Case No: QB-2021-000171

Kostakopoulou v University of Warwick and Others

CORE COURT DOCUMENTS BUNDLE INDEX

Claim Form

In the High Court of Justice, Queen's Bench Division, Media and Communications List	
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For court use only	
Claim no.	
Issue date	

HIGH COURT OF JUSTICE
15 Jan 2021
QUEEN'S BENCH DIVISION
SEAL
QB-2021-000171

Claimant(s) name(s) and address(es) including postcode

Professor Theodora Kostakopoulou of 32 Sneyd Avenue, Westlands, Newcastle under Lyme, Staffordshire, ST5 2PP

Defendant(s) name and address(es) including postcode

(1) **University of Warwick** (Corporate Body incorporated by Royal Charter under Royal Charter Number: RC000678) of The University of Warwick, Coventry, CV4 8UW

(2) **Professor Andrew Sanders** of The University of Warwick, Coventry, CV4 8UW

(3) **Professor Christine Ennew OBE** of The University of Warwick, Coventry, CV4 8UW

(4) **Professor Andy Lavender** of Guildhall School of Music and Drama, Silk Street, Barbican, London, EC2Y 8DT

(5) **Ms Diana Öpik** of The University of Warwick, Coventry, CV4 8UW

Brief details of claim

The Claimant's claim is for:

(1) Damages, including aggravated damages, for libel and/or malicious falsehood in respect of words published or caused to be published by the First Defendant contained in statements concerning the Claimant between January 2020 and 17 September 2020

(2) Damages, including aggravated damages, for libel and/or malicious falsehood in respect of words published or caused to be published by the Second Defendant contained in statements concerning the Claimant in or around January 2020 and March, April, May and/or June 2020, repeating the statements made by the Second Defendant on 12 January 2020

(3) Damages, including aggravated damages, for libel and/or malicious falsehood in respect of words published or caused to be published by the Third Defendant contained in letters to and concerning the Claimant and copied to third parties, on 16 January 2020, 20 January 2020 and 1 June 2020

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(4) Damages, including aggravated damages, for libel and/or malicious falsehood in respect of words published or caused to be published by the Fourth Defendant contained in a letter of 23 January 2020, a Confidential Investigation Report concerning the Claimant on 13 May 2020 and damages, including aggravated damages for slander in respect of statements made by the Fourth Defendant at a hearing on 20 July 2020

(5) Damages, including aggravated damages, for libel and/or malicious falsehood in respect of words published or caused to be published by the Fifth Defendant contained in a statement concerning the Claimant in or around March or April 2020

(6) Damages pursuant to section 8 of the Human Rights Act 1998 (HRA) to afford the Claimant just satisfaction for a breach of her rights under Articles 8 and 14 of the European Convention of Human Rights (taken with section 6 of the HRA), breaches of Articles 1, 7 and 21 of the Charter of Fundamental Rights of the European Union and breaches of the General Principles of EU law, including the right to be heard and proportionality and other primary EU law

Value

The Claimant cannot say how much she intends to recover, save that she does not expect the amount in damages to exceed £100,000.00.

You must indicate your preferred County Court Hearing Centre for hearings here *(see notes for guidance)*

The Claimant's claim must be issued in the High Court pursuant to section 15(2)(c) of the County Courts Act 1984 and CPR PD 7.2.9.

This claim is to be placed in the Media and Communications List.

Defendant's name and address for service including postcode

1. **University of Warwick**, The University of Warwick, Coventry, CV4 8UW

2. **Professor Andrew Sanders**, The University of Warwick, Coventry, CV4 8UW

3. **Professor Christine Ennew OBE**, The University of Warwick, Coventry, CV4 8UW

4. **Professor Andy Lavender**, Guildhall School of Music and Drama, Silk Street, Barbican, London, EC2Y 8DT

5. **Ms Diana Öpik**, The University of Warwick, Coventry, CV4 8UW

	£
Amount claimed	Unspecified
Court fee	£5,000.00
Legal representative's costs	To Be Advised
Total amount	

Claim No.	

Does, or will, your claim include any issues under the Human Rights Act 1998? [**X**] Yes [ ] No

Particulars of Claim to follow

Statement of Truth

*The claimant believes that the facts stated in these particulars of claim are true. The claimant understands 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.

* I am duly authorised by the claimant to sign this statement

Full name Jeremy Clarke-Williams

Name of claimant's legal representative's firm Penningtons Manches Cooper LLP

signed _____ position or office held Partner

*(Claimant's legal representative (if signing on behalf of firm or company)

**delete as appropriate*

Penningtons Manches Cooper LLP
125 Wood Street
London
EC2V 7AW

DX: 42605 Cheapside
Email: jeremy.clarke-williams@penningtonslaw.com
Ref: JCC/GSJ/4010454

Claimant's or claimant's legal representative's address to which documents or payments should be sent if different from overleaf including (if appropriate) details of DX, fax or e-mail.

IN THE HIGH COURT OF JUSTICE **Claim No.: QB-2021-000171**

QUEEN'S BENCH DIVISION

MEDIA AND COMMUNICATIONS LIST

BETWEEN:

PROFESSOR THEODORA KOSTAKOPOLOU

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

PARTICULARS OF CLAIM

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1. Professor Theodora Kostakopolou ("**the Claimant**") was at all material times employed by the University of Warwick ("**the First Defendant**") as a Professor of Law at The University of Warwick, Coventry, CV4 8UW.

2. Professors Andrews Sanders, Christine Ennew OBE and Andy Lavender ("**the Second to Fourth Defendants**" respectively) were employees of the First Defendant. Professor Sanders was the Head of Warwick Law School and line manager of the Claimant. Professor Ennew was the Provost of Warwick University and the person who placed the Claimant formally under a disciplinary investigation, articulated in writing and published false and defamatory statements about the Claimant, ordered the Claimant's suspension from the University of Warwick on 16 January 2020, maintained her

suspension for more than six months and convened a disciplinary hearing chaired by her Deputy, Professor Meyer, which culminated in the Claimant's dismissal on 20 July 2020. Professor Lavender is the investigator appointed by Professor Ennew. In the premises, the First Defendant was vicariously liable for the actions of the Second, Third and Fourth Defendants as outlined below.

3. Ms Diana Opik ("**the Fifth Defendant**") was at all material times a law student at the First Defendant.

4. Protective High Court proceedings were issued on 15 January 2021.

5. The Pre-Action Protocol for defamation and malicious falsehood claims was adhered to by the Claimant with respect to all Defendants and an invitation to alternative dispute resolution was issued.

6. The Defendants provided no response under the Pre-Action Protocol, and declined the offer of engagement in alternative dispute resolution on 17 February 2021.

Background

7. The Claimant joined the University of Warwick in September 2012 as Professor of European Union Law, European Integration and Public Policy. Formerly, she was Professor of European Law and European Integration and Director of the Centre for European Law at the University of Southampton (2011-12) and Professor in European Law and European Integration and Co-director of the Institute for the Study of Law, Economy and Global Governance at the University of Manchester (2005-2011), where she spent twelve years. She held a Jean Monnet Chair in European Law there, having previously been a Jean Monnet post-holder at the University of East Anglia. In all the above posts, she had displayed exemplary

conduct and performance and has acquired national and international reputation for her contributions to social science, law and academic affairs.

8. Professor Andrew Sanders (the Second Defendant) had provided a very good reference praising the Claimant's integrity (- 'her [The Claimant's] integrity is second to none' he had written) for her appointment at Warwick University in 2012 because the Claimant had been under his management at Manchester Law School for several years.

9. On the day of the Brexit Referendum, that is, on 23 June 2016, the former Head of Warwick Law School, Professor Rebecca Probert, wrote a letter of formal notice of disciplinary proceedings against the Claimant. She accused her of disruption and inappropriate behavior at a staff meeting on 15 June 2016.

10. Protesting her innocence, the Claimant immediately complained about victimisation to the Director of Human Resources first (27 June 2016) and then to Professor Croft, the Vice Chancellor of the University of Warwick, outlining the breach of the principles of natural justice and the procedural irregularities of Professor Probert's action. The formal complaint about breaches of the law and Warwick University's procedures, was followed by a second letter to Professor Croft on 24 July 2016 detailing the substantive unfairness of Professor Probert's accusations and the Claimant's discriminatory treatment.

11. The Claimant commenced her annual leave on Monday, 25 July 2016.

12. A week later, on 2 August 2016, Professor Croft suspended the Claimant on the basis of 'information' he had received relating to allegations which to date, that is, five years later, continue to remain baseless.

13. Professor Croft knowingly made unsubstantiated allegations in order to harm the dignity, physical and mental health and the career of the Claimant.

Part 18 Request for FI: 1

In relation to paragraph 13 of the particulars of claim and the assertion that *"Professor Croft knowingly made unsubstantiated allegations in order to harm the dignity, physical and mental health and the career of the Claimant"*.

Please identify the basis upon which it is alleged that Professor Croft *"knowingly"* made such allegations providing full details of the actions or events which gave rise to such knowledge, where and when they took place and who was involved.

Response

I understand this request was made before BML's receipt of substantial documentation relating to this event and interviewing Professor Croft.

But I am pleased to inform you that by letter dated 2 August 2016, Professor Croft voluntaritly made unfair allegations lacking any connection with objective facts and suspended me. Professor Croft wrote: *'I am writing to inform you that I have received information relating to allegations, which, if proven, may form good cause of dismissal…. It is alleged that you have: 2) Engaged in conduct constituting harassment towards the Engaged in conduct constituting harassment towards the Head of Department, Professor Probert, and other members of the administrative and academic staff within the School of Law, including but not limited to the circulation of persistent, intimidating and unsolicited emails. The allegations are such that it leads the University to believe that they constitute good cause for dismissal, as laid out in Statute 24, Part I, paragraph 5, subparagraphs (1)(b): conduct of an immoral, scandalous or disgraceful nature incompatible with the duties of the office of employment (allegation (2) above); and/or 1(c): conduct constituting failure or persistent refusal or neglect or inability to perform duties to comply with the conditions of office (allegation (1) above).*'

Professor Croft's letter provided no information on what I was meant to have done which displayed 'conduct of an immoral, scandalous or disgraceful nature'. Nor was there any information on who had made such allegations. Professor Croft had not conducted a preliminary investigation to examine whether there was a prima facie case of gross misconduct and he did not interview me before taking the decision to suspend me. By so doing, he had disregarded my natural justice-based right to be heard and to refute the allegations by providing the relevant evidence. I was on annual leave and as far as I knew no one had raised any formal or informal complaint of harassment prior to the commencement of my annual leave. I was severely distressed. Within a few days, I was experiencing severe anxiety, panic attacks, chest pains, shaking, sleeplessness and was unable to do ordinary, simple things and to look after my family. Within a short period of time, I descended into 'a black hole' having to rely on heavy medication (sleeping tablets and anti-depressants), which were causing me further adverse effects and heartaches, and which led the NHS North Staffordshire Well-being Service, to which my GP referred me, to refer me to MIND for counselling for severe depression. The incontinence, anxiety and the panic attacks I was

experiencing prevented me from leaving my house, carrying out my business and functioning normally.

Further details are included in the documentation relating to ET1 of Case No 1301587/2017. Please be informed that I made 18 Requests for Further Information during the course of legal proceedings for basic factual information on what I was supposed to have done wrong, when, how and to whom which were resisted by the University of Warwick and the tribunals.

Professor Croft, who had failed to take corrective action at an early stage when I had raised my complaints of discrimination and victimisation to him, had shown him a 'planted' student questionnaire form which stated 'Dora can't speak English well enough' in his office on 19 August 2015, had informed him about unauthorized interference with my staff webpage which had resulted in the deletion of sub-pages with my publications I had created and about the omission of my statements and contributions during Law School committee meetings from the minutes of those meetings and on other occasions their incorrect recording in order to depict me in a negative light and had requested a transfer to another University department, suspended me on 2 August 2016 while I was on annual leave by making allegations which were untrue in substance and in fact in retaliation to protected acts and protected disclosures, including of the Data Protection Act 1998, I had made. Professor Croft, who was also familiar with the very protracted suspension of another innocent professor, namely, Professor Docherty, was aware of the likely consequences of his actions, that is, the reasonably foreseeable professional, physical and mental injuries.

14. Professor Croft never gave advance warning of his decision to suspend the Claimant, did not consult her and did not make her aware of the circumstances surrounding his decision. As a consequence, the Claimant, who was on annual leave when she received by email Professor Croft's suspension, suffered a psychiatric injury.

Part 18 Request for FI: 2

i) Please explain whether it is the claimant's case that Professor Croft was under an obligation to provide:

(a) Advanced warning of his decision.

(b) To consult the claimant.

(c) To make her aware of the circumstances surrounding his decision.

and, if so, identify the basis for any such assertion.

ii) In the event that the claimant intends to pursue a claim for personal injury please provide all of the information required by the Personal Injury Pre-Action Protocol including:

(a) A clear summary of the facts.

(b) The circumstances of the incident giving rise to the injury.

(c) The reason why the claimant is alleging fault on the part of the defendants.

(d) A description of the injuries including a non-exhaustive list of the main functional effects on daily living.

(e) Details of any treatment received.

(f) An explanation as to whether the claimant is still suffering from the effects of her injury.

(g) Any loss of earnings or other financial losses said to have been caused by the alleged injury.

Response:

i) Para. 14 consists of factual statements and not assertions. In so far as this specific request seeks to elicit legal argument prematurely, I would not mind noting that such obligations are based on natural justice and the right to be heard, the duty of care an employer has, the duty of due diligence with respect to an engagement with an employee's fundamental rights and the duties to secure, respect and promote fundamental rights, equality law, health and safety law and the related case law.

ii) Claim No. QB-2021-000171 does not contain any personal injury claim.

15. When the Claimant wrote to Professor Croft on 9 September 2016 evidencing her innocence, Professor Croft intentionally disregarded her letter for more than 50 days and continued to keep her in suspension for four months in order to accentuate the harm caused on her. The suspension lasted from 2 August 2016 to 8 December 2016.

Part 18 Request for FI: 3

Please identify:

i) The facts and matters giving rise to the assertion that Professor Croft *"intentionally"* disregarded the claimant's letter.

ii) The facts and matters relied upon in support of the allegation that Professor Croft disregarded the claimant's letter *"in order to accentuate the harm caused on her"*.

Response:

Shakespeare Martineau must have forwarded to you the ET1 documentation relating to Case No 1301587/2017. In it (i.e., FBP of 22 August 2017), it is stated:

'…This means that Professor Croft knew that the allegations were false and that I had not displayed 'conduct of an immoral, scandalous or disgraceful nature'. Yet, [he] did not act in late August 2016 to end my suspension and to avert any further injury. Instead, [he] continued to subject me to the cruelest victimisation hoping that I would be completely destroyed mentally and being rendered weak physically and thus that I would resign. I believe this was a detriment.

While I was 'in the black hole', I genuinely believed that the duties of care and due diligence that the Vice Chancellor, Professor Croft, has, in conjunction with his knowledge of my complaints, predicament and requests for a transfer to PAIS (in August and November 2015), should have led him to investigate whether there was prima facie evidence of gross misconduct before ordering my suspension. His lawyers or advisers could have gone through the emails I received on 26 August and could easily discern in less than fifteen minutes that there was no 'conduct of an immoral, scandalous or disgraceful nature incompatible with the duties of office or employment' to warrant my summary dismissal. He had read my letter of referral of the legality of Professor Probert's proposed unjustified disciplinary proceedings (dated 9 July 2016) – a letter that was explicit about the breaches of natural justice, the University regulations and the related ACAS guidelines.

I also believe that the duty of due care the Vice Chancellor has should have led him to ensure that I was given an opportunity to be heard and to make representations before being suspended.

In addition, the duty of due care the Vice Chancellor, Professor Croft, has should have led him to ensure that there were no unreasonable delays in: a) informing me about what I was meant to have done which was framed as harassment and b) replying to my letter, which rebutted the false allegations, dated 9 September which he received on the 16th of September

given the damage to my health, family, career and reputation caused by the suspension. With respect to the latter, the Vice Chancellor did not reply to me for 55 days (I received his letter on 9 November directing that the charges against me should be considered by a disciplinary hearing on 29 November 2016)! This was damaging my health, reputation and career and was a detriment. It led to my second psychiatric injury.

My wrongful suspension was unnecessarily protracted (2 August – 8 December 2016), in breach of the principles of proportionality and reasonableness, and was not kept under review contrary to the ACAS guidelines, Warwick's Disciplinary Policy by analogy, and the UK Employment law.

Professor Croft never wrote to me to provide reasons for my continued suspension. In addition, he did not inform me for several months as to the duration of my suspension and displayed no concern about its impact on my health, self-esteem, career, reputation, personal and family relations in contravention of his duty of due care and health and safety regulations. The lack of objectively legitimate grounds for my suspension (under no circumstances I posed a risk to the operation, safety and reputation of the organisation. Nor did I pose a risk to the quality and integrity of a disciplinary investigation because no investigation was conducted and I was on annual leave until the end of August) and of written reasons justifying its continuation, the extended time and the fact that no time limit had been set with respect to the end of the suspension were detriments I suffered.

Although following our meeting in his office on 19 August 2015 Professor Croft had aided my victimisation by Professor Probert, by failing to take action when action was required to protect and support me, by dismissing my complaints in July 2016 and by suspending me (the complainant) on 2 August 2016 he victimised me.

By failing to provide any supporting evidence on the allegations of harassment for 24 days thereby causing my personal injury, by failing to respond to my letter of 9 September 2016 in which I provided evidence that these were false allegations for 55 days and by not dismissing these allegations, I believe that Professor Croft re-victimised me. Despite the explicit assurances he had given me during our meeting in his office in August 2015, not only had he done nothing to protect me, but he was causing a serious injury to my health, mental integrity, career, reputation and standing in the department, the University and beyond.'

16. Such a conduct on the part of a public body required to comply with the Public Sector Equality Duties, the Nolan Principles of Good Governance and the law, led the Claimant to conclude that the University of Warwick was using bullying, vexatious allegations raised in bad faith and in the absence of an eponymous complaint by any recipient of the conduct complained of in accordance with the established University procedures and misusing suspensions in breach of the law and human rights guarantees in order to 'bully individuals out of the job' (Claimant's communications to Ms Kindon, HR, in November 2016) that is, to induce a breach of contract and thus the resignation of the employee and his/her constructive dismissal.

17. The suspension was intentionally very protracted in order to shield the executive from employment tribunal action, which has to be triggered within three months, and to effect maximum damage to the dignity, reputation and self-esteem of the targeted employee.

Part 18 Request for FI: 4

Please identify:

i)The facts and matters relied upon to support the assertion that the suspension was *"intentionally very protracted"*.

ii) The facts and matters relied upon to support the assertion that this was *"in order to shield the Executive from Employment Tribunal action"*.

iii) The facts and matters relied upon to support the assertion that this was *"to effect maximum damage to the dignity, reputation and self-esteem of the targeted employee"*.

Response:

i) Please see my response to your request No 4 relating to paragraph 15 above.

ii) Professor Croft's ordered suspension of me was excessively long (2 August – 8 December 2016) and lasted while no investigation was taking place. But suspensions are tools for investigation and, given their devastating effect on the health and career of employees, employers have a duty to act reasonably, that is to have reasonable grounds for their action and to do what they can in order to resolve issues swiftly and to keep the suspension as brief as possible and always under review. Professor Croft had no direct evidence of any harassing conduct on my part (- such evidence does not exist), he had received no complaint by any

recipient of my alleged conduct in accordance with the University's policies and procedures, did not observe the ACAS guidelines (e.g., suspension as a last resort, should be as brief as possible, should be kept under review, should be never be used as a punitive measure), and disregarded the tests of proportionality and reasonableness. He misused his power and ensured that the suspension was lifted when the deadline of 3 months for employment tribunal action had passed.
iii) Please see my response to your request No 4 relating to paragraph 15 above.

18. If the suspension did not lead to a resignation, then false allegations would be forced upon an employee via unfair and unnecessary disciplinary hearings and sanctions. In Professor Kostakopoulou's case, these hearings were chaired by Professors Gilson in absentia (on 29 November 2016) and Ennew (the Third Defendant) on appeal (on 15 February 2017).

19. The Claimant never accepted the false and malevolent accusations which any reasonable person would characterize as absurd; Professor Croft accused the Claimant of engaging in conduct constituting harassment of academic staff, but no name was ever produced, and towards Professor Probert by writing:

'*Dear Rebecca, Good morning! I hope you had a lovely weekend! Thank you for your kind email and for the information.*
Have a wonderful day,
Dora

Dear Rebecca,
I followed your advice re the University Regulations and I could only find the following. Have I made a mistake? Is there another webpage? Could you please copy and paste the relevant regulation for me? I cannot see it, I'm afraid. Are not there University Regulations about Council or Committee Proceedings?
Many thanks in advance for your time,
Dora'

20. The Claimant commenced employment tribunal proceedings for victimisation under both the equality and whistleblowing legislation and it was in the course of those proceedings that bullying, victimising accusations were raised for the second time against her in 2019 interfering disproportionately with her human rights, health and well-being, professional career and dignity.

21. The Claimant submitted to the Court of Appeal three complaints and documentary evidence of what she called 'textbook manifestations of bullying and victimisation' on three separate occasions requesting Mr Tai (Civil Appeals Office) to communicate them to the Judge. The first file was submitted on 18 October 2019 at 17.05 pm (- the Defendants' solicitor, Mr Browne, was also a recipient of that email) and her exact words were:

'*… Finally, as promised in my previous communication, I include below the evidence concerning the latest manifestation of victimisation I experienced at work. It highlights the ongoing practice of false and malicious allegations and thus sheds ample light on my suspension of 2 August 2016 and my subjection to unnecessary disciplinary proceedings lasting 8 months. It also shows the importance of the issues that are brought before the Court of Appeal and thus my request for further information on what I am supposed to have done wrong (my natural and fundamental rights).*'

22. The 'second wave of victimisation' was reported on 18 November 2019, and her email communication to Mr Tai, Case Progression Manager at the Court of Appeal, stated:

'*these actions follow the 'textbook' definition of bullying and victimisation of making unfounded, misrepresented or fabricated criticisms/allegations and refusing to substantiate them in writing despite my requests and my invocation of the University policies and the law prohibiting victimisation*'. The file consisted of 21 pages.

23. The third wave of victimisation was reported to the Court of Appeal on 9 December 2019 and the documentary evidence submitted consisted of 14 pages. She reported:

'*…. The same pattern continued during the second half of November and early December; that is, making false criticisms/allegations and refusing to substantiate them, summoning me to [meetings on] days when I have professorial duties in other parts of the*

country or abroad and threatening disciplinary action, emails late in the afternoon in my private email address in order to augment distress and so on. Once again, all this is consonant with the textbook definition of victimisation and bullying'.

24. This file also included Professor Sanders' (the Second Defendant's) letter announcing the commencement of disciplinary proceedings against the Claimant on 4 December 2019.

25. Professor Sanders instigated disciplinary action despite the fact that he had undisputed evidence at his disposal that the Claimant had completed her obligations with respect to personal tutees and had been aware of her unavailability owing to the performance of important contractual duties which could not be cancelled on the specific days and times he had summoned her to his office for a meeting.

Part 18 Request for FI: 5

Please:

i) Identify the *"undisputed evidence"* referred to.

ii) The fact and matters relied upon to support the assertion that Professor Sanders *"had been aware of her unavailability"*.

Response:

i) 'Undisputed evidence' refers to information on Tabula, the online student attendance monitoring system of the University of Warwick, my memo of 3 December 2019 on 'completion of task re tutees' which I sent to both Professor Sanders and to the Director of Undergraduate Studies coupled with my email communications to Professor Sanders during the period 17 November – 3 December 2019 and the absence of any student complaints in accordance with the University of Warwick's procedures.

ii) The facts and matters requested are stated in para 19 below. But I am pleased to elaborate on them, here, referring also to the available evidence in your possession (file DE):

a) The Netherlands Journal of Legal Philosophy required significant revisions to an academic article I had submitted to them and its resubmission. Having promised the resubmission of the revised article by the 12th of November 2019, I was immersed into

research during the Reading Week of the Autumn academic term (4- 8 November 2019) and was at Keele University from 9 am to 5 pm on 7 November 2019 (DE, p. 43). Accordingly, when Professor Andrew Sanders, who joined Warwick Law School in December 2018 as the new Head of Department, wrote to me on 29 October 2019 at 15.33 pm (on the same day that he was notified about my short-term illness and did not display any empathy or concern, DE, p. 44) asking me to go to his office on the 7th of November 2019 at 11.45 am, I informed him about my unavailability in advance (DE, pp. 45-49). On 5 November 2019, he emailed me again, 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, I provided a comprehensive reply on 6 November 2019 and reminded him of my previously notified unavailability because I had to be at Keele University the following day (DE, pp. 45-49). On the same day, 6 November 2019 at 13.04 pm, Professor Sanders sent another email 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)' (DE, p. 45). Despite this email communication and the absence of any wilful disobedience on my part, Professor Sanders later falsely accused me of misconduct for not meeting him on the 7th of November in prejudice to my career, welfare and well-being (DE, p. 50). He took disciplinary action against me on 4 December 2019 (DE, p. 50).

b) I had agreed to deliver a public lecture at the University of Amsterdam on 13 November 2019, and thus had to travel to the Netherlands on the 12th of November, which had been advertised locally, nationally and internationally (on the internet). All expenses, including flights and accommodation, were met by the University of Amsterdam. The University of Warwick's media team was aware of it. Accordingly, when a week before my public engagement in the Netherlands Professor Andrew Sanders chose unilaterally and without consultation the 12th and 13th of November 2019 for a meeting, I informed him about my prior contractual commitments which he explicitly accepted as a valid justification for its impossibility (A. Sanders' email communication on 8 November 2019 at 13.36 pm, DE, p. 52). But he later decided to falsely accuse me of misconduct for failing to meet him on the 12th and 13th of November 2019 (DE, p. 50). He took disciplinary action against me on 4 December 2019 (DE, p. 50).

I took the initiative of suggesting alternative dates to him on 17 November 2019 at 8.19, am: 'If you would like to talk to me, I will be in the office on Monday, Tuesday and Thursday. Please feel free to come to my office or let me know when I can come to your office' (DE, p. 51). I also wrote to him on 28 November 2019 (last paragraph of the email communication at 15.16 pm): 'As I noted in my previous communications,…please feel free to come to my office or to let me know when I could come to see you' (DE, p. 53). Andrew Sanders chose not to reply to me.

Subsequently, Andrew Sanders instructed me to meet him on the unilaterally chosen dates of 2 December and 3 December 2019 when I had examining external examining duties at Southampton University. My contract with Southampton University had been signed on 25 September 2019 (DR, p. 54) and I could not cancel the PhD examining arrangements which lasted from 4 am on 2 December (- the time and date of my departure from home) to 3 pm on 3rd December 2019 (- the time and date of my arrival at Warwick University from the south of England) (DE, p. 55-61). I informed Andrew Sanders about this commitment in advance and suggested several alternative dates for the beginning of Term 2 since Term 1 was due to end that week (- the suggested dates were 6 January, 7 January, 8 January and 9 January 2020; my email communication on 1 December 2019 at 15.41 pm, DE, p. 60).

25. The Claimant was conducting urgent research at Keele University from 9 am to 5 pm on 7 November 2019 in order to meet obligations to the Netherlands Journal of Legal Philosophy, had to travel to the Netherlands in order to deliver a public lecture at the University of Amsterdam (12-13 November 2019) and had external examining duties at Southampton University which could not be cancelled (- a PhD Viva Examination) and lasted from 4 am on 2 December to 3 pm on 3 December 2019.

26. Knowing that if PhD examinations are cancelled, students, including those students who are travelling from abroad and have booked flights and accommodation, could raise legal claims against the examining University for the distress, expenditure and the impact of a delay on the conferment of their degree and that the Claimant had not displayed any willful disobedience of his management request to meet with him, Andrew Sanders charged the Claimant with misconduct which she never committed.

Part 18 Request for FI: 6

Please identify: i) The fact and matters relied upon to support the assertion that Professor Sanders knew that if PhD examinations were cancelled students could raise legal claims for distress, expenditure and impact of a delay. ii)The fact and matters relied upon to support the assertion that Professor Sanders knew that the claimant had not displayed any wilful disobedience of his management request to meet with him.

Reponse:

i) Professor Sanders is an academic, an academic lawyer familiar with standard contract law and the legal consequences of breach of contract and has been a Head of Department for nearly 20 years in several UK Universities. As such, he is aware of all claims students can raise with respect to contractual obligations. ii) These are explicated in the foregoing as well and the subsequent paragraphs. Please see also my last response under para 25.

27. The Claimant had written to Professor Sanders suggesting several alternative dates for a meeting on three occasions, namely, in email communications sent on 1 December 2019 at 15.41 pm, on 28 November 2019 at 14.16 pm and on 17 November 2019 at 8.19 am. Professor Andrew Sanders did not respond to the Claimant regarding the suggested dates.

28. On 10 December 2019, Professor Ennew, the Second Defendant, placed the Claimant under a disciplinary investigation for: a) failing to comply with reasonable management requests, non-attendance at 5 separate meetings to discuss issues raised by students and b) not fulfilling her responsibilities in good faith. She did so knowing that discharge of contractual obligations takes place via performance and that the Claimant's performance could be objectively verified by the University of Warwick's online recording system throughout November and December 2019, the Claimant's submissions during the same period, the Claimant's memo to Andrew Sanders on 3 December 2019 as well as the fact that there was no relevant student complaint.

29. On 6 January 2020, the Claimant submitted to the Chair of the Council of the University of Warwick, Sir Normington, and the Deputy Chair, Ms Cooke, a formal grievance against Professors Sanders and Ennew (the Second and Third Defendants, respectively), reporting 'a serious incident of malice, bullying, and victimisation in our academic community which has

been designed to put me in a detrimental position. It brings into play breaches of the law (EA 2010, PIDA 1998, EUCFR, ECHR), the Dignity at Warwick Policy, Warwick's Guiding Principles, the Disciplinary Policy and of Health and Safety Regulations'. She also submitted direct evidence demonstrating that the allegations lacked substance and validity and, more importantly, that were raised in bad faith.

30. Following the submission of the formal grievance, Professor Ennew, Provost of the University of Warwick, proceeded to suspend the Claimant by a letter addressed to her on 16 January 2020.

31. The suspension was carried out in a manner intended to hurt, humiliate and degrade and did not follow the ACAS guidance on suspensions (i.e., suspension as a last resort, exploration of alternative options, strong prima facie case of misconduct, prior investigation to establish facts, the employee ought to be heard, the length of it should be indicated to the employee and so on).

Part 18 Request for FI: 7

Please identify the facts and matters relied on in support of the assertion that the intention was to hurt, humiliate and degrade the claimant.

Response:

The requested information was included in the subsequent paragaphs.

32. More specifically, on Thursday 16 January 2020 at 1.10 pm, Professor Nudds, Head of Social Sciences, and an HR adviser knocked on the Claimant's office door, interrupted a meeting she had with one of her supervisees, asked the supervisee to step outside my office and delivered by hand Professor Ennew's letter of suspension to the Claimant. The Claimant was then ordered to collect her things and to leave the office immediately. The Claimant was in significant distress and did not know how to cope because she had arranged a number of meetings with tutees, supervisees and PhD students that afternoon.

33. Professor Ennew's suspension letter was not accompanied by any written complaint about the Claimant. No supporting evidence and no factual details about what the Claimant was supposed to have done were included. No prior investigation had been conducted to ensure

there was a prima facie case of misconduct and that any (malicious) allegation was true and accurate. Finally, no reasons for the suspension were provided and there was no indication about its length.

34. The accusations against the Claimant were:

'*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 fulfillment of your duties.*

You have harassed and displayed threatening and intimidating behaviour towards students when questioning them in relation to complaints they may have made against you.'

35. The Claimant proceeded to tender a formal internal grievance on 17 January 2020 against Professor Ennew's reprisal for malice, bullying and victimisation and for breaches of the law and the University of Warwick's policies. In it, the Claimant also reported inter alia that Professor Ennew had failed to abide by the natural justice requirements, which form part of all employees' contractual obligations at the University of Warwick, and the procedural fairness requirements mandated by the impartiality provisions of the Disciplinary Policy of the University and due process. She also submitted that Professor Ennew had disregarded the common law principle of legality (the Simms principle) which requires that individuals have a right to be heard before their rights can be affected, and that she had failed to respect the fundamental right of human dignity and the personality rights stemming from Article 8 ECHR and Article 7 EUCFR and the Human Rights Act. The Claimant made also protected disclosures on breaches of the duty of care, health and safety regulations, Equality law and the Dignity at Warwick Policy which prohibits victimisation and bullying and vexatious allegations made in bad faith.

36. Believing that the requirements of proportionality and reasonableness had not been met, that the suspension was a purely punitive measure since the Claimant had done nothing wrong and that the ACAS requirements about workplace suspensions and the case law of this country had not been met, on 22 January 2020 the Claimant wrote to the Chair of the Council, Sir Normington.

37. Between 22 January 2020 and 20 July 2020, the date of the Claimant's summary dismissal by a disciplinary panel chaired by Professor Ennew's deputy, Professor Meyer, the Claimant submitted to the University of Warwick (the First Defendant) an incredible number of letters, email communications and documents containing protected, whistleblowing disclosures and demonstrating that the accusations against her were false and malicious since:

a) she had only made a brief email enquiry with one student, Ms Opik (the Fifth Defendant) as follows:

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 – DO: 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: - DO: 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!

and

b) she had only enquired on 9 January 2020 whether another student, who was MS Opik's boyfriend at that time and had a meeting with the Claimant during the first week of the new academic year (in October 2019), would be willing to verify their meetings in any future investigation. The student had unreservedly replied in the affirmative.

38. The email communication above, which falls within the remit of the fundamental right of freedom of expression, was not a manifestation of a willful or deliberate breach of serious disciplinary rules (the definition of gross misconduct), such as physical violence, assault, threatening or intimidating behavior and acts constituting harassment, discrimination or

victimisation or offensive language or behaviour of a serious nature (including on the grounds of sex, race, disability, sexual orientation, religion and belief, gender reassignment, pregnancy and maternity, marriage and civil partnership, or age), as postulated in Appendix 1 of the Disciplinary Policy of the University of Warwick.

39. Nor did the email communication above indicate that the Claimant was even remotely interested in the content of any communications Ms Opik might have had with Professor Sanders in order to ground a presumption of an intention of an 'attempt to influence witnesses … in an effort to undermine the on-going investigation'.

40. Professor Ennew's reference to students, in plural, being 'harassed, intimidated and threatened' was also a fabricated lie. There was no factual evidence of such actions.

41. Disregarding the Claimant's multiple submissions, evidence, protected disclosures under PIDA 1998 and pleas about risks of heath injury and harm to her human dignity, career and reputation, the University of Warwick (the First Defendant) kept the Claimant in suspension for six months, namely between 16 January 2020 and 20 July 2020.

42. The Claimant was summarily dismissed on the basis of gross misconduct on 20 July 2020 by a disciplinary hearing chaired by Professor Ennew's Deputy, Professor Caroline Meyer, in absentia. The disciplinary hearing was convened when the Claimant was off sick and under a medical certificate for being unfit for duties.

Claims

Damages pursuant to section 8 of the Human Rights Act 1998 (HRA) to afford the Claimant just satisfaction for a breach of her rights under Articles 8 and 14 of the European Convention of Human Rights (taken with section 6 of the HRA), breaches of Articles 1, 7 and 21 of the Charter of Fundamental Rights of the European Union and breaches of the General Principles of EU law, including the right to be heard and proportionality and other primary EU law.

43. The First Defendant is a public authority within the meaning of section 6 of the Human Rights Act 1998. This is a claim pursuant to Section 7(1)(a) of the Human Rights Act 1998.

44. There was an unjustified and disproportionate interference with the Claimant's personality rights entailed by the right to respect for private life (Article 8 ECHR and Article 7 EUCFR) and equal human dignity under Article 1 EUCFR by reason of the First Defendant:

(a) raising false accusations of misconduct and gross misconduct about the Claimant;

And/or

(b) suspending the Claimant and barring her from the University of Warwick campus;

And/or

(c) ignoring the Claimant's multiple submissions about her innocence and the accompanying documentary evidence for more than six months thereby disrespecting her;

And/or

(d) keeping her in suspension for more than six months (16 January – 20 July 2020) thereby impacting detrimentally on her health and well-being, profession, reputation and enjoyment of private and family life;

And/or

(e) dismissing the Claimant on the basis of gross misconduct.

Part 18 Request for FI: 8

In relation to paragraph 44(c)
Please:

i) Identify the facts and matters relied upon to support the assertion that the first defendant ignored the claimant's submissions.

ii) Explain whether it is alleged that the *"disrespecting"* of the claimant is alleged to have been a breach of the claimant's rights as identified in paragraph 44.

Response:

i) There was a persistent failure to act to stop the bullying and the victimisation and a disregard of the evidence I was providing to the First Defendant about the false and malicious nature of the accusations.

ii)The absolute right to human dignity under Art 1 EUCFR, Article 12 UDHR and as an underpinning of both Article 8 ECHR and the ECHR, is premised on the principle that every

human being is of equal worth, is entitled to equal respect and thus ought to be treated accordingly. Respect is an attitude toward someone where the object of that attitude is judged to have some importance, worth or value. Not listening to a human being's pleas and submissions that she had been falsely and unlawfully accused and refusing to take in to account her evidence of groundless accusations raised in bad faith (the documentary evidence about those submissions and their treatment ((i) above) was submitted to BML on 6 June 2021) harm significantly the dignity and personality rights of an employee. The latter is reduced to a non-person, an object to be treated without positive regard and esteem, and according to Dworkin, without the requisite (equal) concern and respect. Ignoring opinions and views and falsely accusing someone of errors not actually made are prime manifestations of workplace bullying and victimisation and of an abusive organisational culture.

45. The First Defendant's conduct, as outlined above, breaches Article 14 ECHR and Article 21 of the EU Charter of Fundamental Rights which applied to, and in, the United Kingdom during the transitional period and is primary EU law. The Claimant was the victim of discriminatory treatment in breach of the above articles taken together with Articles 8 ECHR and 1 and 7 EUCFR.

Part 18 Request for FI: 9

Please identify the discriminatory treatment concerned and provide proper details including where and when it took place and who was involved.

Response:

The statement in para 45 included the words, 'The First defendant's conduct, as outlined above, breaches Article 14 ECHR…'.
Article 14 ECHR is not a self-standing article and thus what was stated with respect to breaches of Article 8 ECHR in para. 44 will also be considered the assessment fo breaches of the prohibition of discrimination on the ground of sex, race or national origin.

46. By suspending the Claimant without giving her advance notice and the opportunity to be heard, the First defendant acted procedurally ultra vires.

47. Because the right to be heard is a mandatory procedural step required under the common law principle of natural justice, the Simms principle of legality as well as a General Principle of EU law, which must always be respected and observed, the suspension of the Claimant was unlawful and the Court should declare it void as a matter of law and thus of having no effect.

48. The First Defendant's actions, as outlined above, also breach other primary EU law, such as Article 31 EUCFR, Article 6(3) TEU, Article 20 TEFU, Article 45(2) TEFU which has been implemented by Regulation 492/2011 (Article 7(1) of Reg. 492/2011) replacing Regulation 1612/68.

Part 18 Request for FI: 10

Please provide details of all the EU law alleged to have been breached.

Response:

The content of the request is unclear; provisions of EU law alleged to have been breached were noted in paras 44, 45 and 47 above in addition to the 'other primary EU law' provisions stated in para 48. Concerning para 48, would you like me to state the wording of, for example, Article 31 EUCFR or Article 6(3) TEU?

49. By acting on no evidence of gross misconduct, by raising accusations of gross misconduct, and/or suspending the Claimant for six months and/or dismissing the Claimant on gross misconduct charges, the First Defendant acted completely disproportionately to the nature of the Claimant's actions.

Part 18 Request for FI: 11

Please explain whether it is alleged that by acting *"disproportionately"* the first defendant breached the claimant's rights and if so, whether a claim is pursued in relation to any such breach. If so, please identify the facts and matters relied upon in support of any such claim.

Response:

The test of proportionality is endemic in the assessment of the pleaded violations of the non-absolute fundamental rights and EU law noted in this section.

49. Fairness requires a public body to act in all its activities in compliance with its public undertakings and assurances and due process, to apply its Dignity at Warwick policy, to display due diligence when the fundamental rights of an employee are engaged, to protect health and safety and to condemn any form of misogyny, racism, harassment, discrimination, victimisation or bullying. Damages are recoverable when a public body acts in bad faith deliberately ultra vires knowing that such action will affect negatively the interests of another and is likely to cause irreparable damage to his/her physical and mental health and well-being and professional career.

Part 18 Request for FI: 12

i. Please explain whether it is asserted that *"fairness"* gives rise to legal obligations on the first defendant.

ii. If so, please identify the nature and extent of the legal obligations concerned.

iii. In the event that it is alleged that there were such obligations and they were breached please identify the breaches concerned, where and when they took place and who was involved.

iv. Please identify any remedies sought in relation to this allegation.

Response:

i) Fairness underpins the common law rules of natural justice, the duty to act fairly, respect for fundamental rights and the rule of law as well as the requirement of legality and the prohibition of discrimination. From Acquinas's dictum 'lex injusta non est lex', to Locke's contractarianism, Lon Fuller's inner morality of law, John Rawls's theory of justice as fairness, Joseph Raz's eight postulates of the rule of law and Dworkin's theory, fairness has justified law's validity as well as the obligation to obey the law.

ii) The legal obligations concerned have received extensive dentification and discussion in the previous paragraphs.

iii) This information was provided in the previous paragraphs.

iv) All remedies have been stated in the particulars of claim.

49. By not affording the Claimant a right to appeal against a suspension decision and, given the continuation of the suspension for a lengthy period, a right to appeal against the continued suspension, the First Defendant breached the requirements of natural justice which are also reflected in Article 6(1) ECHR and EU primary law (Article 47 EUCFR, Articles 2, 6(1) and 6(3) TEU).

PROFESSOR C. ENNEW (THIRD DEFENDANT)

Libel and/or malicious falsehood in respect of words published or caused to be published by the Third Defendant (Professor C. Ennew) contained in letters to and concerning the Claimant and copied to third parties, on 16 January 2020, 20 January 2020 and 1 June 2020

50. In letters dated 16th January 2020 and 1st June 2020 written by the Third Defendant, Professor Ennew, and sent to the Claimant, the Third Defendant wrote and published to third parties the following false and defamatory statements about the Claimant:

> *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 ongoing investigation into the fulfilment of your duties.*
>
> *You have harassed and displayed threatening and intimidating behaviour towards students when questioning them in relation to complaints they may have made against you.*

51. The statements were published to Mr Matt Nudds, Chair of the Faculty of Social Sciences, Ms Clare Phillips, HR Adviser, Professor Lavender, Professor Ledley, Professor Swain, Professor Meyer, Professor Steele, Professor Sparrow, Professor Penny Roberts, Ms Houfe, Ms Way, Mr Partridge, Ms Stewart and to others.

52. In an email communication dated 20th January 2020 written by the Third Defendant, and sent to the Claimant, Professor Lavender, Professor Sanders, Professor Croft, Ms Sandby-Thomas and Ms Ashford, the Third Defendant wrote and published the following false and defamatory statements about the Claimant:

> *The allegations made were of a serious nature and it is alleged that:*
> *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 ongoing investigation into the fulfilment of your duties.*
>
> *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****.*

Part 18 Request for FI: 13

In relation to paragraphs 50-58 of the particulars of claim and the words complained of in paragraphs 50 and 52, please: i) Identify what meaning defamatory of the claimant the words complained of are alleged to have borne. ii) Identify any meaning that it is alleged was actually understood by any of the recipients and any evidence to show that the recipient(s) considered the meaning complained of to be serious.

Response

i) The natural and ordinary meaning of the statements is that: I was harassing, threatening and intimidating students; I was suspect of not fulfilling my duties which had led students to complain about me and was trying to undermine the ongoing investigation by seeking to influencing witnesses, students who had complained about me. ii) That was the meaning understood by the recipients evidenced by my continued suspension for 6 months, my subjection to a disciplinary process, my dismissal on gross misconduct and my summary dismissal without notice of termination.

53. The statements complained of are false and cast a slur on the Claimant's character, disparage her professionalism, integrity and are essentially career-destroying. No employer would be willing to employ a professor who harasses, threatens and intimidates students.

Part 18 Request for FI: 14

Please identify whether it is asserted that the words complained of have been published to an employer other than the first defendant.

Response

Paragraph 53 stated that 'The statements complained of are false and cast a slur on the Claimant's character, disparage her professionalism, integrity and are essentially career-destroying. No employer would be willing to employ a professor who harasses, threatens and intimidates students.' The words complained do not have to be published to future employers for them to know that I was dismissed by Warwick University on gross misconduct because I was accused of harassing, threatening and intimidating students and was not fulfilling my duties thereby leading students to complain about me.

54. They expose the Claimant to contempt, are more than likely to cause her to be shunned or avoided and injure her in her profession in a significant way. Future employers are unlikely to employ a Professor who displays 'harassing, threatening and intimidating behaviour towards students' and any reasonable person would conclude that by writing, and publishing, these statements the Third Defendant had knowledge of facts indicating the Claimant's failure to perform her duties, her incompetence, lack of integrity and reprehensible personal characteristics or behaviour.

Part 18 Request for FI: 15

Please identify: i) The facts or matters which it is asserted make it *"likely"* that the words complained of will cause the claimant to be shunned or avoided and to injure her in her profession in a significant way. ii) Whether it is alleged that the words complained of have been published to any *"future employers"*. If so please identify who and where, when and how the publication concerned took place.

iii) Whether it is alleged that any of the recipients understood the words complained of to mean that the third defendant had knowledge of facts indicating the claimant's failure to perform her duties, her incompetence, lack of integrity and reprehensible personal characteristics or behaviour.

Response:

i) In the previous paragraph I noted that the statements complained of are career-destroying. Being dismissed for having committed harassment, which has a specific meaning and definition in law and all Universities' policies (i.e., unwelcome physical contact of sexual nature, written or verbal threats or insults on race, ridicule based on cultural grounds, derogatory name-calling, offensive or stereotypical comments about a person's disability, inappropriate emails, texts or notes displaying or sending pornographic material, stalking, making offensive or abusive gestures and so on), and for violent conduct (i.e.,, threatening and intimidating behaviour) ruins my reputation and makes almost certain the destruction of my whole life's work and career. I was avoided while I was in suspension, an important professional collaboration collapsed, I was precluded from applying for important University management positions, I have not been shortlisted for the University positions I have applied for despite the fact that my achievements and publications make me an excellent candidate, the invitations I used to receive for scientific collaborations, public and conference speaking in the UK and abroad have evaporated, the emails I used to receive form colleagues in the UK and abroad have almost disappeared and it is almost certain that I will not be able to find not only another University job, but even a job as a school teacher since no education provider would like to hire a member of staff who was dismissed from her previous employment for harassing students and subjecting them to overly aggressive behavior or language in circumstances arising out of the course of their study.

The defendant did not only accuse me falsely of acts I never committed, but also framed, that is, articulated discursively the allegations in the most injurious manner thereby manifesting malignant disposition and mischievous design.

The defamatory statements have been re-published, as they were articulated by Professor Ennew, and now feature within the top 5 entries of Google's search of my name thereby alerting the whole world and University audiences across the globe.

ii) and iii) Please re-read my statements in para 54 which are sufficiently clear and precise in terms of what is alleged.

55. By reason of the publication of the words complained of, the Claimant's reputation has been seriously harmed and she has suffered hurt, distress, anxiety and embarrassment. The statements have caused and are likely to cause serious financial loss to the Claimant within the meaning of Section 1 of the Defamation Act 2013. The Third Defendant's statements caused or more than minimally, trivially or negligible contributed to the First Defendant's termination of the Claimant's employment on or about 20th July 2020. The Claimant's reputation as a highly respected legal academic has been seriously harmed. The Claimant has also suffered financial loss of salary since 24th August 2020 in the sum of £ 8,225.08 per month and continuing at the rate of £ 8,225.08 per month.

Part 18 Request for FI: 16

Please:

i) Identify the facts and matters relied upon to support the assertion that the claimant's reputation has been seriously harmed.

ii) Identify the facts and matters relied upon to support the assertion that the statements complained of have caused and are likely to cause serious financial loss to the claimant.

iii) Identify the facts and matters relied upon to support the assertion that the statements complained of caused the first defendant to terminate the claimant's employment.

iv) Identify the facts and matters relied upon to support the assertion that the claimant's reputation as an academic has been seriously harmed.

Response:

i), ii), iv) Please see the statements in the response above (response to request No 15) and paras 52-55.

iii) The letter of 29 July 2020 terminating my employment summarily is in your possession.

56. The statements complained of are false and were articulated in bad faith; paragraphs 33-40 above are repeated. There exists no direct evidence of harassment, intimidation or a threat in the email communication referred to in paragraph 37a above nor an intention to influence Ms Opik and to undermine any investigation can be gathered from that email communication.

Part 18 Request for FI: 17

Please explain the basis upon which the matters set out at paragraphs 33-40 are relied upon to evidence malice on the part of the third defendant.

Response:

The basis has been stated in para 56: 'The statements complained of are false and were articulated in bad faith; paragraphs 33-40 above are repeated. There exists no direct evidence of harassment, intimidation or a threat in the email communication referred to in paragraph 37a above nor an intention to influence Ms Opik and to undermine any investigation can be gathered from that email communication'.

57. Neither Ms Opik nor Student X, her then boyfriend, have corroborated the Third Defendant's false statements by providing a signed, formal complaint or a witness statement claiming that they were recipients of the behaviours the Third Defendant accused the Claimant of.

58. Finally, the Third Defendant, Professor Ennew, made false and defamatory statements with malice, that is, with knowledge of the statements' falsity or reckless disregard as to whether they were true or false in that:

(a) Professor Ennew authored those statements without any regard to the facts and despite the absence of substantive and quantifiable evidence to support her statements;

(b) the statements were authored in a vague and non-particularised way, typical of standard bullying allegations which tend to make no reference to dates, names, factual descriptions of conduct and of how those fall within the ambit of misconduct in accordance with the rules and procedures of an organsiation, with the actual intent to cause distress and to hurt the Claimant;

(c) Professor Ennew disregarded direct evidence, that is, the email communication of the Claimant with Ms Opik, which did not support any of the statements she authored and Tabula, the University's online student monitoring system, which at a click of a button could disprove any information she had received. In so doing, she was not simply misinterpreting the Claimant's actions but she was fabricating a situation and was falsely referring to 'harassed, intimidated and threatened students' in plural, with the actual intention of damaging the Claimant's reputation;

(d) Professor Ennew did not take into account the absence of any written and signed complaint from Ms Opik or any student as the recipient of the Claimant's conduct in accordance with the established procedures of the University of Warwick, preferring, instead, to rely on unverified hearsay;

(e) Professor Ennew failed to investigate the information Professor Sanders, the Second Defendant, was conveying and to gather prima facie evidence about the true nature of the situation by interviewing the Claimant, Ms Opik and/or her boyfriend at that time either separately or jointly;

(f) Professor Ennew failed to verify that the Dignity at Warwick Policy of the University had been followed and had been correctly applied to the Claimant's case substantively as well as procedurally;

(g) Professor Ennew ignored the requirements of natural justice which are part of the contractual obligations of all employees of Warwick University, health and safety requirements and her non-delagable duty of care and did not provide any information about the specificity of her statements to the severely distressed Claimant who wrote to her on 16 January 2020 at 18.14 pm. On the contrary, in an email communication sent to the Claimant on 20 January 2020, Professor Ennew wrote: '*Fuller details of the complaint will be shared with you at the investigation meeting and you will be able to respond to the complaint. The University is not obliged to provide you with this information in writing at this stage of the proces*s';

(h) Professor Ennew displayed a reckless disregard about the impact of her statements on the falsely accused Claimant's dignity, human rights and professional reputation;

(i) The statements were written in retaliation, and in deflection from, the formal complaint of victimisation and bullying the Claimant had made against Professor Ennew and Professor Sanders on 6 January 2020 to Sir Normington, Chair of the Council of the University of Warwick;

(j) Professor Ennew had injured the Claimant in the past by upholding a disciplinary sanction against the Claimant on no evidence of any wrongdoing on the Claimant's part which was the subject of ongoing litigation at the time of writing the defamatory statements. In this respect, she did not have a fair and unbiased state of mind.

MS DIANA OPIK (FIFTH DEFENDANT)

Libel and/or malicious falsehood in respect of words published or caused to be published by the Fifth Defendant contained in a statement concerning the Claimant in or around March or April 2020

BACKGROUND: FACTS

59. Despite the Claimant's superb guidance and assistance to Ms Opik (the Fifth Defendant) during her first year (2018/2019) at the University of Warwick, who was 'knocking on the Claimant's office door' on almost a weekly basis, on 15 November 2019 at 13.15 pm Ms Opik wrote the following false statement about the Claimant in her email communication to Warwick Law School, that is, to Ms Mouthaan, A. Humber and C. Warner:

'*Dear Solange,*
I have been to Dora's office every week since week 2, often two times a week as she had had replacement hours for when she was away during her normal visiting hours. However, she was never in her office when I went, so I sent an email a few days ago but have not received a response.
Sincerely,
Diana'

60. This published statement, which undermined the Claimant's high level of professionalism and imputed some form of unauthorised absence from work, was accompanied by another false and contradictory statement addressed to the Claimant on 12 November 2019, as follows:

'*Dear Dora,*
How are you? I have been coming to your room almost every week since term started, but haven't been able to see you yet. Is there any chance I could schedule a meeting with you?:)
Thank you!
Sincerely,
Diana'

Part 18 Request for FI: 18

Please:

i) State what meaning defamatory of the claimant the words contained in paragraph 59 of the particulars of claim are alleged to have borne.

ii) Provide particulars of serious harm.

iii) Identify the meaning the recipients understood the words complained of to bear and whether any recipient considered them to be serious.

Response:

This is a misleading request; the background information and evidence demonstrate Ms Opik's propensity not to speak the truth.

61. Both these contradictory statements were false. The Claimant held office hours' meetings with a very large number of students, including seven undergraduate students who were writing dissertations and were supervised by the Claimant, in weeks 1, 2, 3, 5 of the Autumn Academic Term 2019. Week 6 was a Reading week for both students and staff and in weeks 4 and 7, the Claimant exercised important professorial duties abroad having notified Professor Sanders and his personal secretary in advance. Accordingly, she replied to Ms Opik's both email communications on 17 November 2019, as follows:

'*Dear Diana,*
Thank you for your email. I have seen a number of students and supervisees during office hours (on Tuesdays) or during the replacement hours Christine kindly put on my door in week 5 (on Monday morning in week 5). I will be in the office tomorrow and on Tuesday between 4 and 6 and you are very welcome to come to see me…'

'*Hello Diana,*
I was abroad when you sent this! Please feel free to come this week - I was in the office in week 5 with extended hours of five hours (1-6 pm).
With all good wishes,
Dora'

71. The Fifth Defendant, Ms Opik, did not disagree with the Claimant's email responses of 17 November 2019. Nor did she furnish any evidence in support of her published statement that

she was visiting the Claimant 'every week since week 2', that is, in weeks 3 (16 October 1-6 pm) and 5 (31 October, between 1-6 pm) or prior to those weeks.

72. During the termly meeting the Claimant had with Ms Opik (the Fifth Defendant) on 18 November 2019, the Claimant asked Ms Opik whether she had come to her office during her Office Hours, for example, in week 5 between 1 and 6 pm. Ms Opik admitted that she had not done so and apologised to the Claimant for her misleading statements. Ms Opik apologised twice and promised to make amends. The Claimant told her that '*I was not going to tell what to do or how to do it or what to write but my request would be not to leave it for some time in the future because, jokingly, I would not like to 'be knocking on her door'* [- a reversal of positions] *if something happened and HR called me for a meeting in the future*'. The Fifth Defendant, Ms Opik, apologised again before leaving the Claimant's office. The Claimant said to her: '*do not to worry about it*'.

73. On the same afternoon, that is, on 18 November 2019, The Fifth Defendant wrote to the School apologising for what you wrote:

'*From: Öpik, Diana <Diana.Opik@warwick.ac.uk>*
Sent: 18 November 2019 17:27:45
To: Mouthaan, Solange <S.Mouthaan@warwick.ac.uk>
Cc: Kostakopoulou, Dora <D.Kostakopoulou@warwick.ac.uk>; Warner, Christine <C.Warner@warwick.ac.uk>; Humber, Andrea <A.E.Humber@warwick.ac.uk>
Subject: Re: Personal Tutor Meeting
Dear Solange and everyone involved,
I have now met with my personal tutor and I would also like to clarify that when I said Dora wasn't there during her office hours, I only meant that she was not there in the moment when I went to her office, not the whole 2 hours. I'm sorry if this caused any misunderstanding.
Sincerely..'

74. As the Fifth Defendant's communication was not accurate because the Claimant uses pre-written yellow notes on her office door stating 'back in 3 minutes' if she needs to leave her office momentarily, on 19 November 2019 the Claimant wrote the following email communication:

From: Kostakopoulou, Dora <D.Kostakopoulou@warwick.ac.uk>
Sent: 19 November 2019 19:05
To: Mouthaan, Solange <S.Mouthaan@warwick.ac.uk>
Cc: Warner, Christine <C.Warner@warwick.ac.uk>; Humber, Andrea <A.E.Humber@warwick.ac.uk>
Subject: Re: Personal Tutor Meeting

Thank you, Solange! I must say that Diana was really very sorry about what she wrote when she came to see me and I do not believe that students should be placed in this position. When I asked her whether she had come to see me during my specified hours, for example, on Thursday between 1 and 6 in week 5 she said no.
With all good wishes,
Dora

75. There was no contact between the Claimant and the Fifth Defendant for the next twenty five days. The next contact occurred virtually through the brief email correspondence between the Claimant and the Fifth Defendant contained in paragraph 37(a) above.

76. On Friday, 10th January 2020, the Fifth Defendant, who had been in prior communications by email and in person with Ms Solange Mouthaan, Director of Undergraduate Studies during, and after, the email exchange she had with the Claimant, met with Professor Sanders and Ms Mouthaan.

77. Following the meeting dated 10th January 2020, Professor Sanders wrote to HR the statements contained in paragraph 87 below which were detrimental to the Claimant and triggered her suspension and eventual dismissal. It is unclear whether Ms Opik actually made orally the statements Professor Sanders attributed to her or whether Professor Sanders manipulated the situation (- and the student, Ms Opik) in order to author false and defamatory statements against the Claimant with the express intent to procure her defamation, suspension and eventually her dismissal and the very likely destruction of her career.

Part 18 Request for FI: 19

Please: i) Explain whether any claim is pursued in relation to statements made by Ms Öpik to Professor Sanders.

ii) If so, please identify the precise words complained of, their meaning, where, when and how they were published, to whom they were published and the basis upon which, if any, it is asserted that the statements complained of caused or were likely to cause serious harm to the claimant's reputation.

Response:

i)As already stated in para 77, it is unclear at the moment whether Ms Opik actually made these statements orally to Professor Sanders. This will be clarified when Ms Opik and Professor Sanders give evidence under oath and, depending on their answers, I will request the Court to extend time to include such a claim. Professor Sanders' letter to HR of is very important and the High Court proceedings will shed light on the truth concerning the originator of the defamatory, false statements about me as well as the extent to which Ms Opik was manipulated by Professor Sanders.
ii) Please see the section of particulars relating to Professor Sanders.

THE CLAIMS

78. In an email communication/unsigned statement written by Ms Opik, the Fifth Defendant, in late March 2020 or early April 2020 and sent to Professor Lavender and Ms Ashford, HR, which was also later published to Professors Ennew, Sanders, Steele, Meyer, Sparrow, Roberts, Ms Way, Ms Houfe and to several others, the Fifth Defendant wrote the following false and defamatory statements about the Claimant:

I met with Dora on either the 18th or 19th of November… Prior to our meeting was when I had an email exchange with Solange (head of undergraduate studies), and Dora and a few people from administration (I believe) were also copied into the email. In the email, Solange asked me why I hadn't met with my personal tutor yet, as I now had a monitoring point, and I replied saying that I have gone to her office almost every single week during her office hours, sometimes twice a week, but that she was never there. I wanted to address that

with Dora during our meeting, as I felt a bit bad that I had to say that in the email, but that I also had come to her office nevertheless. She said that she had been there during her office hours, and that she was called into a meeting with HR following the email I sent. She wanted me to send another email to the thread, to explain or 'fix' what I had said (I'm not sure what she said exactly), and I'm still not quite sure what she wanted me to do, because I wasn't sure how I could reformulate my email without lying and saying that she was in fact there and/or I was the one who did not go to her office. Either way I assume that was the nature of what was expected of me, as I haven't come up with any other meaning to what she said. I think I apologised or reacted to her being called to a meeting with HR, and she said that if she loses her job because of me, she "will come knocking on my door". She then laughed and said she was only joking…

…The meeting was normal up until the point we started discussing the email thread, after which I felt a bit uncomfortable. I didn't understand what Dora wanted me to do with regards to the email chain, and I wasn't comfortable asking because I felt like I was being asked to lie, and I didn't want to insinuate that she had lied either when she said she was in her office. I would have liked clarification on what she wanted me to do about the email, but wasn't sure how to approach it adequately.

79. Intentional lying on the part of the Fifth Defendant grounded her account of facts which does not tally with the direct evidence of the email communications before and immediately after the meeting of 18 November 2019 as stated in paragraphs 59-74 above.

80. Additional false statements were: '*She said that she had been there during her office hours, and that she was called into a meeting with HR following the email I sent… I think I apologised or reacted to her being called to a meeting with HR… she said that if she loses her job because of me, she "will come knocking on my door… I didn't understand what Dora wanted me to do with regards to the email chain, and I wasn't comfortable asking because I felt like I was being asked to lie, and I didn't want to insinuate that she had lied either when she said she was in her office. I would have liked clarification on what she wanted me to do about the email, but wasn't sure how to approach it adequately'.*

81. The false factual assertions noted above in paragraphs 78-80 taken individually and as a whole containing a clear gist impute unprofessional and unethical conduct on the Claimant's

part; suggest she had engaged with unauthorized absence from work and thus was failing in her professional duties which she then allegedly sought to conceal; that Ms Opik's email communication of 15 November 2019 had triggered a meeting with HR and thus that questions had to be asked institutionally about her professional capacity and performance; and that the Claimant's honesty and integrity were questionable at the time of publication.

82. By authoring those false statements, without an honest belief in their truth and without regard to the facts, Ms Opik, the Fifth Defendant, lowered the Claimant in the estimate of others, imputed some professional impropriety on the Claimant's part thereby denting her impeccable reputation, personal integrity and professional ethics. By casting doubt on the Claimant's character and honesty, the Fifth defendant's statements decreased the respect in which she is held and were intended to be believed by others in order to cause the Claimant damage.

Part 18 Request for FI: 20

1) In relation to paragraphs 78-82 please: i) Identify when the email communication/unsigned statement by the fifth defendant was published to Professors Ennew, Sanders, Steele, Mayer, Sparrow, Roberts, Ms Way and Ms Houfe. ii) Identify the "several others" referred to. iii) Identify the facts and matters relied upon to support the assertion that serious harm has been caused or is likely to be caused to the claimant's reputation as a result of the publication identified in paragraphs 78-80. iv) State whether any of the recipients understood the words complained of to bear the meaning alleged at paragraph 81. v) Identify any loss alleged to have been caused to the claimant as a result of the publications identified at paragraphs 78-80.

Response

i) and ii) The precise date of the publication to each of the recipients is known to the defendants and the HR Department of the first Defendant. I know that the email communication/unsigned statement was written by Ms Opik, the Fifth Defendant, in late March 2020 or early April 2020 and had been published to the recipients by the time of my dismissal and its confirmation. Additional recipients include Mr Graham Partridge, Ms

Roisin Khan and Ms Adele Ashford. The HR Department of the First Defendant could provide information about other individuals who might have read it.

iii), iv) and v) Without Ms Opik's defamatory and false statements, my summary dismissal on gross misconduct would not have taken place and the disciplinary process would have collapsed leading the University and Professor Ennew to admit that they had falsely accused me of gross misconduct and had wrongfully suspended me. The financial loss and the serious harm caused and is likely to be caused has been identified in paragraph 84 below and was also identified above, as follows:

Being dismissed for harassing students (i.e., Ms Opik), which has a specific meaning and definition in law and all Universities' policies (i.e., unwelcome physical contact of sexual nature, written or verbal threats or insults on race, ridicule based on cultural grounds, derogatory name-calling, offensive or stereotypical comments about a person's disability, inappropriate emails, texts or notes displaying or sending pornographic material, stalking, making offensive or abusive gestures and so on), and for violent conduct (i.e.,, threatening and intimidating behaviour) ruins my reputation and makes almost certain the destruction of my whole life's work and career. I was precluded from applying for important University management positions, I have not been shortlisted for the University positions I have applied for despite the fact that my achievements and publications make me an excellent candidate, the invitations I used to receive for scientific collaborations, public and conference speaking in the UK and abroad have evaporated, the emails I used to receive form colleagues in the UK and abroad have almost disappeared and it is almost certain that I will not be able to find not only another University job, but even a job as a school teacher since no education provider would like to hire a member of staff who was dismissed from her previous employment for harassing students and subjecting them to overly aggressive behavior or language in circumstances arising out of the course of their study.

The defendant imputed unprofessional and unethical conduct on my part in order to conceal my (falsely) alleged unauthorized absence from work and was believed by Professor Lavender and the members of the disciplinary panel who decided my dismissal in absentia. The notes of that disciplinary hearing of 20 July 2020 show the Chair, Professor Meyer, asking Professor Lavender, '**if after seeing the students' emails, he had any concerns or suspicions about students potentially not being truthful or if he thought they may have ulterior or malicious motives. Andrew Lavender confirmed that he did not have any concerns in relation to the student's motives**.'

Similarly, the summary dismissal letter written by Professor Meyer on 29 July 2020 stated: '**the panel was presented with evidence which supported these allegations. The panel asked Professor Lavender if he had any concerns as to the veracity of the allegations and/or the motives of the students making the allegations. Professor Lavender confirmed that he did not. It is noted that you were invited to engage in the investigative process and submit any evidence to counter the allegations. Professor Lavender was not presented with any evidence from you to counter these allegations or to support the contention that the allegations were made maliciously. The panel was extremely concerned by allegations three and four given that they related to inappropriate and potentially harassing behavior from a member of the University's staff to student(s). The panel was satisfied that there was sufficient evidence to uphold these allegations and it considered your behavior in that regard to be entirely unacceptable and incompatible with your position as a senior member of academic staff at the University. On this basis the panel concluded that allegations three and four, taken both idnividually and collectively, constituted gross misconduct. In the Provost's letter of 10 July 2020, you were informed that a potential consequence of a finding of gross misconduct was summary dismissal, i.e., without notice or payment of notice. After considering the evidence carefully, the disciplinary hearing panel did not find any mitigating circumstances for a lesser sanction in respect of allegations three and four. The panel acknowledges your length of service but this does not excuse your conduct nor warrant an alternative sanction**…'

The past, present and future financial loss is identified in para 84 below.

83. Ms Opik wrote those false statements with the intention that Professor Lavender, the Investigator appointed by Professor Ennew, would take them as true statements of professional impropriety on the part of the Claimant so as to cause damage in the employment, professional career and livelihood of the Claimant. She intentionally concealed evidence from Professor Lavender thereby preventing him from ascertaining crucial facts about the true situation prior, during and after the meeting she had with the Claimant on 18 November 2019.

Part 18 Request for FI: 21

Please:

i) Identify the facts and matters relied upon to support the assertion that Ms Öpik intended that Professor Lavender would take the statements complained of as true statements so as to cause damage to the claimant's employment, professional career and livelihood.

ii) Identify the facts and matters relied upon to support the assertion that Ms Öpik "intentionally" concealed evidence from Professor Lavender.

Response:

i) and ii) Ms Opik knew that I had been suspended from work and that my courses had been cancelled. She also knew why I had been suspended and the precise allegations Professor Sanders had communicated to HR claiming that she had made them. She also knew that she was taking part in a disciplinary investigation which would affect my employment, professional career and livelihood aimed at uncovering the truth of what had happened. And yet she did not only suppress parts of the truth relating to her actions in November 2019 and conceal the circumstances and whole content of our discussion in my office which would have explained what I said to her and her subsequent email communication to the School partially withdrawing her previous comment about my alleged absence from the office during office hours (paras 59-74 above including undisputed evidence in the form of email communications), but also proceeded to make the false statements identified in paras 78-80 above. When Ms Opik's whole email communication/unsigned statement will be read out in Court, you would be able to discern further innuendo about 'another student' and the use of 'my private email address' reinforcing the display of an intent to harm me, an innocent person that had been very kind and considerably helpful to her in the past.

84. By reason of the publication of the words complained of, the Claimant's reputation (libel) and her profession (malicious falsehood) have been seriously harmed and she has suffered hurt, distress, anxiety and embarrassment. The statements have caused and are likely to cause serious financial loss to the Claimant within the meaning of Section 1 of the Defamation Act 2013. The Fifth Defendant's statements caused or more than minimally, trivially or negligibly contributed to the First Defendant's termination of the Claimant's employment on or about 20th July 2020. The Claimant's reputation as a highly respected legal academic has been seriously harmed. The Claimant has also suffered financial loss of salary since 24th August 2020 in the sum of £ 8,225.08 per month and continuing at the rate of £ 8,225.08 per month.

Part 18 Request for FR: 22

Please:

i) Identify the serious harm referred to.

ii) Explain the basis upon which it is alleged that the statements set out at paragraphs 78-80 have caused serious financial loss to the claimant.

iii) Explain the basis upon which it is alleged that the statements set out at paragraphs 78-80 are likely to cause serious financial loss to the claimant.

iv) Explain the extent to which it is asserted that the statements set out at paragraphs 78-80 caused the first defendant to terminate the claimant's employment. Given the claimant's assertion that other publications caused the termination of the claimant's employment please provide a clear indication as to the extent to which each publication complained of is alleged to have contributed to the termination of the claimant's employment.

Response:

This is a repetitive request for information – please see my response in paragraph 82 above relating to your request No 20.

Concerning (iv), it should be noted that all publications weave the same fabricated narrative, and allegations, are intimately interconnected and were combined and relied upon for the termination of my employment and the significant tarnishing of my reputation. The termination of my employment summarily would not have been realized without the combined involvement of the four individual defendants and their publications which had informed the members of the disciplinary panel that dismissed me in absentia, that is, Professor Ennew's deputy, Professor Meyer, and Professor Steele.

PROFESSOR ANDREW SANDERS (SECOND DEFENDANT)

Libel and/or malicious falsehood in respect of words published or caused to be published by the Second Defendant contained in statements concerning the Claimant in or around January 2020 and March, April, May and/or June 2020, repeating the statements made by the Second Defendant on 12 January 2020

BACKGROUND: FACTS

85. There has been a history of false and malicious statements published by Professor Sanders (the Second Defendant) against the Claimant prior to 16 January 2020. The Claimant expressly and unambiguously communicated to external bodies (Court of Appeal) and the University of Warwick (the First Defendant) her complaints about Professor Sanders' improper motive and documentary evidence proving that Professor Sanders' statements were false and injurious to the Claimant, in reputational and professional terms prior to 16 January 2020. Paragraphs 20-30 are repeated here.

Part 18 Request for FI: 23

Please provide proper details of the "history" of such statements.

Response:

The request was based on the first sentence of the paragraph without including the whole paragraph which refers to the statements in paras 20-30 above as well as the documentation to the Court of Appeal and the Grievance of 6 January 2020 I submitted to Sir Normington – documents which are in the possession of BML and the Defendants. Paragraph 85 is further explicated by paragraph 86 below.

86. Knowing that discharge of contractual obligations takes place via performance and that all Claimant's responsibilities concerning advice and feedback hours and personal tutees had been completed, Professor Andrew Sanders, who had access to Tabula (the University's online system) throughout November 2019 and December 2019 and had received the relevant written verification by the Claimant in a memo dated 3 December 2019, falsely accused the Claimant

of ‘failing to fulfil her responsibilities in good faith’ and instigated disciplinary action against her on 4 December 2019.

Part 18 Request for FI: 24

Please identify the facts and matters relied upon to support the assertion that Professor Sanders “knew” that all of the claimant’s responsibilities had been completed (to the extent that there is any such evidence above and beyond the memo dated 3 December 2019

Response:

A repetitive request – please see my response to Request for FI No 5 in para 25 above: “Undisputed evidence” refers to information on Tabula, the online student attendance monitoring system of the University of Warwick, my memo of 3 December 2019 on ‘completion of task re tutees’ which I sent to both Professor Sanders and to the Director of Undergraduate Studies coupled with my email communications to Professor Sanders during the period 17 November – 3 December 2019 and the absence of any student complaint in accordance with the University of Warwick’s student complaint procedures.

CLAIMS

87. In a signed, private and confidential record of investigation notes on 22 January 2020 which was published following that date and was communicated to the Claimant in March 2020 and made known to others parties, such as Professors Meyer, Steele, Sparrow, Roberts and to several HR Advisers and Managers, Professor Sanders made the following false defamatory statements about the Claimant without an honest belief in their truth and with the intention to affect negatively her reputation and to procure actions injurious to the Claimant in her profession:

… AL – why didn’t DK attend the meetings?

AS [Andrew Sanders] – she didn’t give any good reasons, either refused or didn’t respond. One reason was she couldn’t attend because she was going abroad the following day, I do not consider going abroad one day to be a good reason for not attending a meeting the day before that….

... AS – they were terrified that a reference would not be produced, making their PhD very vulnerable. 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…

...AS – I think you have received all the correspondence, I would like to add that these are just examples of DK's behaviour, and I'm aware that there are a couple of other issues brewing.

Part 18 Request for FI: 25 and 26

25. Please:
i) Identify all of the "others [sic] parties".
ii) Identify the facts and matters relied upon to support the assertion that Professor Sanders did not have an honest belief in the truth of the statement complained of.
iii) Identify the facts and matters relied upon to support the assertion that Professor Sanders intended to negatively affect the claimant's reputation.
iv) Identify the facts and matters relied upon to support the assertion that Professor Sanders intended to "procure actions injurious" to the claimant in her profession.
26. In relation to paragraph 87 please identify the meaning(s) alleged to be borne by the statements complained of.

Response:

Professor Sanders was disparaging me in the way of my profession and imputed problems in my relations with others and negative behavior towards students by saying that:

a) I did not attend meetings with the Head of the Department and did not give any good reasons, either refusing or did not responding.

b) I was affecting negatively a PhD student, 'terrifying her that a reference would not be provided, making their PhD very vulnerable'.

c) 5 of my Personal Tutees have had a negative experience of having me as a Personal Tutor.

d) A colleague knew of alleged issues with respect to my personal tutees and had 'previously suggested that DK doesn't have any personal tutees, because of feedback provided to them'.

e) There were a couple of other issues concerning my behavior which were brewing.

All these are false statements which I find insulting and undermining my professional ethics, professional reputation and impeccable performance. My stated availability on the specific days Professor Sanders was choosing for a meeting has been demonstrated above. I never terrified a PhD student by saying that I would not respond to a legitimate and truthful request for a reference, there is no evidence of 5 of my personal tutees having had a negative experience of having me as a personal tutor and there has never been any issue with respect to any feedback provided to them to prompt the comment that 'I should not have any personal tutees'. Nor were there any 'behavioural issues which were brewing'…

Professor Sanders was uttering those statements to the investigator appointed by Professor Ennew because he intended to subject me to disciplinary proceedings and disciplinary punishment in reaction to official complaints I had made against him for his previous malicious and false allegations that I had refused to meet him and had failed to fulfill my responsibilities in good faith, my protected disclosures and my ongoing legal proceedings. The slanderous falsehoods became libelous falsehoods when his statement of 22 January 2020 was published to the parties mentioned in para 87. Other recipients included Ms Mills, Ms Way, Ms Ashford, Mr Partridge, Ms Khan and the HR Department of the University of Warwick could provide an exhaustive list of all the recipients.

88. On 31 January 2020, the Claimant and Sir Normington, Chair of the Council of the University of Warwick, received by email a copy of Professor Sanders' private and confidential communication to Ms Adele Ashford dated 12 January 2020 which contained false and defamatory statements about the Claimant (- the statements which placed a slur on the Claimant's character and professional conduct are underlined) and was significantly injurious to her office and profession:

> …
>
> *In the email chain headed 'Request for information' (chain 2) Dora asks Diana on several occasions if she has written or spoken with me about personal tutor meetings. Diana felt harassed by this, and she was concerned that Dora would think she did something wrong. She was especially concerned about Dora's statement in her message of Jan 8 "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." She interpreted this as being accused by Dora of lying about her.
When Dora and Diana did have a personal tutor meeting, Dora told her that if she was dismissed as a result of Diana telling of her difficulties in securing a meeting with Dora she (Dora) would come knocking at Diana's door (or words to that effect). Dora then said that she was only joking, but Diana felt intimidated by this.

In chain 2 Diana says, in a message to Solange on 9th January, "Actually something else has come up". When Solange and I met Diana on 10th, she told us that a friend of hers (X) told her about a meeting that Dora had with him recently. In this meeting Dora questioned X about whether he had talked or sent messages to me or others in the School about difficulties in securing a meeting with Dora. She told X that she was asking him this because "some crazy student is going around telling lies about me." (this is again a paraphrase of what Diana told us). She also asked X to testify on her behalf if there was a disciplinary process, and he did not feel able to refuse. X felt very uncomfortable about all of this. He told Diana that he did not want her to disclose his name to anyone. This is because X is taking Dora's module this term; he is worried that if she finds out that he has reported that conversation, or reported that he too had difficulties in securing a meeting with Dora and/or had not been contacted by her early last term, that she would penalise him.

Before sending this message to you I checked with Solange that it accurately reflects what Diana told us on 10th January. I am now very concerned about the welfare of students who are in contact with Dora. I am especially concerned for X who, it appears from what Diana told us a) is afraid of being victimised by her; and b) has been asked by Dora to say things in her favour. Consequently, I would like us to discuss this as soon as possible.
Andrew

Part 18 Request for FI: 27

In relation to paragraph 88 please identify the meaning(s) alleged to be borne by the statements complained of.

Response: In their natural and ordinary meaning the words complained of meant and were understood to mean that the Claimant:

a) Had made Diana feel harassed by sending Ms Opik 4 very brief emails (no more than 3 lines each, wishing her Happy New Year in two of them) within a period of 25 days;

b) Had accused Diana of lying about the Claimant;

c) Had made Diana feel intimidated at the meeting they had in November 2019;

d) Diana had difficulties in securing a meeting with Dora (- in reality she was seen within four working days from her request for a meeting and she had not gone to see the Claimant during the Claimant's office hours in weeks 3 and 5 of Term 1 in line with Ms Opik's own statement to the School of 15 November 2019 that she was visiting the Claimant's office every week since week 2).

e) The Claimant had something to hide (i.e., her alleged unauthorised absence);

f) The Claimant had questioned student X about whether he had talked or sent messages to A. Sanders or others in the School about difficulties in securing a meeting with Dora (- in reality, Student X met with the Claimant as soon as Term 1 commenced, that is, in week 1 of Term 1 2019);

g) Student X also had difficulties in securing a meeting with the Claimant;

h) The Claimant told X that she was asking him this because "some crazy student is going around telling lies about me";

i) The Claimant put student X in an uncomfortable position by 'asking him to testify on her behalf if there was a disciplinary process, and he did not feel able to refuse.'

j) The Claimant had made Student X feel that he would be victimised by her if the Claimant 'found out that Student X reported that conversation, or reported that he too had difficulties in securing a meeting with Dora and/or had not been contacted by her early last term';

k) The Claimant posed a risk to the 'welfare of students who were in contact with the Claimant';

l) The Head of Department was especially concerned about the welfare of student X who 'it appears from what Diana told [us] a) is afraid of being victimised by her; and b) has been asked by Dora to say things in her favour'.

The words complained of were published maliciously.

89. It is unclear whether Ms Opik (the Fifth Defendant) actually made the statements Professor Sanders (the Second Defendant) attributed to her. But it is clear that by writing the above-stated communication, Professor Sanders breached (i) the University of Warwick's policy on Student Complaints, (ii) the Dignity at Warwick Policy which prescribes what a formal complaint written by the person who experienced a detriment ought to contain and (iii) the standard professional code of conduct which prohibits the writing of complaints by a Head of Department on behalf of a student containing hearsay and hearsay of hearsay.

Part 18 Request for FI: 28

Please: i) Identify the specific provisions of the first defendant's policy on student complaints said to have been breached. ii) Identify the specific provisions of the first defendant's Dignity at Warwick policy which are alleged to have been breached. iii) Identify the "standard professional code of conduct" and the specific provisions of it which prohibit the writing of complaints by the head of department on behalf of a student containing "hearsay and hearsay of hearsay".

Response:

In the documentation provided to you on 6 June 2020 there are numerous references to the specific provisions of the student complaints' procedure (i.e., informal resolution stage, formal complaint and so on) as well as of the Dignity at Warwick Policy. These were noted in communications and the grievances submitted to Sir Normington in January 2020. Please see the provisions on what a complaint under the Dignity at Warwick section must contain as well as its section on complaints made by students. Concerning the standard professional code of conduct, there are explicit requirements of honesty, integrity, respect for equality and diversity and the rights of individuals, respect for the rules and procedures of the University and the non-toleration of bullying and harassment which render unacceptable Professor Sanders's email communication of 12 January 2020. Complaints by third parties (that is, other than the actual complainant) on a student's behalf or on behalf of a student wishing to complain on the basis of hearsay relating to another student are inherently suspect because of the potential unfairness and discriminatory impact and thus are not accepted.

Universities' procedures on student complaints might also require that any exception to the latter rule must be agreed by the Academic Registrar on the basis of clear evidence demonstrating that the student is incapable of handling their own complaint. The same applies to frivolous, malicious and/or vexatious complaints which all Universities' procedures treat as potential disciplinary offences.

90. Professor Sanders' statements in the paragraph commencing with the words 'In chain 2…' and ending 'in her favour' concerning Student X are pure fantasies departing from sober truth because Student X had a meeting with the Claimant in Week 1 of Term 1 2019 (as soon as the academic term started) which had agreed to verify to the University.

Part 18 Request for FI: 29

Please explain and/or clarify the words "which had agreed to verify to the University".

Response:

The statement that Student X had voluntarily agreed to verify, that is, to tell the truth about, our tutorial meetings, including the meeting which had taken place in week 1 of Term 1 2019, to the University (any future investigation) is clear and precise.

Professor Sanders presented a false and malicious narrative by writing about me the following:

'*In this meeting Dora questioned X about whether he had talked or sent messages to me or others in the School about difficulties in securing a meeting with Dora. She told X that she was asking him this because "some crazy student is going around telling lies about me." (this is again a paraphrase of what Diana told us). She also asked X to testify on her behalf if there was a disciplinary process, and he did not feel able to refuse. X felt very uncomfortable about all of this. He told Diana that he did not want her to disclose his name to anyone. This is because X is taking Dora's module this term; he is worried that if she finds out that he has reported that conversation, or reported that he too had difficulties in securing a meeting with Dora and/or had not been contacted by her early last term, that she would penalise him.*

Before sending this message to you I checked with Solange that it accurately reflects what Diana told us on 10th January. I am now very concerned about the welfare of students who are in contact with Dora. I am especially concerned for X who, it appears from what Diana told us a) is afraid of being victimised by her; and b) has been asked by Dora to say things in her favour. Consequently, I would like us to discuss this as soon as possible.'

91. In a statement written and published in either March 2020 or early April 2020 and which was re-published in May and/or June 2020 to several Professors (Meyer, Steele, Sparrow, Roberts) and HR advisers and managers (Ms Way, Ashford, Houfe, Mills and others), Professor Sanders (the Second Defendant) contradicted his previous statement of 22 January 2020 by writing:

No similar concerns have been reported to me relating to Professor Dora Kostakopoulou (except by Diana in relation to student X, referred to in my appended message). However, I have not actively sought to elicit such concerns from colleagues or students.

Part 18 Request for FI: 30

Please: i) Identify all of those to whom the statement concerned was published. ii) Explain the basis upon which it is said that the statement quoted contradicted statements made by Professor Sanders on 22 January 2020.

Response:

The individuals have been identified in this paragraph and the contradiction relates to Professor Sanders's statements of 22 January in para 87 concerning students having negative experiences, a colleague suggesting that I should not have personal tutees because of feedback provided to them and 'these are just examples of DK's behaviour, and I'm [AS was] aware that there are a couple of other issues brewing'.

92. The appended message referred to above was Professor Sanders' defamatory and malicious communication to Ms Ashford contained in paragraph 88 above which were calculated to damage the Claimant's reputation and to injure her in her office and profession.

Part 18 Request for FI: 31

Please identify the facts and matters relied upon to support the assertion that the communication concerned was calculated to damage the claimant's reputation and to injure her in her office and profession.

Response:

By writing this complaint continuing falsehoods in breach of the Dignity at Warwick Policy, the student complaints' procedure, equality law and the prohibition of discrimination and victimisation owing to protected acts and protected disclosures, Professor Sanders was triggering my suspension, exclusion and serious disciplinary punishment thereby injuring me in my office and profession. On the impact, both present and likely, of the suspension, disciplinary proceedings and summary dismissal on my reputation and professional career, please see the foregoing paragraphs.

93. The Claimant was named in the documents containing the defamatory statements. The Claimant's initials are "DK" and is known as "Dora", a shortened version of her first name.

94. By reason of the publication of the words complained of, the Claimant's reputation (libel), professional standing, business and career (malicious falsehood) have been seriously harmed and she has suffered hurt, distress, anxiety and embarrassment. The statements have caused and are likely to cause serious financial loss to the Claimant within the meaning of Section 1 of the Defamation Act 2013 and caused or more than minimally, trivially or negligibly contributed to the First Defendant's termination of the Claimant's employment on or about 20th July 2020. The Claimant's reputation as a highly respected legal academic has been seriously harmed. The Claimant has also suffered financial loss of salary since 24th August 2020 in the sum of £ 8,225.08 per month and continuing at the rate of £ 8,225.08 per month.

Part 18 Request for FI: 32

Please:

i) Identify the facts and matters relied upon to support the assertion that the claimant's reputation has been seriously harmed by the publication of the statements complained of.

ii) Identify the facts and matters relied upon to support the assertion that the statements have caused the claimant serious financial loss.

iii) Identify the basis upon which it is said that the statements complained of are likely to cause the claimant serious financial loss.

iv) Given the fact that the claimant asserts that a number of publications contributed to the termination of her employment please identify the basis upon which this particular publication is said to have done so.

v) In relation to the assertion that the claimant has suffered loss of salary please confirm whether the figures provided are before or after the payment of any tax. If before, please provide a net figure.

vi) In the event that the claimant intends to pursue a claim for malicious falsehood against Professor Sanders please set out, with proper particularity, the basis for any allegation of malice and identify the facts and matters relied upon to support the assertion that the statements made by Professor Sanders were untrue.

Response:

Paragraph 94 above makes it clear that this is a claim for defamation and/or malicious falsehood as well as that Professor Sanders's statements 'have caused and are likely to cause serious financial loss to the Claimant within the meaning of Section 1 of the Defamation Act 2013 and caused or more than minimally, trivially or negligibly contributed to the First Defendant's termination of the Claimant's employment on or about 20th July 2020. The Claimant's reputation as a highly respected legal academic has been seriously harmed. The Claimant has also suffered financial loss of salary since 24th August 2020 in the sum of £ 8,225.08 per month and continuing at the rate of £ 8,225.08 per month. The figures include the monthly payment of tax of 40%. Without Professor Sanders's statements on which both Professor Lavender (the investigator) and the disciplinary panel relied there would be no disciplinary process and no summary dismissal. The serious harm to my reputation was explicated in paras 53, 54 and 82 with the responses to the FI Request above. Please let me remark again that without Professor Sanders's libel and/or malicious falsehood, my summary dismissal on gross misconduct would not have taken place and the disciplinary process would have collapsed leading the University and Professor Ennew to admit that they had falsely accused me of gross misconduct and had wrongfully suspended me. Being dismissed for harassing students (i.e., Ms Opik), which has a specific meaning and definition in law and all Universities' policies (i.e., unwelcome physical contact of sexual nature, written or verbal threats or insults on race, ridicule based on cultural grounds, derogatory name-calling,

offensive or stereotypical comments about a person's disability, inappropriate emails, texts or notes displaying or sending pornographic material, stalking, making offensive or abusive gestures and so on), and for violent conduct (i.e.,, threatening and intimidating behaviour) ruins my reputation and makes almost certain the destruction of my whole life's work and career. I was precluded from applying for important University management positions, I have not been shortlisted for the University positions I have applied for despite the fact that my achievements and publications make me an excellent candidate, the invitations I used to receive for scientific collaborations, public and conference speaking in the UK and abroad have evaporated, the emails I used to receive form colleagues in the UK and abroad have almost disappeared and it is almost certain that I will not be able to find not only another University job, but even a job as a school teacher since no education provider would like to hire a member of staff who was dismissed from her previous employment for harassing students and subjecting them to overly aggressive behavior or language in circumstances arising out of the course of their study.

Both malice and falsity have been identified with particularity in the foregoing paragraphs which your paragraph by paragraph defence will be addressing.

PROFESSOR ANDREW LAVENDER (FOURTH DEFENDANT)

Libel and/or malicious falsehood in respect of words published or caused to be published by the Fourth Defendant contained in a letter of 23 January 2020, a Confidential Investigation Report concerning the Claimant on 13 May 2020 and damages, including aggravated damages for slander in respect of statements made by the Fourth Defendant at a hearing on 20 July 2020

95. In a letter dated 23rd January 2020 written by the Fourth Defendant and sent to the Claimant and Ms Adele Ashford of the First Defendant, the Fourth Defendant wrote and published the following statements which are false and defamatory of the Claimant:

> *Further to the letter from Professor Ennew OBE, Provost, dated 16 January 2020, as you are aware, the following investigation for which I have been*

appointed as investigating Officer has been widened to include the following allegations made against you:

- *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 in to (sic) the fulfillment of your duties*
- *You have harassed and displayed threatening and intimidating behaviour towards students when questioning them in relation to complaints they may have made against you*

These allegations are in addition to the following allegations that I will also discuss with you at the investigation meeting:

- *Failure to comply with reasonable management requests, non-attendance at 5 separate meetings to discuss issues raised by students*
- *Not fulfilling your responsibilities in good faith*

Part 18 Request for FI: 33

In relation to paragraph 95 of the particulars of claim please identify the meaning(s) said to be borne by the statements complained of in this paragraph.

Response: This is stated below, but I am pleased to note it here: The Claimant: 1) Harasses, threatens and intimidates students. 2) Attempts to influence potential witnesses by questioning students in relation to complaints they may have made against the Claimant. 3) Attempts to undermines the ongoing investigation into the fulfillment of the Claimant's duties. 4) Has failed to comply with reasonable management requests. 5) Has not fulfilled her responsibilities in good faith.

96. In a Confidential investigation report dated 20th May 2020 written by the Fourth Defendant and made known to Professors Ennew, Meyer, Steele, Sparrow, Roberts, Ms Mills, Ms Ashford, Ms Way, Ms Houffe and other persons presently unknown in the First Defendant, the Fourth Defendant wrote and published the following words which are false and defamatory of the Claimant:

Page 1

…and an investigation meeting between DK, AA and AL was arranged for 9 January 2020. DK attended but was accompanied by her husband (DK had not requested in advance that her husband attend).

But the Claimant had requested in advance that her husband would accompany her and attend.

Page 4

In her email to AS of 4 November, DK notes that her office hours were moved due to sickness, and that she saw a number of students. She does not say whether the sickness period was notified (and if so, to whom, since notification was not given to AS as Head of School), or whether this was a self-certification (which would only be for a few days).

But notification of the Claimant's illness was given to Professor Sanders (AS) on 29 October 2019.

Page 5

DK indicated in her email to AL of 15 April 2020 that she had had an eternal examining commitment at the University of Southampton on 2 and 3 December, but I am not aware that she had confirmed this with AS, and her reply to AS of 1 December does not provide this information.

But Professor Lavender has been made personally aware by the Claimant about her

external examining duties at the University of Southampton in December 2019 and possessed documentary evidence in form of email communications which showed that Professor Sanders had also been made aware in November and early December 2019.

Pages 5-6

I do not see evidence that indicates DK's [the Claimant's] unavailability to meet within a reasonable timeframe (and before the end of the Autumn Term), nor evidence that suggests that it is a reasonable for DK [the Claimant] to refuse to meet with the Head of School [the Second Defendant] as requested, nor to refuse to prioritise such a meeting.

But Professor Lavender had such evidence in his possession in the form of both communications written by Claimant in October, November and December 2019 and the Grievance file submitted to Sir Normington on 6 January 2020.

Page 6

Throughout the period in question I do not see a clear statement of concern on DK's [the Claimant's] part for the needs of her personal tutees. I find no evidence that would account for DK's [the Claimant's] failure to engage constructively with the processes at hand.

But Professor Lavender had such evidence in his possession both in the form of communications written by the Claimant in November and December 2019, the memo of 3rd December 2019 to Professor Sanders regarding completion of duties and the Grievance file of 6 January 2020.

Page 6

In a written statement responding to investigation questions, DÖ testified that she had met with DK on either 18 or 19 November. In relation to the email DÖ sent on 15 November 2019 to SM, she states that DK 'wanted me to send another email to the thread, to explain or 'fix' what I had said (I'm not sure what she

said exactly), and I'm still not quite sure what she wanted me to do, because I wasn't sure how I could reformulate my email without lying and saying that she was in fact there and/or I was the one who did not go to her office. […] she said that if she loses her job because of me, she 'will come knocking on my door'. She then laughed and said she was only joking. […] I didn't understand what Dora wanted me to do with regards to the email chain, and I wasn't comfortable asking because I felt like I was being asked to lie, and I didn't want to insinuate that she had lied either when she said she was in her office. […] When student X came to tell me about what Dora had told him, I got very anxious because I assumed Dora was calling me the crazy student spreading lies about her.'

But Professor Lavender had in his possession information about the true account of events which the Claimant had submitted to him on 31 January 2020 and to the University of Warwick, and which was repeated on several occasions after that date.

Part 8

There are grounds to consider that DK [the Claimant] harassed one student, by way of persistent demands by email, with a view to securing from the student materials that they may have shared with members of staff in confidence; that she attempted to influence the student by stating her own view of the case, when it was inappropriate for this to be discussed with the student; and that the letter from Mr Dochery exacerbates this sense of harassment, putting undue pressure on DÖ (the letter mistakenly attributes to DÖ allegations made formally by AS as a consequence of his interpretation of the situation). DK's [the Claimant's] request to SX to testify in DK's [the Claimant's] favour, when the circumstances and context for such testimony were unclear to SX and when (in SX's words) DK's [the Claimant's] 'kind of language against a student [DO][1] [the Fifth Defendant] 'may be construed as an attempt to influence a potential witness, as may DK's [the Claimant's] comment to DO [the Fifth Defendant] about knocking on her door (albeit that DK [the Claimant] asserted that this was a

[1] Square brackets in the original

joke). The indication in their written statements is that the students found the situation, and DK's behaviour and requests, discomfiting and stress-making.

But Professor Lavender had evidence of the true events and the Claimant's statements in his possession. Importantly, in the paragraph above he admitted that the accusations of 'harassment, intimidating and threatening behaviour' and 'influencing witnesses' were not made by Ms Opik (the Fifith Defendant), but Professor Sanders (the Second Defendant) 'as a consequence of hs interpretation of the situation' - a manifestation of gross misconduct on Professor Sanders's part.

Page 9

Some students did not receive a response from DK [the Claimant] when they contacted her as their Personal Tutor. In this, and in failing to meet with AS [the Second Defendant], DK [the Claimant] did not fulfill her duties in good faith.

…

DK [the Claimant] was asking DO [the Fifth Defendant] to share correspondence and asking both students to speak up on her behalf, which they did not feel was appropriate. The nature of DK's [the Claimant's] communications with these students, in meetings and by email, can be construed as harassment and can be held to be intimidating.

But the few students who had contacted the Claimant during her performance of professional duties abroad and notified short-term illness in weeks 4 and 5, had received the Claimant's automatic reply initially and then then a reply on 4 November 2019 when the Claimant recovered from her illness.

Professor Lavender also knew that there was no evidence of 'bad faith' on Claimant's part, was not 'asking both students to speak up on her behalf, which they did not feel was appropriate' and that no reasonable adult could characterize the Claimant's communications as harassment or intimidation.

Part 18 Request for FI: 34

In relation to paragraph 96 please identify the meaning(s) said to be borne by the statements complained of in this paragraph.

Response:
Please see para 102 below and para 95 and the associated response above.

Part 18 Request for FI: 35

Please explain the basis for the assertion that Professor Lavender knew this.

Response:
There was no evidence of 'bad faith' on Claimant's part;
The Claimant was not 'asking both students to speak up on her behalf, which they did not feel was appropriate';
Professor Lavender has been a Head of Department and is thus thoroughly familiar with the definitions of harassment, threatening and intimidating behavior in Universities' policies, including in the Dignity at Warwick policy and under UK law and thus neither he nor any other reasonable adult could characterize the Claimant's communications as harassment or intimidation.

97. In all the above statements complaint of, Professor Lavender, the Fourth Defendant, purposely avoided the truth or made a deliberate decision not to acquire knowledge of, and/or to state in writing, the facts that might confirm the falsity of the charges against the Claimant.

Part 18 Request for FI: 36

Please:
i) Identify the facts and matters relied upon to support the assertion that Professor Lavender purposefully avoided the truth.
ii) Identify the facts and matters relied upon to support the assertion that Professor Lavender made a deliberate decision not to acquire knowledge of and/or to state in writing the facts that might confirm the falsity of the charges against the claimant.

Response:
This is stated in para 99 below and the whole file with the Claimant's submissions to Professor Lavender was submitted to BML on 6 June 2021 as well as the grievance the Claimant submitted to Sir Normington on 8 June 2020 which included a detailed account of the untrue statements of Professor Lavender's report.

98. During the disciplinary hearing of Monday 20 July 2020, in the presence of Professor Meyer, Professor Steele, Mr Graham Partridge, Ms Adele Ashford and Ms Roisin Khan, the Fourth Defendant, Professor Lavender said to them '*DK [the Claimant] had been given multiple opportunities to meet and explain her actions, including attending the disciplinary hearing, but she had not engaged throughout the process*'.

Part 18 Request for FI: 37

In relation to paragraph 98 please identify whether this statement is alleged to be defamatory and, if so, please identify the meaning(s) alleged to be borne by this statement and the basis upon which it is said to be defamatory. Where any alleged meaning is an innuendo meaning please explain the basis upon which the innuendo would be understood by the reader of the statement complained of or the person who heard the statement complained of.

Response:
The claim does not state that the statement is defamatory. The subsequent paragraph states that it is a false statement and justifies this assertion.

99. These words were false in that Professor Lavender knew that the Claimant was under a medical certificate of being 'unfit for duties' on 20 July 2020 and had in his possession a whole file including an incredible number of written submissions attesting the Claimant's innocence. This file included Grievance File 1 (29 pages), Grievance File 2 (12 pages), Grievance File 3 (20 pages), the Claimant's Letter of 10 January 2020 (1 page), the Claimant's husband's letters of 25 January 2020 (2 pages) and of 28 January 2020 (2 pages), the Claimant's email communication 31 January 2020 (4 pages), the Claimant's letter of 3 February 2020 (1/2 page), the Claimant's email communication of 7 April 2020 containing a table (3 pages), her email

communication of 7 April 2020 at 17.40 (1 page), the Claimant's communication of 15 April 2020 (1/3 page), a file with documentary evidence the Claimant submitted to him on 16 April 2020 (5 pages), the file the Claimant sent to the Registrar and the Chair of the Council (5 pages) and the Claimant's email communication of 16 April 2020 (three lines).

100. All these submissions and documentary evidence were intentionally suppressed by Professor Lavender, the Fourth Defendant, who by uttering the words complained of above he suggested that the Claimant was guilty of the offences of gross misconduct and misconduct.

Part 18 Request for FI: 38

Please identify the facts and matters relied upon to support the assertion that Professor Lavender intentionally repressed the submissions and documentary evidence referred to.

Response: A repetitive request – please see the response in para 97 and paras 96-102.

101. At the same hearing and in presence of the persons noted above, Professor Lavender also said that '…*having reviewed the relevant materials, there was no evidence to suggest why DK could not engage with her Head of Department*', '*there was evidence that DK had harassed and intimidated students*', 'h*e had found no evidence to explain why DK would not meet with A*S', '*he could not see that Andrew Sanders was included in the correspondence relating to DK's non-availability to meet him on 3 December*' and that, with reference to Ms Opik, '*he did not have any concerns in relation to the student's motives*'.

102. The natural and ordinary meaning of the words above would be that the Claimant was guilty of the (groundless) accusations, she had failed in her professional duties and that she had harassed and intimidated students. Professor Lavender was accusing the Claimant of an inability to perform the general functions required of her profession, blemished or tarnished her reputation, disrespected her and devalued her immense contributions to the University of Warwick and imputed serious misconduct on her part.

103. The Fourth Defendants' Statements referred, and were understood to refer, to the Claimant.

104. The defamatory statements complained of were false and malicious and were calculated to form the basis for the Claimant's summary dismissal on the same day on ground of gross misconduct. As such, they were calculated to cause and did cause pecuniary damage to the Claimant.

Part 18 Request for FI: 39

Please: i) Set out the facts and matters relied upon to support the allegation of malice. ii) Set out the facts and matters relied upon to support the assertion that the statements complained of were calculated to form the basis for the claimant's summary dismissal. iii) Set out the facts and matters relied upon to establish that the statements complained of were calculated to cause pecuniary damage to the claimant. iv) Identify the pecuniary damage alleged to have been caused to the claimant.

Response: The requested information has been provided above. The dismissal letter of 29 July 2020 is in your possession as well as the disciplinary hearing notes. Both documents will be examined in detail in conjynction with the Claimant's grievance against Professor Lavender of 8 June 2020 which was never addressed by the University of Warwick. The pecuniary damage is stated below.

105. By reason of the publication of the words complained of, the Claimant's employment was terminated whereby the Claimant lost the salary which she was being paid by the First Defendant which she would otherwise have been paid. The statements have caused and are likely to cause serious financial loss to the Claimant within the meaning of Section 1 of the Defamation Act 2013 and caused or more than minimally, trivially or negligibly contributed to the First Defendant's termination of the Claimant's employment on or about 20th July 2020. The Claimant's reputation as a highly respected legal academic has been seriously harmed. The Claimant has suffered financial loss of salary since 24th August 2020 in the sum of £ 8,225.08 per month and continuing at the rate of £ 8,225.08 per month.

Part 18 Request for FI: 40

Please:

i) Identify the facts and matters relied upon to support the assertion that the statements complained of are likely to cause serious financial loss to the claimant.

ii) Given the fact that the claimant asserts that a number of publications caused the termination of her contract, please explain the extent to which it is said that this publication caused the first defendant to terminate the claimant's employment.

iii) Explain the basis upon which the claimant's reputation as a "highly respected legal academic" has been harmed.

iv) Identify whether the sums claimed include tax and, if so, provide a net figure.

Response:

DAMAGES

106. The Claimant will rely on the following facts and matters in support of a claim for aggravated damages:

(1) Although the Claimant has made it quite clear to the First to Fourth Defendants that the words complained of are entirely false and baseless, the First to Fourth Defendants and each of them have failed to offer any apology or retraction which adequately addresses the harm occasioned by the publication of the defamation and/or malicious falsehood;

(2) The First, Second, Third and Fourth Defendants had material in their possession since January 2020 which demonstrated that their statements were false;

(3) The First Defendant acted oppressively, grossly unjustly and disproportionately by suspending the Claimant, keeping her in suspension for

six months thereby infringing on her human dignity and personality rights and persistently disregarding both the voluminous evidence of her evidence and the harms to her health and well-being, career and reputation she was reporting to it;

(4) The First, Second and Third Defendants intentionally framed bullying accusations against the Claimant which, were more likely than not to destroy her whole life's work and end her career and have repeated their defamatory statements about the Claimant within a setting including senior managers and the highest echelon the First Defendant. The Claimant reserves her right to add re-publications for which the Second, Third and/or Fourth Defendants are liable if necessary.

PARTICULARS OF LOSS

(1) Damages for defamation to be quantified

(2) Damages for injurious falsehood for statements that do not fall within the remit of defamation to be quantified

(3) Human Rights damages to be quantified

(4) Damages recoverable for the ultra vires suspension of six months to be quantified

(5) Loss of salary since 20th July 2020 to 6 May 2021 at £ 8,225.08 a month

(6) Future loss of salary from 6 May 2021 to be quantified

Total to be quantified

107. The Claimant claims interest pursuant to section 35A of the Senior Courts Act 1981 on the damages claimed above such period and at such rate as the Court thinks fit.

And the Claimant claims:

1. Damages, including aggravated damages;
2. Interest pursuant to section 35A of the Senior Courts Act 1981;
3. An injunction restraining the First, Second, Third and Fourth Defendants, whether by themselves, their employees, agents or otherwise, from further publishing or causing to be published the said or similar words defamatory of the Claimant or publishing the same or similar malicious falsehoods concerning the Claimant.
4. A declaration that the First Defendant has unlawfully breached the human rights of the Claimant.
5. A declaration that the ultra vires suspension of the Claimant is null and void.
6. A declaration that Second, Third and Fourth Defendants have unlawfully defamed the Claimant and published malicious falsehoods about the Claimant.
7. Further or other relief.
8. Costs.

STATEMENT OF TRUTH

I believe that the facts stated in these Particulars of Claim 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.

……
Professor Theodora Kostakopolou

Claimant

5th May 2021

TO: Court .

Defendants

On behalf of: Defendants
Witness: Timothy George Edwin Smith
No. of witness statement: Second
Exhibit: TGS/2
9 July 2021

IN THE HIGH COURT OF JUSTICE **Claim No. QB-2021-000171**
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

B E T W E E N

PROFESSOR THEODORA KOSTAKOPOLOU

Claimant

- and –

(1) UNIVERSITY OF WARWICK (CORPORATE BODY INCORPORATED BY ROYAL CHARTER UNDER ROYAL CHARTER NUMBER: RC000678)
(2) PROFESSOR ANDREW SANDERS
(3) PROFESSOR CHRISTINE ENNEW OBE
(4) PROFESSOR ANDY LAVENDER
(5) MS ÖPIK

Defendants

SECOND WITNESS STATEMENT OF TIMOTHY GEORGE EDWIN SMITH

I, TIMOTHY GEORGE EDWIN SMITH, of BLM, 30 Fenchurch Street, EC3M 3BL, WILL SAY as follows:

1. I am a solicitor and partner in the firm of BLM. I have conduct of this matter on behalf of the Defendants and am authorised to make this witness statement on their behalf. This witness statement is made in support of the Defendants' application for an order that the claim be struck out and/or for summary judgment on the grounds set out below. Except where I indicate to the contrary, the facts and matters contained within this witness statement are from my own knowledge based on the relevant documents, which I exhibit where appropriate. Where the facts are not within my own knowledge, I have identified my sources of information or belief.

2. Attached to this witness statement is an exhibit marked 'TGS/2' which contains paginated documents to which I shall refer.

Parties/Background

3. The Defendants are the University of Warwick, Professor Andrew Sanders (who is, and was at the relevant time, the Head of the Warwick Law School), Professor Christine Ennew OBE (who is, and was at the relevant time, the Provost of the University of Warwick), Professor Andy Lavender (who was appointed to conduct a disciplinary investigation in relation to the claimant) and Ms Diana Öpik, a law student at the First Defendant.

4. The Claimant is a former employee of the First Defendant and was employed in the First Defendant's School of Law from 1 September 2012 until 29 July 2020, when the Claimant was dismissed from her employment with the First Defendant. During her time at the First Defendant, the Claimant was a professor of European Union Law, European Integration and Public Policy.

5. There has been a history of disciplinary proceedings involving the First Defendant and the Claimant, which are relevant to the Claimant's current claim as all of the publications complained of were made in the context of the latest disciplinary investigation into the Claimant.

The 2016 Disciplinary Proceedings

6. On 23 June 2016 Professor Rebecca Probert (the then Head of the School of Law at the First Defendant) wrote to the Claimant to notify the Claimant that Professor Probert had found the Claimant's behaviour at a School of Law staff meeting held on 15 June 2016 to be disruptive and inappropriate. Professor Probert explained that she considered the matter to warrant a formal meeting, which was scheduled for 1 July 2016 (page 38 of TGS/2).

7. It is the First Defendants' view that the Claimant refused to meaningfully engage in the disciplinary process and instead engaged in conduct constituting harassment towards

Professor Probert including, but not limited to, the circulation of persistent, intimidating and unsolicited emails. On 2 August 2016 Professor Croft (the Vice-Chancellor and President of the First Defendant) wrote to the Claimant stating that the Claimant's conduct was such that it led the First Defendant to believe that it constituted good cause for dismissal. Professor Croft also informed the Claimant that he considered, in the circumstances, that it was appropriate to suspend the Claimant on full pay and with immediate effect. A copy of Professor Croft's letter is at pages 39-41 of TGS/2.

8. Following a disciplinary hearing on 29 November 2016 Professor Simon Gilson (Chair of the Arts Faculty at the First Defendant) wrote to the Claimant on 9 December 2016. In his letter, Professor Gilson explained that he upheld all of the allegations made against the Claimant and confirmed that he was issuing a written warning which would remain on the Claimant's file for two years with effect from the date of his letter. Professor Gilson also explained that the Claimant's suspension had been lifted with immediate effect. A copy of Professor Gilson's letter is at pages 43-45 of TGS/2. The Claimant submitted an appeal against the disciplinary sanction issued by Professor Gilson but this was ultimately unsuccessful and the sanction was upheld. The Claimant was informed of this in a letter from the Third defendant dated 23 February 2017 (pages 46-49 of TGS/2).

The First Employment Tribunal Claim (2017)

9. On 27 June 2017 the Claimant issued a claim against the First Defendant, Professor Rebecca Probert, Professor Stuart Croft and Ms Gillian McGrattan (the First Defendant's Director of HR). The Claimant alleged that she had been subjected to a series of detriments because of whistleblowing and other protected acts. The Claimant also alleged unlawful direct race and sex discrimination and raised arguments based on alleged breaches of her human rights and provisions of EU law.

10. Amongst the remedies sought by the Claimant, she requested compensation for (i) injury to feelings (ii) psychiatric injury and (iii) aggravated damages. A copy of the Claimant's ET1 claim form is at pages 50-67 of TGS/2.

11. On 13 November 2018 Employment Judge Camp struck out the Claimant's complaints against Professors Probert and Croft and against Ms McGrattan on the basis that those claims had no reasonable prospects of success. The Claimant's complaints against the First Defendant were also struck out on the same basis save for three complaints relating to alleged victimisation which were permitted to continue. A copy of the relevant judgment is at pages 68-70 of TGS/2.

12. The remaining parts of the Claimant's claim were ultimately dismissed in April 2019 (page 72 of TGS/2) after the Claimant had failed to comply with an 'unless' order made by Employment Judge Monk dated 4 March 2019 (page 71 of TGS/2) which required the Claimant to send a list of all documents in the Claimant's possession and/or control that were relevant to any issue in the case, including the issue of remedy, by 18 March 2019.

13. The Claimant applied to the Court of Appeal for permission to appeal against the decision of Employment Judge Monk. This was refused in an Order made by Lord Justice Lewison dated 18 May 2020. In the reasons provided for refusing to grant permission, Lord Justice Lewison noted that the Claimant's application was focused on the decision of Employment Judge Monk of 4 April 2019 which did no more than inform the Claimant of the consequences of the Claimant's failure to comply with the unless order and that no application for permission to appeal had been made in respect of the unless order itself. Notwithstanding this, Lord Justice Lewison observed that "*there is no real prospect of a successful challenge to the making of the unless order. There is no breach of fair trial rights (either under the ECHR or other international instruments) if a tribunal makes case management orders in order to facilitate the orderly conduct of its own proceedings*" and that, in the case he had been asked to consider, the Claimant "*had persistently failed to comply with orders for disclosure made by the ET*.". A copy of Lord Justice Lewison's Order is at pages 73-74 of TGS/2.

The 2019 Disciplinary Investigation

14. I am informed that the protocol within the School of Law at the First Defendant is that all academic members of staff must meet with their allocated personal tutees within the first two weeks of the Autumn term. I also understand, from information provided to me by

the First Defendant, that an email was sent to all academic members of staff to inform them of this requirement in the autumn term in 2019. The autumn term in 2019 at the First Defendant commenced on 30 September 2019 (page 75-79 of TGS/2) and therefore Friday 11 October 2019 would have marked the end of the first two weeks of that term.

15. On 17 October 2019 the Second Defendant, who was the Claimant's line manager at the time, sent an email to the Claimant in which he said that he had been told that, as of 10 October 2019, the Claimant had not seen some or all of her first year tutees (page 80 of TGS/2). The Claimant did not initially respond to the Second Defendant's email and he therefore sent her further emails on 23 and 29 October 2019 chasing for a response (pages 81 and 82 of TGS/2).

16. There followed a protracted email exchange in November and December 2019 between the Second Defendant and the Claimant in which the Second Defendant requested, amongst other things, that the Claimant attend a meeting with him to discuss her responsibility to meet her tutees. Various dates were proposed for the meeting but it did not take place.

17. On 12 November 2019 the Fifth Defendant sent an email to the Claimant saying "*Dear Dora, How are you? I have been coming to your room almost every week since term started, but haven't been able to see you yet. Is there any chance I could schedule a meeting with you?:) Thank you! Sincerely, Diana"* (pages 83 of TGS/2).

18. On 15 November 2019 the Fifth Defendant sent an email to Solange Mouthaan (an Associate Professor and Director of Undergraduate Studies at the First Defendant's School of Law) saying *"Dear Solange, I have been to Dora's office every week since week 2, often two times a week as she has had replacement hours for when she was away during her normal visiting hours. However, she was never in her office when I went, so I sent her an email a few days ago but have not received a response."* (pages 84 of TGS/2).

19. On 17 November 2019 the Claimant responded to the Fifth Defendant's email of 12 November (pages 85 of TGS/2) and the Claimant and Fifth Defendant arranged to meet.

20. On 18 November 2019 the Fifth Defendant sent an email (at 17:27) to Solange Mouthaan (copied to the Claimant, Christine Warner and Andrea Humber (Student Services manager)) saying *"Dear Solange and everyone involved, I have now met with my personal tutor and I would also like to clarify that when I said Dora wasn't there during her office hours, I only meant that she was not there in the moment when I went to her office, not the whole 2 hours. I'm sorry if this caused any misunderstanding, Sincerely, Diana"* (page 86 of TGS/2).

21. Solange Mouthaan responded to the Fifth Defendant's email (copying in the other recipients) on the same day (at 18:29) to say "*Dear Diana, I am pleased you met with your personal tutor. I hope you have found the meeting useful. I appreciate our clarification. Best wishes, Solange"* (pages 87 of TGS/2).

22. On 19 November 2019 the Claimant responded to Solange Mouthaan's email (again copying in the other recipients) to say "*Thank you Solange! I must say that Diana was really very sorry about what she wrote when she came to see me and I do not believe that students should be placed in this position. When I asked her whether she had come to see me during my specified hours, for example, on Thursday between 1 and 6 in week 5 she said no. With all good wishes, Dora"* (pages 87 of TGS/2).

23. On 10 December 2019 the Third Defendant wrote to the Claimant explaining that she had received information relating to two allegations which, if proven, might warrant consideration at a Disciplinary Hearing. A copy of the Third Defendant's letter is at pages 90-91 of TGS/2. The allegations were based on the issues that the Second Defendant had raised with the Claimant about the Claimant's apparent failure to meet her tutees and the Claimant's refusal to attend a meeting with the Second Defendant. The Third Defendant summarised the allegations as follows:

    - "*Failure to comply with reasonable management requests, non-attendance at 5 separate meetings to discuss issues raised by students*

    - *Not fulfilling your responsibilities in good faith*".

24. The Third Defendant explained that she had determined that there should be an investigation in accordance with paragraph 8.2 of the First Defendant's Disciplinary Policy and Procedure ("the Policy"), a copy of which the Third Defendant enclosed with her letter and is exhibited to this statement at pages 92-109 of TGS/2. The Third Defendant stated that she had appointed the Fourth Defendant as the Investigating Officer to conduct the investigation and that the Fourth Defendant's role would include ensuring that, where practicable, all relevant facts and witness statements were obtained in relation to the alleged misconduct.

25. Pursuant to clause 23 of the Claimant's Terms of Employment (pages 110-121 of TGS/2), the Claimant was required to abide by the requirements of the First Defendant's relevant policies and procedures, including the Policy. Clause 20 of the Claimant's Terms of Employment states that the disciplinary and grievance procedures that apply to Academic, Research and Teaching staff (including the Claimant during her employment) are governed by "*the relevant University Statute and by procedural Ordinances approved by the University to implement the Statute, and which the University may vary or amend from time to time*.". The relevant University Statute for present purposes is Statute 24, Part III which addresses "*Discipline, dismissal and removal from office*". A copy of this document is at pages 124-125 of TGS/2. Ordinance 20 sets out the procedure to be followed in connection with Statute 24, Part III and a copy of this document is also exhibited at pages 126-127 of TGS/2.

26. The Claimant's Terms of Employment, Statute 24, Ordinance 20 and the Policy are relevant to the issues arising on this application of whether the claimant consented to the disciplinary investigation, and so the publication of the statements complained of and that such statements were, in any event, plainly published on an occasion of qualified privilege.

27. An investigation was opened and an investigation meeting was arranged on 9 January 2020 between the Claimant, the Fourth Defendant and Adele Ashford (an HR Business Partner at the First Defendant). The Claimant attended but was accompanied by her

husband. The First Defendant's Disciplinary Policy entitles an employee to be accompanied by a colleague from the First Defendant or a Trade Union representative. The Claimant's husband did not meet either criteria and her request that he attend the meeting was refused. The Claimant chose not to proceed with the meeting unaccompanied.

28. The Fourth Defendant interviewed the Second Defendant on 9 January 2020.

29. During the course of the first defendant's investigation, more serious allegations against the claimant emerged in relation to the Fifth Defendant's assertion that she had not been able to meet with the Claimant and the meeting that eventually took place between the Claimant and the Fifth Defendant on 17 or 18 November 2019.

30. On 10 January 2020 the Second Defendant and Solange Mouthaan met with Fifth Defendant. A document entitled "Ms Opik's Statement to Professor Lavender and Ms Ashford" (pages 88-89 of TGS/2) records the Fifth Defendant stating *"…I replied saying that I have gone to her office almost every single week during her office hours, sometimes twice a week, but that she was never there. I wanted to address that with Dora during our meeting, as I felt a bit bad that I had to say that in the email., but that I also had come to her office nonetheless. She said that she had been there during her office hours, and that she was called into a meeting with HR following the email I sent. She wanted me to send another email to the thread, to explain or 'fix' what I had said (I'm not sure what she said exactly), and I'm still not quite sure what she wanted me to do, because I wasn't sure how I could reformulate my email without lying and saying she was in fact there and/or I was the one who did not go to her office. Either way I assume that was the nature of what was expected of me, as I haven't come up with any other meaning to what she said. I think I apologised or reacted to her being called to a meeting with HR, and she said that if she loses her job because of me, she "will come knocking on my door". She then laughed and said she was only joking…..The meeting was normal up until the point we started discussing the email thread, after which I felt a bit uncomfortable. I didn't understand what Dora wanted me to do with regards to the email chain, and I wasn't comfortable asking because I felt like I was being asked to lie, and I didn't want to insinuate that she had lied either*

when she said she was in her office. I would have liked clarification on what she wanted me to do about the email, but wasn't sure how to approach it adequately.".

31. Following the meeting between the Second Defendant, Solange Mouthaan and the Fifth Defendant on 10 January 2020, on 12 January 2020 the Second Defendant sent an email to Ms Ashford regarding the meeting and his concerns in the light of what had been discussed and the additional material that had been provided to him (page 129 of TGS/2).

32. On 13 January 2020 the Second Defendant provided information to the Fourth Defendant in relation to the allegations referred to below (in relation to the letter from the Third Defendant to the Claimant dated 16 January 2020).

33. On 16 January 2020 the Third Defendant wrote again to the Claimant to address these allegations which she summarised as follows:

"It is alleged that:

- *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 ongoing investigation into the fulfilment of your duties.*
- *You have harassed and displayed threatening and intimidating behaviour towards students when questioning them in relation to complaints they may have made against you*."

34. The Third Defendant explained that she had asked the Fourth Defendant to widen the scope of his existing investigation to include these additional allegations. The Third Defendant also explained that, in view of the nature and seriousness of these further allegations, she considered that it was appropriate to suspend the Claimant on full pay with immediate effect, pending further investigation into the allegations. A copy of the Third Defendant's letter is at pages 130-131 of TGS/2. This letter is the first publication that the Claimant complains of in her libel and malicious falsehood claims in these proceedings.

35. On 16 January 2020 the Claimant's husband sent an email to the Third Defendant (copied to the Second and Fourth Defendants and Ms Sandy-Thomas complaining of victimisation of the Claimant and that the First Defendant had breached its procedures and making a series of requests for information (pages 132-133 of TGS/2).

36. The Third Defendant responded (to the same recipients) on 20 January (pages 134-135 of TGS/2), seeking to clarify a number of the issues and emphasising that the First Defendant was following its Disciplinary Policy. This is the second publication complained of and is referred to further below.

37. I attach at pages 136-139 of TGS/2 a copy of the Investigation Meeting notes dated 9 January 2020 and signed on 22 January 2020. This document is the fifth publication complained of (see Paragraphs 87 of the Particulars of Claim) and is referred to further below.

38. On 23 January 2020 the Fourth Defendant wrote to the Claimant regarding the expanded allegations that he was investigating (pages 140-141 of TGS/2). This is the eighth statement complained of and is referred to further below.

39. On 29 Jan 2020 the investigation was suspended due to Claimant's grievance complaint against the Third Defendant.

The Second Employment Tribunal claim (February 2020)

40. On 25 February 2020 the Claimant issued a claim in the Employment Tribunal against the First to Third defendants in these proceedings. A copy of the Claimant's ET1 and Particulars of Claim are at pages 157-186 of TGS/2. The Second Employment Tribunal claim relates to a detriment that the Claimant alleges that she has suffered as a result of protected acts under the Equality Act 2010 and the Employment Rights Act 1996 in relation to the commencement of the disciplinary proceedings against her.

41. The Second Employment Tribunal claim contains many similarities with the present claim, to the extent that the claims particularised against the First Defendant in paragraphs 43–51 of the Particulars of Claim in the present action constitute a repeat of the same complaint, and so in the Defendants' view an abuse of process pursuant to the rule in *Henderson v Henderson*. The matters pleaded in paragraph 44 of the Particulars of Claim in the present claim (which are relied on to substantiate the claims for infringements of the Claimant's human rights, including under Articles 8 and 14 of the ECHR and Articles 1, 7 and 21 of the EUCFR) and breaches of EU law relate, among other things, to what the Claimant describes as *"false accusations"* of misconduct against her, her suspension and the First Defendant "*ignoring*" the claimant's submissions about the Claimant's innocence. These matters are already before the Employment Tribunal in the Second Employment Tribunal claim.

42. While the Defendants respectfully invite the Court to consider the claimant's ET1 and Particulars of Claim in full, they draw particular attention to the following aspects of the Claimant's Second Employment Tribunal claim, which the Defendants respectfully submit bear a clear resemblance to the claims pleaded in paragraphs 43–51 of the Particulars of Claim in this action:

    a) On page 6 of the Claimant's ET1 (page 162 of TGS/2), she states that her claim "*also involves breaches of human rights under HRA 1998, ECHR, EUCFR and EU law and other international instruments as well as violations of directly effective EU citizenship rights and thus breaches of EU law, which is fully applicable and effective during the UK's transitional period*.".

    b) On page 8 of the Claimant's ET1 (page 164 of TGS/2), she states that she seeks damages "*for the breach of* [her] *human rights and for the reputational damage caused by the suspension which has real implications for* [her] *professional development and career…*".

    c) In paragraph 19 of the Particulars of Claim (page 172 of TGS/2), the Claimant states that: "*I regarded Professor Sanders' actions and threats of disciplinary action as an*

unacceptable interference with my right to human dignity (an absolute right under Article 1 EUCFR) and Articles 7 and 31 EUCFR , my Union citizenship rights and my personality rights under Article 8 ECHR. By breaching my human rights and my EU citizenship right to equal treatment and making me unwell, the Respondents had subjected me to a detriment.".

d) In paragraph 46 of the Particulars of Claim (page 179 of TGS/2), the Claimant complains of the failure to protect her "*personality rights stemming from Article 8 ECHR and Article EUCFR and the Human Rights Act*.".

e) In paragraph 63 of the Particulars of Claim (page 182 of TGS/2), the claimant alleges that the second defendant (for whose actions she seeks to hold the first defendant liable in this action): "*displayed complete regard for* [her] *fundamental rights (he acted in breach of Articles 1 and 8 EUCFR, Article 12 UDHR and Article 8 ECHR*)".

The Resumed Disciplinary Investigation

43. The disciplinary investigation was suspended between 30 January and 31 March 2020 while the Claimant's separate grievance proceedings were investigated. The disciplinary investigation resumed on 1 April 2020.

44. During March and April 2020 evidence was gathered (primarily by email due to the pandemic). This included an unsigned statement from the Fifth Defendant and a statement from the Second Defendant.

45. The Claimant was invited (on 1 April 2020) to attend a virtual meeting on 8 April but did not attend it.

46. On 15 April the Fourth Defendant sent questions to the Claimant. The Claimant responded on the same day but rather than responding to the questions, raised her own questions and referred to her previous grievances. On 16 April 2020 the Claimant indicated that she would not be responding to the Fourth Defendant's questions.

47. On 21 April 2020 a statement a statement was provided by Student X on condition of anonymity.

48. The full investigation report was completed on 20 May 2020 and is dated 13 May 2020 (pages 142-150 of TGS/2), It is the ninth publication complained of.

49. On 1 June 2020 the Third Defendant informed the Claimant that the Disciplinary Hearing would take place on 29 June 2020 (pages 154-156 of TGS/2) this is the third publication complained of.

The Third Employment Tribunal claim (August 2020)

50. In August 2020, the Claimant issued a further claim in the Employment Tribunal against the First and Third Defendants in these proceedings. The claims include wrongful dismissal, unfair dismissal, "*unlawful and disproportionate interference*" with the Claimant's human rights to dignity and respect for private and family life under Article 8 ECHR, and breach of the Claimant's rights to human dignity and respect for private and family life under Articles 1 and 7 of the EUCFR. A copy of the Claimant's ET1 is at pages 187-199 of TGS/2.

51. The Claimant particularises her claim for the "*unreasonable and disproportionate interference with human rights and rights derived from primary and secondary EU law on EU citizenship*" in paragraphs 33–36 of her ET1 (pages 198-199 of TGS/2). She states in paragraphs 34 and 35 that:

> "*34. The suspension was a purely punitive measure since I had done nothing wrong and the ACAS requirements about workplace suspensions and the case law of this country had not been met. It has breached the requirements of proportionality and reasonableness. No individual in a civilised society is allowed to inflict suffering on a human being, to cause disruption of her life and work, reputational damage, health problems and to undermine one's dignity and professional status by suspending her without an eponymous written complaint and substantive proof. Libel is a serious tortious offence.*

35. The same applies to the instigation of a disciplinary process and the disciplinary hearing. I have committed no misconduct and have been wondering why the fundamental rights of individuals are not respected…"

52. There is again considerable overlap between the Claimant's Third Employment Tribunal claim and the claims brought against the First Defendant in these proceedings, as set out in paragraphs 43–51 of the Particulars of Claim. The alleged breaches of the Claimant's human rights and EU law in the Third Employment Tribunal claim relate to the Claimant's suspension, dismissal and, more generally, the perceived unfair treatment that the Claimant says she experienced during the disciplinary process. Insofar as there is any material difference between those claims and the claims that the Claimant is advancing in this action, the Defendants respectfully submit that the Claimant could and should have raised these matters in the Employment Tribunal proceedings. Instead, she has chosen to issue this action which the Defendants respectfully submit is abusive and duplicative.

53. In paragraphs 22 of the Claimant's ET1 in the Third Employment Tribunal Claim, she seeks compensation for unfair dismissal, and *"damages for the sustained attack on my professional status and reputation, career disadvantage and stigma."*. In paragraph 11 of the Claimant's ET1 in the Third Employment Tribunal claim she seeks, for wrongful dismissal, "*damages in respect of* [her] *net salary and other contractual benefits for the notice period which expires at 31 December 2020*.". In paragraph 29 of the Claimant's ET1, relating to discrimination, she states that she seeks "*damages and interest for the pecuniary losses*.". The Claimant accordingly appears to be seeking, in the Third Employment Tribunal, to recover the same heads of loss that she now seeks to recover from the Defendants in this action.

54. It is the Defendants' respectful submission that any claim for loss flowing from the Claimant's dismissal is to be considered in the Employment Tribunal, and any attempt to claim the same losses in this High Court claim is barred by the *Johnson* exclusion principle (as set down by the House of Lords in *Johnson v Unisys Ltd* [2003] 1 AC 518) ("*Johnson*").

55. As part of the Third Employment Tribunal claim, the Claimant sought interim relief under section 128 of the Employment Rights Act 1996. That application was heard, and dismissed, by Employment Judge Dean in the Employment Tribunal in Birmingham on 3 November 2020. Employment Judge Dean concluded:

> "*To succeed in the application the Claimant must have a pretty good chance of satisfying the burden of proof at the Final Hearing, such that on my consideration of the interim relief application, I am not able to conclude that the Claimant has demonstrated that it is likely on determining the complaint to which the application relates, the Tribunal will find that the reason (or if more than one, the principle* [sic] *reason for the dismissal) was one of those specified in section 103A [of the Employment Rights Act 1996]*" (a copy of the judgment is at pages 229-242 of TGS/2).

56. The Claimant's Second and Third Employment Tribunal claims have now been conjoined. As the Court might expect, they have progressed further than this action. In both Employment Tribunal claims, the Respondents have filed Grounds of Resistance, copies of which I exhibit at pages 200-213 and 214-229 of TGS/2. I am informed by Messrs Shakespeare Martineau, the solicitors acting for the Respondents in the conjoined cases, that a preliminary hearing had been listed on 1 April 2021 to manage the cases but that this hearing was cancelled by the Employment Tribunal at the last minute because it considered that it would be necessary to have a two-day preliminary hearing in person.

The current applications

57. Before outlining the grounds for the Defendants' applications in this action, I briefly summarise the Claimant's claims against each Defendant, all of which relate to statements made during the disciplinary investigation and hearing as set out above. I refer to the paragraphs of the Particulars of Claim (pages 2-37 of TGS/2) in which the Claimant has sought to particularise her claims.

a) In respect of the First Defendant, the Claimant seeks damages pursuant to section 8 of the Human Rights Act 1998 ("HRA") for breaches of her rights under Articles 8 and 14 of the European Convention on Human Rights ("ECHR") (taken with section 6 of the HRA), breaches of Articles 1, 7 and 21 of the European Union Charter of Fundamental Rights ("EUCFR") and "*breaches of the General Principles of EU law, including the right to be heard and proportionality and other primary EU law*". These claims are particularised in paragraphs 43–51 of the Particulars of Claim (the Court will note that there are three paragraphs numbered 49) (pages 12-14 of **TGS/2**).

b) The Claimant seeks to hold the First Defendant vicariously liable for the actions of the Second to Fourth Defendants as set out in subparagraphs (c)-(e) below (paragraph 2 of the Particulars of Claim, pages 2-3 of TGS/2)

c) The Claimant brings claims against the Second Defendant for libel and/or malicious falsehood in respect of words published, or caused to be published, by the Second Defendant "*in or around January 2020 and March, April, May and/or June 2020*".

d) The Claimant brings claims against the Third Defendant for libel and/or malicious falsehood in respect of words published, or caused to be published, by the Third Defendant in letters dated 16 and 20 January and 1 June 2020 (pages 136-139 of **TGS/2**).

e) The Claimant brings claims against the Fourth Defendant for libel and/or malicious falsehood in respect of words published, or caused to be published, by the Fourth Defendant in a letter dated 23 January 2020 and a confidential investigation report dated 13 May 2020. In addition, the claimant brings a claim for slander against the Fourth Defendant in respect of statements attributed to the Fourth Defendant at a disciplinary hearing on 20 July 2020.

f) The Claimant brings a claim against the Fifth Defendant for libel and/or malicious falsehood in respect of words published, or caused to be published, by the Fifth Defendant in or around March or April 2020.

Grounds to strike out the claim and/or summary judgment

The claims against the Defendants for defamation and malicious falsehood

a) Further or alternatively, the Defendants seek an order striking out, or for summary on, the Claimants' claims for libel, malicious falsehood and slander on the basis that the Claimant consented, and/or granted leave and licence, to the publication of the statements complained of, and the claim therefore fails in accordance with the principle established by the Court of Appeal in *Friend v Civil Aviation Authority* [1998] IRLR 253 ("*Friend*"). The *Friend* principle makes clear that where, as here, an employee consents to a disciplinary procedure as part of the terms of their employment, they consent to communications for the purpose of carrying out disciplinary investigations. Such consent is implicit in any contract of employment.

b) Further or alternatively, the Defendants seek to strike out and/or summary judgment in respect of the Claimant's claims for libel and slander because the Claimant has no real prospect of succeeding in 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 trial.

c) Further or alternatively, the Defendants seek an order that the claims for malicious falsehood be struck out because the Particulars of Claim (and the Claimant's Part 18 Response) disclose no arguable case of malice.

d) Further or alternatively, the Defendants seek an order striking out the libel, slander and malicious falsehood claims pursuant to the principle in *Jameel (Yousef) v Dow Jones Inc* [2005] EWCA Civ 75, on the grounds that there is no realistic prospect of a

trial yielding any tangible or legitimate advantage to the claimant such as to outweigh the disadvantages for the parties in terms of expense, and to the wider public in terms of court resources. On the face of it a claim of this nature, involving multiple publications, five defendants, a complex background, a range of defences and a litigant in person could easily involve a trial lasting 10 days and costs on the Defendants' side alone of £500,000-£750,000.

The claim against all of the Defendants for loss as result of the Claimant's dismissal

e) Further or alternatively, the Defendants seek an order striking out, or for summary judgment on, the claim for losses flowing from dismissal, including the claims for financial loss stated to be "*loss of salary between 20 July 2020 and 6 May 2021*" and for "*future loss of salary from 6 May 2021*" on the basis that the claim for loss arises by reason of the Claimant's dismissal and the Employment Tribunal has exclusive jurisdiction to determine such claims. The Claimant's claim is accordingly barred pursuant to the principle in *Johnson*.

f) Flowing from that, the Defendants seek an order striking out, or for summary judgment on, the claims for malicious falsehood against all of the Defendants and the claim for slander against the Fourth Defendant on the basis that such claims are actionable upon proof of special damage and, in consequence of the Claimant's claim for financial loss being barred by the *Johnson* exclusion principle, there is no real prospect of the Claimant succeeding with these claims and/or the Particulars of Claim (and the Claimant's Part 18 Responses) disclose no reasonable grounds for bringing such claims.

g) Further, the Defendants seek an order striking out, or for summary judgment on, the claims for libel and slander because the Particulars of Claim (and the Claimant's Part 18 response) disclose no basis upon which the Court could properly conclude that, absent the losses flowing from dismissal, the publications complained of, being internal to the disciplinary process, caused (or are likely to cause) serious harm to the

Claimant's reputation and/or the Claimant has no real prospect of establishing serious harm to her reputation or the likelihood of it.

The claims against the First Defendant in paragraphs 43–51 of the Particulars of Claim

h) The Defendants seek an order striking out, or for summary judgment on, the claims against the First Defendant in paragraphs 43–51 of the Particulars of Claim on the basis that these claims constitute an abuse of process. The Claimant has already brought these claims (or ought to have done so) in extant Employment Tribunal proceedings and the Defendants accordingly respectfully submit that this action is therefore contrary to the principle established in *Henderson v Henderson* [1843] 3 Hare 100 that a party should not be twice vexed. In so far as these claims relate to damage flowing from dismissal they are also barred by the *Johnson* exclusion principle.

The claims against the Second to Fifth Defendants

58. The Claimant has alleged that the publications complained of have been made to a range of individuals. These individuals all had a role in the disciplinary process involving the Claimant. To assist the Court and the parties in understanding who these individuals are, and the role they played in the disciplinary process, we have prepared a table containing this information (exhibited at pages 248-252 of TGS/2). As the Court will note, each individual named in the table was employed by the First Defendant and played an integral role in the disciplinary process involving the Claimant. The Defendants accordingly respectfully submit that each individual had a legitimate reason to receive/interest in receiving the statements complained of, which were necessary to allow them to perform the role they performed in the context of the disciplinary process (to which the Claimant consented as part of her employment).

59. The Defendants respectfully submit that the Claimant's case as to how the statements complained of were published to the named publishees is not always clear. The Defendants have already made one Part 18 Request for further information and are

presently considering whether it is necessary to make a further request. Without prejudice to the Defendants' contention that the burden is on the Claimant to plead and prove publication and that the Claimant's statements of case are largely inadequate in this respect, the First Defendant has conducted its own investigations in an effort to establish how each of the publications might have occurred.

The Second Defendant (paragraphs 85–94 of the Particulars of Claim)

60. In paragraph 87 of the Particulars of Claim, the Claimant states that the Second Defendant made false and defamatory statements "*in a signed, private and confidential record of investigation notes on 22 January 2020 which was published following that date and was communicated to the Claimant in March 2020 and made known to other parties, as Professor Meyer, Steele, Sparrow, Roberts and to several HR Advisers and Managers*". In the Claimant's Part 18 Response to Requests 25 and 26, she states that "*other recipients included Ms Mills, Ms Way, Ms Ashford, Mr Partridge, Ms Khan and the HR Department*". The positions held by these individuals, and the role they played in the disciplinary process, is included in the table at pages 248-252 of TGS/2.

61. A copy of the investigation meeting notes is at pages 136-139 of TGS/2. The Claimant's statements of case do not explain how it is said that this document came to be published to the individuals named in the Claimant's statements of case. Neither it is clear from the face of the document itself how such publication could have occurred. While this document records that the Fourth Defendant and Ms Adele Ashford (an HR representative employed by the First Defendant) were present at the investigation witness meeting which took place at 9.00am on 9 January 2020, it does not explain how any of the putative publishees received a copy of the investigation notes themselves.

62. Based on the investigations that the First Defendant has carried out to date, the Defendants are able to confirm that the investigation notes were considered by the Disciplinary Panel and a subsequent Appeals Panel. At the meetings held by each Panel, a member of the First Defendant's HR department would take notes. Beyond this, the Defendants are currently unable to admit or deny publication to the named individuals

and I respectfully submitted that, in circumstances where the burden to prove publication rests with the Claimant, the Defendants are under no obligation to do more at this stage.

63. At paragraph 88 of the Particulars of Claim, the Claimant pleads that, on 31 January 2020, she and "*Sir Normington, Chair of the Council of the University of Warwick, received by email a copy of Professor Sanders' private and confidential communication to Ms Adele Ashford dated 12 January 2020*.". A copy of the Second Defendant's email dated 12 January 2020 is at page 129 of TGS/2. The Claimant does not complain of the original publication of the email dated 12 January 2020 (and cannot do so because such publication falls outside the one-year limitation period applicable to claims for defamation and malicious falsehood).

64. The Claimant has provided the Defendants with a copy of the email dated 31 January 2020 referred to in paragraph 88 of the Particulars of Claim (page 128 of TGS/2). That email was sent to the Claimant by the Fourth Defendant and was copied only to the Claimant's husband. On the face of the email there was no publication to Sir David Normington, as alleged by the Claimant. The First Defendant is presently unable to say how publication to Sir David Normington occurred (if indeed it did) but suspects that if it did then the Claimant would be responsible for it. Further, while the email dated 31 January 2020 is included as a publication complained of in relation to the Second Defendant, it is clear that the Second Defendant did not send that email to Sir David Normington himself (as stated above, the Fourth Defendant was the author). I note that the Claimant has pleaded, in the alternative, that the Second Defendant caused the statements complained of (which seemingly includes the email of 31 January 2020) to be published but it is entirely unclear from the Claimant's pleaded case whether, and if so how, she contends that the Second Defendant was responsible for this.

65. In paragraph 91 of the Particulars of Claim, the Claimant states "*in a statement written in either March 2020 or early April 2020 and which was re-published in May and/or June 2020 to several Professors (Meyer, Steele, Sparrow, Roberts) and HR advisers and managers (Ms Way, Ashford, Houfe, Mills and others), Professor Sanders (the Second Defendant) contradicted his previous statement of 22 January 2020…*" (page 27 of TGS/2). The roles of

the named publishees are set out in the table at page 248-252 of TGS/2. In the statement concerned, the Second Defendant refers to the Second Defendant's email to Ms Ashford dated 12 January 2020, which the Second Defendant appended to his statement. The Claimant again fails to explain how publication is said to have occurred. It is admitted by the Defendants that the statement was published to the Fourth Defendant (the statement itself has a handwritten note which states "*A. Sanders' second statement to A. Lavender*"). Beyond this, and in the absence of proper particulars from the Claimant, the First Defendant can only confirm that the Second Defendant's statement would have been read by members of the Disciplinary Panel and subsequent Appeals Panel (and any relevant members of the HR team at the First defendant).

66. The Defendants respectfully submit that the claimant does not satisfy the stringent requirements imposed on the pleading of malice (against any of the Defendants). As this is effectively a pleading point, the Defendants' case will be advanced principally in the legal written and oral submissions made on their behalf prior to, and at, the hearing of this application. However, I consider that it is important to emphasise two general points at this stage. Firstly, as the Court will know, malice is an extremely serious allegation which should not be made lightly. 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 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.

67. Secondly, I respectfully submit that even the documents on which the Claimant relies do not support her case of malice. For instance, in the investigation meeting notes which the Claimant complains of in paragraph 87 of the Particulars of Claim, the Second Defendant is recorded as saying that there were "*parts of her* [the claimant's] *role she does very well*", that she was "*well thought of outside the University*" and that he had not received "*any complaints about her teaching ability*" (page 139 of TGS/2). When the

Second Defendant was asked what his "preferred outcome" would be, he said that it was not for him to say. In my respectful submission, it is very difficult to reconcile these words with the Second Defendant maliciously seeking to injure the Claimant.

The Third Defendant (paragraphs 50 – 58 of the Particulars of Claim)

68. In paragraphs 50 and 51 of the Particulars of Claim, the Claimant complains of letters written by the Third Defendant dated 16 January and 1 June 2020 which were "*published to Mr Matt Nudds, Chair of the Faculty of Social Sciences, Ms Clare Phillips, HR Adviser, Professor Lavender, Professor Ledley* [sic], *Professor Swain, Professor Meyer, Professor Steele, Professor Sparrow, Professor Penny Robert, Ms Houfe, Ms Way, Mr Partridge, Ms Stewart and to others*.". Copies of both letters are at pages 130-131 and 154-156 of TGS/2. The Claimant does not explain how publication is said to have occurred to each of these individuals, who are referred to in the table at pages 248-252 of TGS/2. In relation to the letter dated 16 January 2020, it is stated (at the foot of the letter) that the letter was copied to the Second Defendant, Rachel Sandby-Thomas (Registrar) and Geraldine Mills (HR Director) and it is therefore accepted that publication took place to those individuals. I am instructed by the First Defendant that Mr Nudds and Ms Phillips met with the Claimant on 16 January 2020 to notify her of her suspension and talk through the details of the letter. It is therefore also accepted that publication took place to those individuals.

69. As regards the Third Defendant's letter dated 1 June 2020, the First Defendant can confirm that Professors Meyer and Steele (as members of the Disciplinary Panel) and Professors Sparrow and Roberts (as members of the Appeal Panel) would have received a copy of the letter. The First Defendant can also confirm that the Fourth Defendant would have also received a copy of the letter. Mr Partridge and Ms Houfe, in their roles as HR support for the respective Panels, are also likely to have received a copy.

70. Beyond what is stated in above, and in the absence of a permissible plea on publication, the Defendants are not currently in a position to admit or deny publication of the letters dated 16 January and 1 June 2020 to the other named individuals in the Particulars of

Claim. In any event, even if publication did occur to all of those identified in the Particulars of Claim, I respectfully submit that each of them needed to receive the letters (and had an interest in doing so) given the key roles they played in the disciplinary process, as set out in the table at page 248-252 of TGS/2.

71. In paragraph 52 of the Particulars of Claim, the Claimant complains of "*an email communication dated 20th January 2020 written by the Third Defendant, and sent to the Claimant, Professor Lavender, Professor Croft, Ms Sandy-Thomas and Ms Ashford*". A copy of the relevant email is at page 134-135 of TGS/2. The email states that it was published to those identified by the Claimant. These publishees plainly needed to receive (and had an interest in receiving) the Third Defendant's email given their role in the disciplinary process. In addition, I note that the Third Defendant was responding to an email that the Claimant sent (seemingly from her husband's email address) on 16 January 2020 to the same publishees (save for Ms Ashford) (page 132-133 of **TGS/2**).

72. I respectfully submit that the malice plea against the Third Defendant is not supported by the documents on which the Claimant relies. The three publications complained of in relation to the Third Defendant were simply examples of the Third Defendant acting in accordance with her role as Commissioning Officer in the disciplinary investigation. In the Third Defendant's letter dated 16 January 2020, the Third Defendant set out the allegations and stated "*if proven*" they may warrant consideration. The Third Defendant acknowledged that this might be a difficult process for the Claimant and offered to provide access to forms of wellbeing support (page 131 of TGS/2). In my respectful submission, reading this document and the two other publications complained of in their proper context, they do not suggest that the Third Defendant was in any way actuated by malice.

The Fourth Defendant (paragraphs 95–105 of the Particulars of Claim)

73. In paragraph 95 of the Particulars of Claim, the Claimant states "*in a letter dated 23rd January 2020 written by the Fourth Defendant and sent to the Claimant and Ms Adele Ashford of the First Defendant, the Fourth Defendant wrote and published the following*

statements…". A copy of the letter is at pages 140-141 of TGS/2. It is admitted that the letter was published to Ms Ashford, as alleged. Ms Ashford provided essential HR support to the Fourth Defendant during the disciplinary investigation.

74. In paragraph 96 of the Particulars of Claim, the Claimant states "*in a Confidential investigation report dated 20th May 2020 written by the Fourth Defendant and made known to Professors Ennew, Meyer, Steele, Sparrow, Roberts, Ms Mills, Ms Ashford, Ms Way, Ms Houffe and other persons presently unknown in the First Defendant, the Fourth Defendant wrote and published the following words*…". A copy of the investigation report, which is in fact dated 13 May 2020, is at pages 142-150 of TGS/2. Pending receipt of further and better particulars in respect of the alleged publication, the First Defendant is only able to confirm that the report would have been published to those involved in the disciplinary and appeal hearings. It is clear that these individuals needed to receive (and had an interest in receiving) a copy of the report in order to perform their roles.

75. In paragraph 98 of the Particulars of Claim, the Claimant states "*During the disciplinary hearing of Monday 20 July 2020, in the presence of Professor Meyer, Professor Steele, Mr Graham Partridge, Ms Adele Ashford and Ms Roisin Khan, the Fourth Defendant, Professor Lavender said to them*…". A copy of the notes from the disciplinary hearing is at pages 151-153 of TGS/2. The notes confirm that each of the individuals identified by the Claimant were present at the disciplinary hearing. The notes also briefly explain the role of each such individual. Each of them needed to be at the meeting in order to perform their roles.

76. Insofar as the plea of malice against the Fourth Defendant can be discerned, it appears to essentially boil down to the Fourth Defendant being malicious merely because he did not attach due weight to certain points the Claimant feels support her position and/or because the Fourth Defendant's interpretation of the relevant events did not match the Claimant's own interpretation. 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.

The Fifth Defendant (paragraphs 59–84 of the Particulars of Claim)

77. In paragraph 78 of the Particulars of Claim, the Claimant states "*In an email communication/unsigned statement written by Ms Opik, the Fifth Defendant, in late March 2020 or early April 2020 and sent to Professor Lavender and Ms Ashford, HR, which was also later published to Professors Ennew, Sanders, Steele, Meyer, Sparrow, Roberts, Ms Way, Ms Houfe and to several others, the Fifth Defendant wrote the following false and defamatory statements about the Claimant…*". A copy of the statement is at pages 88-89 of TGS/2. In the Claimant's Part 18 Response to Request 20 she states "*Additional recipients include Mr Graham Partridge, Ms Roisin Khan and Ms Adele Ashford*". The Claimant has not explained how the alleged publication is said to have occurred. The First Defendant has informed me that, as the Fifth Defendant's statement was appended to the Fourth Defendant's investigation report dated 13 May 2020, the Fifth Defendant's statement would have been received by Professors Sanders, Ennew, Meyer, Steele, Sparrow and Roberts, given the important roles that they played during the disciplinary process, as identified in the table at pages 248-252 of TGS/2, and Mr Partridge, Ms Khan and Ms Way given the HR support they provided. I respectfully submit that all of these recipients needed to receive (and had an interest in receiving) a copy of the Fifth Defendant's statement in order to carry out their roles.

78. I respectfully submit that the claimant's plea of malice against the Fifth Defendant is impermissible. Even based on the documents on which the claimant relies, there is no basis on which to allege malice. In paragraph 73 of the Particulars of Claim, for instance, the Claimant refers to an email dated 18 November 2019 sent by Fifth Defendant to Professor Solange Mouthaan in the First Defendant's School of Law in which the Fifth Defendant clarified an earlier statement that the Fifth Defendant had made about the claimant not being in her office when the fifth defendant had tried to see her there. The Fifth Defendant's clarification was expressed in the following terms: "*I would also like to clarify that when I said Dora* [the claimant] *wasn't there during her office hours, I only meant that she was not there in the moment when I went to her office*". The Fifth Defendant accordingly did not resile from anything that she had previously said or acknowledge that her earlier account had been incorrect; she was simply clarifying what

she had meant when she had said that the claimant was not in her office during office hours. I respectfully submit that this material does not support the Claimant's very serious allegation of "*intentional lying on the part of the Fifth Defendant*", which is alleged in paragraph 79 of the Particulars of Claim.

79. In the circumstances, I respectfully submit that the Claimant's claims have no real prospect of success for the reasons given above and I respectfully ask the Honourable Court to strike them out and/or grant the Defendants summary judgment.

80. The Defendants also apply for an order that the Claimant pay the Defendants' costs of any claim which is struck out and/or in relation to which summary judgment is entered (including the costs of the application itself).

Procedural history

81. The Defendants' respectfully submit that the Claimant has effectively obliged them to make this application now. On 5 July 2021 we wrote to the Claimant to notify her of the grounds on which the Defendants believe these High Court proceedings should be struck out and invited the Claimant to agree to a stay of them, pending the final determination of the claimant's two current Employment Tribunal claims. We informed the Claimant that if she did not agree to a stay the Defendants would need to make an application to strike out the claim and/or for summary judgment by 9 July 2021, which is the existing deadline for service of the defence, unless that deadline was extended. We explained that in such circumstances we would need to reserve the Defendants' right to serve additional material in support of their application after 9 July should that be necessary (particularly in view of the significant number of publications complained of and the fact that the Claimant has issued her claim against five Defendants). A copy of our letter is at page 244-247 of TGS/2). In the Claimant's response dated 6 July 2021, she refused to agree to the proposed stay and urged the Defendants to file a defence. I respectfully submit that, given the fact that the Defendants consider that the entirety of the claim should be struck out, it would be inappropriate for the Defendants to serve a defence at this stage.

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.

.....

Timothy George Edwin Smith

9 July 2021

IN THE HIGH COURT OF JUSTICE **Claim No. QB-2021-000171**
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

B E T W E E N

PROFESSOR THEODORA KOSTAKOPOLOU

Claimant

- and -

(1) UNIVERSITY OF WARWICK (A CORPORATE BODY INCORPORATED BY ROYAL CHARTER UNDER ROYAL CHARTER NUMBER: RC000678)
(2) PROFESSOR ANDREW SANDERS
(3) PROFESSOR CHRISTINE ENNEW OBE
(4) PROFESSOR ANDY LAVENDER
(5) MS DIANA ÖPIK

Defendants

Defendants' Skeleton Argument for hearing on 18 and 19 October 2021

Bundle references are in the form [Tab] or [Tab/Printed page number];
PDF page numbers are 3-5 higher than printed page numbers

Suggested pre-reading: (2-3 hours)

(1) Ds' Application Notice [13/142-144]
(2) WS of Mr Smith in support of Ds' application [14/145-173]
(3) Dramatis personae [15/386-390]
(4) Particulars of Claim [2/4-39]
(5) C's Application Notice objecting to Mr Smith's statement [18/408-411]
(6) WS of C in support of C's application [19/412-462] (although much of it does not appear relevant);
(7) WS of Mr Smith in reply [26/1131-1144].

1. This is the Ds' application to strike out C's claim and/or be granted summary judgment, on a number of grounds. The claim is principally one in libel, relating to statements published internally within D1, C's then employer, during the disciplinary process that concluded with her dismissal.

2. The relevant facts are set out in Mr Smith's evidence at §§3-56 [14/149-156] and are not repeated here, save where relevant.

3. The grounds for the application are set out in the Application Notice [13], and fall under the following heads:

    3.1. Consent, or leave and licence, to the publication of the statements as part of the disciplinary process;

    3.2. Qualified privilege, and no malice;

    3.3. The losses claimed fall within the *Johnson* exclusion principle;

    3.4. No serious harm;

    3.5. *Jameel* abuse of process;

    3.6. *Henderson v Henderson* abuse of process.

4. C, acting in person, has made various applications since Ds' application, including for default judgment, to set aside the Court's directions, for information under CPR Part 18, and in respect of objections to parts of Mr Smith's 2nd witness statement. The applications for default judgment and in respect of the witness statement have been directed to be heard at this hearing [9/135/§2], [11/138/§1]. Neither will take any time: the Court has extended time for service of the defence in its Order of 13 July 2021 [8/133/§11], and the witness statement application is dealt with by C's service of her own evidence in response [19] (and Mr Smith's reply in his 4th statement [26]).

5. C's various other applications have been refused, three with costs, and in two instances with a certification that they were totally without merit [12/141/§1].

6. The bundle for the hearing is very large, but most of the documents are not necessary from Ds' perspective. Pursuant to the Order of the Court dated 13 July 2021, §6, C was permitted to add whatever documents she wished to the bundle [8/133]. Ds have sought to produce an agreed bundle insofar as possible and have not only added documents requested by C but have sought to agree the headings and description of the documents within the bundle, the order of the documents and have also agreed to remove some documents at C's request.

1. Consent or 'leave and licence'

Legal principles

7. In *Friend v Civil Aviation Authority* (CA, unreported, 29 January 1998), the Court of Appeal held that the claimant had assented to his employer's disciplinary process when he accepted employment, including consenting to the publication of documents such as was necessary for the fair conduct of that disciplinary process, regardless of whether the documents had been created maliciously.

8. The relevant facts are set out at p3-4 and 5-6:

> "Captain Friend had since April 1987 until his dismissal in March 1993 been employed by the CAA as a Flight Operations Inspector… a formal complaint was laid before the CAA's internal disciplinary panel, contending that Captain Friend's conduct in the course of his employment had disrupted his working relationship with his colleagues. After a four day hearing culminating on 1 October 1992 the panel recommended that the complaint should be dismissed, and held that while good relations between Captain Friend and his managers had broken down, the fault was not clearly attributable to one side,

leading to a recommendation that he and another senior manager should work together on a rehabilitation programme. The panel's recommendations were rejected by the head of the Operating Standards Division, Mr. John Saull, the fourth defendant in the second action. As a result Captain Friend was dismissed by letter dated 1 December 1992.

Captain Friend next pursued an appeal under the CAA disciplinary procedure, and this was heard on 2 and 10 March 1993 and dismissed on 17 March 1993. He then presented a final internal appeal which was dismissed on 16 June 1993.

…

Prior to the disciplinary proceedings, a number of senior employees of the CAA, including the five defendants in the second action, had written memoranda, numbering twelve in all, and dated between 1 August 1990 and 8 April 1991, which were highly critical of Captain Friend. These formed the basis of those proceedings, together with two subsequent memoranda compiled in June and September 1992 subsequent to the institution of those proceedings, and also numerous other documents.

On 29 September 1995, one month after the conclusion of the EAT proceedings, Captain Friend issued his two libel writs, complaining in each case of the publication of all fourteen memoranda referred to above.

The limitation period having started on 30 September 1992, Captain Friend limited his plea to the re-publication of the memoranda on and after 1 October 1992 to the respective members of the various tribunals (i.e. on the fourth day of the original disciplinary hearing before the panel, and thereafter throughout the internal appellate process): he did not claim in relation to the original publication by their respective

authors of the fourteen memoranda, which of course fell outside the limitation period."

9. The terms and conditions of Captain Friend's employment provided that rules of conduct and discipline would be set out in a staff manual (pp9-10). The rules provided that natural justice would be applied, and that disciplinary investigations would involve seeking evidence, taking statements and collating relevant records and documents (p11).

10. Captain Friend's claims were brought against both the CAA and certain individuals, who were the authors of the memoranda complained of (see p1 and the "third contention" at p7).

11. The claims had been struck out by the Master, but the Captain's appeal was allowed by Alliott J in respect of some of the publications complained of (p2). The Judge had found that while the Captain had impliedly consented to the publications, any such defence would be defeated by malice, which the Captain alleged; although the Captain was to be taken to have consented to all publications in respect of the appeal, regardless of malice (p7).

12. On appeal to the Court of Appeal, the Defendants contended that malice was irrelevant, while the Captain challenged the finding in respect of the appeal.

13. The Court of Appeal found for the Defendants. At p16 the Captain's submissions were summarised as *"that a person cannot consent to a malicious untruth, and, as he put it, natural justice does not include malice."*. At p16-7 Hirst LJ (with whom Millett and Brooke LJJ agreed) set out his decision rejecting this contention:

> "In my judgment the defendants here are entitled to rely on the defence of volenti and leave and licence in relation to both actions, substantially for the reasons given by Mr. Moloney [for the Defendants]. Captain Friend's submissions seem to me to be based on a basic misconception as to the nature of disciplinary proceedings.

Inevitably they are launched as a result of some kind of accusation or complaint against an employee, and their essential purpose is to decide whether that accusation is true or false, for which purpose the accusation or complaint must inevitably be re-published to the disciplinary tribunal and those responsible for hearing any subsequent disciplinary or appeal proceedings.

Natural justice comes into the picture in order to ensure that their adjudication is fairly carried out.

It necessarily follows that an employee who accepts a disciplinary code such as the CAA's as part of his contract of employment consents to the re-publication of the accusation or complaint as part of that process, otherwise there is no way in which, for his own protection as well for the protection of the interests of his employer, the truth or falsity of the accusation or complaint can be fairly established.

[…]

Captain Friend's consent to the publication of the accusation or complaint to those involved in the disciplinary adjudications is on the basis that nobody can know for certain whether that accusation is true or false until it has been re-published to, considered by, and adjudicated upon by those persons at the various stages of the disciplinary process."

14. In his concurring judgment Brooke LJ said, at 25-6:

"I accept Captain Friend's proposition that in most ordinary circumstances there would need to be evidence of a special express consent before a person could be held to have consented to the publication or republication of malicious libels on him/herself. In my judgment, however, the disciplinary process to which he assented when he accepted employment with the CAA necessarily involved the

publication to the relevant officers of the authority of the documents that related to a disciplinary charge that was being investigated. Without access to those documents the authority could not conduct a fair inquiry.

It is only the publication of the documents for the purposes of the inquiry of which Captain Friend makes complaint, and this publication is covered by his consent. As Hirst LJ has said, there was nothing other than the passing of the limitation period to prevent him from bringing an action for damages against the authors in respect of their original publication."

Application to the present case

15. *Friend* is plainly directly applicable here.

16. As the Court of Appeal emphasised, it is a feature of natural justice that allegations must be investigated. For allegations to be fairly and properly investigated those allegations will inevitably need to be republished during the investigation. It is an implied term of any contract of employment that disciplinary processes will be conducted fairly: *Lim v Royal Wolverhampton Hospitals NHS Trust* [2011] EWHC 2178 (QB) at [93].

17. C's terms of employment provided that the disciplinary procedure was available on the University's website or in hard copy from her line manager [15/255/§20] (similar to Captain Friend at the CAA who was required to read the staff manual to keep up to date with the relevant policy).

18. The Disciplinary Procedure in force at the time [15/230-247], included the following:

    18.1. "7.1. In matters that are more serious or in cases of repeated minor breaches the alleged misconduct will be dealt with under the formal disciplinary policy and procedure. The relevant HR Adviser should be consulted by the Head of Department (or nominated representative) at

all stages under the formal procedure for advice on managing disciplinary matters."

18.2. "8. Investigation

8.1. The extent of an investigation prior to a disciplinary hearing, will depend on the seriousness and complexity of the case. In some cases this will require the holding of an investigatory meeting, however, in others, the investigatory stage will be the collation of evidence for use at a disciplinary hearing.

8.2. Generally, in complex or potentially serious cases, it will be appropriate for an Investigating Officer to be appointed by the Provost, Registrar, or a Senior Officer or those to whom they have delegated authority (known as the Commissioning Officer) in liaison with the relevant HR Adviser.

8.3 Where appointed, the role of the Investigating Officer will be:

- to ensure that, where practicable, all relevant facts and witness statements are obtained in relation to the alleged misconduct;
- to decide which witnesses are necessary to interview and, accordingly, to invite them to participate in an investigatory interview. Such witnesses will have the right to be accompanied by a work colleague or Trade Union representative should they so wish;
- to conduct the investigation in a confidential manner, and complete the investigation without undue delay wherever possible;
- to provide a written report outlining the findings of the investigation to the Head of Department (or nominated representative) or Commissioning Officer.

8.4. Following receipt of the Investigating Officer's report, the Head of Department (or nominated representative) or Commissioning Officer

will determine whether there is sufficient evidence for the matter to be considered at a Disciplinary Hearing. The Head of Department (or nominated representative) or Commissioning Officer will be responsible for informing the employee of the outcome and advising on any next steps, i.e. whether the matter will be progressing to a Disciplinary Hearing.

8.5. Should the matter proceed to a disciplinary hearing, the Head of Department (or nominated representative) or Commissioning Officer will provide the individual with a copy of the Investigating Officer's report for information. In exceptional circumstances, for example where it is deemed that the release of the report may be damaging to other parties, the report may be redacted."

19. Here C does not sue over the initial allegations made against her. Like in Captain Friend's case, those original publications are time-barred. She sues over the internal republication of the allegations while they were being investigated.

20. As per C's own case, the disciplinary investigation into her conduct commenced on 4 December 2019 (PoC §24) or 10 December 2019 (PoC §28 – see the letter from D3 at [15/228]). This is not, therefore, a case like *Parris v Ajayi* [2021] EWHC 285 (QB), where strike out sought on the ground of consent was refused on the basis that it was not clear that the disciplinary investigation had commenced at the time of the publications.

21. The first publication C sues over is not until 16 January 2020, which is the notification to her of an expansion of the investigation to address further allegations, namely of attempting to influence witnesses and harassing/intimidating students (PoC §50; the letter is at [15/268-269]). The letter refers to the existing investigation and the previous letter of 10 December 2019.

22. PoC §51 lists the names of various individuals to whom this letter is alleged to have been published, but it is clear that each of these individuals only received it as part of the disciplinary process. C has clarified that even on her case, most of these individuals only saw the letter at later stages of the process, such as the panel members at the disciplinary hearings themselves [5/108-9/§5-8]. See also the Dramatis Personae at [15/386-390].

23. The other publications sued on are all also part and parcel of the disciplinary process, to which C expressly or impliedly consented as part of her employment:

    23.1. A later letter from D3, dated 1 June 2020 [15/292-294], inviting C to the disciplinary hearing (also §50);

    23.2. A letter from D3 repeating her summary of the allegations, dated 20 January 2020 [15/273-4], replying to C's queries about the investigation [15/270-1] (§52);

    23.3. The statement by D5, one of the students concerned, for the disciplinary hearing [15/276-277] (PoC §78);

    23.4. Notes of an investigatory meeting between Professor Lavender (D4), appointed by D3 to investigate the allegations, and D2, C's line manager (PoC §87);

    23.5. Re-publication of D2's account of his conversation with D5 on 31 January 2020 (§88; as to which it is also entirely clear that the publication complained of to Sir David Normington in §88 was by C herself copying him in to her response to D4 – see Mr Smith at [14/165/§63-64] and [24/869] – which provides another reason to strike out this part of the claim), and later (in May/June 2020) as part of his statement for the disciplinary hearing (§92);

    23.6. A letter from D4 of 23 January 2020 to C setting out the allegations that he was investigating (§95);

23.7. D4's conclusions as set out in his Investigation Report dated 20 May 2020 (§96), and his statements at the disciplinary hearing on 20 July 2020 (§101).

24. Mr Smith addresses the roles of the publishees of these communications in his WS at §§60-77 at [14/164-170]. See also the Dramatis Personae at [15/386-390]. C has clarified her case on this aspect, to a limited degree, at [5/108-114]. It is clear that all of these publications were a proper part of the disciplinary process.

25. Accordingly, Ds request that the claims for libel, slander and malicious falsehood be struck out as disclosing no reasonable grounds for bringing these claims and/ or summary judgment be granted.

2. Qualified Privilege and no malice

Legal principles

26. In *Toogood v Spyring* (1834) 1 CM & R 181, Parke B said at 193:

> "In general, an action lies for the malicious publication of statements which are false in fact, and injurious to the character of another, and the law considers such publication as malicious, unless it is fairly made by a person in the discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned. In such cases, the occasion prevents the inference of malice, which the law draws from unauthorised communications, and affords a qualified defence depending upon the absence of actual malice. If fairly warranted by any reasonable occasion or exigency, and honestly made, such communications are protected for the common convenience and welfare of society; and the law has not restricted the right to make them within any narrow limits."

27. In *Adam v Ward* [1917] A.C. 309 at 334, Lord Atkinson defined an occasion that will be protected by qualified privilege:

> "A privileged occasion is … an occasion where the person who makes a communication has an interest, or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential."

28. In *Watt v Longsdon* [1930] 1 KB 130, Scrutton LJ, having cited that passage from *Adam v Ward*, continued at 147–148:

> "With slight modifications in particular circumstances, this appears to me to be well established law, but, except in the case of communications based on common interest, the principle is that either there must be interest in the recipient and a duty to communicate in the speaker, or an interest to be protected in the speaker and a duty to protect it in the recipient. Except in the case of common interest justifying intercommunication, the correspondence must be between duty and interest. There may, in the common interest cases, be also a common or reciprocal duty. It is not every interest which will create a duty in a stranger or volunteer. This appears to fit in with the two statements of Parke B already referred to [including that in *Toogood v Spyring*], and with the language of Erle CJ in *Whiteley v Adams*, that the communication was made in the discharge of some social or moral duty, or on the ground of an interest in the party making or receiving it. This is approved by Lindley LJ in *Stuart v Bell* , but I think should be expanded into 'either (1) a duty to communicate information believed to be true to a person who has a material interest in receiving the information, or (2) an interest in the speaker to be protected by communicating information, if true, relevant to that interest, to a person honestly believed to have a duty to protect that interest, or (3) a common interest in and reciprocal duty in respect of the subject matter of the communication between speaker and recipient'."

29. These and other cases were considered by the Court of Appeal in *Kearns v General Council of the Bar* [2003] 1WLR 1357. In that case, a firm of solicitors brought proceedings for defamation in respect of a communication between the defendant and the heads, senior clerks and practice managers of barristers' chambers which stated, inaccurately and as a result of a mistake, that the claimants, who had been instructing counsel, were not solicitors and entitled to instruct counsel. The Court of Appeal upheld the decision of Eady J to grant summary judgment to the defendant on the ground that the claimant had no real prospect of defeating the pleaded defence of qualified privilege. In support of his submission that both of the material occasions were protected by qualified privilege, the defendant's counsel argued that the present claims fell within the category discussed by Simon Brown LJ (as he then was) at [30] and [39]:

> "The argument, as it seems to me, has been much bedevilled by the use of the terms "common interest" and "duty-interest", for all the world as if these are clear-cut categories and any particular case is instantly recognisable as falling within one or other of them … To my mind an altogether more helpful categorisation is to be found by distinguishing between on the one hand cases where the communicator and the communicatee are in an existing and established relationship (irrespective of whether within that relationship the communications between them relate to reciprocal interests or reciprocal duties or a mixture of both) and on the other hand cases where no such relationship has been established and the communication is between strangers (or at any rate is volunteered otherwise than by reference to their relationship) … Once the distinction is made in this way, moreover, it becomes to my mind understandable that the law should attach privilege more readily to communications within an existing relationship than to those between strangers.

> … What matters is that the relationship … is an established one which plainly requires the flow of free and frank communications in both directions …"

30. A reference given to a prospective employer is a classic example of a communication protected by qualified privilege. In *Watts v Longsdon* [1930] 1 K.B. 130 CA, the court had no doubt that the defendant's passing of the letter alleging misconduct by the plaintiff to the chairman of the company which employed him was privileged on account of the employment relationship.

31. In *Crossland v Wilkinson Hardware Stores Limited* [2005] EWCA Civ 635, publications within a company grievance procedure were, it was not disputed, protected by qualified privilege (Rix LJ at [4]).

32. In *McBride v The Body Shop International Plc* [2007] EWHC 1658 (QB), where a defamatory publication was published within a grievance procedure it was said by Eady J that the "occasion of publication was manifestly one of qualified privilege".

33. In *Crossland v University of Glamorgan* [2011] EWHC 2809 (QB), Master Leslie's findings that communications as part of a university's complaints procedure were protected by qualified privilege was not appealed (unlike other aspects of his decision).

34. Qualified privilege is defeasible by malice, but there is a very high threshold for malice to be proved or even pleaded. Nicklin J said in *Huda v Wells* [2018] E.M.L.R. 7:

> "70. Malice means publishing a statement that the defendant knew was false, or was reckless (in the sense of complete indifference) as to its truth or falsity. It is tantamount to dishonesty: *Alexander v Arts Council of Wales* [2001] 1 W.L.R. 1840 [18]. It is that state of mind that justifies depriving a defendant of a defence of qualified privilege or makes it just to allow recovery for the publication of a falsehood. The

classic exposition of malice is from the speech of Lord Diplock in *Horrocks v Lowe* [1975] A.C. 135 , 149-150…

72. As malice is a serious allegation – the equivalent of fraud – "it must be pleaded with scrupulous care and specificity. … [I]t is quite inappropriate to proceed on the basis that something may turn up (whether on disclosure of documents or at trial)": *Henderson v The London Borough of Hackney* [2010] EWHC 1651 (QB) [40] per Eady J.

73. Each of the particulars relied upon by the Claimant is required to be indicative of this dishonest state of mind in order to be sustainable. Each particular has to raise a "probability of malice" and each particular has to be "more consistent with the existence (of malice), than with its non-existence": *Turner v MGM* [1950] 1 All E.R. 449, 455a-e per Lord Porter; *Telnikoff v Matusevitch* [1991] 1 Q.B. 102 at 120 per Lloyd LJ. As made clear in Turner "each piece of evidence must be regarded separately… [I]f the result is to leave the mind in doubt, then that piece of evidence is valueless as an instance of malice whether it stands alone or is combined with a number of similar instances " (455b-c).

74. The Court will scrutinise the statement of case in order to discern whether the malice plea has any prospects of success: *Branson v Bower* [2002] Q.B. 737 [16] per Eady J.

75 … A plea of malice against those who are passing on information that they have received or reporting concerns arising from such disclosures has an unpromising foundation. It will be an unusual case in which an individual in such a position will know that the allegations made by the complainant are false. …

81. … The failure to contact the Claimant and/or to carry out any investigation do not raise a probability of malice (paragraphs 47 and 48). The Defendants were not the investigators (and even had they

been, a failure to contact the Claimant would not have been probative of malice)…"

35. As Eady J said in *Henderson v London Borough of Hackney* [2010] EWHC 1651 (QB):

> "34. … Mere assertion will not do. A claimant may not proceed simply in the hope that something will turn up if the defendant chooses to go into the witness box, or that he will make an admission in cross-examination: see *Duncan and Neill on Defamation* at para 18.21.
>
> 35. It is not appropriate merely to plead (say) absence of honest belief, recklessness or a dominant motive on the defendant's part to injure the claimant. Unsupported by relevant factual averments, those are merely formulaic assertions. It is certainly not right that a judge should presume such assertions to be provable at trial. Otherwise, every plea of malice, however vague or optimistic, would survive to trial."

36. As Warby J (as he then was) noted in *Yeo v Times Newspapers Ltd* [2015] EWHC (QB) 209 at [33] it follows from these principles that a plea of malice must focus upon what the defendant did or said or knew, and must allege specific facts from which it is alleged the inference of dishonesty is to be drawn.

Application to the present case

37. The internal communications sued on were all part of the disciplinary process and all between relevant individuals with legitimate duties and/or interests in making and receiving them. These were plainly occasions of qualified privilege.

38. 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.

39. The plea of malice against D3, in respect of her letters (which did no more than summarise the allegations against C that she had directed be investigated (see PoC §50,52)), is principally made up of vague assertions, but appears to be that D3 should have required more evidence before even summarising the allegations; and that C's emails with D5 "did not support" the allegations D3 had summarised (589(c)). That may be a matter of interpretation, but is hardly a particular of malice; and D5's complaint was not limited to the emails alone, but related to her account of her meeting with C, and there was also the account of Student X. This is nowhere near a viable case of malice in respect of D3's descriptions of these matters as the 'allegations' which were to be investigated. D3 was not purporting to determine their truth.

40. The plea of malice against the student, D5, other than mere assertion, is that her account in her statement for the disciplinary hearing "does not tally with the direct evidence of the email communications before and immediately after the meeting of 18 November 2019" (PoC §79). This is simply incorrect, and C notably fails to explain any way in which D5's account does not tally with her emails. In her emails before the meeting of 18 November 2019, D5 said that she had repeatedly tried to see C in her office but had been unable to find her; in her email after the meeting of 18 November 2019 D5 said that wanted to make clear that she was only saying that C was not there when she came to find her, she was not absent for an entire 2 hours. Even her account of the meeting is consistent with C's, in respect of the comment about C having to come knocking on her door, which D5 states C said was a joke. This is, plainly, no basis for a finding of malice.

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. C also ignores the majority of the Investigation Report [15/280-288]), which sets out all of the matters considered in much more detail (eg, C's failure to engage with the process, complained of at §98 but clearly explained at [15/281-282]).

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.

3. The *Johnson* exclusion principle

44. Richard Spearman QC (sitting as a Judge of the Queen's Bench Division) summarised the leading cases in this area in *Parris v Ajayi* [2021] EWHC 285 (QB):

> "112. In *Johnson v Unisys Ltd* [2003] 1 AC 518 the claimant was summarily dismissed in 1994, following allegations concerning his conduct. His complaint of unfair dismissal was upheld by an industrial tribunal. He then commenced proceedings against the employer for damages for wrongful dismissal claiming that, because of the manner in which he had been dismissed, he had suffered a mental breakdown and was unable to work. He alleged that, in breach of an implied term of his contract of employment that the employer would not, without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence, the employer had in the manner of dismissing him harmed his professional development, health, financial welfare and future employment prospects.
>
> 113. On the employer's application, the judge struck out the claim as disclosing no reasonable cause of action. The Court of Appeal upheld that decision. The House of Lords dismissed the claimant's appeal, holding that, in the light of the evident intention of Parliament that

claims relating to dismissals should be heard by specialist tribunals and the remedy restricted in application and extent, it would be improper for the courts to imply the relevant term, as they might otherwise have done.

114. The leading speech was delivered by Lord Hoffman (with whom Lord Bingham and Lord Millett agreed). Lord Hoffmann referred to the unfair dismissal jurisdiction and its effect on the common law as follows (emphasis added):

> "51. In 1968 the Royal Commission on Trade Unions and Employers' Associations under Lord Donovan recommended a statutory system of remedies for unfair dismissal. The recommendation was accepted by the government and given effect in the Industrial Relations Act 1971. Unfair dismissal was a wholly new statutory concept with new statutory remedies. Exclusive jurisdiction to hear complaints and give remedies was conferred upon the newly created National Industrial Relations Court. Although the 1971 Act was repealed by the Trade Union and Labour Relations Act 1974, the unfair dismissal provisions were re-enacted and, as subsequently amended, are consolidated in Part X of the Employment Rights Act 1996. The jurisdiction is now exercised by employment tribunals and forms part of the fabric of English employment law.
>
> 52. Section 94(1) of the 1996 Act provides that "An employee has the right not to be unfairly dismissed by his employer". The Act contains elaborate provisions dealing with what counts as dismissal and with the concept of unfairness, which may relate to the substantive reason for dismissal or (as in this case) the procedure adopted. Over the past 30 years, the appellate courts have developed a substantial body of case law on these matters. Certain classes of employees are altogether excluded from the

protection of the Act. Section 108 excludes those who have not had one year's continuous service and section 109 excludes those over normal retiring age or 65. The tribunal may make an order for reinstatement, re-engagement or compensation. The latter consists of a basic award and a compensatory award. The basic award is related to the period of service but, by section 122(2), may be reduced by such amount as the tribunal considers just and equitable on account of the complainant's conduct before dismissal. A compensatory award under section 123(1) shall be, subject to qualifications:

> "such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer."

…

54. My Lords, this statutory system for dealing with unfair dismissals was set up by Parliament to deal with the recognised deficiencies of the law as it stood at the time of *Malloch v Aberdeen Corpn* [1971] 1 WLR 1581. The remedy adopted by Parliament was not to build upon the common law by creating a statutory implied term that the power of dismissal should be exercised fairly or in good faith, leaving the courts to give a remedy on general principles of contractual damages. Instead, it set up an entirely new system outside the ordinary courts, with tribunals staffed by a majority of lay members, applying new statutory concepts and offering statutory remedies. Many of the new rules, such as the exclusion of certain classes of employees and the limit on the amount of the compensatory award, were not based upon any principle which it would have been open to the courts to apply. They were based upon policy and

represented an attempt to balance fairness to employees against the general economic interests of the community. And I should imagine that Parliament also had in mind the practical difficulties I have mentioned about causation and so Parliament adopted the practical solution of giving the tribunals a very broad jurisdiction to award what they considered just and equitable but subject to a limit on the amount.

55. In my opinion, all the matters of which Mr Johnson complains in these proceedings were within the jurisdiction of the industrial tribunal. His most substantial complaint is of financial loss flowing from his psychiatric injury which he says was a consequence of the unfair manner of his dismissal. Such loss is a consequence of the dismissal which may form the subject matter of a compensatory award…

56. Part X of the Employment Rights Act 1996 therefore gives a remedy for exactly the conduct of which Mr Johnson complains. But Parliament had restricted that remedy to a maximum of £11,000, whereas Mr Johnson wants to claim a good deal more. The question is whether the courts should develop the common law to give a parallel remedy which is not subject to any such limit.

57. My Lords, I do not think that it is a proper exercise of the judicial function of the House to take such a step. Judge Ansell, to whose unreserved judgment I would pay respectful tribute, went in my opinion to the heart of the matter when he said:

"there is not one hint in the authorities that the ... tens of thousands of people that appear before the tribunals can have, as it were, a possible second bite in common law and I ask myself, if this is the situation, why on earth do we have this

special statutory framework? What is the point of it if it can be circumvented in this way? ... it would mean that effectively the statutory limit on compensation for unfair dismissal would disappear.""

115. Lord Nicholls said at [2]:

"… a common law right embracing the manner in which an employee is dismissed cannot satisfactorily coexist with the statutory right not to be unfairly dismissed. A newly developed common law right of this nature, covering the same ground as the statutory right, would fly in the face of the limits Parliament has already prescribed on matters such as the classes of employees who have the benefit of the statutory right, the amount of compensation payable and the short time limits for making claims. It would also defeat the intention of Parliament that claims of this nature should be decided by specialist tribunals, not the ordinary courts of law."

116. Lord Steyn came to the same conclusion, but on the different basis that although the plaintiff had a cause of action, he had no realistic prospect of overcoming the obstacle of remoteness of damage.

117. The appeals to the House of Lords in *Eastwood v Magnox Electric Plc* and *McCabe v Cornwall County Council* were heard together and are reported at [2005] 1 AC 503.

118. In *Eastwood* two employees, Messrs Eastwood and Williams, sought damages for stress-related illness and inability to work which they claimed to be the result of a campaign on the part of their employer to demoralise them before dismissing them, in breach of an implied term in their contracts of employment and/or a duty of care.

119. In summary (see Lord Nicholls at [17]-[19]) the assumed facts were as follows. Mr Eastwood's immediate superior had a long-standing grudge against him and made a report against him to his manager, Mr Allen. This was followed by a series of events whose purpose was to secure evidence as a foundation for disciplinary proceedings against Mr Eastwood. Individuals were counselled to provide false statements. Mr Williams was asked to provide a false statement against Mr Eastwood, to be used to counteract an appeal brought by Mr Eastwood against a finding of misconduct made by Mr Allen. When Mr Williams refused, he was threatened with possible investigation into his own conduct. There were no grounds for making any such investigation. In July 1996, Mr Eastwood's appeal succeeded in part. A Mrs Roberts was encouraged by Mr Allen and other members of management to formulate a series of complaints against Mr Eastwood and Mr Williams. Both men were told that serious allegations of sexual harassment had been made against them, but they were not given any details or the name of the complainant. A week later, on 7 August, both men were very publicly suspended from work. Those responsible for investigating the complaint on behalf of management then encouraged individuals to provide statements with the promise they would not be asked to attend any hearing. Members of management asked Mrs Roberts to "beef up" her allegations and assisted her to do this. By the time of the (grossly unfair) disciplinary hearing, after four months of a campaign to demoralise and undermine him, Mr Williams had symptoms of anxiety and fear, later diagnosed as a depressive illness. On 4 October, he was dismissed. Mr Eastwood's disciplinary hearing was postponed until April 1997 because he was suffering from a depressive illness. He too was dismissed.

120. Lord Nicholls continued at [20]-[23]:

> "20. Both men pursued claims for unfair dismissal. Mr Williams' complaint resulted in a finding of unfair dismissal.

Before a remedies hearing took place on Mr Williams' claim, and before any hearing on Mr Eastwood's claim, a compromise agreement was reached. Both men received financial payments. The agreement reserved the men's right to pursue a claim at common law for any claims they might have in respect of personal injuries arising out of their employment.

21. Mr Eastwood and Mr Williams then commenced proceedings in the County Court in July 1999 for negligence and breach of contract. They alleged they suffered personal injuries in the form of psychiatric illnesses caused by a deliberate course of conduct by certain individuals using the machinery of the disciplinary process. Judge Elystan Morgan dismissed both claims on the basis that, as a matter of law, they had no reasonable prospect of success. Johnson's case showed that the development of the common law implied terms, of trust and confidence and the like, cannot proceed further 'in so far as they come up against the buffers, as it were, of the unfair dismissal legislation'. Those terms are excluded from the area within the purview of an employment tribunal, and that area includes acts done from the time the disciplinary machinery starts running.

22. The Court of Appeal [2003] ICR 520, comprising Peter Gibson and Mantell LJJ and Sir Swinton Thomas, upheld the judge's decision. Peter Gibson LJ delivered the only reasoned judgment. Having referred to Johnson's case, he said at paragraph 23:

> "The implied term of trust and confidence cannot be used in connection with the way the employer/employee relationship is terminated. There may be cases where the particular manner in which an employee is dismissed or

> the circumstances attending dismissal is or are confined to events occurring at the same time or immediately before the dismissal. In other cases that manner and those circumstances may include a pattern of events stretching back over a period. It is a question of fact for the trial judge to determine in each case."
>
> 23. Peter Gibson LJ then concluded, in short, that the circumstances attending Mr Williams' dismissal began in May 1996. All these circumstances were considered by the employment tribunal. The compensation recoverable in the employment tribunal covers the substance of what Mr Williams is claiming in his court proceedings. There can be no justification for allowing Mr Williams a second bite of the cherry. In Mr Eastwood's case there has been no hearing in the employment tribunal. But on analysis his position is no different from that of Mr Williams."

121. In *McCabe*, a teacher employed by Cornwall County Council sought damages for psychiatric injury cause by the Council's suspension of him and failure during the next five months to inform him of allegations made against him or to carry out a proper investigation of those allegations, in breach of the relationship of trust and confidence and of the duty to provide a safe system of work.

122. In summary (see Lord Nicholls at [24]-[25]), in May 1993 allegations were made that Mr McCabe had behaved inappropriately towards certain female pupils, and he was suspended from his employment. At a disciplinary hearing he was given a final written warning. He appealed. Following a hearing by an appeal panel he was dismissed. Mr McCabe appealed again, unsuccessfully. He lodged a complaint with an industrial tribunal. In November 1996 the tribunal

found that he had been unfairly dismissed. The dismissal was in breach of the relevant disciplinary procedures, as the allegations had not been investigated at the time by a senior member of staff and the complainant girls had not signed their statements. The Employment Appeal Tribunal upheld the industrial tribunal's finding on liability and overturned its finding of 20% contributory fault. Meanwhile in March 1997 Mr McCabe instituted proceedings in the High Court against the council and the school governors claiming damages for breach of contract, negligence and breach of statutory duty. His primary complaint in his statement of claim as originally served was that by reason of the council's failure to investigate the allegations properly and to conduct the disciplinary hearings properly and his dismissal he had sustained psychiatric illness. He claimed special damages approaching £200,000. Later, in response to the decision in *Johnson*, he sought to amend his statement of claim to seek damages, in contract and tort, for psychiatric injury caused during the period before his dismissal, that is, for the suspension and the failure to properly inform him of the allegations or investigate. On 27 May 2002 Judge Overend, sitting as a judge of the High Court [2002] EWHC 3055 (QB), refused permission to amend the statement of claim and struck out the original statement of claim as disclosing no cause of action. The conduct of which Mr McCabe complained was all part and parcel of the events which led up to his dismissal and as such was caught by "the Eastwood extension to the Johnson principle".

123. Lord Nicholls continued at [26]:

> "The Court of Appeal, comprising Auld, Brooke and Sedley LJJ, allowed an appeal by Mr McCabe on 19 December 2002 [2003] ICR 501. Auld LJ, at [27], with whom the others agreed, identified the essential question as one of determining where on the facts of any particular case the line should be drawn between dismissal, caught by the unfair dismissal legislation,

and conduct prior to that causing injury compensatable in damages at common law. The case should be permitted to go to trial to enable the underlying facts to be ascertained."

124. At [27]-[31], Lord Nicholls said this:

"27. Identifying the boundary of the "Johnson exclusion area", as it has been called, is comparatively straightforward. The statutory code provides remedies for infringement of the statutory right not to be dismissed unfairly. An employee's remedy for unfair dismissal, whether actual or constructive, is the remedy provided by statute. If before his dismissal, whether actual or constructive, an employee has acquired a cause of action at law, for breach of contract or otherwise, that cause of action remains unimpaired by his subsequent unfair dismissal and the statutory rights flowing therefrom. By definition, in law such a cause of action exists independently of the dismissal.

28. In the ordinary course, suspension apart, an employer's failure to act fairly in the steps leading to dismissal does not of itself cause the employee financial loss. The loss arises when the employee is dismissed and it arises by reason of his dismissal. Then the resultant claim for loss falls squarely within the *Johnson* exclusion area.

29. Exceptionally this is not so. Exceptionally, financial loss may flow directly from the employer's failure to act fairly when taking steps leading to dismissal. Financial loss flowing from suspension is an instance. Another instance is cases such as those now before the House, when an employee suffers financial loss from psychiatric or other illness caused by his pre-dismissal unfair treatment. In such cases the employee has a common law cause of action which precedes, and is

independent of, his subsequent dismissal. In respect of his subsequent dismissal he may of course present a claim to an employment tribunal. If he brings proceedings both in court and before a tribunal he cannot recover any overlapping heads of loss twice over.

31. … In cases of constructive dismissal a distinction will have to be drawn between loss flowing from antecedent breaches of the trust and confidence term and loss flowing from the employee's acceptance of these breaches as a repudiation of the contract. The loss flowing from the impugned conduct taking place before actual or constructive dismissal lies outside the *Johnson* exclusion area, the loss flowing from the dismissal itself is within that area. In some cases this legalistic definition may give rise to difficult questions of causation in cases such as those now before the House, where financial loss is claimed as the consequence of psychiatric illness said to have been brought on by the employer's conduct before the employee was dismissed. Judges and tribunals, faced perhaps with conflicting medical evidence, may have to decide whether the fact of dismissal was really the last straw which proved too much for the employee, or whether the onset of the illness occurred even before he was dismissed."

125. Lord Steyn delivered a speech concurring in the result, and Lord Hoffmann, Lord Rodger and Lord Brown agreed with Lord Nicholls. Accordingly, the appeals in Eastwood were allowed, and the appeal in McCabe was dismissed. In short (see Lord Nicholls at [34]): "the assumed facts constitute causes of action which accrued before the dismissals. They disclose reasonable causes of action which should proceed to trial".

126. In *Edwards v Chesterfield NHS Trust* [2012] 2 AC 22, the Supreme Court decided two conjoined appeals, both of which involved claims for damage to reputation.

127. In the first case, Mr Edwards was a consultant surgeon employed by the defendant NHS trust. A complaint was made against him of an inappropriate examination of a female patient. A disciplinary panel decided that he should be summarily dismissed on the grounds of gross professional and personal misconduct. Because of the finding of gross professional misconduct against him, he was unable to secure another full-time medical post. He issued proceedings seeking damages for breach of his employment contract, contending that the constitution of the disciplinary panel failed to comply with the terms of his contract, and that a properly constituted panel would have reached a different conclusion. The NHS trust obtained a declaration that any damages would be limited to loss of earnings for the contractual period of three months' notice. The Judge and Court of Appeal allowed appeals, with the result it was held that the claimant was entitled to recover damages for the loss of the opportunity to hold another full-time appointment within the NHS as a consultant surgeon.

128. In the second case, Mr Botham was a youth worker employed by the Ministry of Defence. An allegation was made against him of inappropriate conduct towards two teenage girls. Following a disciplinary hearing he was dismissed for gross misconduct. As a result of that dismissal he was placed on the list of persons deemed unsuitable to work with children. His claims for unfair dismissal and wrongful dismissal were upheld by an employment tribunal, which found that there had been breaches of contract by the defendant regarding the disciplinary procedures. Following the tribunal's decision, his name was removed from the list of persons unsuitable to work with children. He issued proceedings in the High Court seeking damages for breach of the express terms of his contract of employment

contending that as a result of those breaches he had been dismissed from his employment, suffered a loss of reputation, been placed on the unsuitable persons register and been precluded from further employment in his chosen field. The judge dismissed his claim but, following the decision of the Court of Appeal in Edwards, and by consent, the Court of Appeal allowed an appeal by him.

129. A Supreme Court comprising 7 justices overturned the Court of Appeal in both cases, by a majority. The holdings and certain observations of the justices are summarised in the head note as follows:

> "Held, (1) (Baroness Hale of Richmond JSC dissenting) that damages were not recoverable for breach of contract in relation to the manner of a dismissal even where the breach was of an express term of the contract of employment regulating the disciplinary procedures leading to dismissal …
> (2) Allowing the appeal in the first case (Baroness Hale of Richmond JSC, Lord Kerr of Tonaghmore and Lord Wilson JJSC dissenting), that it was impossible to divorce the findings on which the claimant founded his claim for damages for loss of reputation from the dismissal itself …
> (3) Allowing the appeal in the second case (Baroness Hale of Richmond JSC dissenting), that the damages claimed by the claimant for loss of reputation were caused by the dismissal itself …
> Per Lord Walker of Gestingthorpe, Lord Mance and Lord Dyson JJSC. Provisions about disciplinary procedure incorporated as express terms into a contract of employment are not ordinary contractual terms agreed by the parties to a contract in the usual way, since Parliament, in the unfair dismissal legislation, linked a failure to comply with such procedures with the outcome of unfair dismissal proceedings and could not have intended that the inclusion of such

provisions in a contract would also give rise to a common law claim for damages …

Per Lord Kerr of Tonaghmore and Lord Wilson JJSC. If a cause of action is in existence before dismissal, it is not extinguished by subsequent dismissal, even if the dismissal is consequent on the state of affairs which gave rise to the cause of action …

Per Lord Phillips of Worth Matravers PSC. If the courts in developing the common law principles of measure of damage can exclude a claim for stigma damages for breach of contract which consists of wrongful dismissal, it is equally open to them to exclude such a head of claim for breach of contract which consists of a failure to comply with a disciplinary code, and the chain of causation linking a failure to follow a disciplinary procedure is more tenuous than the chain of causation linking wrongful dismissal with stigma ..."

130. Lord Dyson (with whom Lord Walker and Lord Mance agreed) said at [40]:

"… "Parliament has made certain policy choices as to the circumstances in which and the conditions subject to which an employee may be compensated for unfair dismissal. A dismissal may be unfair because it is substantively unfair to dismiss the employee in the circumstances of the case and/or because the manner in which the dismissal was effected was unfair. The manner may be unfair because it was done in a humiliating manner or because the procedure adopted was unfair, inter alia, because the agreed disciplinary procedure which led to the dismissal was not followed. It may be unfair because defamatory findings were made which damage the employee's reputation and which, following a dismissal, make it difficult for the employee to find further employment. Any

such complaint was intended by Parliament to be adjudicated on by the specialist employment tribunal subject to the various constraints to which I have referred. Parliament did not intend that an employee could choose to pursue his complaint of unfair dismissal in the ordinary courts, free from the limitations carefully crafted by Parliament for the exercise of this statutory jurisdiction."

131. In respect of the individual cases Lord Dyson said:

"Mr Edwards

55. It is accepted by [his counsel] that Mr Edwards's claim for unfair dismissal falls within the *Johnson* exclusion area. But she submits that his claim for damages for loss of reputation consequent on the findings of misconduct made by the disciplinary panel does not. She contends that these findings resulted from the fact that (in breach of the contractual disciplinary procedures) the disciplinary panel was not properly constituted and acted in a manner which was procedurally unfair. This breach, she submits, occurred independently of the dismissal.

56. The undisputed facts are that Mr Edwards's disciplinary hearing was held on 9 February 2006. He was notified of his summary dismissal on the following day. The decision was confirmed in a long letter from the chairman of the disciplinary panel dated 16 February which set out in detail the allegations and the panel's findings. The complaint is that the panel's "erroneous" conclusions flowed from these findings. The findings and conclusions were first published in the letter which was sent six days after the decision to dismiss had been communicated to Mr Edwards and were contained in the letter which confirmed his dismissal. In my view, it is impossible to

divorce the findings on which Mr Edwards seeks to found his claim for damages for loss of reputation from the dismissal when they were the very reasons for the dismissal itself.

57. In these circumstances, Mr Edwards's claim for damages for loss of reputation is not one of those exceptional cases to which Lord Nicholls referred in *Eastwood's* case [2005] 1 AC 503 where an employer's failure to act fairly in the steps leading to a dismissal causes the employee financial loss. This claim does not arise from anything that was said or done before the dismissal. It is not independent of the dismissal. It arises from what was said by the trust as part of the dismissal process. It follows that I cannot accept the distinction made by Lord Kerr and Lord Wilson JJSC between the findings or reasons for the dismissal and the dismissal itself. I agree with what Lord Mance JSC says about that.

Mr Botham

58. The case pleaded, at para 20 of the particulars of claim, is that as a result of the MOD's breaches of contract, Mr Botham "foreseeably, was dismissed from employment, and was caused (wrongly) to suffer loss and damage to his reputation and to be precluded from further employment in his chosen field and to be placed on the register of persons deemed unsuitable to work with children …" The damages claimed include loss of earnings and other benefits from the date of dismissal. The statement of facts and issues agreed for the purposes of the appeal state that Mr Botham was placed on the register "as a consequence of the dismissal for gross misconduct" (para 5) and the relief sought by him includes damages on the grounds that his "dismissal and his inclusion on the POCA precluded him from further employment as a youth community worker" (para 15(3)).

59. In my view, this case is a fortiori that of Mr Edwards. In Mr Edwards's case it is alleged that the damages for loss of reputation were caused by the erroneous findings made by the panel, rather than the dismissal. Mr Botham goes further and says that the damages he claims for loss of reputation were caused by the dismissal itself. For the reasons already given, it falls within the Johnson exclusion area. That was the view of Slade J [2010] EWHC 646 (QB) and I agree with it. The consent order made by the Court of Appeal on 31 August 2010 [in Mr Botham's favour] should therefore be set aside."

132. Lord Mance said:

"94. … in the absence of express contrary agreement, the Johnson exclusion area must be taken to cover both loss arising from dismissal and financial loss arising from failures in the steps leading to such dismissal, unless the loss claimed can be regarded as occurring quite independently of the dismissal, as the psychiatric loss claimed by the claimants in the Eastwood cases could be.

95. There are further potential objections to Mr Botham's proposed case. It depends upon the propositions (a) that one alleged breach of contract or duty can be said to have caused the commission of another breach of contract or duty by the same person or entity, and (b) that where recovery for the latter breach is limited, a claim may, by relying on the former breach as causing the latter breach, avoid the limit. Both propositions are in my view open to question. First, so far as the failure to take proper disciplinary steps can be separated from the dismissal, then it constituted not a reason for dismissing, but a reason for not dismissing. The dismissal was a fresh decision,

which the employer ought not to have taken and without which there would have been no loss. But, second, assuming the first point in Mr Botham's favour, any loss that he suffered flowed from the wrongful or unfair dismissal, and was recoverable either as compensation for breach of contract or for unfair dismissal, subject in either case to the relevant limits. If the wrongful or unfair dismissal is to be attributed causatively to the prior failure to take proper disciplinary steps, I find it difficult to see why or how the damages recoverable for the prior failure should or could exceed the compensation recoverable for the later dismissal. However, these points were not fully developed in argument, and I express no further view on them."

133. With regard to Mr Edwards, Lord Mance said at [99]:

"The fact is that Mr Edwards was dismissed on the basis of and contemporaneously with the disciplinary findings about which he seeks to complain. In so far as his claim consists of loss allegedly suffered by dismissal, it falls directly within the "exclusion area" which was recognised in *Johnson v Unisys Ltd* [2003] 1 AC 518 and which I have referred to … above. But, in my opinion, it is quite unrealistic in this context to seek to differentiate any of the loss he has allegedly suffered from his dismissal. Any breach of disciplinary procedure did not cause of itself identifiably separate loss or illness... Where the findings reached in the disciplinary proceedings and the dismissal are, as in the present case, a part of a single process, the remedy for any unjustified stigma lies, short of circumstances establishing a claim for defamation, in the restoration of reputation which may in the ordinary course be expected to result from a successful claim for wrongful or unfair dismissal."

134. Lord Kerr (with whom Lord Wilson agreed) said in respect of Mr Botham at [156]:

> "It is accepted that the reputational damage which he is alleged to have suffered was inextricably linked to the fact of his dismissal. His cause of action in respect of that reputational damage did not exist before he was dismissed, therefore. Such financial loss as he may have suffered as a consequence is the result of his dismissal. I consider, therefore, that compensation for damage to his reputation could only have been sought as part of his unfair dismissal claim."

45. In *Parris v Ajayi*, Richard Spearman QC applied the principle to the claimant's defamation claim in respect of a statement made by her line manager leading to her dismissal, to strike out the claim for loss of earnings flowing from the dismissal itself. In doing so he confirmed that the principle could not be evaded by suing an individual rather than the employer, as permitting that would "run counter to, and would substantially undermine, the effect of the decisions of the House of Lords and the Supreme Court in *Johnson*, *Eastwood* and *Edwards*, and the policy considerations so clearly spelled out in those cases" [143].

Application to present facts

46. C makes repeated references to her dismissal and the loss of earnings flowing from it, and seeks to recover it in PoC, §§55, 77, 84, 94, 104, 105 and at (5) and (6) of the prayer. These losses are firmly within the *Johnson* exclusion area and these references and claims should therefore be struck out. C has (prior to issuing this libel claim) brought claims in the Employment Tribunal, including claiming the loss flowing from her dismissal ([15/325] at [15/333/§22]), and that is the appropriate venue to seek to recover such losses.

4-5. No serious harm and *Jameel* abuse

Legal principles

Serious harm

47. In *Gubarev v Orbis Business Intelligence Ltd* [2020] EWHC 2912 (QB), Warby J explained:

> "37. The law, since 1 January 2014, is that a libel claim cannot succeed unless the claimant establishes that the statement complained of satisfies each of three requirements: (a) the common law requirement, that the statement should have a defamatory tendency; (b) a requirement, emanating from statute, that the publication of the statement must have caused actual damage that is more than minimal; and (c) a further, and more demanding, statutory threshold for actual defamatory impact.
>
> 38. The common law requires that the offending statement should have a tendency to cause a substantial adverse effect on the attitude of other (right-thinking) people towards the claimant: *Thornton v Telegraph Media Group* [2011] 1 WLR 1985, [94] (Tugendhat J) . This is an objective test, depending on the extent to which the meaning of the words has an inherently harmful character. The requirement of more than minimal actual damage was recognised by the Court of Appeal in *Jameel (Yousef) v Dow Jones & Co Inc* [2005] QB 946, where the Court held that the Human Rights Act 1998 imposed on it a duty to dismiss a libel claim which was so trivial that its continuation would involve a disproportionate interference with freedom of expression.
>
> 39. The higher statutory threshold was laid down by s.1 of the Defamation Act 2013, which contains what I have called the serious harm requirement:
>
> '1 Serious harm

(1) A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant

…'

40. The correct interpretation of s.1 has been litigated as far as the Supreme Court, which has now confirmed that section 1:

> '… not only raises the threshold of seriousness above that envisaged in *Jameel (Yousef)* and *Thornton*, but requires its application to be determined by reference to the actual facts about its impact and not just to the meaning of the words': *Lachaux v Independent Print Ltd* [2020] AC 612, [12] (Lord Sumption, with whom the other Justices agreed).

48. The effect of *Lachaux* was summarised by Julian Knowles J in *Spicer v Commissioner of Police for the Metropolis* [2021] EWHC 1099 (Admin) at [360]:

> "The effect of the Supreme Court's decision in *Lachaux*, supra, can be summarised by reference to the following propositions drawn from Lord Sumption's judgment:
>
> a. A statement which would previously have been regarded as defamatory, because of its inherent tendency to cause some harm to reputation, is not to be so regarded unless it 'has caused or is likely to cause' harm which is 'serious' ([14]).
>
> b. The reference 'has caused' is to 'the consequences of publication'; some historic harm 'which is shown to have actually occurred' ([14]).
>
> c. Harm 'can be established only by reference to the impact which the statement is shown actually to have had … It depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated' ([14).

d. The 'same must be true' of the reference to 'likely' harm – it must 'be established as a fact' and is not (as the Court of Appeal had accepted) 'a synonym for the inherent tendency which gives rise to the presumption of damage at common law' [14].

e. He said at [16]:

> "Suppose that the words amount to a grave allegation against the claimant, but they are published to a small number of people, or to people none of whom believe it, or possibly to people among whom the claimant had no reputation to be harmed. The law's traditional answer is that these matters may mitigate damages but do not affect the defamatory character of the words. Yet it is plain that section 1 was intended to make them part of the test of the defamatory character of the statement."

f. The 'defamatory character of the statement no longer depends only on the meaning of the words and their inherent tendency to damage the claimant's reputation … But I do not accept that the result is a revolution in the law of defamation' [17].

g. Subsequent events can 'be evidence of the likelihood of [serious harm] occurring' ([18]).

h. Warby J's findings on the facts of the case, which the Supreme Court upheld, were 'based on (a) the scale of the publications; (b) the fact that the statements complained of had come to the attention of at least one identifiable person in the United Kingdom who knew Mr Lachaux and (c) that they were likely to have come to the attention of others who either knew him or would come to know him in future; and (d) the gravity of the statements themselves, according to the meaning attributed to them by Sir David Eady.' [21]. Also:

"Mr Lachaux would have been entitled to produce evidence from those who had read the statements about its impact on them. But I do not accept, any more than the judge did, that his case must necessarily fail for want of such evidence. The judge's finding was based on a combination of the meaning of the words, the situation of Mr Lachaux, the circumstances of publication and the inherent probabilities. There is no reason why inferences of fact as to the seriousness of the harm done to Mr Lachaux's reputation should not be drawn from considerations of this kind. Warby J's task was to evaluate the material before him, and arrive at a conclusion on an issue on which precision will rarely be possible."

***Jameel* abuse of process**

49. Nicklin J summarised the relevant law in *Alsaifi v Trinity Mirror Plc* [2019] E.M.L.R. 1:

> "36. The Court has jurisdiction to stay or strike out a claim where no real or substantial wrong has been committed and litigating the claim will yield no tangible or legitimate benefit to the claimant proportionate to the likely costs and use of court procedures: in other words, "the game is not worth the candle": *Jameel* [69]–[70] per Lord Phillips MR and *Schellenberg v BBC* [2000] E.M.L.R. 296, 319 per Eady J. The jurisdiction is useful where a claim "is obviously pointless or wasteful": *Vidal-Hall v Google Inc* [2016] Q.B. 1003 [136] per Lord Dyson MR.
>
> 37. Nevertheless, striking out is a draconian power and it should only be used in exceptional cases: *Stelios Haji-Ioannou v Dixon* [2009] EWHC 178 (QB) [30] per Sharp J.

38. It is not appropriate to carry out a detailed assessment of the merits of the claim. Unless obvious that it has very little prospect of success, the claim should be taken at face value: *Ansari v Knowles* [2014] EWCA Civ 1448 [17] per Moore-Bick LJ and [27] per Vos LJ.

39. The Court should only conclude that continued litigation of the claim would be disproportionate to what could legitimately be achieved where it is impossible "to fashion any procedure by which that claim can be adjudicated in a proportionate way": *Ames v Spamhaus Project Ltd* [2015] 1 W.L.R. 3409 [33]–[36] per Warby J citing *Sullivan v Bristol Film Studios Ltd* [2012] E.M.L.R. 27 [29]–[32] per Lewison LJ."

Application to present facts

50. Should any of the internal publications complained of somehow not have been consented to or be the subject of a qualified privilege defence then, given the unavailability of any claim for damages flowing from dismissal in this forum, Ds would contend that they did not cause serious harm to C's reputation and/or their continued pursuit in this litigation would yield no proportionate benefit. Stripped of the consequences of dismissal, as they must be under *Johnson*, these are small-scale internal publications, to publishees who were either already well aware of the allegations or whose role it was to consider them as part of the disciplinary process, which can have caused no real harm. It is notable that C's case on harm to reputation is entirely speculative; she brings forward no evidence whatsoever of any harm caused by any of the statements sued on (a point noted against the claimant in *Bode v Mundell* [2016] EWHC 2533 (QB) at [48]-[51]). Yet despite that, as Mr Smith says in his evidence, "On the face of it a claim of this nature, involving multiple publications, five defendants, a complex background, a range of defences and a litigant in person could easily involve a trial lasting 10 days and costs on the Defendants' side alone of £500,000-£750,000" [14/162/(d)].

6. *Henderson* abuse

Legal principles

51. *Henderson v Henderson* [1843-1860] All ER Rep 378 established a rule of principle preventing litigants from advancing causes of action or arguments that they could have advanced in earlier proceedings. It was said that:

> "the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. "

52. The *Henderson v Henderson* line of authority has been helpfully summarised by Pepperall J in *Mansing Moorjani v Durban Estates Limited* [2019] EWHC 1229 (TCC) at [17.4]:

> "Even if the cause of action is different, the second action may nevertheless be struck out as an abuse under the rule in *Henderson v. Henderson* where the claim in the second action should have been raised in the earlier proceedings if it was to be raised at all. In considering such an application:
>
> a) The onus is upon the applicant to establish abuse.
>
> b) The mere fact that the claimant could with reasonable diligence have taken the new point in the first action does not necessarily mean that the second action is abusive.
>
> c) The court is required to undertake a broad, merits-based assessment taking account of the public and private interests involved and all of the facts of the case.

d) The court's focus must be on whether, in all the circumstances, the claimant is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before.

e) The court will rarely find abuse unless the second action involves "unjust harassment" of the defendant".”

Application to present facts

53. Here, the position is a fortiori in that C is raising points that she not only could have raised in her previous claims, but which she *has in fact* raised in those proceedings:

53.1. C’s Employment Tribunal claim against D1, D2 and D3, commenced in February 2020, complains that her suspension breached “natural justice requirements… procedural fairness requirements… the common law principle of legality (the Simms principle)… the fundamental rights of human dignity and the personality rights stemming iron Article 8 ECHR and Article 7 EUCFR and the Human Rights Act, disregarded the duty of care which all members of the executive team have and health and safety regulations and the Dignity at Warwick Policy which prohibits victimisation and bullying and vexatious allegations made in bad faith… the requirements of proportionality and reasonableness…”

53.2. C’s Employment Tribunal claim against D1 and D3, commenced in August 2020, complains of “Unlawful and disproportionate interference with my human rights to dignity and respect for private and family life under Article 8 ECHR… Breach of my fundamental rights to human dignity and respect for private and family life under Articles 1 and 7 of the EU Charter of Fundamental Rights… Breach of the General Principles of EU law, in particular the right to be heard which reflects the common law, known also as Simms, principle of legality in the UK, and my rights as an EU citizen under the Union Citizenship provisions of the EU Treaties which continue to apply…” [15/325-326, 336-337].

54. The very same matters are now raised in this claim, at PoC §44-49. This is an obvious case of D1 being vexed twice over with the same matter, an abuse of the court's process which should not be permitted.

55. Moreover, the claim at §§43-49 is focused on alleged unfairness relating to the procedure by which C was dismissed (including her claims about the suspension), and on damage caused by her dismissal, and as such is firmly within the exclusive remit of the Employment Tribunal and the *Johnson* exclusion area (as explained above).

56. The claim is also incoherent and fails to set out reasonable grounds. CPR PD 16 para 15.1(2) provides that a party relying on any right arising under the Human Rights Act 1998 must in their statement of case "(a) give precise details of the Convention right which it is alleged has been infringed and details of the alleged infringement; (b) specify the relief sought;". C makes vague references to Article 8 and Article 14 ECHR but gives no (or no sustainable) explanation of how these are said to have been infringed. That C was suspended and dismissed for gross misconduct on the basis of allegations of workplace misconduct (that were investigated and the subject of a disciplinary hearing and appeal hearing) cannot, without more, constitute an infringement of C's right to respect for her private and family life, as protected by Article 8. Similarly, and contrary to the point at the end of the section (§49), Article 6 ECHR plainly does not apply to D1's procedure when suspending employees (see *Mattu v the University Hospitals of Coventry and Warwickshire Trust* [2012] EWCA Civ 641, [2012] 4 All E.R. 359 for the very limited circumstances in which Article 6 will apply to disciplinary procedures).

57. There are various references to 'EUCFR' – the European Union Charter of Fundamental Rights. While the courts may have regard to this there is no freestanding cause of action for breach of any of these rights.

58. The complaint about the suspension at §§46-47 does not set out any cause of action, and the declaration referred to would be academic. The repeated paragraphs numbered §49 similarly do not set out any cause of action. These are matters to be raised before the Employment Tribunal about the fairness of the dismissal, if at all.

59. This claim should therefore be struck out pursuant to CPR 3.4(2)(a), (b) and/or (c).

RICHARD MUNDEN

5RB

22 September 2021

Neutral Citation Number: [2021] EWHC 3454 (QB)

Case No: QB 2021 000171

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 December 2021

Before:

Sir Andrew Nicol

- -

Between :

Professor Theodora Kostakopolou	**Claimant**
- and -	
(1) University of Warwick (corporate body incorporated by Royal Charter No RC0006678)	**Defendants**
(2) Professor Andrew Sanders	
(3) Professor Christine Ennew OBE	
(4) Professor Andy Lavender	
(5) Ms Diana Opik	

- -
- -

Richard Munden (instructed by **BLM**) for the **Defendants**
The Claimant in person

Hearing dates: 18th and 19th October 2021

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

SIR ANDREW NICOL

Sir Andrew Nicol :

1. This is the hearing of applications:

   i) By the Defendants to strike out the claim or for summary judgment in their favour.

   ii) By the Claimant for judgment in default of a defence.

   iii) By the Claimant to strike out certain passages in the witness statements of Timothy Smith, a solicitor for the Defendants.

2. The Claimant was employed by the 1st Defendant as Professor of Law. She was Professor of European Law, European Integration and Public Policy.

3. The 1st Defendant is the University.

4. The 2nd Defendant was head of Warwick Law School and the Claimant's line manager.

5. The 3rd Defendant was the Provost of the University of Warwick.

6. The 4th Defendant was an investigator appointed by the 3rd Defendant.

7. The 5th Defendant was a law student at the University of Warwick.

8. As against the 1st Defendant the Claimant seeks damages under the Human Rights Act 1998 for breaches of her rights under ECHR Articles 8 and 14 taken with breaches of Articles 1, 7 and 21 of the EU Charter of Fundamental Rights ('EUCFR'). The Claimant also says that the 1st Defendant is vicariously liable for the torts of the 2nd – 4th Defendants.

9. The claim against the 2nd Defendant is for libel or malicious falsehood in respect of words published or caused to be published in January 2020 and March-June 2020.

10. The claim against the 3rd Defendant is for libel and/or malicious falsehood for words published on 16th January 2020, 20th January 2020 and 1st June 2020.

11. The claim against the 4th Defendant is for libel or malicious falsehood for words published in a letter of 23rd January 2020 and a confidential investigation report dated 13th May 2020. The Claimant also alleges that she was slandered by the 4th Defendant in statements at a disciplinary hearing on 20th July 2020.

12. The claim against the 5th Defendant is for libel or malicious falsehood in a publication by the 5th Defendant in March or April 2020.

Factual Background

13. The Claimant was appointed to a chair in the University in 2012.

14. In 2016 disciplinary proceedings were commenced against the Claimant, accusing her of disruptive and inappropriate behaviour at a staff meeting on 15th June 2016.

15. On 2nd August 2016 the Claimant was suspended by Professor Croft, the Vice Chancellor of the University of Warwick.

16. A disciplinary hearing took place on 29th November 2016. Thereafter Professor Simon Gilson (Chair of the Arts Faculty of Warwick University) notified the Claimant on 9th December 2016 that he upheld all of the complaints against the Claimant. He issued a written warning that would remain on the Claimant's file for 2 years. He also notified the Claimant that her suspension had been lifted with immediate effect. The Claimant appealed against Professor Gilson's sanction, but her appeal was unsuccessful, as she Claimant was told on 23rd February 2017.

17. On 27th June 2017 the Claimant issued a claim in the Employment Tribunal ('the 2017 ET claim') The Respondents were the University, and others. She alleged that she was being subjected to detriment because of her whistleblowing and other protected acts. She also alleged race and sex discrimination, breaches of her human rights and EU law.

18. On 13th November 2018 Employment Judge Camp struck out much of the 2017 ET claim. The Claimant appealed against his decision to the Employment Appeal Tribunal which ordered a preliminary hearing of whether Judge Camp was correct to strike out the whistleblowing claim and to remove the individual respondents from the claim.

19. The remainder of the 2017 ET claim was dismissed in April 2019 by Employment Judge Monk because of the Claimant's failure to comply with an Unless order regarding disclosure. The Claimant appealed that decision to the EAT.

20. The Claimant applied to the Court of Appeal for permission to appeal, but on 18th May 2020 she was refused permission to appeal by Lewison LJ.

21. On 4th December 2019 disciplinary proceedings were started against the Claimant. The allegations were that she had failed to comply with reasonable management requests, had failed to attend various meetings and not fulfilled her responsibilities in good faith. The disciplinary proceedings were started by the 3rd Defendant who appointed the 4th Defendant as the Investigating Officer.

22. On 6th January 2020 the Claimant submitted a formal grievance to Sir David Normington, the Chair of the Council of University and Ms Cooke, the Deputy Chair.

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 complaints that they had made.

24. On 16th January 2020 the 3rd Defendant suspended the Claimant, alleging that the Claimant had sought to harass potential witnesses against her.

25. On 29th January 2020 the investigation into the disciplinary matter was suspended because of a grievance which the Claimant had made against the 3rd Defendant. That suspension continued until 29th July 2020 when the Claimant was dismissed by the University.

26. On 25th February 2020 the Claimant issued a second set of proceedings in the Employment Tribunal ('the February 2020 ET claim'). The February 2020 ET claim was brought against the 1st - 3rd Defendants in the present proceedings. She claimed that she had been subjected to a detriment as a result of protected acts under the Equality Act 2010 and the Employment Rights Act 1996 because of the commencement of disciplinary proceedings against her. The Defendants submit that there is considerable overlap between allegations in the February 2020 ET claim and the Particulars of Claim in the present proceedings.

27. On 1st April 2020 the disciplinary investigation resumed.

28. On 21st April 2020 a statement was provided by Student X on condition of anonymity.

29. The disciplinary investigation report was completed on 20th May 2020 and is dated 13th May 2020.

30. On 1st June 2020 the 3rd Defendant informed the Claimant that a disciplinary hearing would take place on 29th June 2020.

31. The Claimant was dismissed by the 1st Defendant on 29th July 2020. This was the conclusion of the disciplinary hearing chaired by Professor Ennew's Deputy, Professor Caroline Meyer.

32. In August 2020 the Claimant issued a third Employment Tribunal claim ('the August 2020 ET claim'). The August 2020 ET claim was against the 1st and 3rd Defendants. The claims included wrongful dismissal, unfair dismissal, interference with the Claimant's Article 8 ECHR rights and for breaches of her rights under Articles 1 and 7 of the EUCFR. The Defendants submit that there is substantial overlap between the August 2020 ET claim and the present proceedings.

33. As part of the August 2020 ET claim, the Claimant sought interim relief under the Employment Rights 1996 s.128. The application was refused by Employment Judge Dean on 3rd November 2020. The Claimant says that she appealed his refusal to the EAT.

34. The February 2020 ET claim and the August 2020 ET claim have now been conjoined.

35. The Claimant appealed her dismissal to a panel which comprised Professor Sparrow, Professor Roberts and Ms Stuart. The appeal was dismissed on, I believe, 27th August 2020.

36. The Claimant has asked the Employment Tribunal to stay the ET proceedings while this High Court claim is litigated (see further below).

Procedural history

37. The Claim Form was issued on 15th January 2021. It said that it was in respect of:

    i) Libel and malicious falsehood regarding statements published by the 1st Defendant between January and 17th September 2020.

ii) Libel and malicious falsehood in publications by the 2nd Defendant in January - June 2020.

iii) Libel and malicious falsehood in publications by the 3rd Defendant between January and June 2020.

iv) Libel and malicious falsehood by the 4th Defendant in respect of publication of a letter of 23rd January 2020, a confidential investigation report of 13th May 2020 and slander regarding statements spoken at a hearing on 20th July 2020.

v) Libel and malicious falsehood by the 5th Defendant in a statement in March or April 2020.

vi) Damages under the Human Rights Act 1998, Articles and 8 and 14 of the European Convention on Human Rights ('ECHR') and for breaches of Articles 1, 7 and 21 of the Charter of Fundamental Rights of the European Union ('EUCFR') and breaches of the General Principles of EU law, including the right to be heard and proportionality and other primary EU law.

38. The Claimant served her Particulars of Claim on 5th May 2021.

39. The Defendants acknowledged service of the claim form on 20th May 2021.

40. The Defendants served a request for Further Information of the Particulars of Claim. The Claimant served her response on 25th June 2021.

41. The Claimant responded to a second request for Further Information on 5th September 2021.

42. On 7th June 2021 the Defendants applied for an extension of time for their defence. The Defendants relied on the 1st witness statement of Timothy Smith, a solicitor in BLM, solicitors for the Defendants. His first witness statement was dated 8th June 2021.

43. It seems that the Defendants' Application Notice (for an extension of time for the defence) was only served on 8th June 2021.

44. On 9th June 2021 Master Sullivan treated the application as having been made without notice. He extended time for the defence until 9th July 2021.

45. On 10th June 2021 the Claimant made a witness statement in response to the Defendants' application for an extension of time to serve their defence.

46. On 9th July 2021 the Defendants applied to strike out the claim or for summary judgment in respect of the claim. The application was supported by the 2nd witness statement of Timothy Smith (dated 9th July 2021).

47. On 13th July 2021 Nicklin J.

i) Directed that the Defendants' strike out/summary judgment application should be listed before a Judge in the Media and Communications List and gave directions for that hearing.

ii) Directed that time for the defence was extended until 21 days after determination of the Defendants' application.

48. On 16th July 2021 the Claimant applied for judgment in default of defence ('default judgment application').

49. On 20th July 2021 the Claimant applied to set aside the order of Nicklin J. of 13th July 2021 ('set aside application').

50. On 22nd July 2021 Nicklin J.

i) Refused to set aside his order of 13th July.

ii) Directed that the default judgment application should be heard with the Defendants' application for strike out/summary judgment.

iii) Gave further directions for the hearing of the Defendants' application.

51. On 23rd July 2021 the Claimant applied for Further Information of the Defendants' intended defence.

52. On 29th July 2021 Nicklin J. refused the application for further information

53. On 23rd August 2021 the Claimant sought various orders in relation to the witness statement of Timothy Smith dated 9th July 2021. Her application was supported by her witness statement also of 23rd August 2020.

54. On 31st August 2021 Nicklin J. directed that the Claimant's application regarding the witness statement of Timothy Smith should be listed at the hearing to be heard by a High Court Judge and he gave directions regarding the service of evidence in relation to that application.

55. On 27th August 2021 the Claimant again applied for an order that the Defendants provide further information of their intended defence.

56. On 2nd September 2021 Mr Smith made his 3rd witness statement.

57. On 9th September 2021 the Claimant applied for directions from the High Court concerning inaccuracies in Mr Smith's witness statements of 2nd and 3rd September 2021.

58. On 13th September 2021 Nicklin J. refused the Claimant's applications of 27th August and 9th September and certified them as totally without merit.

59. Thus, there are before the Court the following matters:

i) The Defendants' application to strike out the claim or for summary judgment.

ii) The Claimant's application for judgment in default of defence.

iii) The Claimant's application to strike out certain passages of Mr Smith's various witness statements.

60. On 2nd November 2021 the Court was notified:

    i) That on 27th October 2021 Employment Judge Woffenden had granted a stay of the conjoined proceedings in the ET and directed that the stay should continue until 28 days after my decision;

    ii) Employment Judge Woffenden had also apparently confirmed that the ET did not have jurisdiction to consider the Claimant's EU and human rights claims.

61. I understand that EJ Woffenden has said that a written judgment will be produced. However, in the meantime, I have seen a note of the Employment Judge's oral decision which was made by the Claimant and which is largely agreed by the Defendants. 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.

62. After this judgment was distributed in draft to the parties, the Claimant made further substantive submissions. I shall come to those in due course.

Defendants' application to strike out the claim or for summary judgment in their favour

63. This has several bases:

    i) The defendants have an unanswerable defence that the words complained of were published with the Claimant's leave and licence by virtue of her agreement to her contract of employment which included provisions for disciplinary procedures in the course of which the alleged defamatory statements were published. c.f. *Friend v Civil Aviation Authority* [1998] IRLR 253 ('*Friend*').

    ii) The Defendants have an unanswerable defence that the words complained of were published on an occasion of qualified privilege and the Claimant has no realistic prospect of establishing malice.

    iii) So far as the claim seeks damages flowing from the Claimant's dismissal, it is barred by reference to the principle in *Johnson v Unisys Ltd* [2003] AC 518 ('*Johnson'*).

    iv) The claims for malicious falsehood and the claims in slander against the 4th Defendant require proof of special damage, but the claim for special loss is barred by *Johnson* and there is no other ground for bringing these claims.

    v) The Claimant has no realistic prospect of being able to establish that the Claimant suffered serious harm to her reputation.

    vi) The claims are an abuse of process pursuant to the principle in *Jameel (Yousef) v Dow Jones Inc.* [2005] EWCA Civ 75 ('*Jameel*') because there is no realistic prospect of the litigation yielding an advantage to the Claimant to make the costs of litigating worthwhile.

    vii) As against the 1st Defendant the claims are an abuse of process by reference to the principle in *Henderson v Henderson* [1843] 3 Hare 100 ('*Henderson*').

64. It is convenient to consider these submissions individually and the Claimant's response to each.

Leave and licence and Friend

65. Mr Munden for the Defendants submits that, when the Claimant joined the Faculty of Law of the University of Warwick, she agreed as part of her contract of employment to submit herself to any disciplinary proceedings that were taken against her and that, inevitably, as part of the disciplinary process, it would be necessary for the allegations against her to be repeated and examined. It is a feature of natural justice that complaints or disciplinary matters should be fairly examined. The disciplinary process of the University expressly provided for the means by which that examination was to occur, and it included the possibility of the appointment of an investigating officer.

66. Mr Munden argues that the Claimant did not sue over the initial allegations against her for the good reason that those publications would now be time barred. This contrasts her case with that of *Parris v Ajayi* [2021] EWHC 285 (QB) where the disciplinary investigation had not begun at the time of the publications complained of. By contrast, in the Claimant's case all of the publications were subsequent to, and part of, the disciplinary process. The disciplinary process began in December 2019 and the first publication of which she complains was in January 2020.

67. The Claimant responds by submitting first that *Friend* was decided in 1998. That was before the commencement of the Human Rights Act 1998, the Equality Act 2010 and the obligations which the UK assumed by being party to the EU Charter of Fundamental Rights.

68. The Claimant also argues that the University's procedure was not properly followed: there was no complaint by any student and so the initiation of the process was flawed. She was not given a fair opportunity to put her case and she was not treated in the dignified manner that the University's policies require. She also submits that she objected frequently to the manner in which the complaints against her were being investigated. There was therefore no leave and licence or consent to the publications.

69. In my judgment, *Friend* remains good law notwithstanding the passage of time and the legislation to which the Claimant refers. *Parris* (which was a decision of Richard Spearman QC (sitting as a Deputy Judge of the High Court)) was decided in 2021 and shows that he considered that *Friend* remained good law and I respectfully agree with him.

70. So far as the Human Rights Act 1998 is concerned, this incorporated into UK law certain parts of the European Convention on Human Rights ('ECHR') but I agree with Mr Munden that there is not an arguable breach of Article 8 ECHR, otherwise any disputed dismissal would engage Article 8 and that is not so. Further, in my view complaints of breaches of the Human Rights Act which bore on the Claimant's employment or dismissal (which are the focus of the Claimant's grievance) are more conveniently considered when I turn to the part of the strike out application which relies on *Johnson*. As far as the EUCFR is concerned, the impact of this would also be a matter for the Employment Tribunal (so far as it has any bearing on the Claimant's employment). Mr Munden denied that the University had not followed the appropriate procedure (he submitted for instance that the Student Complaint procedure had not been

followed because this was not a student complaint) but, if the Claimant was right it would go to her claims for unfair or unlawful dismissal which were the proper province of the Employment Tribunal. I agree with Mr Munden about this.

71. I did not see the relevance of the Equality Act 2010. She does not rely on this as a cause of action and, if she did, it would be in the context of the treatment of her by the University and that, too, would be a matter for the Employment Tribunal. Likewise, I do not consider that the Claimant's references to the principle of non-discrimination against EU nationals took the argument any further. Such discrimination is not pleaded in the Particulars of Claim and, if it were, since any such discrimination would be in the context of her employment, that, too would be a matter for the Employment Tribunal.

72. I also agree with Mr Munden that the Claimant plainly did agree, as part of her contract of employment, to the University's disciplinary process and all of the publications were part of that process. The Claimant may have objected to the manner in which the disciplinary proceedings occurred but that is immaterial to the submission that she had consented at the time of her contract to the disciplinary process being the way in which allegations were to be investigated and therefore all the publications which were part of that process were made with her agreement. She objects that the disciplinary process was not properly followed, but that, too, would be a matter for the Employment Tribunal to examine.

73. I have mentioned that, after this judgment was distributed in draft, the Claimant made further substantive submissions. She did so by an email to the Listing officer of 10th December 2021. She said that relevant authorities had not been drawn to my attention. She was referring to *Spencer v Sillitoe* [2003] EWHC 1651 (QB) a decision of Eady J. and to *Imperial Chemicals Ltd. v Shatwell* [1965] 1 AC 656 I invited submissions from the parties as to how I should proceed. I set a timetable for submissions and submissions in reply. The Defendants submitted that the distribution of a judgment in draft was not to enable further argument on the substance of the matter, but to give the parties an opportunity to suggest corrections of a typographical or factual nature and to try to agree an order which should follow from the draft judgment. The Defendants submitted that the Claimant's submissions went beyond this and were an impermissible attempt to reargue the applications which were before me.

74. In any event, Mr Munden disputed that either case was germane. *ICI v Shatwell* concerned a claim for breach of statutory duty, but the Claimant was not claiming for breach of statutory duty. Her claims were in defamation and malicious falsehood. *Spencer v Sillitoe* had been a case on its particular facts and there was some uncertainty as to whether the publications relied on had occurred during the disciplinary proceedings.

75. In my view neither case is material to the issues which I have to decide. I agree with Mr Munden that *Spencer* turned on its particular facts and *Shatwell* concerned a different legal situation.

76. I would strike out the claim on the basis that the Defendants have an unanswerable defence based on leave and licence.

Qualified Privilege

77. Mr Munden submitted that it was plain that all of the publications complained of were published on occasions protected by qualified privilege and that the Claimant had no arguable case of malice.

78. 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.

79. Mr Munden's answer was that the Claimant had chosen to rely on malicious falsehood as well as defamation. It was therefore incumbent on her to set out her plea of malice in the Particulars of Claim. I could assume that the Claimant had advanced the best case that she could, in that regard, and I could, therefore, judge the adequacy of the pleading in respect of both causes of action (i.e. both defamation and malicious falsehood). Mr Munden drew attention to the onerous burden which a Claimant must assume in pleading and proving malice. Malice is akin to an allegation of fraud – *Henderson v London Borough of Hackney* [2010] EWHC 1651 (QB) [40] per Eady J. and it must be pleaded with the same care, as was said in *Turner v MGM* [1950] 1 All ER 449,455a-e per Lord Porter. Thus,

> "each piece of evidence must be regarded separately [I]f the result is to leave the mind in doubt, then that piece of evidence is valueless as an instance of malice whether it stands alone or is combined with a number of similar instances' (at p.455 b-c)."

80. Mr Munden submits that the Claimant has not set out a proper case of malice in her Particulars of Claim and, I can assume, she could do no better in her Reply. He argues that it was incumbent on the University to investigate the allegations against the Claimant and no arguable basis for malice is shown. So far as the student, the 5th Defendant, is concerned, the contemporary documents are not necessarily inconsistent with her account. That was a matter for argument within the disciplinary process, but the emails do not show that the 5th Defendant's publication was arguably malicious.

81. 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.

82. She reminded me that the present occasion was not one which should turn into a mini-trial.

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 a plea of malice must attain. I also agree that the present pleading is hopeless.

84. I would also strike out the claim on the basis that the Defendants have an unanswerable defence of qualified privilege.

The Johnson principle

85. Mr Munden submits that the *Johnson* principle is an important acknowledgement of the distinct roles of the courts and the specialist tribunals (then Industrial Tribunals, now Employment Tribunals).

86. In *Johnson* itself, the House of Lords held that the restriction could not be circumvented by relying on a duty of care (see Lord Hoffman at [59]).

87. In *Eastwood v Magnox Electric plc* [2005] 1 AC 503, the issue was revisited by the House of Lords and the court repeated that the statutory code provides an exclusive forum for the statutory right not to be unfairly dismissed. Lord Nicholls said at [28]-[29],

> "[28] In the ordinary course, suspension apart an employer's failure to act fairly in the steps leading up to dismissal does not of itself cause the employee financial loss. The loss arises when the employee is dismissed, and it arises by reason of his dismissal. Then the resultant loss falls squarely within the *Johnson* exclusion area."
>
> [29] Exceptionally this is not so. Exceptionally, financial loss may flow directly from the employer's failure to act fairly when taking steps leading to dismissal. Financial loss flowing from suspension is an instance. Another instance is cases such as those before the House now, when an employee suffers financial loss from psychiatric or other illness caused by his pre-dismissal unfair treatment, which precedes and is independent of his subsequent dismissal. In such cases an employee has a common law cause of action which precedes his dismissal…"

88. The Supreme Court again considered the *Johnson* principle in *Edwards v Chesterfield Royal Hospital NHS Foundation Trust, Botham v Ministry of Defence* [2012] 2 AC 22, in which Lord Dyson said at [40],

> "A dismissal may be unfair because it is substantively unfair to dismiss the employee in the circumstances of the case and/or because the manner of the dismissal was unfair. The manner may be unfair because it was done in a humiliating manner or because the procedure adopted was unfair. Inter alia because the agreed disciplinary procedure which led to the dismissal was not followed. It may be unfair because defamatory findings were made which damage the employee's reputation and which, following dismissal, make it difficult for the employee to find further employment. Any such complaint was intended by Parliament to be adjudicated on by the specialist employment tribunals subject to the various constraints to which I have referred. Parliament did not intend that that an employee could choose to pursue his complaint of unfair dismissal in the ordinary courts, free from the limitations carefully crafted by Parliament for the exercise of this statutory jurisdiction."

89. From these authorities, I consider that the following propositions are established:

    i) The *Johnson* principle remains good law. The courts must be vigilant to observe the exclusive jurisdiction which has been conferred on the specialist Employment Tribunals subject to their particular conditions and qualifications.

    ii) There is an exception where the cause of action accrued before and independently of the dismissal. Then the *Johnson* principle is not infringed if a claim in in respect of such matters in the ordinary courts is allowed to proceed.

    iii) The principle does extend to the manner of the dismissal even where that is said to involve defamatory imputations in the course of the dismissal process. That may be a reason why the dismissal is unfair and, if the Employment Tribunal finds that complaint is made out, it can award compensation for such unfairness.

90. In this case, Mr Munden argues that the *Johnson* principle is engaged and no exception to it applies.

91. Mr Munden asks me to observe from the following paragraphs of the Particulars of Claim that the Claimant makes repeated references to her dismissal and the loss of earnings flowing from it: 55, 77, 84, 104, 105 and the prayer sub-paragraphs (5) and (6).

92. The Claimant submits that this is not so. She is not seeking to litigate in this court the same issue which she has raised in the ET. Rather, she is seeking to raise matters (defamation, breaches of her rights under the ECHR and the EUCFR) over which the Employment Tribunal does not have jurisdiction.

93. The Claimant has a further procedural argument which applies to this and the other bases for strike out. She observes that the Defendants entered an unqualified acknowledgement of service on 20th May 2021. They did not indicate that they intended to challenge the jurisdiction of the court, nor did they issue an application notice raising that challenge. She asks me to note that in *Hoddinott v Persimmon Homes* [2007] EWCA Civ 1203 the Court of Appeal took a strict approach to the terms of Part 11 of the Civil Procedure Rules and the consequence of not taking the steps which Part 11 contemplates. That decision was followed in *Deutsche Bank v Petromina ASA* [2015] 1 WLR 4225.

94. An alternative way of putting the procedural objection was articulated by the Claimant. She submitted that the Defendants had sought extensions of time for service of their defence. It was not now open to them to argue that they did not need to serve a defence at all. She also argued that she had been put to trouble and time in responding to the Defendants' request for further information about her Particulars of Claim. Again, it was unreasonable for them to argue now that the claim should be struck out.

95. In my view Mr Munden is right that the present action infringes the *Johnson* principle and does not come within any relevant exception. It is notable that Lord Dyson in *Chesterfield* expressly considered the manner of a dismissal which might be unfair because of defamatory remarks made in the course of the dismissal and which, it was alleged had made it harder for the Claimant to obtain another job. That is precisely what the Claimant says is her position. However, the authorities show that she must seek any

remedy in that regard in the Employment Tribunal. The Claimant was suspended in the course of the dismissal process but, as I understand it, the suspension was on full pay and so the *suspension* did not cause her loss separate and distinct from the dismissal itself: certainly, no such loss is pleaded.

96. I do not accept the Claimant's procedural objection. These Defendants do not say that the court lacks jurisdiction. If the action is to continue, the High Court does have jurisdiction. However, for the various reasons which Mr Munden has given, it is argued that the claim should not be able to proceed. On this I agree with Mr Munden. It is notable that in the cases which went to the House of Lords or Supreme Court, no-one argued that the claims should be able to continue because the procedure in CPR Part 11 had not been followed.

97. As for the Claimant's alternative way of putting the procedural objection, I agree that, in exercising the court's discretion as to whether to accede to a defendant's application to strike out a claim as an abuse of process, the court can have regard to the stage at which the objection was taken. In this case the application to strike out the claim was issued on 9th July 2021. That was at a relatively early stage of the litigation. I do not consider that the timing of the application counts against the Defendants.

98. The Claimant alleges that the disciplinary procedure was not correctly followed and she was treated unfairly by the University, but it is for the Employment Tribunal to decide those matters, not this Court.

99. Accordingly, I would allow the Defendants' application additionally on the basis her claim infringes the *Johnson* principle.

100. 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.

Serious harm

101. In consequence of the Defamation Act 2013 s.1 a publication will not be defamatory unless it has caused or is likely to cause serious harm to the Claimant's reputation.

102. Mr Munden argues that, once the consequences for the Claimant's employment are disregarded (as they must be in line with *Johnson*) the Claimant does not have an arguable case that her reputation has been caused serious harm. He argues as well that any future impact on the Claimant's reputation is unlikely and will be overshadowed by the University's decision to dismiss her.

103. I do not find this part of the Defendants' argument convincing. On an application for striking out or summary judgment, I should only accede to the application if there is no point in having a trial because its outcome is plain, even at an early stage. I do agree with Munden that, consistent with *Johnson*, there has to be disregarded the elements of the claim which are properly to be determined by the Employment Tribunal. The Claimant may well have an up-hill struggle to show that the impact of the publications

did cause or was likely to cause serious harm to her reputation, but I cannot say that will be the outcome with the certainty that I must apply before giving summary judgment in the Defendants' favour.

104. Nothing follows from this conclusion however, since I am upholding the Defendants' strike out application on other grounds.

105. Having decided that the claim should be struck out on the grounds that I have, it is unnecessary for me to decide whether the claim should also be struck out on the remaining grounds argued by Mr Munden (*Jameel* and *Henderson*).

106. I have reached the conclusion that the claim should be struck out notwithstanding EJ Woffenden's decision to stay the conjoined Employment Tribunal proceedings. She was clearly aware of the Defendants' application to strike out the claim. She was not intending to influence the outcome of that application and it would not have been proper for her to seek to do so. It is apparent that she followed the decision of the Employment Appeal Tribunal in *Mindamaxnox LLP v Gover* (EAT decision of 7th December 2010 HHJ McMullen), but in that case, so far as I can see, there was no equivalent strike out application. The case was also procedurally different in that, in addition to the High Court proceedings there were also extant proceedings in the district court of Limassol, Cyprus. In any event, nothing that EJ Woffenden had to say deflects me from the conclusion to which I have, in any event come.

The Claimant's application for judgment in default of defence

107. In my view this application is hopeless. Nicklin J. extended time for the defence as I have said. The Claimant was unhappy with that decision and she exercised her right to apply to have the order set aside. Her application in that regard was unsuccessful. The Claimant did not seek to appeal his refusal. I am not saying that any such appeal would have had any prospect of success, but, absent the overturning of his order on appeal, the order stands and the time for the defence has been extended. Thus, the short answer to the Claimant's application is that the Defendants are not in default because the time for serving their defence has not yet expired. Mr Munden had a further argument that judgment in default of defence cannot be entered when there is an, as yet, undetermined application to strike, out the particulars of Claim or for summary judgment (see CPR r.12(3)(a)).

108. Since I would refuse the Claimant's application for judgment in default of defence in any event, it is not necessary for me to engage with this argument which might involve resolving at what precise time the application to strike out the Particulars of Claim was issued.

Claimant's application to strike out parts of the witness statements of Mr Smith

109. The Claimant disagrees with parts of what Mr Smith says in his witness statements. She goes so far as to say that he has lied in parts of his statements.

110. Mr Smith denies that he has lied and denies any impropriety in making any of his statements.

111. I do not regard this a fruitful use of the Court's time. It is, of course, a regular occurrence that parties to litigation disagree as to their view as to what facts are important, or indeed, what the facts are. That is why on contested applications the court gives both parties the opportunity to serve evidence in response to their opponents. That opportunity was afforded to the Claimant in this case and she took advantage of it. The role of the Court is then to come to a view as to what it makes of the evidence by reference to the law which the Court is obliged to apply. That is what I have done. So far as is material to the strike out application by the Defendants and the application for judgment in default of defence, I accept the evidence of Mr Smith. In my view it is not necessary or a proportionate use of the Court's time to go further and to investigate and rule on each of the Claimant's objections to Mr Smith's witness statements.

Summary of conclusions:

i) I will strike out the claim.

ii) I will refuse the Claimant's application for judgment in default of defence.

iii) I decline to rule on the application to strike out the passages of Mr Smith's witness statements to which the Claimant objects.

Amended under the slip rule CPR 40.12 dated 30/12/2021. by Sir Andrew Nicol

IN THE HIGH COURT OF JUSTICE **Claim Number: QB-2021-000171**
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

SIR ANDREW NICOL (SITTING AS A JUDGE OF THE HIGH COURT)

BETWEEN:

PROFESSOR THEODORA KOSTAKOPOLOU

Claimant

- and –

(1) UNIVERSITY OF WARWICK (CORPORATE BODY INCORPORATED BY ROYAL CHARTER UNDER ROYAL CHARTER NUMBER: RC000678)
(2) PROFESSOR ANDREW SANDERS
(3) PROFESSOR CHRISTINE ENNEW OBE
(4) PROFESSOR ANDY LAVENDER
(5) MS DIANA ÖPIK

Defendants

HIGH COURT OF JUSTICE
22 Dec 2021
QUEEN'S BENCH DIVISION
QB-2021-000171

ORDER

UPON the Defendants' Application by way of Application Notice dated 9 July 2021 to strike out the claim and/or for summary judgment ("the Application")

AND UPON the Claimant's Applications (1) by way of Application Notice dated 15 July 2021 for judgment in default of a defence and (2) by way of Application Notice dated 23 August 2021 to strike out certain passages in the witness statements of Mr Timothy Smith, a solicitor for the Defendants.

AND UPON reading the evidence filed

AND UPON hearing Counsel for the Defendants and the Claimant in person

AND UPON handing down judgment on this date

IT IS ORDERED THAT:

1. The claim be struck out Summary for the reasons set out in the Judgment.

2. The Claimant's Application for judgment in default of defence is dismissed for the reasons set out in the Judgment. Pursuant to CPR r.23.12, the application was totally without merit.

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3. It is not necessary or a proportionate use of the Court's time to consider the Claimant's application to strike out parts of Mr Smith's witness statements and no order is made on that application.

4. The Claimant shall pay the Defendants' costs of the strike out application and the Claimant's application for default judgment, and of the action, to be the subject of detailed assessment if not agreed.

5. In respect of the payment ordered to be made in paragraph 3 4 above, the Claimant shall make a payment on account in the sum of £75,000 by no later than 28th February 2022.

Dated this 21st day of December 2021

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