Arguably, it was a simple operation of the contract, not the decision, which brought is employment to an end, and the nature of the discriminatory effect should be viewed in that context.

7.127 The reality is the claimant argues that the failure to extend his contract was the discriminatory act, as had his contract been extended, he would have remained employed. It is in the context of non-extension that he argues the extension would have had no financial consequence.

7.128 Most employment situations involve a fundamental bargain. That bargain is that an individual provides services in return for payment. In this case we find there was no prospect of this claimant ever teaching again at the LSE. The claimant had formed an extremely negative view of the LSE, and the department of management. He believed it was a harassment machine. His assertion that, in some manner his grievance was legitimate, or could be resolved in a way which allowed him to work again, is without any merit. His evidence that he believed he could have returned is in our judgement disingenuous.

7.129 We should not ignore the context in which appointments are made at the LSE. Management of a large organisation like the LSE requires proper financial control over departmental expenditure and transparent and non-discriminatory recruitment procedures . The claimant invites us to take the view that we should ignore or set aside the entirety of the respondent’s management system and instead say that his case should have formed some form of exception, and he should have remained employed, even if he was not able to teach, so that he could undertake his own research.

7.130 We find that the claimant's contentions really revolve around one single point, and that is the respondent could have continued to employ him with no financial cost. We do not accept that employing the claimant had no costs consequences. There were administrative costs. There may be other direct costs, including holiday pay. Against that, we must consider the reality of the LSE’s department structure, the need to employ reliable staff, the need to advertise to the student population he identity of those who would be teaching courses, and the need to behave in a way that achieved its legitimate aims.

7.131 Employing the claimant was not neutral. It had some costs consequences. It inhibited the employment of others. It created uncertainty in the department. It inhibited the ability to put in place teachers who could be reliably advertised to the world as teaching the course.

7.132 Further, the claimant's behaviour, over a long period, had been contentious to the point where it was harassing and destructive. Considerable effort had been made to resolve the claimant's difficulties and that simply generated yet more grievances, complaints, and hostility. The amount of time and effort involved in attempting to deal with the claimant's complaints was disproportionate and ultimately a futile waste of resources. Had he remained employed, that intractable dispute would have continued and deepened. The continuing commitment of resources was unjustifiable. Employing the claimant impacted on the respondent's ability to focus on its key aims, which revolved around efficient use of resources and delivery of its charitable objectives, as resources were tied up with dealing with the claimant's escalating, and ultimately unjustified, complaints.

7.133 The claimant's argument entirely ignores his need to contribute to the department generally in a constructive and collegiate manner. To make that contribution there must be mutual trust and confidence. The claimant's attitude to the department, its employees, and the LSE in general was incompatibles with his participating in a positive and collegiate way. The claimant's inability to engage reasonably and professionally, and his inability to accept legitimate instructions would, of itself, have justified his dismissal.

7.134 We accept that dismissal was a proportionate means of achieving a legitimate aim. It follows that the dismissal was not an act of discrimination because of something arising in consequence of disability.

7.135 We will now deal with the remainder of the section 15 allegations. We can deal with those more briefly.

Allegation one – "by an internal email on 25 July 2013 from Professor Calhoun, referring to the claimant's communication with the respondent via his wife as 'bizarre.'"

7.136 Professor Calhoun was, at the material time, the director of the London School of Economics. His role is extremely senior. He had oversight of the overall policy, direction, and strategy of the LSE. At no time did he have any responsibility directly for the claimant, the employment of the claimant, or the management of any grievance. No doubt the claimant, through his wife, identified Professor Calhoun as the most senior member of the organisation and sought to engage him. At an early stage, he established that he would not become involved and would not correspond directly. Instead, he simply forwarded Professor Marnette-Piepenbrock's

emails to deputy directors including Ms Scholefield, Mr Gaskell, and Mr Kelly. Professor Calhoun received hundreds of emails a day. Sometimes he made brief comments when forwarding them. At no time did the respondent do anything which would make the claimant believe Professor Calhoun was the right person to write to. We have reviewed protected act 25 and this appears to be largely a series of alleged grievances against Professor Calhoun. As we have noted, whilst the correspondence purported to come from Professor Marnette-Piepenbrock, in fact it was the claimant who was the author. The correspondence became more frequent and more hostile in nature. It became clear the dominant purpose of his grievances was to harass the respondent's employees. It is in that context in which we must view the comments made by Professor Calhoun's and others.

7.137 This allegation fails at the first stage. Professor Calhoun did not did not send an email on 25 July 2013 referring to the claimant's communication with the respondent via his wife as "bizarre."[42]

7.138 There was an email from Mr Gosling which matches the description. In the claimant's submissions, he alleges that this allegation should be against Mr Gosling. This would, technically, require an amendment; no such amendment has been sought or granted. However, it can be dealt with briefly. Mr Gosling's comment was "and it is bizarre that Ted still does not communicate with us directly." That is an innocuous statement. There is no suggestion to us that the word bizarre is being used in a pejorative sense. The claimant had been absent for over seven months. The complaint against him had been resolved in a manner which was both generous and favourable to the claimant. He was an employee. He had given no indication he would not return to work. It is extremely unusual for an employee to fail to communicate directly with an employer, even when that employee may be suffering from depression. There was no reason to believe that the claimant's condition was so debilitating that he could not communicate directly.

7.139 "Bizarre" is, objectively, a reasonable description. It is not in our view unfavourable treatment, whatever the claimant's view of it. In any event, we do not accept it arises out of anything in consequence of disability. There is no causational link between the absence, which arose in consequence of disability, and the statement. We do not accept that the claimant's disability was such that he could not communicate with the respondent. Instead, he was the effective author of all the documentation, but he chose not to put his name to it. No doubt Mr Gosling saw there was something strange or unusual, even though he was not fully apprised of the facts.

7.140 The use the term bizarre in an internal communication is innocuous. It was necessary to communicate about the correspondence. Inevitably

[42] He did in his email of 21 June 2013 say "It continues - rather bizarrely." We consider this as part of the victimisation claim.

comment is made. It is a necessary part of the management of a difficult situation, and is entirely proportionate, even if there was, contrary to our view, any discriminatory effect.

Allegation two - by an internal email on 2 August 2013 from Professor Estrin to Professor Willman, referring to the claimant's behaviour since December 2012 as "extraordinary"

7.141 On 2 August 2013, Professor Estrin sent an internal email party which stated, "His behaviour, added to his earlier problems with the gmim group and his extraordinary behaviour since December mean that I will not be renewing his Ad contract from September in gmim." The claimant alleges the use of the word "extraordinary" was discrimination because of something arising in consequence of disability.

7.142 At paragraph 53 of his submissions, he refers to the use of the words bizarre, and extraordinary, as being some form of comment on the claimant's disability (i.e., "not what would be expected from a neuro typical person…") However, it has not been the claimant's case that his correspondence was unusual, in some manner, as a consequence of his disability. It has been his case that his correspondence was reasonable, appropriate, and not unusual.

7.143 The word was used. The first question is whether it is unfavourable treatment. This is an innocuous word, used reasonably, to describe correspondence which was, objectively, extraordinary. It may be that the claimant now, subjectively, objects to its use. Viewed objectively, it is a neutral, reasonable, and legitimate description of oppressive correspondence. It does not have any quality in our view which would make it unfavourable treatment.

7.144 As for what arose in consequence of disability, at paragraph 78 of his submissions, the claimant refers to his absence "among others." The logic of the claimant's submission is difficult to ascertain. We accept the word extraordinary was used because it was a reasonable and legitimate description of the claimant's contentious and excessive correspondence. We note, in particular, this followed shortly after Professor Marnette-Piepenbrock's email of 24 July 2013 which contained an unjustifiable interpretation of the outcome of Ms D's grievance, which could reasonably be described as extraordinary. The mere fact that this occurred in the context of disability absence does not establish the causational link.

7.145 In any event, the use of the word was justified. Professor Estrin was attempting to manage a very difficult situation. Discussing the claimant's emails, whether in correspondence or otherwise, was necessary because the relationship with the claimant, in the context of the running of the department, had to be managed. The term was objectively justified, it had no specific detrimental effect. It was a reasonable and neutral word in all the circumstances.

Allegation three [16.3]: by indicating in the same email on 2 August 2013 that the claimant "cannot expect to take up where he left off", and that Professor Estrin would not be "willing to contemplate using [the claimant] for teaching. In this or future modules"

7.146 This arises out of the same email of 2 August 2013. Again, it is important to consider the context. Professor Estrin was involved in organising the department. He needed to ensure there was proper teaching for the courses offered. Following the claimant commencing sickness absence on 12 December 2012, the claimant had behaved unprofessionally and inappropriately. He had failed to interact with the department. This left the department in a difficult and invidious position. It was unclear whether the claimant would return after Christmas. The claimant did nothing to assist by providing teaching resources. In essence he abandoned all responsibility for any of his duties. Professor Estrin others had to make considerable efforts to cover the claimant's teaching at short notice and the position was unsatisfactory. The claimant maintained his silence and gave no indication as to when he would return. In that context, Professor Estrin was entitled to use words which demonstrated a degree of dismay and unhappiness. It was impossible for the claimant to pick up where he had left off, because the position and fundamentally changed. Resources had been put in place to teach students; students had expectations.

7.147 The reality is that Professor Estrin was exceptionally supportive. When it appeared the claimant was able to return in September, Professor Estrin began to put in place plans to include the claimant in the teaching resource. It was the claimant's failure to engage which caused difficulty. Professor Estrin did have some concerns, and there is clear evidence that the claimant had got into conflict with a student on the GMIM. Professor Estrin's concern was legitimate, reasonable, and appropriate. Nevertheless, Professor Estrin recognised the claimant's ability to teach and was ready for the claimant to resume teaching. The reference to the claimant not teaching was limited to the GMIM modules, not teaching in general. This reflected Professor Estrin's concerns about the claimant's behaviour formed at time when the claimant was teaching and was not absent because of disability. It is no part of the claimant's case that he behaved inappropriately because of disability at any time he was teaching. There is no causal link to anything arising in consequence of disability. In any event, the comment is a reasonable one based on reasonable concerns, and in that sense, it is fully justified in any event.

Allegation four [16.4]: by failing to renew the claimant's Deputy Academic Dean contract

7.148 This was a one-year appointment which was largely administrative. The claimant had not been able to fulfill his duties following his absence. Connson Locke, had been acting up. The respondent was paying for two people to do the job. There was no prospect of the claimant returning. The claimant's absence, and his total inability to fulfil his duties, led to the non-renewal of this position. The aims revolved around the efficient use of

resources in ensuring that the duties were undertaken. By not appointing the claimant, someone who was able to fulfil the duties could be appointed. It follows that not renewing the claimant's position allowed the appointment of someone who could do the role. This fulfilled the aim of ensuring that the role was covered and the duties performed. We find it was proportionate. There was no prospect at all of the claimant fulfilling his duties by returning to work. Had the claimant been appointed, the reality is there would have been a parallel appointment of someone else who could have done the job, and in our view that would have been a complete waste of resources and entirely disproportionate. We find it was a proportionate means of achieving a legitimate aim.

Victimisation

7.149 We have found that there were no protected acts. The claim of victimisation has only been pursued as a reaction to protected acts. It follows the victimisation claim must fail in its entirety. Lest we be wrong, it is proportionate for us to set out our remaining findings on the victimisation claim.

7.150 We have considered the law above. We should summarise the appropriate steps. First, did the alleged treatment occur at all. If it did not, the allegation fails at that stage. There is difficulty when an allegation is unclear, and that is why clarity is important. Second, an unjustified sense of grievance, however firmly held, may not be detrimental treatment amounting to victimisation. It is necessary to consider what a reasonable employee would have thought. Third, the alleged treatment must have been because of a protected act (or the belief there has been or may be a protected act). This is a question of causation. Causation is a legal construction. It is necessary to look at the mental processes of the individual responsible, whether conscious or subconscious. Fourth, it may not be enough for the treatment to be in response to the doing of a protected act. It is a matter of common sense that the treatment may be for some feature of the alleged protected act which can properly be treated as separable. One example can be when the reaction is a response to clear harassment. Fifth, if the allegation, said to be the protected act, is false and made in bad faith, it is not protected.

7.151 There are numerous allegations of victimisation. Considerable time was spent prior to the hearing seeking to identify and codify the allegations. This included a lengthy hearing concerning a request for amendment. That itself led to an appeal and occupied yet more judicial time. EJ Hodgson produced a lengthy list of issues, and within that list gave guidance about those allegations which were unclear and required clarification. The claimant did not engage in any meaningful way with that guidance, by amendment or otherwise.[43] The issues placed the allegations into three categories which broadly were as follows: first, those allegations which were sufficiently clear; second, those allegations which

[43] The application to amend did have some limited clarification, albeit that was coincidental.

had some substance, but lacked relevant details; and third, those allegations which were generalised and where it was not possible to ascertain, with any confidence or certainty, what was said to be the treatment.

7.152 There were seven allegations identified in category one (3. 9. 10, 11, 12, 13, and 19), being those which were sufficiently particularised. We will consider them now.

Detriment 3: by an internal email from Professor Estrin to LSE Director Calhoun on 21 June 2013, alleging that the claimant did not win an award and that his wife was not a professor, in response to learning that the claimant was battling suicide

7.153 On one interpretation, it can be said that the treatment happened, in the sense that the email was written. We cannot find, as a fact, that it was written in response to learning the claimant was battling suicide. The reference to suicide is a reference to Professor Marnette-Piepenbrock's email of 21 June 2013. This did not say the claimant was battling suicide. Instead, it referred to an allegation that a former BBC employee committed suicide when his grievances were not investigated. We do not accept that Professor Estrin should have necessarily inferred that the claimant was in a similar situation.

7.154 Professor Estrin's email stated "Note that Marnette is not a professor. She is a tutorial fellow./ I believe [P]iepenbrock did not win an award. He was nominated for one." This was an internal email which was not intended to be viewed by the claimant. By the time this was written, the claimant had been absent for over six months, and he had not engaged with the department at all. We have described the correspondence received, which we have found to be harassing.

7.155 Professor Estrin accepts that he wrote a quick email. He describes it as "churlish" and states he was irritated by the self-aggrandising tone of the email. At the time, he believed Professor Marnette-Piepenbrock was an associate professor. He was referencing a cross university prize, which ultimately the claimant did not win. His issue was with the claimant's behaviour and its effect on the students. He found the correspondence from Professor Marnette-Piepenbrock to be vexatious because of the repeated reference to a version of events about Ms D which was not consistent with his understanding. He states he had reached a state of exasperation. He was disappointed with the claimant's behaviour and with the volume, and extraordinary tone, of the emails from Professor Marnette-Piepenbrock. He described his own email as "facetious" and "ill judged."

7.156 We have no doubt Professor Estrin was frustrated. His view that the correspondence was, as he put it, vexatious was understandable, and justified. No doubt, Professor Estrin regrets the email, as it was a put down. We must consider whether it was detrimental treatment for the

purpose of victimisation. We are not satisfied that a facetious putdown is necessarily detrimental in the context of the behaviour exhibited by the claimant and the correspondence from Professor Marnette-Piepenbrock. Individuals who behave inappropriately may provoke sarcastic comment which they find unwelcome. We are not convinced that such comments should attract legal liability. The law should not be trivialized. We doubt that Professor Estrin's intemperate response, given that it was an understandable human reaction in the face of provocation, is, in context, detrimental treatment, as envisaged by the act.

7.157 It is clear it was not because of any protected act. It was a reaction to what we have termed harassment, and what Professor Estrin refers to as the vexatious nature of the correspondence. In any event, it fails because there was no protected act.

Detriment 9: by an internal email on 5 December 2013 from Mr Andrew Webb, director of corporate policy, stating that he did not "really give a zebra's what we say to Piepenbrock or his Mrs…"

7.158 Mr Webb did write the email. The treatment did occur. Was the treatment detrimental? This must be viewed in context. Mr Webb gave clear, frank, and scrupulously honest evidence. He explained the reference to "zebra's" did imply a missing word – "turd." During his evidence he offered an apology to Ms Weale, who was the recipient of the email, as he considered his own email to be rude and intemperate. However, he did not consider his email to be unjustified, and he never intended that the claimant should read it.

7.159 Mr Webb had undertaken a careful, thorough, reasonable, and appropriate investigation of the claimant's grievance. He had set out his proposed course of action, reasonably and appropriately, noting that the claimant was unlikely to participate directly. He had received no objection to the way he proposed to deal with the grievance. He spent considerable time reviewing all the documents. His assessment of the claimant's grievance was scrupulously honest and fair. In brief he had done all that he could do or could be reasonably be expected to do.

7.160 The claimant's response was to reject Mr Webb's grievance outcome, and file a grievance against Mr Webb, which itself was couched in intemperate and offensive language. When Mr Webb wrote the "Zebra's" email, his direct involvement had come to an end. Ms Weale was writing to him, largely as a matter of courtesy, to see if he had any input. The meaning and purpose of Mr Webb's email was to emphasise his lack of involvement. He accepts that the language was rude; he did not intend it to be read by the claimant. His reaction was, essentially, the same as Professor Estrin's, as we have described above.

7.161 Mr Webb was rude because of his frustration and annoyance. As previously noted, those who act in a way which is harassing and use intemperate language may provoke sarcastic comments which arise out of

frustration. This is an example. There is little doubt that a reasonable employee would have considerable sympathy with Mr Webb's response, whilst not condoning it, and may conclude that the claimant was treated in a way which was consistent with the claimant's own behaviour. Such sarcastic statements, made in the course of internal correspondence, are best avoided. Mr Webb acknowledges that.

7.162 We doubt that this comment should be treated as detrimental for the purpose of the act. In any event, it is not a reaction to protected act. It is a reaction to the unreasonable way in which the claimant behaved generally, which then extended to the unreasonable way that he rejected Mr Webb's report. It is a reaction to the harassing nature of the claimant's approach. Finally, there was no relevant protected act.

Detriment 10: by an internal email on 22 December 2013 from Mr Webb, referring sarcastically to the claimant's wife's tone as "the usual measured, eirenic [sic], conciliatory tone"

7.163 Mr Webb did write the email. The treatment is established. This email was sarcastic. Mr Webb believed that the tone of Professor Marnette-Piepenbrock's emails was the opposite of measured, eirenic and conciliatory. He accepts that it can be seen as an ill-judged attempt to employ irony in the face of the "visceral" tone used by Professor Marnette-Piepenbrock in her email to the LSE. We have no doubt that explanation is true. We have no doubt that the claimant's complaints were challenging to handle. For those individuals involved, their management was extremely difficult to deal with, it was wearing, and it was time-consuming. It is not surprising that those individuals let off some steam at times when they thought it was safe to do so. In no sense whatsoever does that suggest that they did anything other than act appropriately and professionally in relation to the complaints themselves. Mr Webb's conduct provides a striking example of an individual who behaved with complete integrity and fairness towards an individual who was not exhibiting the same characteristics. At times Mr Webb used intemperate language in his internal correspondence. That was understandable, even though it should be avoided and cannot be condoned. An occasional sarcastic comment in internal correspondence is probably not enough to be treated as detrimental in the sense it should attract legal liability in the context of the Equality Act 2010. Findings of victimisation are extremely serious, and a tribunal should be cautious to ensure that the gravity is respected.

7.164 We doubt that any reasonable employee would consider Mr Webb's action to be detrimental given the context. In any event, Mr Webb's action was not because of any alleged protected act. His reaction was to what we have broadly termed the claimant's harassment. In any event there was no protected act. The allegation fails.

Detriment 11 [21.14]: By an internal email from Professor Calhoun on 5 January 2014 commenting on Mr Wargel's email asking why his testimony in support of the claimant has been ignored stating "I continue to ignore"

7.165 Professor Calhoun was not directly involved in either Ms D's grievance, or the claimant's. The claimant, through Professor Marnette-Piepenbrock, began to send correspondence to Professor Calhoun, for no good reason, and thereafter filed dozens of grievances against him. There was no reason for Professor Calhoun to be involved. Appropriate individuals had been nominated to deal with the claimant's correspondence. It was agreed that he should simply send the correspondence to them.

7.166 It is not unusual when emails are forwarded for an individual to pass brief comment. It may be no more than "FYI," or it may be some brief comment or description. On 5 January 2014, Professor Calhoun sent to Ms Scholefield an email from Mr Wargel dated 5 January 2014. In context, his comment "I continue to ignore." Is simply confirming that he is forwarding it to Ms Scholefield for her attention. It follows that the treatment alleged is made out. We do not accept there is any possibility that this could be detrimental treatment. It is innocuous. It is not a reaction to any alleged protected act. It is not even a reaction to the claimant's harassing correspondence. Professor Calhoun forwarded the email, because it was not his responsibility to deal with it. It was not a response to any alleged protected act.

Detriment 12 - Ms Scholefield on 4 February 2014, refusing to meet with the claimant and his wife at the claimant's home.

7.167 We have explored the circumstances in our finding of fact. Ms Scholefield did refuse to meet the claimant and his wife at the claimant's home. In that narrow sense the treatment is established. In no sense whatsoever can this be seen as detrimental treatment. Ms Scholefield had originally offered to meet the claimant and his wife at the claimant's home, provided she could have her own witness. The claimant's refusal to allow Ms Scholefield to attend with a witness caused her serious concern. Ms Scholefield told us that she was frightened. That fear is understandable; we accept her explanation, without reservation. It was not a response to any alleged protected act. It was not even a response to the harassing nature of the correspondence, and the unreasonableness of the conditions the claimant sought to impose. It was a response to Ms Scholefield's fear. She did not wish to put herself in a position where she was alone with the claimant, without any witness, and not in a public setting. This allegation fails.

Detriment 13 - Professor Calhoun, on 10 March 2014, forwarding the claimant's grievance to Ms Scholefield with the sarcastic comment "And a good morning to you!"

7.168 On 10 March 2014, Professor Marnette-Piepenbrock sent Professor Calhoun a lengthy email which contained a grievance against Mr Gosling,

a grievance against Mr Webb, a grievance against Ms Scholefield, and a grievance against Professor Calhoun. The grievance against Mr Calhoun included the following statement: "As you are aware of – and therefore ultimately responsible for – the above illegal systematic campaign, launched 481 days ago, to destroy an innocent faculty member's life and career, the list of grievances against you continues to mount and it is now 139 days since Dr Piepenbrock filed a formal complaint against you. This oppressive and unacceptable delay is contributing to Dr Piepenbrock serious psychological injury." The email itself was two pages long. Professor Calhoun describes the email as "outlandish in tone." That assessment is, objectively, justified. It was one of a stream of emails that he received.

7.169 Responsibility for responding was delegated, as described above. He forwarded it to Ms Scholefield with the comment "And a good morning to you!" We find that this is a comment which reflects relatively good-humoured exasperation. Anyone would have struggled to cope with the nature of, and volume of, Professor Marnette-Piepenbrock's correspondence. In context, this comment is a supportive comment offered to Ms Scholefield, and it demonstrates some sympathy for the enormity of the task she faced. In no sense whatsoever was it detrimental treatment. It is innocuous. No reasonable employee would consider this an inappropriate comment having regard to all of the circumstances. We accept it was to some extent a reaction to the nature of the correspondence. However, it was a reaction to the harassing nature of the correspondence. In any event there was no protected act. For all these reasons the allegation fails.

Detriment 19 - failing on 2 September 2014 to renew the claimant's employment contract

7.170 We have accepted that it was Mr Seehra who chose not to renew the claimant's contract of employment by extending the fixed term. We have explored in detail his reason for doing this in the context of unfair dismissal. We should summarise the position. Mr Seehra believed there was no prospect of the claimant returning to work in the foreseeable future. He believed the trust and confidence had broken down. It is implicit that he believed that the respondent had done all it could to preserve, or re-establish, mutual trust and confidence. He accepted there were no exceptional circumstances which would lead to an extension of the period of the fixed term. His view was appropriate, reasonable, and justified. In no sense whatsoever was it because of the claimant's correspondence. It was not a reaction to the harassing nature of the correspondence. It was simply an appropriate business decision based on sound grounds and reasoning.

7.171 It is a feature of this case that each of the individuals involved in dealing with the claimant, even those who at times employed intemperate or sarcastic language, have all behaved with the utmost integrity, despite all

the difficulties caused by the claimant's own approach. The dismissal was not an act of victimisation.

7.172 We next consider those alleged detriments which have appeared as category two - those that appear to refer to specific acts but lack one or more relevant details: (1, 2, 4, 5, 7, 8, 14, and 16).

Detriment 1 - failing, between 11 March 2013 and present, to investigate, or investigate timely and/or properly, the complaints/grievances made by the claimant, either directly or through his wife, in the above correspondence or any other correspondence between 11 March 2013 and November 2014

7.173 This is a wide-ranging allegation and on reviewing it, we find it is not possible to say with certainty what specific treatment is alleged to be detrimental. This is illustrated by the fact that when considering this allegation, we had to resort to considering the claimant's later statements, including his submissions, to try and make sense of it. It was, perhaps, generous to put it into category two. We remind ourselves of paragraph 9 of **Anya**, if treatment is not made out, the allegation should fail at that point. The difficulty with an allegation of this nature is it is impossible to be certain what the treatment is. It leads to the parties, and the tribunal, attempting to understand the allegation by making reference to multiple documents. This approach was deprecated by Langstaff P in the **Chandhok v Tirkey** EAT 190/14.[44]

7.174 No doubt, a tribunal should seek to give a litigant in person sufficient opportunity to particularise a claim. However, this should not be interpreted as granting unbridled license. The difficulty arises when, despite reasonable efforts, the allegations remain uncertain. The reality is that such uncertainty leads to lengthy and unwieldy proceedings. Such proceedings are a disproportionate drain on tribunal resources. Lengthy hearings may be oppressive and may be inconsistent with a fair hearing, particularly for respondents. Further, the lack of precision may lead to appeals.[45] If the tribunal finds a claim is made out, a respondent is likely to appeal, understandably, on the basis that the allegation was not set out adequality, and the claimant's success may prove to be a pyric victory. Addressing the difficulty caused by unclear generalised allegations may prove problematic. Requesting particularisation may compound the difficulty. A tribunal must be cautious when seeking to define the limits of a poorly pleaded and generalised claim, lest it be seen as an implied strike out. It remains unclear what a tribunal should do when there is a lack of particularisation. The reality is that a fair hearing is undermined, both for the claimant and the respondent. One possibility would be to strike out the allegation, possibly on the grounds that a fair hearing is not possible, but it is not clear that the relevant case law, ultimately, supports such an approach. It is also unclear how far a tribunal should go to "particularise" something which lacks clarity. In this case, we have, consciously, taken a

[44] See, e.g., paragraphs 17 and 18.
[45] See, e.g., *Barts Health Trust v Kensington-Oloye* EAT 137/14, and in particular paragraphs 33 and 43.

step which, arguably, we are not permitted to do. We have considered the nature of the claim by reference to documents which are not part of the pleaded case. In particular, we have turned to the claimant's submissions.

7.175 The claimant says this:

> **Dr Piepenbrock's then-lawyer, Duncan Bain from Morgan Cole Solicitors, wrote on his behalf to Mr D. Linehan, Harassment Officer, on 4 February 2013 [C149 (2617)] and to Mr C. Gosling, HR Director, on 11 March 2013 [H682 (4566)], with a series of grievances against the Respondent. It was only in November 2013 – more than 8 months later – that Mr A. Webb was tasked by the Respondent to investigate these grievances, which he did in a report that was then appealed by the Claimant. Mr Webb never interviewed Dr Piepenbrock, Professor Marnette-Piepenbrock or Mr Wargel while investigating the grievance, whether in person or in writing, nor did he ask Dr Piepenbrock for any evidence, while he interviewed at least 6 LSE staff. Mr Webb was tasked with investigating grievances against his boss, Susan Scholefield, and his boss' boss, Craig Calhoun, showing clear conflicts of interest since he was investigation his superiors. Neither was Mr Webb a neutral investigator as he had been apprised of the case with Susan Scholefield (the School Secretary) as early as 24 June 2013 (see email from Kevin Haynes to Mr Webb on 24 June 3013). For these reasons, it is clear that Dr Piepenbrock's grievances were not investigated timely nor properly. Dr Piepenbrock appealed the Grievance's panel final findings, on 4 August 2014, which was unanswered, and then on 9 September 2014. The Appeal wasn't heard for a further 6 months, on 24 February 2015, after the ET1 was issued and 6 months after Dr Piepenbrock's employment had been terminated.**

7.176 The submissions refer to the grievance of 11 March 2013. We agree that Mr Webb was tasked with investigating the grievances. We agree there was delay. We have noted why Mr Webb did not interview Dr Piepenbrock. No request was made to interview him. Mr Webb explained his approach. Professor Marnette-Piepenbrock did not dispute his approach. Mr Webb has given a full and satisfactory explanation for not interviewing the claimant, Professor Marnette-Piepenbrock, or Mr Wargel. The claimant had made it clear he would not be interviewed. Professor Marnette-Piepenbrock's evidence was unlikely to be relevant. Mr Wargel may have been relevant in supporting or disputing an explanation given by the claimant, but there was no good reason to interview him absent an interview with the claimant.

7.177 There was no reason why Mr Webb should not have conducted an investigation against his superiors. As we have noted, his integrity and his approach to the grievance is unimpeachable. We do not accept that there was a failure to respond to any appeal, or grievance against the panel's findings. There was an appeal process. We can find no evidence to support the contention that the claimant's grievances were not investigated properly. Given the nature of the grievances, which include both the volume of the grievances and their ultimate purpose to harass, the respondent did all that was practicable.

7.178 The principal complaint is delay. We have noted that there is some lack of explanation for the delay. However, this is an unusual set of

circumstances. The reality is the claimant was not cooperating at all and the way he behaved frustrated the relevant processes. The most relevant process was the investigation of Ms D's complaint and the claimant's behaviour was obstructive and unjustified. It was reasonable for the respondent to put off considering the claimant's grievance until resolution of Ms D's complaint. The primary reason why Ms D's complaint was not dealt with earlier revolved around the claimant's conduct and his failure to engage. It may be fair to say that the respondent could have kept the claimant more fully informed of the reason for delaying his own grievance. But in our view this failure should attract minimal criticism.

7.179 To the extent that this alleged detriment can be said to be treatment, we do not accept treatment is made out. There is real danger in taking minute aspects, which have not been properly pleaded, and considering them under a microscope. We should avoid doing this. Viewed in context, even given the failure of the respondent in terms of delay, we do not accept that a reasonable employee would see any of this treatment as detrimental. There is no basis on which we could find in any of the treatment was because of any alleged protected act. In any event there was no protected act. The allegation fails.

Detriment 2 - failing to contact Mike Wargel in relation to his testimony in support of the claimant

7.180 This has been included by the claimant in his submissions as part of detriment one. We have considered it above. It fails. Mr Wargel was not contacted because his evidence was irrelevant in the absence of the claimant providing a proper statement himself. Had the claimant provided such a statement, it may have beeen possible to say whether Mr Wargel could have given relevant evidence. Mr Webb's approach was appropriate and rational. In no sense whatsoever did it have anything to do with any alleged protected act.

Detriment 4 - Repeatedly referring to the claimant's complaints and/or behaviour as "bizarre" in internal correspondence (e.g. email from G. Gaskell on 23 June 2013, email from C. Gosling on 17 July 2013, email from C. Gosling on 25 July 2013, email from C. Calhoun on 21 June 2013);

7.181 We will deal with this briefly. Various individuals referred to the claimant's correspondence as bizarre. We do not accept that any were referring to his complaint specifically. It was the nature of his behaviour which is referenced. The word bizarre is not necessarily pejorative. The claimant uses the word bizarre on five occasions in his own liability statement. We do not need to consider the exact definition. The parties advanced various definitions. The claimant gave an edited version from the dictionaries he relied on. The reality is that the word 'bizarre' encompasses the concept of particularly unusual. Whatever the precise definition in various dictionaries, we have to consider how it is used in context.

7.182 Professor Calhoun's email of 21 June 2013 is simply another email forwarding continuing correspondence. It says "It continues - rather bizarrely." No reasonable employee would think that this was anything other than fair comment. We cannot find it to be detrimental treatment.

7.183 Mr Gaskell's email of 23 June 2013 sought a briefing on the case. No reasonable employee would find that his description of the case as bizarre would be inappropriate. The nature of the claimant's behaviour was extraordinary and extremely unusual. We asked Professor Calhoun whether he had experienced anything similar and he had not. This was not detrimental treatment.

7.184 The email from Mr Gosling of 17 July 2013 references the fact that claimant had not contacted the respondent directly but had used Professor Marnette-Piepenbrock as "his mouthpiece." The reference to bizarre concerns the renewal of the contract. Essentially, Mr Gosling is suggesting that if the claimant was serious about returning to work, he should be able to speak to the respondent. In that context he uses the word bizarre. No reasonable employee would think that this was anything other than fair comment. We cannot find it detrimental treatment.

7.185 Mr Gosling repeated the point in his email of 25 July 2013. He stated it was bizarre the claimant did not communicate directly. For the same reason as the email of 17 July 2013, we find that this could not be seen as detrimental treatment.

Detriment 5 - in emails on or around 2 July 2013 referring to letters sent to the respondent in support of the claimant as baffling and not "very sensible" (e.g. email from LSE Director Calhoun on 2 July 2012 and email from Kevin Haynes on 2 July 2013)

7.186 We have limited this allegation to the two emails identified.

7.187 There is an email from Mr Haynes of 2 July 2013 which responds to Ms Dommett's email of 2 July 2013. Professor Calhoun stated, "Still baffled by this, but over to you for good handling, I trust." In no sense whatsoever can this be seen as detrimental treatment. He was simply passing on the email to Ms Scholefield.

7.188 We have considered Mr Haynes response in our finding of fact. He stated, "This isn't a very sensible letter; did HR get back to you with a draft response to the other submissions?" He is referring to Ms Dommett's alleged letter of support. That letter stated that Ms Dommett had become "increasingly alarmed" at various aspects of Ms D's alleged behaviour. It states Ms D "seemed determined to follow Ted obsessively." She continued "I witnessed inappropriate and obsessive behaviour from Ms D towards Ted." This letter was evidence the claimant knew, or should have known, Ms D had formed some form of attachment, which may have been an obsession. It matters not whether it is true. It seriously undermined the claimant's position. In the light of such behaviour, rather than seek

guidance, and attempt to distance himself, he employed Ms D and went on a trip to America, where they would potentially occupy the same hotel. Ms Dommett's letter, arguably, demonstrated the claimant showed a serious lack of professional judgement. It is in that context, Mr Haynes made the accurate, understandable, and reasonable observation that the letter was not very sensible. However well-meaning the letter was, it was seriously damaging to the claimant.

7.189 Mr Haynes' statements were innocuous. They were not a reaction to an alleged protected act or the harassing nature of the correspondence.

7.190 Both emails show Professor Calhoun and Mr Haynes behaving professionally.

Detriment 7: the refusal by Professor Estrin to agree to contact the claimant as requested by an email from his wife on 2 September 2013

7.191 What is said to be the refusal is unclear. We have again resorted to seeking clarity in the claimant's own submissions. We are conscious we should not do this.

7.192 The submissions referred to Professor Marnette-Piepenbrock's email of 2 September 2013 at 09:42. This included the assertion "Ted would like to speak with you." To the extent refusal is identified, it is Professor Estrin's email to Professor Marnette-Piepenbrock of 2 September 2013 which states "I will not respond to further emails via an intermediary." If anything, this is an invitation to speak to the claimant. It is not a refusal. We must be careful not to scrutinise microscopically, and out of context, specific sentences from the huge volume of correspondence. We find the claimant does not establish there was a refusal. To the extent it is suggested that Professor Estrin's email of 2 September 2013 is detrimental, we reject that. At the time, Professor Estrin was seeking to establish whether the claimant would return to work so that he could teach. It was the claimant who refused to contact the respondent. This despite the fact he was effectively corresponding using his wife's name.

Detriment 8: the refusal of Professor Estrin and Professor Barzelay to contact the claimant as requested by an email from his wife on 30 September 2013

7.193 It is unclear what is said to be the refusal. We have again considered the submissions to provide the detail. There is reference to Professor Marnette-Piepenbrock's email of 30 September 2014 which states, "I know that Ted would appreciate hearing from you." It is said that Professor Estrin, by email 1 October 2013 to Michael Barzelay, said "Please do not respond." By this time, Professor Estrin was about to hand over responsibility for the department. He was simply reiterating that the matter was now in the hands of the HR. He was providing some guidance. In no sense whatsoever was this a refusal to speak to the claimant.

7.194 The submissions also refer to Professor Marnette-Piepenbrock's email of 31 September 2013 to Professor Estrin which contains the statement, "I know that Ted would appreciate hearing from you. " It is said this was ignored. The reality is Professor Estrin was willing to speak to the claimant. It was the claimant who refused to speak to the respondent and instead insisted on all emails coming from his wife, even though he was the effective author. There was no detrimental treatment. In no sense whatsoever was the response because of any alleged protected act.

Detriment 14: failing to respond to the claimant's wife's request on 10 March 2014, that Professor Barzelay get in contact with the claimant

7.195 The claimant refers to Professor Marnette-Piepenbrock's email of 10 March 2013. This contained a number of allegations and we have previously referred to the general nature of this. It contains the comment "I know that Ted would appreciate hearing from you."

7.196 Mr Barzelay deals with this at paragraph 16 of his statement. He states, and we accept his evidence, that Dr Piepenbrock had not reached out to him directly previously. He had extremely limited knowledge of the case. He believed the matter was being dealt with by human resources. He did not contact Dr Piepenbrock. If this had been an isolated email, and not one which is buried amongst numerous emails which we have found to have been harassing, it may have received a different response. However, in context, we cannot find that any reasonable employee would have believed it to be a detriment. Professor Marnette-Piepenbrock's request appears to be disingenuous, and this is particularly so given that the effective author was the claimant himself. In any event, Mr Barzelay's explanation is a complete answer. He believed it was being dealt with by someone else. If HR had wanted to him to make contact, no doubt he would have done.

Detriment 16: Andrew Webb instructing Dame Dobbs' Secretary on 17 March 2014, to not respond or pass on Mr Wargel's report of the respondent's treatment of the claimant

7.197 On 16 March 2014, Dr Wargel sent an email to the honourable Dame Linda Dobbs who was, at the time, the chair of the LSE's ethics policy committee. It was also forwarded to Gwen O'Leary of human resources and others by Stephanie Alison. Ms Alison was the secretary to the ethics policy committee. Ms Alison confirmed she would respond to Mr Walker.

7.198 At the time, Mr Webb had oversight of the developing situation with Dr Piepenbrock's case. He discussed the matter with Ms Scholefield and they jointly concluded that the matter was subject to legal proceedings and all correspondence should be dealt with through the correct channel.

7.199 The ethics committee was not the appropriate channel. There was a risk of the muddying the waters in the light of legal proceedings. Mr Webb's email to Ms Alison states "This is the subject of legal proceedings which

extends to the acknowledgement of correspondence, so please do not acknowledge it in any shape or form. Do nothing." This is a logical and reasonable explanation.

7.200 During the course of this hearing we have heard much from the claimant about the Woolf report which considered the LSE's links to Libya.[46] The claimant appears to have drawn the conclusion that the report's ambit was so wide that there was a general finding that the LSE was an unethical organisation. There was no such finding. We do not need to set out the detail of the Woolf report. We have considered it. It is irrelevant to the claimant's claims, but it appears the claimant has no appreciation of this. However, that misunderstanding perhaps explains why he sought to involve the ethics committee, a body which was entirely irrelevant. Mr Webb's response was appropriate. It was not detrimental. In no sense whatsoever was it no sense whatsoever motivated consciously or subconsciously by any alleged protected act.

7.201 Finally, we turn to those allegations that we have termed as category three – those allegations which are generalised, and it is difficult to understand what is the alleged detrimental act (detriments 6, 15, 17, and 18)

Detriment 6: from 28 August 2013 until 2 September 2014, the refusal by some employees of the respondent, on repeated occasions, to correspond with the claimant through his wife

7.202 This allegation is, essentially, wholly unparticularised. There is an argument that it should be struck out as it is oppressive, cannot be reasonably responded to, and seriously undermines a fair hearing. It may also be possible to say that it is so lacking in content it is essentially meaningless. Whatever the position, to rely on specific allegations, an application to amend should be made.

7.203 The mischief of this type of allegation is graphically illustrated by reference to the claimant's submissions. The submissions refer to 11 specific emails: from Professor Estrin 28 August 2013; Professor Estrin 2 September 2013; Gwen O'Leary 2 September 2013; Mr Gosling 11 September 2013; Ms O Leary 11 September 2013; Ms O'Leary 12 September 2013; Professor Estrin 1 October 2013; Ms O'Leary 1 October 2013; Ms Hay 1 October 2013; Ms Weale 4 October 2013; and Ms Scholefield 2 April 2014.

7.204 However, having identified those emails, the scope of allegation six does not rest there. In the submissions, the claimant says the following: "Furthermore, LSE director Craig Calhoun did not respond to around 50 emails between September and 2013 September 2014 (including the emails listed in the protected acts), and never once emailed Professor Marnette-Piepenbrock."

[46] The Woolf Inquiry – An inquiry into the LSE's links with Libya and lessons to be learned (2011)

7.205 We are only required to determine those claims that have been pleaded. It may be arguable that it would have been possible, by way of some form of particularisation, to set out these 11 specific emails, and the further emails which concern Professor Calhoun. However, we doubt that that would be, legitimately, an act of particularisation. Particularisation implies there is something to particularise. A wholly new claim is not particularisation. Putting the allegation based on those 11 emails is simply pleading detrimental acts, and reliance on each requires an amendment. The same would apply to the “around 50 emails” referred to in the second part of the submissions. Each would need to be identified. Each would need to be pleaded.

7.206 We decline to consider each of them individually. This is an unusual case because the reality is there is an absolute answer to these claims. The claimant alleges the victimisation occurred because of a response to protected acts. There were no protected acts. They must fail.

7.207 We observe the given the claimant can now identify the specific emails in his submissions, there is no reason why he should not have identified them before and included them in his original claim or in his application to amend. His approach moves the focus away from the pleadings, which for the reasons we have already given, is inappropriate. It potentially circumvents the need for amendment, which removes the tribunal's case management role.

Detriment 15: failing to action the claimant’s agreement to external mediation

7.208 This allegation fails to state what was the alleged agreement to external mediation. It fails to state what the failure was. It cannot be understood adequately without proper pleading of the relevant matters. What is intended can, at best, be guessed at.

7.209 The submissions do go into detail. The fact that the detail can be given in the submissions confirms the unreasonableness of the claimant's approach in not setting out that detail at any other time. This is not a case of a litigant in person having difficulty with the law. The difficulty faced when pleading claims can be seriously overstated. All that is required is to identify the specific treatment clearly and use clear words that allege that it was an act of victimisation. The fact that the claimant does give the detail in his submissions illustrates that he could have given that detail at any stage. However, even at this stage, the submissions remain unclear as to what is said to be the agreement.

7.210 The claimant relies on Professor Marnette-Piepenbrock’s email of 13 December 2013, which says "He would certainly welcome external mediation." He relies on Professor Marnette-Piepenbrock’s email of 17 March which refers to his seeking "an impartial constructive resolution." It appears that these ambiguous statements are said to be some form of agreement. The submissions also refer to Ms Scholefield's email of 17 March 2014. In this, Ms Scholefield stated that external mediation was an

alternative to addressing the claimant's grievances. However, she noted that the claimant's additional requests for "neutral evaluation, independent appeal and independent workplace investigation" were necessary as a condition of mediation.

7.211 The reality is that the respondent did attempt to enter into mediation. Ms Scholefield attempted to meet with the claimant, and Professor Marnette-Piepenbrock. The claimant refused Ms Scholefield's sensible, and reasonable request that she should have a witness. The claimant then insisted Ms Scholefield meet with him and his wife at his home, alone. This imposed an impossible condition. Ms Scholefield did all she could to propose a reasonable alternative. She identified a hotel within yards of the claimant's home where she and a colleague could meet claimant and his wife. It was the claimant's action which amounted to refusal.

7.212 We do not accept the claimant was genuine in his suggestion that he would enter into mediation. We have considered the claimant's email of 13 December 2013 and have considered the effect of the conditions the claimant imposed. We do not need to repeat them. The conditions imposed by the claimant concerning neutral evaluation had the effect of his insisting, as a prerequisite to external mediation, that there was some form of internal investigation which attributed blame. The exact scope of that blame is uncertain. The effect is that he imposed conditions which were unmanageable and unreasonable. It is the claimant's approach which prevented any form of mediation taking place. To the extent that any of this can be interpreted as a request by the claimant for mediation, we find the response was reasonable, proportionate, and appropriate. It was the claimant who was acting unreasonably and being obstructive. In no sense whatsoever can the respondent’s reaction be seen as a detriment. In any event, the respondent’s explanation for its reasonable approach to mediation is an answer to the claimant's allegation that the response was because of any alleged protected act. It was not.

Detriment 17: initially imposing short deadlines for submitting an appeal against the grievance outcome, and commenting on evidence in the grievances

7.213 This allegation is unclear. When and how the deadlines were imposed is not set out. There is no reason why the detail should not have been given. The submissions state that on 25 November 2013, Mr Webb gave the claimant five days to submit an appeal against his report. It would be fair to say that this reference to the initial five-day period is the best fit for the general allegation. However, the submissions go further and refer to an email of 2 June 2014 where Mr Sutherland, chair of court and counsel, requested written comments on responses from Professor Calhoun, Mr Webb, and Ms Scholefield. There is also reference to an email of 29 July 2014 when the claimant was given a further five days to submit an appeal by Mr Elias.

7.214 It follows that the claimant's submissions go significantly further than what may be inferred from the issue as recorded, and amendment would be required.

7.215 The standard period for appeals against grievance outcomes, as set out in the respondent's policies, was five days. There has to be a starting point. Mr Webb simply quoted the normal procedure. The reality is that the respondent thereafter agreed to requests for extensions. The claimant was given more than ample time to produce his responses at all stages of the grievance and the subsequent appeals. Had the respondent not readily agreed to extensions, it may be arguable (albeit we doubt it is arguable) that an initial period of five days was detrimental. However, given the manner in which the respondent readily agreed to extensions, no reasonable employee would consider the initial five-day period, which was consistent with the respondent's policy, to be a detrimental act. In any event, causation is not made out. The reason for giving the five-day period was because that was the policy. It was not because of any alleged protected act.

Detriment 18: failing, in or prior to August 2014, to conduct a genuine consultation with the claimant regarding the renewal of his fixed term contract

7.216 It is impossible to understand from this what is intended as allegation of detrimental treatment. At best it can be guessed at. The claimant's submissions proceed in a manner which could not have been predicted, and demonstrate the impossibility of understanding what was intended. This approach effectively prevents the respondent from knowing the case it is to answer. As the respondent does not know the case it is to answer, it is denied an opportunity to, effectively, dispute the underlying facts or to bring the necessary cogent evidence to establish any explanation. That prevents the respondent from having a fair hearing on the point.

7.217 The submissions appear to develop a number of themes. The claimant alleges he was informed on 19 August 2014, without "any prior consultation or notice" that his contract would not be renewed. He complains this was two weeks before the termination on 2 September 2014. The claimant states the respondent "deliberately failed to give the three-week statutory minimum notice. He argues that the policy of the LSE is to give longer notice periods. Thereafter, the submissions appear to develop a theme that, in some manner, there was a failure to develop his career, or advise on ways in which he could do so himself. The reality is that this has nothing to do with consultation.

7.218 Consultation may consider various relevant matters depending on the relevant circumstances. It is normally in the context of redundancy. This was not a redundancy. There is no diminished need for the work the claimant was employed to undertake. Consultation can extend to finding ways of avoiding individual dismissal. Often that revolves around alternative employment. This was raised. The claimant did not engage with the process.

7.219 The claimant's approach is misconceived. This was a fixed term contract, and the claimant knew at all material times when his contract would end. Mr Seehra reasonably and appropriately contacted the claimant and sought to enter into discussions with a view to ascertaining whether the claimant's loss of mutual trust and confidence could be repaired and whether there was any possibility of offering the claimant further employment. To the extent that this process can be described as consultation, the respondent entered it in good faith; the claimant failed to engage. No reasonable employee would consider the action of the respondent to be detrimental treatment. The respondent's approach was in no sense whatsoever because of any alleged protected act. Mr Seehra genuinely attempted to explore alternatives to termination with the claimant.

7.220 It follows that all allegations of victimisation fail.

Time

7.221 We do not need to consider whether any claim was out or time, as all claims fail on their merits.

_____

Employment Judge Hodgson

Dated: 8 June 2022

Sent to the parties on:

.08/06/2022.

For the Tribunal Office