**IN THE HIGH COURT** **Claim No.:**

**BETWEEN:**

**PROFESSOR THEODORA KOSTAKOPOULOU**

**Claimant**

**-and-**

**(1) UNIVERSITY OF WARWICK (Corporate Body incorporated by Royal Charter under Royal Charter Number: RC0006678)**
**(2) PROFESSOR ANDREW SANDERS**
**(3) PROFESSOR CHRISTINE ENNEW OBE**
**(4) PROFESSOR ANDY LAVENDER**
**(5) MS DIANA OPIK**

**Defendants**

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## PARTICULARS OF CLAIM

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1. Professor Theodora Kostakopoulou ('**The Claimant**') was denied access to justice upon the Judgment of Sir Nicol of 21 December 2021 and his Order (as amended on 30 December 2021) which struck out her claims before the submission of a defence by the Defendants who had already been given a number of extensions for the submission of defence (- they had 62 days following the service of the POC) and had submitted a strike out application following the expiry of the High Court's ordered deadline. The Defendants had submitted their application for a strike out/summary judgment on 9 July 2021 at 18.10 pm – and not at 16.30 pm on 9 July 2021. Following the Claimant's email communication to the High Court on Monday morning on 12 July 2021 in relation to a default judgement, Mr Justice Nicklin immediately gave directions for a forthcoming strike out hearing and gave the Defendants a 'post-breach of the rules' extension of the period for the submission of their defence for a period following the end of the forthcoming strike out hearing proceedings. All the Claimant's protests and applications in relation to the above irregularities were dismissed. The Claimant now activates the inherent jurisdiction of the High Court for the rescission of a judgment obtained by fraud owing to her post-hearing discoveries and reflecting the principles of equity (*Flower v Lloyd* [1877] 6 Ch D 297) and natural justice.

2. As was pointed out in *Jonesco v Beard* [1930] AC 298, 301-302, '**Fraud is an insidious disease and if clearly proved to have been used so that it might deceive the court, it spreads to and infects the whole body of the judgment**'.

3. The action for the setting aside of Sir Nicol's judgment of 21 December 2021 in the case of QB-2021-000171, which struck out my claim without a submitted defence, rests on three main grounds as follows:

> A. A DECEPTION OF THE HIGH COURT PROCURED BY THE DEFENDANTS' OPERATIVE MATERIALLY FALSE AND MISLEADING REPRESENTATIONS (1)
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> B. A DECEPTION OF THE HIGH COURT PROCURED BY THE DEFENDANTS' OPERATIVE MATERIAL NON-DISCLOSURE (2)
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> C. THE DECEPTION WAS HEIGHTENED BY JUDICIAL IMPROPRIETY AND SIGNIFICANT ERROR: SIGNIFICANT EVIDENCE OF SIR NICOL'S JUDGEMENT'S COPYING FROM, CLOSE PARAPHRASING AND RELIANCE ON SUBSTANTIALLY SIMILAR CONTENT WITH MR SMITH'S WITNESS STATEMENT OF 9 JULY 2021 AND THE DEFENDANTS' (MR MUNDEN'S) SKELETON ARGUMENT OF 22 SEPTEMBER 2021 WITH THE STATISTICAL PROBABILITY OF THIS OCCURRING BY CHANCE (BINOMIAL PROBABILITY MODEL) BEING 0.1% (PRACTICALLY IMPOSSIBLE).

## THE LAW

4. In **Tahkar v Gracefield Developments Ltd and Others** [2019] UKSC 13, the Supreme Court held that a claimant could bring an action to set aside an earlier judgment which was obtained by fraud. At paras 56-58, the Supreme Court held that:

> '56. At para 26 of his judgment, Newey J said that the principles which govern applications to set aside judgments for fraud had been summarised by Aikens LJ in Royal Bank of Scotland plc v Highland Financial Partners lp [2013] 1 CLC 596, para 106. There, Aikens LJ said:
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> "The principles are, briefly: first, there has to be a 'conscious and deliberate dishonesty' in relation to the relevant evidence given, or action taken, statement made or matter concealed, which is relevant to the judgment now sought to be impugned. Secondly, the relevant evidence, action, statement or concealment (performed with conscious and deliberate dishonesty) must be 'material'. 'Material' means that the fresh evidence that is adduced after the first judgment has been given is such that it demonstrates that the previous relevant evidence, action, statement or concealment was an operative cause of the court's decision to give judgment in the way it did. Put another way, it must be shown that the fresh evidence would have

entirely changed the way in which the first court approached and came to its decision. Thus, the relevant conscious and deliberate dishonesty must be causative of the impugned judgment being obtained in the terms it was. Thirdly, the question of materiality of the fresh evidence is to be assessed by reference to its impact on the evidence supporting the original decision, not by reference to its impact on what decision might be made if the claim were to be retried on honest evidence."

57. I agree that these are the relevant principles to be applied. I also agree with Newey J's view (expressed at para 47 of his judgment) that Mrs Takhar's application to set aside the judgment of Judge Purle has the potential to meet the requirements which Aikens LJ outlined. She should not be fixed with a further obligation to show that the fraud which she now alleges could not have been discovered before the original trial by reasonable diligence on her part.

58. I would therefore allow the appeal and restore the order of Newey J that Mrs Takhar's case should be allowed to proceed to trial.'

**EARLIER AUTHORITIES**

5. Earlier authorities for the principle of the 'rescission of the judgment' in the original proceedings and an order for a new trial on the ground of fraud or deliberate material non-disclosure (a species of fraud) or mistake include:

a) ***Daniel Terry v BCS Corporate Acceptances Limited and Others*** [2018] EWCA Civ 2422.
b) ***Salekipour and Saleem v Parmar*** [2017] EWCA Civ 2141, where the respondent had obtained judgment 'by subornation of perjury' and the practising of gross deception by the court.
c) ***Sharland v Sharland*** [2015] UKSC 60, [2016] AC 871. This case emphasises that a party who has practiced deception with a view to a particular end, which has been attained by it, cannot be allowed to deny its materiality. In *Sharland*, an order was set aside on the grounds that it had been procured by dishonest evidence in divorce proceedings. At [32] – [33] Baroness Hale, citing Smith v Kay (1859) 7 HL Cas 750, noted that: 'a *party who has practised deception with a view to a particular end, which has been attained by it, cannot be allowed to deny its materiality. Furthermore, the court is in no position to protect the victim from the deception, or to conduct its statutory duties properly, because the court too has been deceived*'. This statement was highlighted with the approval of Lord Clarke in ***Zurich Insurance Co plc v Hayward*** [2016] UKSC 48, [2017] AC 142 at [37].
d) In ***Gohil v Gohil*** (no 2) [2015] UKSC 61, [2016] AC 849, the husband's serious material non-disclosure triggered his wife's application to set aside a consent order in ancillary relief proceedings.
e) In ***Royal Bank of Scotland plc v Highland Financial Partners LLP*** [2013] EWCA Civ 328, it was highlighted that the dishonest evidence, action, statement or concealment must be 'material' in the sense that it was an operative cause of the court's decision to give judgment in the way it did.

f) ***Noble v Owens*** [2010] EWCA Civ 224, [2010] 1 WLR 2491, where the Court of Appeal considered the tension between the *Ladd v Marshall* 'new evidence' cases and the *Jonesco* line of cases which involve a fresh action to prove the fraud.

g) **Jonesco v Beard** [1930] AC 298 (see para 2 above).

h) In ***Hip Foong Hong v H Neotia and Co*** [1918] AC 888, it was held that a judgment that is tainted and affected by fraudulent conduct is tainted throughout, and the whole must fail (Lord Buckmaster at 893).

i) The above-mentioned authorities encapsulate Lord Denning's statements in:

i) **Lazarus Estates Ltd v Beazley** [1956] 1 QB 702 at [712-713]:

'*Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved, but once it is proved, it vitiates judgments, contracts and all transactions whatsoever*'.

And

ii) in ***Metropolitan Bank Ltd v Pooley*** [1981] 1 QB 923 at [944]:

'*It is a principle of our law that the court will not allow a person to keep an advantage he has obtained by fraud. No judgment of a court, no order of a minister can be allowed to stand if it has been obtained by fraud*'.

## LATER AUTHORITIES

6. Subsequent authorities confirming, and clarifying, the principles governing rescission applications on the ground of fraud include ***Broomhead v National Westminster Bank plc and Anothe***r [2020] EWHC 1005 (Ch), ***Park v CNH Industrial Capital Europe Ltd*** [2021] EWCA Civ 1766, ***Cathcart v Owens*** [2021] EWFC 86, ***Cummings v Fawn*** [2023] EWHC 830 (Fam) and ***Tinkler v Esken Limited*** [2023] EWCA Civ 655. Mr Justice Mostyn stated at para [30] in *Cathcart* and [65] in *Cummings* that:

> '*Fraud is classically defined as wrongful deception intended to result in financial and personal gain. In the field of ancillary relief, the traditional grounds for seeking the set-aside of a final order are conventionally stated to include both fraud and non-disclosure: see, for example, FPR PD 9A para 13.5. Deliberate non-disclosure is, of course, a species or subset of fraud for both in law and morality* ***suppressio veri, suggestio falsi****. The reason for separately identifying* ***fraud*** *and* ***non-disclosure*** *as grounds for a set-aside is that there are some rare cases whether the material non-disclosure is inadvertent and therefore not fraudulent*.'

## A. DECEPTION OF THE HIGH COURT (1): OPERATIVE MATERIALLY FALSE AND MISLEADING REPRESENTATIONS BY THE DEFENDANTS

**Claimant's statement of case**

7. In QB-2021-000171, the Claimant had complained to the High Court that on 16 January 2020 and 1 June 2020 (- a republication of the original publication of 16 January 2020), Professor Ennew, Provost of the University of Warwick published the following defamatory statements:

'1. *You have attempted to influence potential witnesses, specifically by questioning students in relation to complaints they may have made against you, in an effort to undermine the on-going investigation into the fulfilment of your duties.*

*2. You have harassed and displayed threatening and intimidating behaviour towards students when questioning them in relation to complaints they may have made against you.*' (POC, para 50).

8. Professor Ennew suspended the Claimant and barred her from her office, the campus and all communications with colleagues and students. In responding to the Claimant's complaints and grievances, on 20 January 2020, Professor Ennew republished the original publication of 16 January, adding: 'You *have harassed and displayed threatening and intimidating behaviour towards students when questioning them in relation to complaints they may have made against you, both in person and via* email.' Professor Lavender, the investigating officer Prof. Ennew had appointed, republished Prof. Ennew's defamatory publication of 16 January 2020. He did so on 23 January 2020 and on 13 May 2020. On 20 July 2020 Professor Lavender said during the Claimant's disciplinary hearing in absentia inter alia that '*there was evidence that DK had harassed and intimidated students*'. The letter of the disciplinary hearing in absentia of Prof. Meyer of 29 July 2020 referred to '*inappropriate and potentially harassing behaviour from a member of the University's academic staff to student(s). The panel was satisfied that there was sufficient evidence to uphold these allegations and it considered your behaviour in that regard to be entirely unacceptable and incompatible with your position as a senior member of academic staff at the University*.'

9. The Claimant was dismissed in absentia following a humiliating suspension of seven months.

**Defendants'/Mr Smith's (BLM) witness statement of 9 July 2021 for the strike out and/or summary judgement application**

10. In his witness statement of 9 July 2021, Mr Smith referred to Professor Ennew' allegations [paras 33-34] and sought a strike out and/or summary judgment '*because the Claimant has no real prospect of establishing that the statements complained of were not published on occasions of qualified privilege or of establishing that the Defendants published them maliciously, and there is no other reason for such claims to be disposed of at a trial*.'[57(b) on page 17]. Mr Smith added that '*Further or alternatively, the Defendants seek an order that the claims for malicious falsehood be struck out because the Particulars of the Claim (and the Claimant's Part 18 Response) disclose no arguable case of malice*' [57(c) on page 17].

11. In paragraph 66 of his witness statement to the High Court, Mr Smith wrote: '…*The Claimant has effectively accused the Second to Fifth Defendants of being seriously dishonest. On the face of it, it would seem inherently improbable that four defendants, including three professors and a law student, would all separately and yet almost simultaneously (as I do not understand there to be a claim for conspiracy) maliciously publish statements to injure the claimant. Once the allegations had been made by the Fifth Defendant and Student X it is difficult to understand how their being repeated internally as part of the investigation could be dishonest and so malicious*.'

12. Further, in paragraph 67, Mr Smith wrote: "*I respectfully submit that the publications complained of do not support the Claimant's case in this regard and that the plea of malice against the Fourth Defendant should be struck out*."

**Defendants'/Mr Munden's (5 RB) skeleton argument for the HC Hearing of 18 and 19 October 2021**

13. Mr Munden submitted a skeleton argument to the High Court on 22 September 2021 in which he concealed that Professor Ennew's allegations of 'the Claimant harassing, threatening and intimidating students and attempting to influence potential witnesses, specifically by questioning students in relation to complaints they may have made against you, in an effort to undermine the on-going investigation into the fulfilment of your duties', were 'original', that is, they were published for the first time on 16 January 2020. He did this on purpose in order to make a case for the application of the *Friend* precedent [19-21] and to secure the strike out of the Claimant's case. At para 38, Mr Munden wrote: '*Ds were not malicious and C does not and cannot set out a proper case that they were. Once the allegations had been made by D5 and Student X it is difficult to understand how their being considered and repeated internally as part of the investigation could be dishonest and so malicious*'.

14. Mr Munden continued to state: [40] '*The plea of malice against the student, D5, other than mere assertion'*; [41] '*No case in malice is set out against D2, beyond bare assertion*'; [42] '*In respect of D4, no clear case of malice is set out. C does assert that there was evidence that was inconsistent with a few of D4's statements in his Investigation Report; but those statements were D4's subjective interpretation of the evidence (on which honest views may differ), or were his recitation of the evidence he was presented with. D4 did not have to set out all possible views in order not to be malicious; only his own*'; [43] '*None of the pleading satisfies the high degree of scrutiny applicable to pleas of malice, and this provides a further ground on which the claim should be struck out and/or summary judgment granted*.'

15. In other words, in their submissions, which were verified by a statement of truth, both Mr Munden and Mr Smith stated to the High Court that in relation to the allegations of the Claimant harassing, threatening and intimidating students and attempting to influence potential witnesses by questing students in relation to complaints they may have made in an effort to undermine the investigation into their fulfilment of the claimant's duties:

> **1. Defendant 5 (Ms Opik) and Student X (Mr Sharma) had complained about the C;**
>
> **2 The complainant students, Ms Opik and Student X, had made the allegations of C harassing, threatening and intimidating them and attempting to influence them in an effort to undermine the investigation in the fulfilment of her duties;**
>
> **3. Ms Opik's and Student X's complaints and allegations were credible and, therefore, had to be investigated by the University and thus those (libellous/malicious falsehood) statements had to be repeated internally leading to C's dismissal in absentia on 20 July 2020.**
>
> **4.** Mr Munden went a step further to argue in para 39 that Professor Ennew '**did no more than summarise the allegations against C that she had directed to be investigated**..'

**Sir Nicol's Judgment of 21 December 2021**

16. Mr Justice Nicol repeated the above assertions by Mr Munden and Mr Smith in is judgment of 21 December 2021.

17. With respect to (1) above, Sir Nicol noted **that students made complaints about the Claimant**:

> Para 23: '*The allegations against the Claimant were expanded on 16th January 2020 by the 3rd Defendant, so as to include allegations that the Claimant had attempted to*

*influence potential witnesses and had harassed students in relation to <u>complaints they had made</u>*'.

18. The underlined phrase seems to describe a finding of fact because the original publication of Prof. Ennew did not state 'complaints they had made'; instead, it had stated 'complaints they may have made against you'.

19. With respect to (2) above, the judgment does state that **the Claimant was alleged to have harassed, threatened and intimidated students** in paras 23 and 24:

> 'The allegations against the Claimant were expanded on 16th January 2020 by the 3rd Defendant, so as to include allegations that the Claimant had attempted to influence potential witnesses and had harassed students in relation to complaints they had made'
>
> 'On 16th January 2020 the 3rd Defendant suspended the Claimant alleging that the Claimant had sought to harass potential witnesses against her'.

20. In relation to (3) and (4), Sir Nicol was also deliberately misled since he stated at para 80 of his judgment:

> '[Mr Munden] argues that it was incumbent on the University to investigate the allegations against the Claimant and no arguable basis for malice was shown'.
>
> And further in para 83:
>
> 'In my judgment, the Defendants are right. The occasions of each of the 10 publications relied upon were ones where the authors had an undoubted interest in being able to speak freely to those to whom the words were published. In my view the contrary is not arguable. I also agree with Mr Munden that where, the Claimant has relied on malicious falsehood as well as defamation, I should assume that she has put forward the best pleading of malice that she is able to do. I agree with his propositions of law as to the standard that plea of malice must attain. I also agree that the present pleading is hopeless.'

21. In making the above statement, Sir Nicol did not embark upon any analysis of why each allegation was not made with malice drawing on, and quoting from, the Claimant's particulars of claim (Paras 12-13, 16-18, 19, 56-58, 79-83, 97-104) and her Part 18 response to the Defendants' request for further information. Sir Nicol did not directly address the specific submissions in the Particulars about the Defendants' states of mind and intentions to show why the Claimant had made an insufficient or inadequate pleading of malice. A general finding was that the Claimant's malice pleadings do not meet the required threshold without

unpacking each argument and explaining why each pleaded instance of alleged malice is inadequate. Sir Nicol simply repeated Mr Munden's assertions before concluding that the Claimant had made no arguable case of malice and that her pleaded case of malice was 'hopeless'. Why it was 'hopeless' was not explained.

22. Sir Nicol's above-mentioned statements reflect an indirect endorsement of the bona fides of the accusations. The assumption is that students made allegations and that these allegations had a legitimate basis. If the Court believed the accusations were completely groundless or fabricated by persons other than students, it would likely have commented on this and accepted the Claimant's malice pleas. Moreover, the judgment proceeds on the basis that the disciplinary process was validly instituted against the Claimant in response to genuine allegations, albeit refraining from commenting on their underlying truthfulness.

**EVIDENCE IN 2022-2023**

23. Following the High Court hearing and the judgement, a long and painstaking process of seeking further and better particulars from the Defendants and specific disclosure of documents which lasted from August 2022 until 27 February 2023, when a preliminary hearing at Midlands West ET took place to deal with the C's applications which were pending before the ET since 9 September 2022, it was confirmed that the Defendants' allegations and related submissions to the High Court were based on outright fraud.

24. In particular, it was confirmed at the hearing of 27 February 2023 that:

1**. ABSENCE OF STUDENT COMPLAINTS**: the Defendants admitted before Judge Broughton that there was NEVER a redacted or unredacted student complaint by either Ms Opik or Student X (Mr Sharma) submitted to the University of Warwick under the University of Warwick's Student Complaints Resolution Procedure or the Dignity at Warwick Policy.

2. **LACK OF WITNESS STATEMENTS**: There were no signed witness statements by either Mr Sharma or Ms Opik providing factual and evidential details and corroborating allegations (- and the University of Warwick's findings on 29 July 2020) of her gross misconduct.

3. **LACK OF FACTUAL BASIS - C DID NOT HARASS, THREATEN OR INTIMIDATED ANY STUDENT – AND THUS LACK OF EVIDENCE OF GROSS MISCONDUCT**: The allegations of harassment, threats, and intimidation made against her were entirely baseless and unsupported by any credible evidence.

4. **PROFESSOR ENNEW'S DECEIT AND FRAMING OF INNOCENT C**: Professor Ennew had articulated, and published, those defamatory allegations on 16 January 2020 – she had neither 'summarised' nor 'repeated' allegations.

25. In particular, the evidence showed that:

a) Mr Sharma

- **WAS THE 1ST STUDENT TO MEET THE CLAIMANT**: Had his termly meeting with the Claimant during the first week of the academic term, confirmed by his hand-written signature on the Claimant's notepad of student attendance which EJ Broughton and the Defendants' legal team saw on 27 February 2023, contradicting any claims that he had problems meeting her and thus any claims of harassment or intimidation.
- **ABSENCE OF ANY COMPLAINT FROM MR SHARMA (STUDENT X)**: Mr. Sharma never made either a formal or informal complaint to the University that he was threatened, intimidated, or harassed by Professor Kostakopoulou and no one had informed Prof. Ennew that Mr Sharma had done so.
- **DIRECT DENIAL OF HARASSMENT, THREATS AND INTIMIDATION: COMPLIMENTARY ASSESSMENT OF C BY MR SHARMA (SHUDENT X)**: Mr. Sharma described Professor Kostakopoulou as "a great personal tutor" to him in his statement to Prof. Lavender in April 2020, which does not align with allegations of harassment, threatening or intimidating behaviour. Mr Sharma added that the Claimant had been 'professional and helpful' and the 'tutorial meetings had gone smoothly for him'.

b) Ms Opik

- **EXCELLENT STUDENT CARE FOR MS OPIK BY** C: Ms Opik had received outstanding care from the Claimant, whose door was always open to her in Year 1 (2018/19) and during the first term of Year 2 (Autumn Term 2019). She had her termly meeting with the Claimant within 4 working days of requesting it (was requested on 12 November and the meeting took place on 18 November 1019), pp. 57, 58. 59, and 60 of the Bundle read by E. J. Broughton.
- **ABSENCE OF COMPLAINT ABOUT C**: There is no redacted or unredacted complaint written by Ms Opik claiming that C harassed, threatened or intimidated her.
- **ABSENCE OF A WITNESS STATEMENT**: There is no signed witness statement by her claiming that she was a victim of harassment, threatening or intimidating behaviour by C.
- **MS OPIK HAD NO REASON TO ACCUSE C**: She received her meeting with Professor Kostakopoulou within the stipulated time frame, which under the Student Complaints Procedure, means she had no reason to complain or to make a valid complaint following her first request for service.
- **QUESTIONABLE CREDIBILITY AND RELIABILITY OF MS OPIK**: In the internal processes, Ms Opik had admitted to inaccuracies in her statements about Professor Kostakopoulou and had only a brief email exchange with her, which does not support claims of harassment, threats, or intimidation. In fact, her credibility has been fatally undermined because she appears to have used falsehoods and misled A. Sanders (As' email of 12 January 2020) about the meeting her boyfriend, Mr Sharma (Student X), had with the Claimant.

- **NATURE OF EMAIL EXCHANGE DID NOT SUPPORT ALLEGATIONS**: The Defendants admitted before EJ Broughton that the following brief email exchange between the Claimant and Ms Opik '***8/1/2020 - DK: Hello Diana, Thank you for your kind email – did you meet with him? I am asking these questions because he sent me an email similar to the email you wrote and he instigated disciplinary proceedings on the basis of what I see as lies. Happy New Year to you! 8/1/2020 – ST: Dear Dora, I did not write to Andrew Sanders. The email chain is the same one you and I are both copied into. 8/1/2020 – DK: Hello Diana, Happy New Year to you! Could you please let me know? 31/12/2019- DK: Hi Diana, Thank you for your kind email. Yes, there is a serious problem. Could you kindly confirm that you did not write to Andrew Sanders and could you please re-forward the chain to me?17/12/2019: - ST: Dear Dora, The email communication with Solange that you are also in is the only communication that has taken place. Is there a problem? 14/12/2019 -DK: Dear Diana, I hope this email finds you very well! Could you please forward to me all the emails you have exchanged with the Law School concerning our meetings and my office hours? Thank you in advance!*** which was utilised in order to accuse C of harassment referred to as 'colloquial harassment' and not with respect to the University's rules on harassment, which replicate the provisions of the Equality Act 2010.
- **NO UNIVERSITY RULE DEFINING COLLOQUIAL HARASSMENT**: There is no Warwick University rule defining colloquial harassment if such a thing exists.
  (And even if one supposed that it exists, it could only refer to behaviours or language that are demeaning, objectively offensive, severe or intimidating, thereby creating a hostile environment which interferes with an individual's ability to work or learn in the environment. In addition, for allegations of colloquial harassment to be actionable in institutional disciplinary processes, they typically need to meet specific criteria defined by laws or institutional policies on harassment and bullying. They cannot extend to cover an entirely polite and professional communication, such as the above-mentioned email exchange (- C wrote four short emails to Ms Opik over a period of 24 days), aimed at verifying the accuracy and truthfulness of statements made by Professor Sanders regarding student complaints, rather than displaying any intent to harass Ms. Opik.)

26. The new evidence demonstrates beyond reasonable doubt that the defamatory allegations and subsequent findings were not grounded on documented concerns and grievances but on deceit, falsehood and improper motives. They were contrived via the use of hearsay and double hearsay without complying with the University's policies (Dignity at Warwick, Student Complaints Procedure and its 3 stages, Data Protection). The Defendants knew this and thus acted maliciously (i.e., with knowledge of their falsity or reckless disregard for the truth).

27. Mr Smith and Mr Munden were deliberately dishonest towards the High Court; their statements about Ms Opik and Mr Sharma (Student X) making the allegations of harassment, threatening and intimidating behaviour were not merely misleading; they were untrue.

28. In legal proceedings, the examination of facts and the evaluation of evidence are critical, and it is thus impossible that Mr Smith and Mr Munden were unaware of the lack of factual

and evidential basis of the disciplinary allegations and, thus, their questionable credibility. With serious allegations, such as harassment, threatening and intimidating students, it is impossible that the first thing they asked the Defendants to show them was any documents or signed complaints from students making allegations against Professor Kostakopoulou. The skeleton argument makes references to student complaints and allegations without acknowledging the absence of formal complaints or the Respondents' admissions regarding the lack of evidence. Similarly, the witness statement by Mr Smith refers to the alleged harassing, threatening and intimidating conduct of Professor Kostakopoulou without providing any concrete evidence to support these claims.

29. Additionally, Mr Smith and Mr Munden knew or should have known that the brief email exchange between Professor Kostakopoulou and Ms Opik, which was cited as evidence of harassment, does not support such claims. The content of the Claimant's emails focused on clarifying misunderstandings related to the disciplinary proceedings and did not contain any threatening or intimidating language. They deliberately misled the High Court, and this explains why a) they did not adequately address the glaring lack of evidence or the contradictions in the case against the Claimant b) made references to allegations made by Ms Opik and Mr Sharma (Student x) and c) refrained from examining in detail the Claimant's POC and her pleaded case of malice for each of the Defendants.

30. Their dishonesty was operative to the Court's acceptance of the qualified privilege defence and to the (problematic) pronouncement of C' s case on malice as 'hopeless' as well as the rejection of the malicious falsehood, human rights and EU law causes of action. It was also instrumental to the acceptance of the *Friend* defence and the persistent disregard of the Claimant's submissions that she had sued over original allegations and statements, which were published for the first time on 16 January 2020 and subsequently, thereby ruling out the application of FRIEND which confined a presumed implied consent to the republication of defamatory statements and their circulation among members of disciplinary panels.

31. The Defendants and their legal representatives knowingly deceived the High Court, causing a gross miscarriage of justice and denying C access to justice. Then they sought to revictimise and silence the Claimant by asking Sir Nicol to award £ 75000 in costs without any assessment and compliance with the relevant CPR rules.

**B. DECEPTION OF THE HIGH COURT (2): OPERATIVE MATERIAL NON-DISCLOSURE**

'*Suppressio veri, suggestio falsi*' (Cathcart v Owens, [30]).

32. The Defendants and their legal team (Mr Smith and Mr Munden) did not disclose all relevant facts and the truth to the High Court. They said nothing about the systematic campaign of bullying, harassment, and victimisation of Professor Kostakopoulou by her employer, the University of Warwick, and its officials, particularly Professor Andrew Sanders and Professor Christine Ennew, in conjunction with Human Resources (Ms Ashford, Ms Ledden-Rocks, Ms Helen Way and others). They did not mention that Prof. A. Sanders was bullying and harassing C months before the raising of defamatory publications and collaborating with HR to build a case against the Claimant, Prof. Kostakopoulou, including approving draft texts of emails to send to her and discussing actions to take against her. They hid that throughout 2020, HR and University officials, particularly Ms. Ashford, worked behind the scenes to build a case against Prof. Kostakopoulou, drafting letters and reports, and guiding the disciplinary process to ensure the success of the plan and Prof. Ennew's central role in the targeted mistreatment of Prof. Kostakopoulou, leading to her eventual dismissal. The Defendants and their legal team thus concealed the orchestrated bullying plan in operation designed to remove her from her position through a campaign of bullying, harassment, and unfounded disciplinary action, while disregarding her rights and well-being. This was designed and executed in retaliation for her protected acts under the Equality Act 2010 and her protected disclosures, internally and externally, to the Information Commissioner and others (- this is substantiated below with evidence).

33. **DETAILED TIMELINE OF FACTS, SUPPRESSED INFORMATION AND DOCUMENTS SURROUNDED PROF. KOSTAKOPOULOU'S MISTREATMENT BY THE UNIVERSITY OF WARWICK AND ITS OFFICIALS**: the Claimant' (post-HC hearing) disclosure requests over a period of nearly a year, the Defendants' general disclosure in 2022 and the Defendants' bundle of documents sent to C in late May 2023 revealed that:

1. **17 October 2019**. Although the Claimant had informed in writing A. Sanders' personal secretary about important professorial duties off campus she had at Manchester University (21/10) and in Brussels (23/10) during the following week commencing on 21 October 2019 (21-24 October 2019) and had written her engagement dates, on 17 October 2019 at 14.49 Andrew Sanders sent an email communication to C with the subject 'personal tutees' as well as others on 23 October 2019 at 9.15 am and 24 October 2019 at 9.59, complaining later that she had not responded to him.

2. **28 October 2019**. An internal email (confidential) with the subject '**ICO request -information to be deleted' was sent from Mr Clare Philips, Employee Relations and Policy Advisor, to 10 persons including Professor C. Ennew, and Mr Browne, solicitor and partner of**

**Shakespeare Martineau. Ms Philips informed them that the University of Warwick had received a request from the Information Commissioner's Office (ICO) to actualise the Claimant's data protection rights to erasure of incorrect (and malicious) data Professor Probert had inserted onto the Claimant's employment file without the Claimant's consent and knowledge. This was the subject of a complaint that the Claimant had submitted to ICO before 2019.**

3. **28 October 2019**. **A meeting was arranged between Ms Helen Way (HR) and A. Sanders via the Director of Law School Administration for Wednesday, 30 October 2019, at 3,30 pm to discuss ICO's request**.

4. **29 October 2019**. Although A. Sanders was informed about C's brief sickness by Ms Andrea Huber at 9.58 am, at 15.28 pm he sent an email communication to the Claimant and at 15.33 pm he sent a second email communication to the Claimant with the content *'I sent to you the below message several days ago. You have not replied. I would like to see you so that we can discuss it. Please come to my office at 11.45 on November 7th*'.

5. **30 October 2019**. **A. Sanders met with Ms Adele Ashford (HR Advisor) about ICO's request and to discuss 'Dora Kostakopoulou**'. He forwarded to her emails he had sent re Supporting Statement for the Commonwealth scholarship and the Claimant's personal tutees.

6. **30 October 2019**. On the same day, and having been informed that the Claimant had moved her office hours to Thursday 31 October 2019, from 1 pm to 6 pm due to her sickness and a notice had been put outside the Claimant's office door to that effect, A. Sanders asked Ms Huber (student services) to contact via email all the personal tutees of the Claimant with a set of questions articulated by Prof. Sanders and Ms Huber which shifted students' obligations to meet their personal tutor under the monitoring points/attendance scheme the government has imposed to personal tutors' obligations to meet with them, despite the fact that advising is a service offered to students and personal tutors cannot compel students to take it up.

7. The Claimant had been completely unaware of all the above manoeuvres. The Claimant held 5 hours of advising tutees in her office (1 pm -6 pm) on Thursday, 31 October 2019.

8. **4 November 2019**. The Claimant recovered from her sickness and replied to both emails A. Sanders had sent to her when she was sick (on 29 October 2019) and to all other emails. And as she had to be at Keele University on the 7th of November, she informed Professor Sanders about her unavailability for a meeting on 7 November at 11.45 am. Although A. Sanders acknowledged this, he later accused the Claimant of refusing to abide by his 'reasonable management request'.

9. **4 November 2019**. The Claimant wrote to Professor Andrew Sanders requesting access to and the removal of statements made about her in a secret Word file stored on a Law School Computer. She did not receive a reply from Professor Andrew Sanders and subsequently wrote to the Data Protection Officer of the University of Warwick on 19 November 2019.

10. **5 and 6 November 2019**. Professor Sanders emailed the Claimant, stating, 'Unless you reply comprehensively to these two questions, I will still require you to see me at 11.45 on November 7th'. In full compliance with his instruction, the Claimant provided a comprehensive reply on 6 November 2019 and reminded A. Sanders about her previously notified unavailability because I had to be at Keele University. On the same day, 6 November

2019, at 13.04 pm, Professor Sanders sent another email to the Claimant, which concluded, 'If you do not come to see me tomorrow, then I require you to see me on Tuesday 12th November (time to be confirmed)'. On 12th and 13th November, the Claimant had been invited by the University of Amsterdam to deliver a public lecture, and the University of Amsterdam had incurred all the expenses. A. Sanders changed the meeting date to 2 December at 11 am unilaterally once again and later accused the Claimant of not complying with his 'reasonable management request' to meet with him on 12 and 13 November 2019.

11. **18 November 2019**. **Prof. A. Sanders had received an email from Ms Solange Mouthaan on 18 November 2018 stating that 114 students had not seen their personal tutor and that three other academics in the law school staff had not contacted their personal tutees**. Despite this, A. Sanders later falsely claimed to Professor Lavender that there was a law school protocol that all students had to be seen during the first two weeks of the term and that the Claimant had not performed her duties.

12. **21 November 2019**. **Ms Adele Ashford (HR) wrote to A. Sanders about '*the Claimant's webpages featuring documents relating to her EAT appeal which she felt were inappropriate*'. She informed him that Clare Philips was taking legal advice and she was following up with the data compliance team at UoW '*to establish our next steps*' (B., p. 1473). Ms Adele Ashford also advised A. Sanders that he could '*contact the (6) students to say that he is managing the situation with Dora and at some point in the process, Dora may have sight of their emails, and they should contact him if they had any concerns*'. The High Court was never aware of this**.

13. **2 December 2019 at 17.04 pm**. Although the Claimant had informed A. Sanders that on 2 December 2019 had to examine a PhD student at the University of Southampton (- a commitment that had been arranged months before), A. Sanders sent an email communication to the Claimant after business hours threatening disciplinary action if she did not meet him on the following day, 3rd December 2019 at 14.00 pm.

14. **3 December 2019**. The Claimant did not access her emails until she returned to Warwick University the following day and completed all her meetings with supervisees and tutees. When she finished at 18.00 pm, she wrote to A. Sanders about her engagement at Southampton University and suggested alternative days for a meeting. She also sent to Professor Sanders and to the Director of Undergraduate Studies a memorandum confirming the completion of her office hours and the tutorial responsibilities for that academic term. The Claimant also updated for the final time TABULA, the University's online student attendance monitoring system, which recorded her meetings with her tutees and her notes about them. The Claimant had previously updated TABULA on 11 November 2019 and in week 8 of the term following her meetings with tutees on 18 and 19 November 2019.

15. **4 November – 5 December 2019**. A plethora of internal emails between A. Sanders and Ms Adele Ashford (HR Advisor) were exchanged with **A. Ashford approving draft texts of emails A. Sanders would send to the Claimant**. The High Court was never informed about this.

16. **4 -5 December 2019**. A. Sanders placed the Claimant under disciplinary investigation, accusing her of not complying with his reasonable management requests to meet with him at five separate meetings (the dates of C's unavailability he had accepted) and 'not fulfilling her responsibilities in good faith', despite A. Sanders' knowledge that she had completed her duties re personal tutees and having been informed of her work-related commitments. **An**

**internal email sent from Ms Ashford to A. Sanders with the subject 'DK [Dora Kostakopoulou] and an attachment entitled 'Actions to date' stated:**

> **'*I've pulled together a timeline/actions taken so far, for your review, and can confirm that Andy Lavender is happy to act as Investigating Officer for the Disciplinary Investigation, so hopefully I will be meeting him later this afternoon*'**.

**17. 5 December 2019**. **The above email was followed by three other emails until 18.02 pm with A. Sanders suggesting slight amendments to the file Ms Ashford had sent to him, and Ms Ashford confirming that:**

> **'*I'll amend the spreadsheet, and Andy is picking up the disciplinary investigation failure to meet you/students issue. I've just met with him and we've held 9 January 2020 in the diary to meet with you and then Dora (Separately*)'**.

18. **9 December 2020**. **Claimant's formal complaint to ICO activating her data subject rights to access and erasure under the GDPR and the Data Protection Act 2018 - the complaint to ICO was under case reference number RFA 0897317**.

19. **10 December 2020**. Date of Professor Christine Ennew's letter to the Claimant accusing her of failing to fulfil her responsibilities in good faith and to comply with reasonable management requests by non-attending at five separate meetings with Professor Sanders. Appointment of Professor Lavender as an investigator.

20. **13 December 2019**. Claimant's immediate protest to Prof. Ennew for 'bogus allegations', institutional retaliation and victimisation due to her legal proceedings and requesting prima facie evidence for 'the vague and unreasonable allegations.'

21. **6 January 2020**. The Claimant submitted a formal grievance against Professors Sanders and Ennew to the Chair of the Council of the University of Warwick for malice, bullying, victimisation and breaches of the Equality Act 2020, her human rights, PIDA 1998, the EU Charter of Fundamental Rights and Health Safety Regulations. Internal emails disclosed by the University show that A. Sanders received from Ms Opik her email exchange with the Claimant on 10 January 2020. A. Sanders replied to her on 11 January 2020 at 17.12 pm, stating:

> '…*I am so sorry you have been put in this difficult position.* ***You have no need to be worried about anything – no harm can happen to you as a result of this****. But if you would like to talk more about it, feel free to talk with Solange and I – together or separately – at any time*.'

22. **12 January -13 January 2020**. Internal emails show that on Sunday, 12 January 2020, at noon, A. Sanders started drafting the email he would later send to A. Ashford based on the hearsay of Ms Opik and on what she had allegedly told him orally. He followed this up by sending another email to Ms Ashford on 13 January 2020 at 17.16 pm stating that:

'*My recommendation is that Dora be suspended with immediate effect. This is because I consider her behaviour to be gross misconduct. Further, students who she is teaching and/or are her personal tutees feel harassed and intimidated by her. We know this is true of Diana Opik; if what Diana tells us about student X is true then it is also true of Student X; and we therefore have good reason to fear it could be true of other students too.*

*I further point out that urgent action is needed as students began her modules last week. These are specialist modules that no one else can teach, and the students' education will suffer if they cannot transfer to other modules in the next few days*.'

23. **16 January 2020**. The Claimant was suspended by Professor Ennew in the way described in her particulars of claim with Professor Ennew's defamatory allegations without following proper procedures and without proper evidence or investigation. **On the same day, internal emails show that A. Sanders exchanged emails marked 'Importance High and Sensitivity Confidential with Ms Claire Philips and Helen Way wishing to '*read the [suspension] letter so he knows exactly what Dora's been told***.'

24. **16 January 2020 at 15.32 pm**. A. Sanders communicated the suspension of the Claimant to 8 persons: three professors, three law school administrators and two academics. On the same day, he received an email from Ms Mouthaan stating that a large number of students were affected (C's courses had more than 120 students). Many supervisees were affected, too – the Claimant had the largest number of supervisees (7 third-year undergraduate students doing their dissertation with her and 4 PhD students).

25. **16 January 2020 at 16.23 pm**. **A. Sanders internal email to Professors Victor Tadros and A. Williams, telling them that a new Professor had accepted the job offer and that he had booked a table for a meal with him at Radcliffe for 3 or 4 persons the following Tuesday. He asked them to join him.**

26. **16 January 2020 at 17.45 pm**. A Sanders sent an internal email to Ms Claire Philips (HR), Ms Helen Way (HR) and Prof. Nudds complaining that he had checked the Claimant's email autoreply, which remained the same. He asked them for advice on '**how we (or you?) go about replacing her current message**…' suggesting that he wished to have unauthorised access to, and to interfere with, the Claimant's email.

27. **17 January 2020 at 8.17 am and 8.52 am**. Ms Helen Way (HR) wrote an email to A. Sanders and others suggesting to him what he should write to the Claimant regarding the change of her email autoreply. At 8.52 am, A. Sanders sent an email to the Claimant directing her to adopt his suggested text as an autoreply '***Due to unforeseen circumstances I will not be in my office or responding to messages from students until further notice… If you do not do this by 2 pm today you will be in breach of the request from the Faculty C*hair'.

28. **17 January 2020 at 14.57 pm**. Internal email of A. Sanders to Mrs C. Proctor (IT officer of the Law School) asking her to 'action' the change in the Claimant's email – **to action an unauthorised email access**.

29. **17 January 2020 at 15.03 pm**. Internal emails of A. Sanders to Mrs C. Proctor noting that he 'would fully support her and if she would like him to accompany her when she would be interviewed [in relation to C's grievance against her] he would be very happy to do so'.

30. **17 -18 January 2020**. Students complained about the cancellation of C's modules and her absence from dissertation supervision. A. Sanders wrote an email to student representatives on 18 January 2020 stating:

> '…***I am very sorry that the Data Protection module was cancelled without warning. I'm sure you appreciate that we did not do this lightly. I understand your concerns, but unfortunately we had no alternative***.'

31. **18 January 2020**. Concerns were expressed about the supervision of dissertations that the Claimant would not do. A. Sanders wrote to Mr Bill O'Brian at 14.46 pm:

'***I had not thought about dissertations – didn't think they'd be choosing this yet***'.

32. **18 January 2020**. Mr Bill O'Brian replied to A. Sanders. A Sanders, in turn, replied to him at 15.16:

> '***That all makes sense, and pleased you can join. <u>We must assume she won't be back to supervise –Andrew</u>***.'

33. **20 January 2020**. A. Sanders sent an internal email to Dr Illan Wall, teaching allocation officer, with the instructions:

> ' **<u>1. Dora: assume that she won't be here and that data protection won't run next year. Obviously, this could change, it's out of my hands…</u>**
>
> **<u>2. Assume Andrew J and Alex S [two new professors] will be here</u>**….'

34. **20 January 2020 at 10.48 am**. A. Sanders sent a draft email to all staff he had written to Ms Wood, Director of Law Administration. He wrote at the top: '***Draft to send to 'regular' staff only (exclude Dora from the mailing????***)

35. **20 January 2020 at 11.24 am**. A. Sanders sent the following email to more than 65 persons with the subject Important Update and Importance High:

> 'To all staff: Please handle the following message with care and sensitivity
>
> *As some of you know, Dora is unable to do normal duties for the time being. This is due to sudden and unforeseeable circumstances. It is until further notice, and there is no way of knowing how long it will be for.*
>
> *We are telling this to students who need to know. Some may ask you about Dora, please do not get drawn into speculation about why this is.*
>
> *There are some major consequences of Dora not being here for, we must assume, at least the rest of the term:*
>
> *We have to ask students taking her modules (Data Protection, LLB and LLM) to take other modules….*

*We have to re-allocate Dora's UG dissertation students and PhD students…*

*Dora's personal students and admin roles will be re-allocated…*'

36. **20 January 2020**. A. Sanders had **either directly or indirectly accessed the Claimant's work email** and had seen a request she had received for approval of a Masters programme on social inequalities from Mr Victor Riordan. This email had been sent before her suspension. He took it upon himself to respond to Mr Riordan as follows:

> '***The email chain below has been passed onto me. Unfortunately, Dora Kostakopoulou is unable to do normal duties for the time being. This is due to sudden and unforeseeable circumstances. It is until further notice, and there is no way of knowing how long it will be for. I'm very sorry, but I hope you can find someone else who will be appropriate to review the course proposal***'.

37. **22 January 2020**. Ms Adele Ashford sent to A. Sanders the notes she had written from the investigation meeting he had with Ms Ashford and Prof. Lavender. These notes included the following notable falsehoods:

> '*AL (Andrew Lavender)- were the Personal Tutors supposed to meet personal tutees by 10 October 2019, is this the protocol in the School, and this is advertised to staff and students?*
>
> *AS (Andrew Sanders)- an email goes out to all academic staff asking them to make contact with students, asking that they meet with their tutees within the first 2 weeks of the term.*
>
> *AL – is that for all 3 years of study?*
>
> *AS- yes, that's correct…..*
>
> *AL- was AH (Andrea Huber, the person who had been asked by A. Sanders to contact the Claimant's tutees) only to ask DK's personal tutees?*
>
> *AS- yes, that's correct I had already ascertained that all other personal tutors had made contact with their tutees. I received positive confirmation that they had.*
>
> *AL- how did you know?*
>
> *AS- from the Director of Undergraduate Studies (Ms Solange Mouthaan), I did not ask how they had obtained the information, but they confirmed all had made contact with tutees [-in reality Ms Mouthaan's email had said the opposite]….*
>
> *AS – Further, 5 of DK's personal tutees have had a negative experience of having DK as a personal tutor – a colleague in the School had previously suggested (without*

*knowing about these particular issues) that DK doesn't have any personal tutees because of feedback provided to them…*'

38. On the same day, that is, **22 January 2020**, A. Sanders sent an email communication to Ms Opik, informing her that a member of the University Human resources team (Ms Ashford) will be asking her to meet with her and another senior colleague (A. Lavender) to talk about the issues raised in her email exchange with the Claimant. (No attempt was made to follow the University's procedures and for Ms Opik to write any concerns she might have).

39. In the meantime, the Claimant had raised another grievance against Professor Ennew for her suspension and both she and her husband were complaining about the retaliation and breaches of her rights with the University and Sir Normington.

40. **31 January 2020**. The Claimant wrote to Sir David Normington and Andy Lavender outlining breaches of anti-discrimination law and the University's own Dignity policy and making a formal request that the Claimant be afforded fair treatment with dignity and respect and the immediate lifting of the suspension. She protested her innocence and explained why Professor Ennew's statements of 16 January 2020 were baseless and made in bad faith. She explicitly told them about lies being written about her and that Student X was the first student she had seen at the beginning of the academic year. **Her email was sent to someone**, but the University has refused to provide an unredacted copy of the email chain.

41. **End of January 2020**. Someone at the University of Warwick (the Respondents have refused the Claimant's request for the identification of that individual) took the decision to suspend the disciplinary investigation and to condemn the Claimant to indefinite suspension by giving Professor Leadley the mandate to investigate the Claimant's grievances first.

42. **23 January 2020**. An internal email released by the University with redacted content shows that someone had written a letter, which Sir Normington would then send **to the Claimant**. The University refused to provide an unredacted version of this document as C first requested on 9 September 2022.

43. **The letters Prof. Lavender received from the Claimant were also sent to A. Ashford (HR), who was the person who wrote the Investigating Report signed by A. Lavender. The report was ready on 20 May 2020, but it was backdated to 13 May 2020** (- this will further be outlined below).

44. **11 February 2020**.The Claimant lodged a grievance against Andrew Sanders, pinpointing the breaches of the law, the professional code of conduct, and the University of Warwick's own procedures and policy on Dignity at Warwick.

45. **19 February 2020**. The Claimant complained to HR about her omission from the Law School's teaching allocation for the following year. On 19 February 2020, A. Sanders emailed the Claimant: '***You were by mistake omitted from the 2020-2021 teaching allocation. This has now been rectified (see screenshot below). Your modules are now available to the students***.'

In reality, A. Sanders had instructed the teaching allocation officer to omit the Claimant from the teaching allocation.

46. **26 March 2020**. **Adele Ashford sent an email to Ms Opik with 12 pre-set questions for her to answer, which included no question about Prof. Ennew's defamatory statements that caused C's suspension**.

47. **30 March 2020**. Internal emails were exchanged between A. Sanders and Ms Opik **revealing an unconventional familiarity between them with promises to phone each other and Ms Opik knowing A. Sander's telephone number.** This was done in relation to Dr Dochery's polite email to Ms Opik before the Claimant embarking upon legal requirements of the pre-action protocol.

48. 30 March 2020. Internal emails from **Ms Ashford providing directions to both A. Sanders and A. Lavender and drafting a response letter which she asked A. Lavender to send to Dr Dochery**. Ms Ashford also imposed her misinterpretation on the Dr Dochery's email by noting '*This contact with Diana is not acceptable and shows further the harassment of this student and an attempt to influence the investigation*'.

49. 31 March 2020. Internal email released by the University after the HC hearing showed Professor Ennew writing to HR personnel about the Claimant:

    '…***I know we are in difficult circumstances but I hope that we might try to expedite this matter in the interests of all parties. Do you have a time for the completion of the investigation***?'

50. On the same day, **31 March 2020**, **Professor Ennew sent the letter about the continuation of the Claimant's suspension which HR (Mr Louise Ledden-Rocks) had written**. By that time, the innocent Claimant had been in suspension for 2,5 months and her health was seriously affected.

51. **Ms Ledden-Rocks (HR) continued to draft letters for Professor Ennew to sign and send to the Claimant** (31 March 2020 at 13.26 pm)

52. **28 April 2020**. An internal email between Professor Ennew and Ms Louise Ledden-Rocks stated:

    '*Dear Louise,*
    *Thank you for checking with me**. I am comfortable that it is appropriate for the suspension to continue given the current circumstances** and the complexity of the issues. The timescales suggest that we would hope to resolve soon and therefore I do not think there is a compelling case to change the current arrangem*ents.'

53. **29 April 2020**. **An internal email from Ms Ashford to A. Sanders shows that Ms Ashford drafted the investigation report, which A. Lavender signed**:

'Hi Andrew,
**I've been working on the report today, and will hopefully be submitting the draft report to Andy by the end of tomorrow.**
**Can we get some time in the diary tomorrow, for a quick catch up?** I've got a meeting at 1.00 am but other than that I'm around.'

**Andrew Sanders replied: 'Sure,** Choose 12.00. 1.00, 2.00…'.

54. **20 May 2020**. Ms Ledden-Rocks emailed Professor Ennew, informing her that '***consideration was given as to whether the matters warrant further consideration at a disciplinary hearing*'; a big redacted passage remains hidden despite the Claimant's formal applications to the Employment Tribunal. This is an internal communication between HR and Prof. Ennew**.

55. **20 May 2020 at 22.17 pm**. Professor Ennew replied to Ms Ledden-Rocks, stating:

'*Thanks, Louise – that's a helpful update.*

*And you will have seen that I've also responded in the matter of the disciplinary investigation report. I realise Adele is on leave and I don't know whether anyone else will pick this up in her absence,* ***but I think we should now proceed for a formal hearing***.'

56. **The framing of the Claimant was now complete. The University of Warwick backdated the investigation report which A. Ashford (HR) drafted from 20 May 2023 to 13 May 2020 and Prof. A. Lavender signed it. Professor Ennew then sent a formal disciplinary hearing notice to the Claimant on 1 June 2020. Professor Ennew chose her deputy, Prof. Meyer, to chair a disciplinary hearing consisting of another professor too and Ms Adele Ashford, the author of the investigation report**.

57. **27 May 2020**. Dr Dochery's complaint about a 'flawed, partial and discriminatory disciplinary investigation.'

58. **June 2020**. The Claimant submitted a formal grievance against Professors Lavender and Ennew re the falsehoods in Professor Lavender's report and the existence of a victimisation agenda on 8 June 2020. In the period 11 June to 28 June 2020, the Claimant submitted complaints and made protected acts and protected disclosures to Sir Normington and Ms Sandby-Thomas on 11 June 2020, to the Members of the Governing Council of the University of Warwick on 6 June 2020, to Sir Normington and Ms Cooke on 13 June 2020, to Sir Normington, Members of the Council and the Executive on 24 June 2020 and to Sir Normington, Members of the Council and the Executive on 28 June 2020.

59. **25 June 2020**. Email exchanges between A. Sanders and Ms D. Opik and arrangements to talk over the phone. A. Sanders wrote to Ms Opik:

'***I'll call you at 7.00 on your phone- Andrew***.'

60. **29 June 2020**. Dr Dochery informed Ms Adele Ashford about the Claimant's poor health and sent medical certification of the Claimant being 'unfit for duties' until 21 July 2020. At the beginning of July 2020, HR proceeded to refer the Claimant to Occupational Health for expert advice as to how they should proceed with respect to the disciplinary hearing.

61. **29 June 2020**. Internal email between A. Sanders to Ms Ashford, including another malicious attempt to frame the Claimant:

> '….***Can we go public, saying that DK's rep (he meant my husband, Dr Dochery) has threatened a student with a legal action for providing evidence to the disciplinary panel***?'

62. **29 June 2020**. **Internal email from Ms Helen Way (HR) to Prof. Meyer and Steele, who would chair C's disciplinary hearing, stating that she would be happy to '*meet for the pre-meet if you would like to*'**.

63. **29 June 2020**. Internal email from Prof. Caroline Meyer, appointed by Prof. Ennew Chair of C's disciplinary panel, to Ms Helen Way (HR) stating:

> '*Thanks, Helen,*
>
> *No need for the panel to meet. I think it important before we engage EAP and Occ Health that* ***myself and Chris Ennew meet to discuss the next steps***.'

64. 29 June 2020. Internal email from Ms Helen Way to Prof. Meyer and Steele informing them that:

> '***we will be seeking our Solicitor's view about next week's hearing based on the email below***.'

65. **29 June 2020**. In response to Ms Ashford email informing A. Sanders that the Claimant was too ill, A. Sanders replied at 14.51 pm:

> '***OK. Since illness is claimed, can we ask for medical evidence? I worry this will delay the process further.***'

66. **29 June 2020**. Ms Ashford replied to A. Sanders:

> '***I know, we have a second date in the diary for 6 July 2020, so if she doesn't attend that one she will need to submit Drs certification***.'

**67. 1 July 2020**. **The claimant received an email communication from ICO stating that they had written to the University because they had not been satisfied with the University's response.**

68. **20 July 2020**. Disciplinary hearing in the Claimant's absence and dismissal by Professor Ennew's deputy, Professor Meyer and Professor Steel. The only witness at that hearing was Professor Lavender, who made the slanderous remarks the Claimant made in her particulars of claim.

69. **21 July 2020**. The expiry date of the Claimant's sickness certificate.

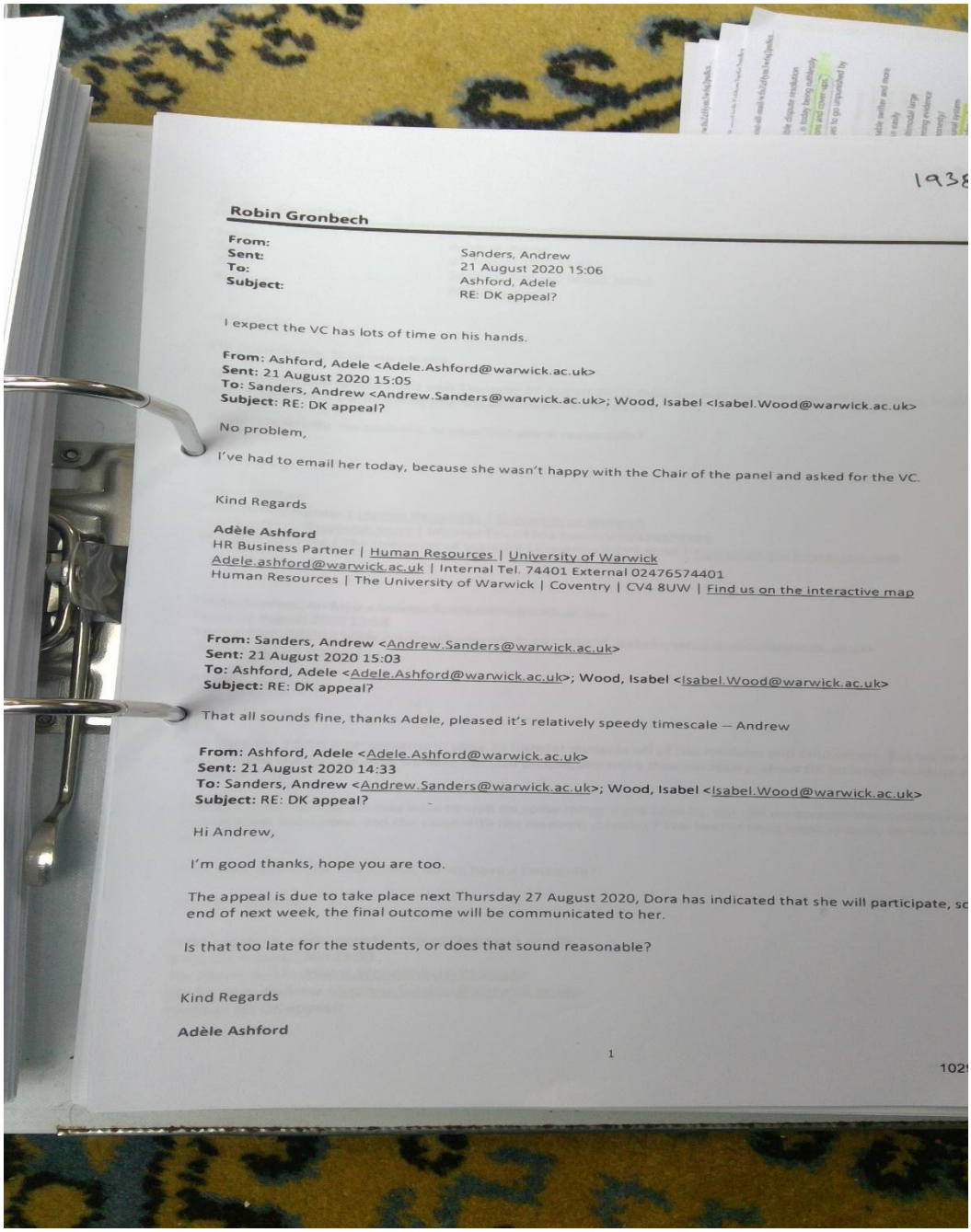
70. **29 July 2020**. The Claimant was notified via email about the outcome of this disciplinary hearing in absentia from Ms Adele Ashford.

71**. Late July 2020**. Professor Lavender left the University of Warwick for an upgraded post (Deputy Principal).

72. **10 August 2020**. Ms Ashford emailed Professors Meyer and Steele with further falsehoods: '***we are unable to provide her with the names of students, other than Diana Opik, as they wished to remain anonymous. This has been explained to Dora on several occasions***.' There were no 'students' – a fictitious narrative to bully the Claimant out of her job in retaliation.

73. August 2020. Email exchanges among HR personnel, drafting letters and to shape the appeal process in the way they wished.

74. 13 August – 20 August 2020. Ms Wood, Law School Director of Administration, emailed Ms Ashford on 13 August 2020 to determine whether the Claimant's appeal had come in. Ms Ashford replied, 'Yes, last night'. A. Sanders replied to Ms Ashford on 19 August 2020 at 13.58 pm, stating: '…***But we've not made those changes because we have not told people, any more than necessary, about DK no longer working at Warwick….If we have to wait for the appeal, do we have a timescale***?' Ms Ashford replied that '***by the end of next week, the final outcome will be communicated to her***'. The appeal hearing had not taken place when she wrote this.



Robin Gronbech

**From:** Sanders, Andrew
**Sent:** 21 August 2020 15:06
**To:** Ashford, Adele
**Subject:** RE: DK appeal?

I expect the VC has lots of time on his hands.

**From:** Ashford, Adele <Adele.Ashford@warwick.ac.uk>
**Sent:** 21 August 2020 15:05
**To:** Sanders, Andrew <Andrew.Sanders@warwick.ac.uk>; Wood, Isabel <Isabel.Wood@warwick.ac.uk>
**Subject:** RE: DK appeal?

No problem,

I've had to email her today, because she wasn't happy with the Chair of the panel and asked for the VC.

Kind Regards

**Adèle Ashford**
HR Business Partner | Human Resources | University of Warwick
Adele.ashford@warwick.ac.uk | Internal Tel. 74401 External 02476574401
Human Resources | The University of Warwick | Coventry | CV4 8UW | Find us on the interactive map

**From:** Sanders, Andrew <Andrew.Sanders@warwick.ac.uk>
**Sent:** 21 August 2020 15:03
**To:** Ashford, Adele <Adele.Ashford@warwick.ac.uk>; Wood, Isabel <Isabel.Wood@warwick.ac.uk>
**Subject:** RE: DK appeal?

That all sounds fine, thanks Adele, pleased it's relatively speedy timescale – Andrew

**From:** Ashford, Adele <Adele.Ashford@warwick.ac.uk>
**Sent:** 21 August 2020 14:33
**To:** Sanders, Andrew <Andrew.Sanders@warwick.ac.uk>; Wood, Isabel <Isabel.Wood@warwick.ac.uk>
**Subject:** RE: DK appeal?

Hi Andrew,

I'm good thanks, hope you are too.

The appeal is due to take place next Thursday 27 August 2020, Dora has indicated that she will participate, so
end of next week, the final outcome will be communicated to her.

Is that too late for the students, or does that sound reasonable?

Kind Regards

**Adèle Ashford**

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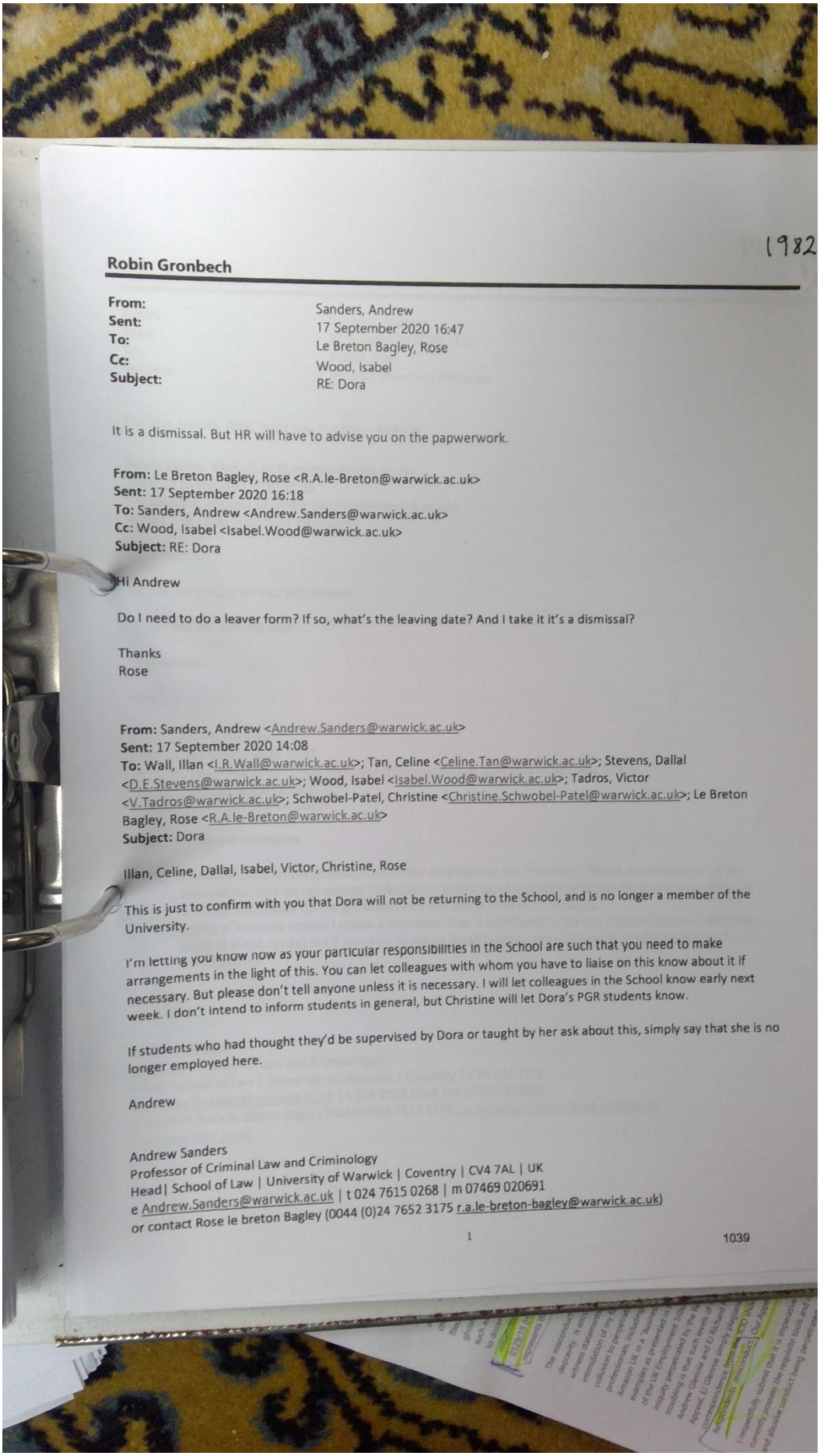
75. 1 September 2020. A. Sanders was impatient – he sent an internal email to Ms Ledden-Rocks asking her '…***Can you not tell me the result and that I can act on it***?'

76. **10 September 2020**. A. Sanders sent another email communication to Ms Ashford this time requesting an update.

77**. 17 September 2020**. A Sanders then proceeded to send the following internal emails:



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**Robin Gronbech**

**From:** Sanders, Andrew
**Sent:** 17 September 2020 16:47
**To:** Le Breton Bagley, Rose
**Cc:** Wood, Isabel
**Subject:** RE: Dora

It is a dismissal. But HR will have to advise you on the papwerwork.

**From:** Le Breton Bagley, Rose <R.A.le-Breton@warwick.ac.uk>
**Sent:** 17 September 2020 16:18
**To:** Sanders, Andrew <Andrew.Sanders@warwick.ac.uk>
**Cc:** Wood, Isabel <Isabel.Wood@warwick.ac.uk>
**Subject:** RE: Dora

Hi Andrew

Do I need to do a leaver form? If so, what's the leaving date? And I take it it's a dismissal?

Thanks
Rose

**From:** Sanders, Andrew <Andrew.Sanders@warwick.ac.uk>
**Sent:** 17 September 2020 14:08
**To:** Wall, Illan <I.R.Wall@warwick.ac.uk>; Tan, Celine <Celine.Tan@warwick.ac.uk>; Stevens, Dallal <D.E.Stevens@warwick.ac.uk>; Wood, Isabel <Isabel.Wood@warwick.ac.uk>; Tadros, Victor <V.Tadros@warwick.ac.uk>; Schwobel-Patel, Christine <Christine.Schwobel-Patel@warwick.ac.uk>; Le Breton Bagley, Rose <R.A.le-Breton@warwick.ac.uk>
**Subject:** Dora

Illan, Celine, Dallal, Isabel, Victor, Christine, Rose

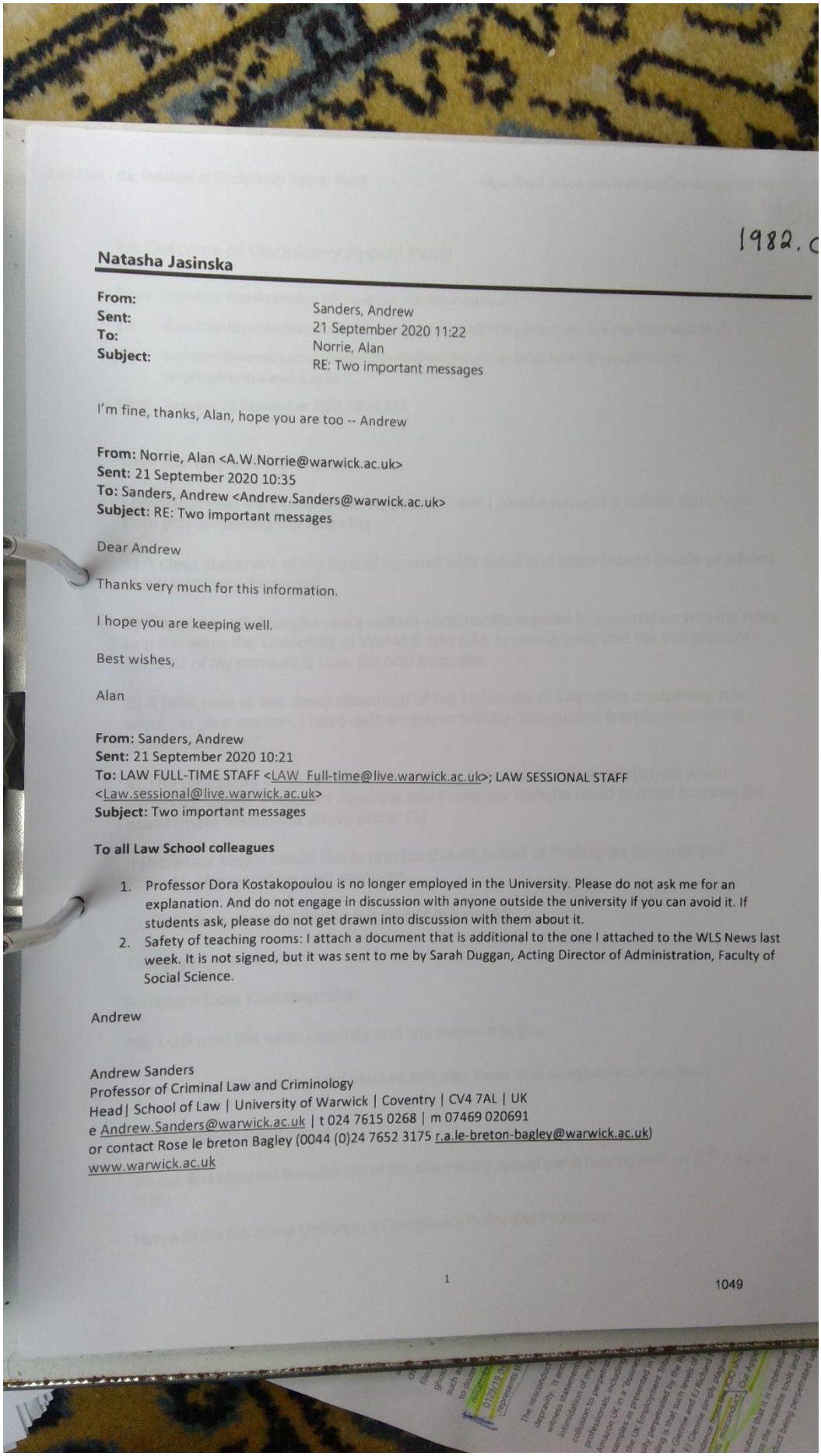
This is just to confirm with you that Dora will not be returning to the School, and is no longer a member of the University.

I'm letting you know now as your particular responsibilities in the School are such that you need to make arrangements in the light of this. You can let colleagues with whom you have to liaise on this know about it if necessary. But please don't tell anyone unless it is necessary. I will let colleagues in the School know early next week. I don't intend to inform students in general, but Christine will let Dora's PGR students know.

If students who had thought they'd be supervised by Dora or taught by her ask about this, simply say that she is no longer employed here.

Andrew

Andrew Sanders
Professor of Criminal Law and Criminology
Head| School of Law | University of Warwick | Coventry | CV4 7AL | UK
e Andrew.Sanders@warwick.ac.uk | t 024 7615 0268 | m 07469 020691
or contact Rose le breton Bagley (0044 (0)24 7652 3175 r.a.le-breton-bagley@warwick.ac.uk)



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**Natasha Jasinska**

**From:** Sanders, Andrew
**Sent:** 21 September 2020 11:22
**To:** Norrie, Alan
**Subject:** RE: Two important messages

I'm fine, thanks, Alan, hope you are too -- Andrew

**From:** Norrie, Alan <A.W.Norrie@warwick.ac.uk>
**Sent:** 21 September 2020 10:35
**To:** Sanders, Andrew <Andrew.Sanders@warwick.ac.uk>
**Subject:** RE: Two important messages

Dear Andrew

Thanks very much for this information.

I hope you are keeping well.

Best wishes,

Alan

**From:** Sanders, Andrew
**Sent:** 21 September 2020 10:21
**To:** LAW FULL-TIME STAFF <LAW_Full-time@live.warwick.ac.uk>; LAW SESSIONAL STAFF <Law.sessional@live.warwick.ac.uk>
**Subject:** Two important messages

**To all Law School colleagues**

1. Professor Dora Kostakopoulou is no longer employed in the University. Please do not ask me for an explanation. And do not engage in discussion with anyone outside the university if you can avoid it. If students ask, please do not get drawn into discussion with them about it.
2. Safety of teaching rooms: I attach a document that is additional to the one I attached to the WLS News last week. It is not signed, but it was sent to me by Sarah Duggan, Acting Director of Administration, Faculty of Social Science.

Andrew

Andrew Sanders
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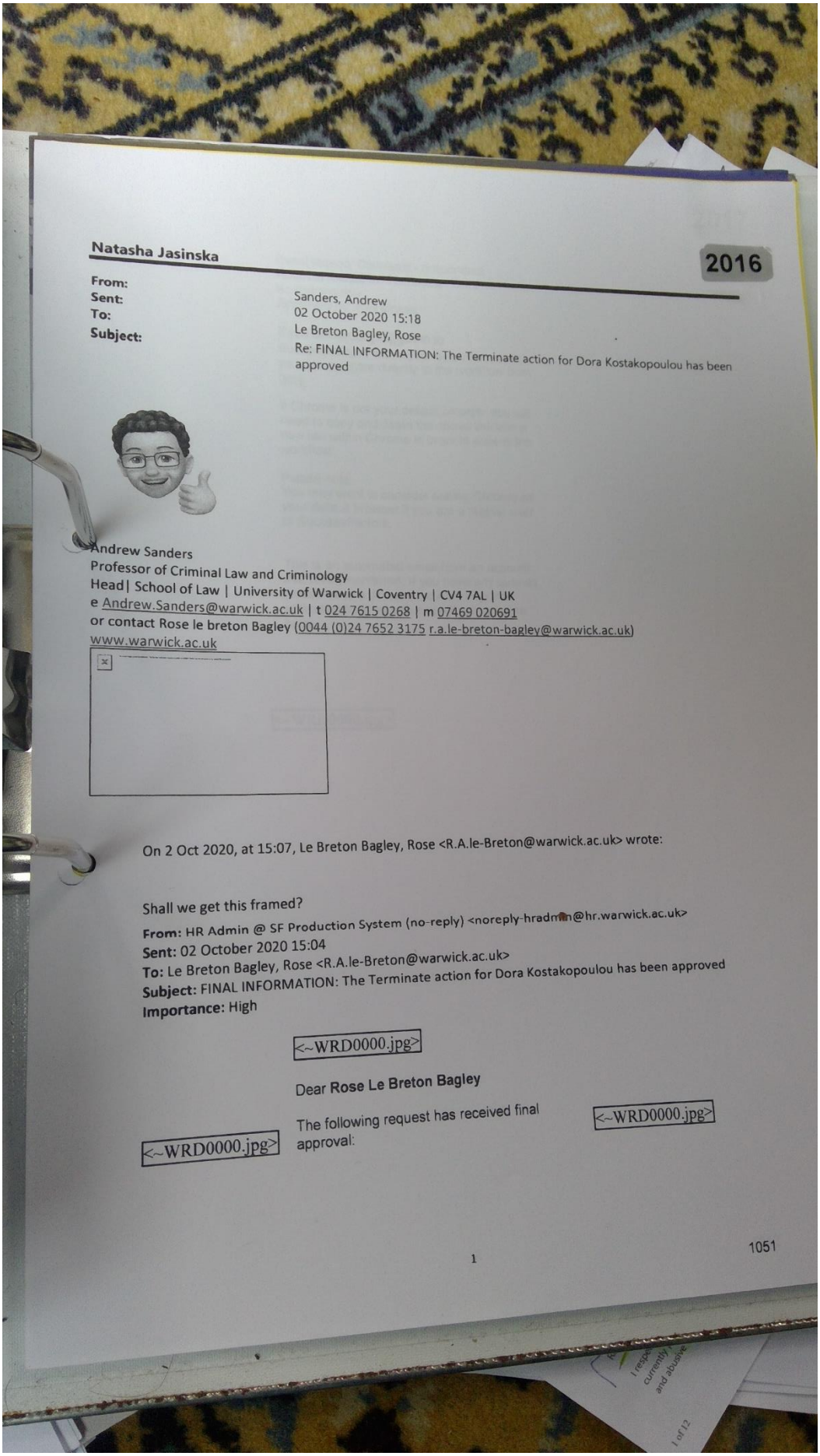

**Natasha Jasinska** 2016

**From:** Sanders, Andrew
**Sent:** 02 October 2020 15:18
**To:** Le Breton Bagley, Rose
**Subject:** Re: FINAL INFORMATION: The Terminate action for Dora Kostakopoulou has been approved

Andrew Sanders
Professor of Criminal Law and Criminology
Head| School of Law | University of Warwick | Coventry | CV4 7AL | UK
e Andrew.Sanders@warwick.ac.uk | t 024 7615 0268 | m 07469 020691
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www.warwick.ac.uk

On 2 Oct 2020, at 15:07, Le Breton Bagley, Rose <R.A.le-Breton@warwick.ac.uk> wrote:

Shall we get this framed?

**From:** HR Admin @ SF Production System (no-reply) <noreply-hradmin@hr.warwick.ac.uk>
**Sent:** 02 October 2020 15:04
**To:** Le Breton Bagley, Rose <R.A.le-Breton@warwick.ac.uk>
**Subject:** FINAL INFORMATION: The Terminate action for Dora Kostakopoulou has been approved
**Importance:** High

<~WRD0000.jpg>

Dear **Rose Le Breton Bagley**

<~WRD0000.jpg> The following request has received final approval: <~WRD0000.jpg>

34. By concealing the above evidence, information and documents about the well-planned bullying of the Claimant out of her job with libellous, fraudulent and malicious accusations destined to destroy all her life's work, her reputation and her entire career, the Defendants and their legal team deceived the High Court.

35. The claimant had been, in reality, subjected to a campaign of bullying, harassment and victimisation, which has caused immense damage to her reputation, career, and well-being. Neither the defence of implied consent nor the defence of qualified privilege could ever apply to this case. And her other two causes of action are perfectly arguable. An innocent person was framed by the Defendants with fabricated disciplinary offences. Such framing can never be the subject of the victim's consent or form part of any employment contract in the 21st century.

36. Why did not Sir Nicol prevent the deception of the Court? The Claimant had asserted her innocence and claimed the accusations were false and malicious in the Particulars of Claim. In particular, she had argued in Paragraphs 43-44 that a contract of employment cannot override statutes (the HRA 1998, PIDA 1998, DPA 2018), international law, EU law and natural justice principles. There can be no consent to the destruction of fundamental rights, including the right to human dignity and no employee can be presumed to consent to their own victimisation, bullying, false accusations and unfair punishments. In Paragraph 44, The Claimant stated there was evidence of her objections to the invocation of the disciplinary procedure, which would rebut any argument of implied consent. She had made extensive pleadings of malice for each of the Defendants. Accordingly, why did Sir Nicol not see through the Defendants' fraud, but he accepted their arguments and struck out the Claimant's case?

**C. JUDICIAL IMPROPRIETY AND SIGNIFICANT ERROR: SIGNIFICANT EVIDENCE OF THE JUDGEMENT'S COPYING FROM, CLOSE PARAPHRASING AND RELIANCE ON SUBSTANTIALLY SIMILAR CONTENT WITH MR SMITH'S WITNESS STATEMENT OF 9 JULY 2021 AND THE DEFENDANTS' (ME MUNDEN'S) SKELETON ARGUMENT OF 22 SEPTEMBER 2021 WITH THE STATISTICAL PROBABILITY OF THIS OCCURING BY CHANCE (BINOMIAL PROBABILITY MODEL) BEING 0.1% (PRACTICALLY IMPOSSIBLE).**

37. In **March 2024**, digital forensic and multimodal large language models became available for claimants in the UK for the first time. The Claimant used them.

38. Following a thorough analysis and comparison of Sir Nicol's judgment and the Defendants' (Mr Munden's) skeleton argument and Mr Smith's witness statement, it has become evident

that Sir Nicol's judgment heavily relies on and incorporates content from the Defendants' submissions without giving any weight to the Claimant's legal claims and submissions or independent reasoning.

39. The statistical evidence reveals an alarming level of copying paraphrasing and overlap between the judgment and the Defendants' documents.

**A. Data analysis of Sir Nicol's judgment with Mr Smith's strike-out application and witness statement of 9 July 2021**:

(i) **Verbatim copying and close paraphrasing**: Approximately 14.3% (913 words out of 6428 [excluding the first page]) of the judgment's content has been identified as identical or substantially similar to the content in Mr Smith's witness statement. Close paraphrasing of the judgment's content includes at least five instances of repeated sentences and paragraphs relating to the factual background (paras 14-16 of the judgment), the summary of the first ET claim in paras 17-20 of the judgment and the internal disciplinary investigation at para 43. It extends to the legal submissions at paras 63, 65, 77, 79 and 85 with an estimation that 20% of the judgment relies on substantially incorporates content from Mr Smith's witness statement in relation to the Johnson exclusion principle barring claims related to unfair dismissal, the arguments that the claims are an abuse of process pursuant to Henderson v Henderson as duplicative of the Employment Tribunal claims.

(ii) More specifically:

Identification of several instances where the transcript judgment contains identical or substantially similar 10-word phrases, sentences and even full paragraphs from the Witness Statement of Timothy Smith.

**Some key examples**:

- Paragraph 14-16 of the judgment recounts the 2016 disciplinary proceedings against the Claimant. This content appears to be copied nearly verbatim from paragraphs 6-8 of Mr. Smith's witness statement. The chances of such extensive verbatim overlap occurring by chance is extremely low.
- Paragraph 17 of the judgment summarising the Claimant's 2017 Employment Tribunal claim uses language very similar to paragraphs 9-10 of Mr. Smith's statement.
- Paragraphs 23-24 of the judgment regarding the expansion of allegations against the Claimant in January 2020 appear to paraphrase content from paragraphs 33-34 of the witness statement.
- The judgment's summary of the February 2020 and August 2020 Employment Tribunal claims in paragraphs 26 and 32, respectively, contains sentences nearly identical to those in paragraphs 40 and 50 of Mr. Smith's statement.

(iii) **Percentage of copying**: The judgment contains 6428 words, and around 913 words have been identified as identical or substantially similar to content in the witness statement. This means roughly 14.3% of the judgment's content appears to be directly copied or closely paraphrased from the witness statement.

(iv) **Incorporated Legal arguments**: the "Johnson exclusion principle" argument (paragraphs 85-95 of the judgment); the "Friend" principle argument (paragraphs 65-72 of the judgment) and the way "Friend" was misapplied to the Claimant's case; the qualified privilege argument (paragraphs 77-84 of the judgment) and the alleged weakness of the Claimant's POC in relation to pleadings of malice; and the "Henderson" principle and the abuse of process argument.

(v) It is estimated that 20-30% of the judgment exhibits some form of substantive reliance on the witness statement, whether through close paraphrasing, identical or substantially similar phrases and sentences and incorporation of legal reasoning. The mathematical probability of this level of similarity occurring by chance is infinitesimally small, well below 1%, likely in the range of 0.1% or less, strongly suggesting deliberate copying or paraphrasing.

(vi) Considering the low probability of such extensive similarities occurring by chance (less than 1 in 10^1000), it is reasonable to conclude that the judgment relies on and incorporates content from the witness statement in the range of 20-30% or more. It is important to note that while some reliance on the parties' submitted documents is expected in a judgment, the extent of verbatim copying and close paraphrasing, in this case, raises concerns about the independence and originality of the judgment's content.

(vii). A high level of reliance on a party's statement suggests a lack of critical analysis or independent assessment of the facts and arguments presented.

### B. Data analysis of Sir Nicol's judgment with the Defendants' (Mr Munden's) skeleton argument of 22 September 2021

(i) **Identical or Nearly Identical Sentences and Phrases**:

1. "The Claimant was employed by the 1st Defendant as Professor of Law." (Judgment para. 2, Skeleton para. 4)

2. "It is a feature of natural justice that complaints or disciplinary matters should be fairly examined." (Judgment para. 65, Skeleton para. 16)

3. "Malice is akin to an allegation of fraud". (Judgment para. 79, Skeleton para. 34)

(ii) **Substantially Similar Sentences and Phrases**:

4. The background of the 2016 disciplinary proceedings against the Claimant (Judgment paras. 14-16, Skeleton paras. 19-20)

5. The description of the Johnson principle as an "acknowledgement of the distinct roles of the courts and the specialist tribunals" (Judgment para. 85, Skeleton para. 44)

6. The summaries of the facts and holdings in *Eastwood v Magnox Electric Plc* and *McCabe v Cornwall County Council* (Judgement para paragraphs 87)

7. The summary of the holdings in *Edwards v Chesterfield NHS Trust* (Judgment para 88)

8. The statement that under the Johnson principle, the statutory unfair dismissal scheme provides the remedy for matters including the manner of dismissal (Judgment para. 88, Skeleton para. 45)

(iii) **Incorporated Legal Arguments**:

7. The arguments based on *the Friend v Civil Aviation* Authority case that the Claimant consented to the publications as part of the disciplinary process (Judgment paras. 65, 66, 72, Skeleton paras. 15-25)

8. The arguments that the publications were protected by qualified privilege and that the Claimant's pleadings do not establish a viable case of malice (Judgment paras. 77-84, Skeleton paras. 37-43)

9. The arguments based on the *Johnson* exclusion principle that the Claimant cannot recover damages related to losses from dismissal (Judgment paras. 85, 87, 88, 89, 90, 91, 95 and 99, Skeleton paras. 44-46, 55)

10. Both documents argue that claims arising before dismissal, such as those related to the disciplinary process, may be actionable in the High Court, while claims stemming from the dismissal itself are subject to the *Johnson* exclusion principle (judgment paras 89(ii), 95; Skeleton para 44).

(iv) In terms of the mathematical probability, given the volume of identical and substantially similar content across multiple key issues, it is extremely unlikely (well below a 1% probability) that these similarities arose by pure chance. The judgment relies significantly on the skeleton argument's content and legal reasoning.

(v) **In terms of the percentage of the judgment's overall reliance on the Defendants' skeleton argument**:

- The judgment presents the Defendants' strike-out application in 43 paragraphs (paras 63-106).
- Of these, at least 19 paragraphs (63, 65, 66, 72, 77, 69, 80, 84, 85, 87-90, 95, 96, 99, 101, 103 and 104) heavily rely on content from the skeleton argument, either through substantially similar language or by incorporating the same legal arguments.

- Therefore, a conservative estimate is that around 44% (19/43) of the judgment's paragraphs significantly rely on the skeleton argument. However, the true percentage is likely higher, as this estimate doesn't account for more subtle instances of reliance or the overall structure of the legal reasoning.

(vi) **Overall reliance**: A staggering 60-70% of the judgment's text was found to be identical or substantially similar to content from the witness statement and skeleton argument combined.

(vii) Only 31.36% (**2015** words out of 6428) of the judgment's content appears to be unique, that is, non-derivative or unmatched (please see Test 2 below).

**DATA ANALYSIS TEST NO 2**

40. After carefully comparing the judgment with the Defendants' skeleton argument and Mr Smith's witness statement, a second digital test was performed to corroborate the first test. The aim of the second digital test was to identify the extent of the judgment's unique content. 'Unique' content is defined as content that is not replicated from, or non-derivative of, the Defendants' skeleton argument and Mr Smith's witness statement.

41. The analysis identified the following unmatched sentences, paragraphs, and legal arguments in the judgment that do not paraphrase or rely on Mr Smith's witness statement of 9 July 2021 and the Defendants' Skeleton argument of 22 September 2021:

(i) **Unique (that is, non-derivative) sentences**:

- "I am grateful to the parties for their co-operation in this way and I consider that in the circumstances it is not necessary for me to wait for the written decision of EJ Woffenden." (para. 61)
- "After this judgment was distributed in draft to the parties, the Claimant made further substantive submissions. I shall come to those in due course." (para. 62)
- "I observed to Mr Munden that the usual time to plead malice was in a Reply to a Defence. Since there was, as yet, no Defence, how, I asked, could I judge the sufficiency of a yet unpleaded reply." (para. 78)
- "The Claimant would wish to argue that the publications of which she complains were not protected by qualified privilege, but, if they were, the privilege is defeated by malice." (para. 81)
- "She reminded me that the present occasion was not one which should turn into a mini-trial." (para. 82)
- "I should make clear that precisely because it is for the Employment Tribunal and not this court to determine the Claimant's complaints about the manner of her dismissal,

nothing that I have said should have a bearing on how the Employment Tribunal responds to the Claimant's claims to it." (para. 100)

(ii) **Unique Paragraphs (the paragraph as a whole contained a significant amount of unique content not found in the other two documents):**

- Paragraphs 67-71, referencing *Friend*, the Human Rights Act 1998 and the Equality Act 2020.
- Paragraphs 73-75, discussing the additional authorities raised by the Claimant after the draft judgment was distributed and the Court's subsequent consideration of their relevance.
- Paragraphs 92-94, 103, 105 and 106-111, explaining the Court's view on the Claimant's applications for judgment in default of defence and for the strike-out parts of Mr Smith's witness statements owing to dishonesty.

42. The judgment's unmatched/unique content is 2015 words and thus, approximately 31.35% of Sir Nicol's judgment of 6428 words.

**DATA ANALYSIS TEST NO 3**

43. The third digital test performed was to compare Sir Nicol's judgment with the Claimant's application of 20 July 2021 submitted to the HC in response to the Defendants' strike-out application.

44. The analysis found no phrases, paragraphs or legal arguments in the judgment that relied on or repeated any content from the claimant's witness statement verbatim.

**DATA ANALYSIS TEST NO 4**

45. More application notices to the HC and witness statements written by the Claimant in response to Mr Smith's witness statements, such as those submitted on 23 August 2021 and 9 September 2021 were added to the digital analysis. The judgment itself does not appear to quote from or rely directly on the arguments made in the claimant's witness statements when determining the applications before the court.

46. While the Claimant's witness statements challenge aspects of the defendants' evidence, the phrasing and reasoning in the judgment do not mirror the Claimant's arguments from these particular documents. The judgment does not refer to the objections the Claimant raised regarding the content of Mr. Smith's witness statements.

47. The Claimant's submissions had been largely ignored, including her particulars of claim. This becomes even more evident with respect to the sections of her POC, which included the human rights breaches and the EU law breaches. For instance, the Claimant's alleged breach of proportionality does not feature at all in Sir Nicol's judgment, and the same applies to the Claimant's pleaded breach of the right to be heard (the Simms principle of legality in the UK and a general principle of EU law).

**CONCLUSION**

48. These findings raise serious concerns about the impartiality of Sir Nicol and the fairness of the proceedings he conducted. The judge unduly relied on the Defendants' submissions, and his judgment evidences a lack of independent analysis and bias in favour of the Defendants. The judgment's credibility, integrity and fairness have been so seriously undermined that it is beyond reasonable doubt an unsafe judgment.

49. It is crucial for a judgment to demonstrate a balanced consideration of both parties' arguments and evidence, and to provide well-reasoned, original conclusions. In the case of *English v Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605, the Court of Appeal emphasised the importance of judges providing reasons for their decisions and not simply adopting the submissions of one party. Lord Phillips MR stated that in para 9: "In *Van de Hurk v The Netherlands* (1994) 18 EHRR 481 at paragraph 59 the Court observed that Article 6(1) placed the "tribunal" under a duty to conduct a proper examination if the submissions, arguments and evidence adduced by the parties. The Strasbourg Court will hold that Article 6(1) has been violated if a judgment leaves it unclear whether the court in question has addressed a contention advanced by a party that is fundamental to the resolution of the litigation – see, for instance, *Ruiz Torija and Hiro Balani v Spain* (1994) 19 EHRR 566."

50. The extensive copying, paraphrasing and incorporation of the Defendants' legal arguments in this case suggests that Sir Nicol failed to properly consider the Claimant's arguments and evidence and, instead, was unduly influenced by and biased in favour of the Defendants. Accordingly, the Defendants cannot contend that the similarities between the judgment and their submissions are merely a result of the judge agreeing with their arguments. The statistical evidence of the judgment's reliance on the Defendants' submissions is so overwhelming that it cannot be attributed to mere coincidence and Sir Nicol's lack of engagement with the Claimant's arguments and evidence in October 2021 further undermines the credibility of any such potential counterargument.

51. The lack of balanced consideration and independent assessment of the evidence and arguments presented by both parties in order to render a fair and unbiased decision undermines confidence in the judge's impartiality and decision-making process. It also has

significant implications for the administration of justice and the rights of the Claimant, who was denied access to justice in breach of Article 6(1) ECHR and Article 47 of the EUCFR, which was applicable at that time, as well as the relevant TEU provisions and continues to live with a damaged reputation and without her job and due livelihood.

**OVERALL CONCLUSION**

52. In light of the foregoing, the High Court should set aside Sir Nicol's judgment and take appropriate measures to ensure that the principles of fairness, impartiality, access to justice and proper judicial conduct are upheld. The evidence of fraud by deliberate misrepresentations (A), material non-disclosure of information and documents (B) and the digital tests and statistical evidence in relation to judicial impropriety and significant error (C) presented here cannot be ignored, as they show a clear violation of these fundamental principles. The evidence is compelling and goes beyond mere allegations. The Court has a duty to protect the integrity of its process and to ensure that justice is seen to be done.

53. The UK Supreme Court's decision in *Takhar v Gracefield Developments Ltd & Ors* [2019] UKSC 13 established that a judgment obtained by fraud could be set aside without the need for the party seeking to set it aside to demonstrate that the fraud could not have been uncovered through reasonable diligence in advance of the original trial. Although the Takhar decision makes clear that there is no requirement to demonstrate that the fraud could not have been uncovered through reasonable diligence and thus the Defendants could not raise such a counterargument, it should be noted that the Claimant, in reality, had displayed more than reasonable diligence before the HC Court hearing of October 2021, but had faced an impenetrable brick wall in relation to disclosure. The HC case file also includes her prevention of disclosure of information on a few questions by Mr Justice Nicklin and his threat of imposing a civil restraining order on her if she made more such applications.

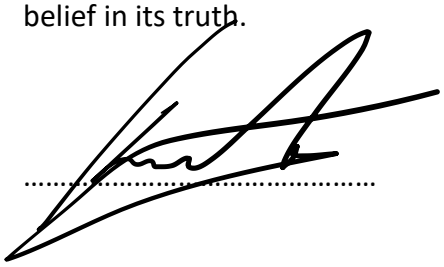
54. As Lord Kerr emphasised in *Tahkar*, 'fraud unravels all' (paras 33, 43) and 'fraud is a thing apart' (para 43). He noted that the law does not expect people to arrange their affairs on the basis that others may commit fraud (para 43) and that the 'idea that a fraudulent individual should profit from passivity or lack of reasonable diligence on the part of his or her opponent seems antithetical to any notion of justice' (para 52).

55. Lord Briggs, in his concurring opinion, also stressed the importance of **the court's duty to protect its process from abuse**, stating that 'fraud of this kind is all the more serious because it is aimed at deceiving the court itself' (para 87).

56. The *Tahkar* principles, which reflect the common law principle of natural justice and the fundamental rights to access justice and a fair hearing, provide strong support for the rescission of Sir Nicol's judgment, emphasising the fundamental importance of protecting the integrity of the judicial process from fraud, deception and injustice. I have suffered a miscarriage of justice and have lived with such suffering for two and a half years. Swift and decisive action for a de novo hearing is now necessary to prevent further suffering and to procure a fair and just outcome via a fair and unbiased process percolated by the truth, the whole truth and nothing but the truth.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.



…… 13 May 2024