

Kostakopoulou v University of Warwick and Others

CORE BUNDLE INDEX

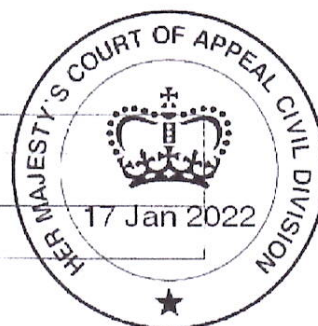
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Appellant's notice

(All appeals except small claims track appeals and appeals to the Family Division of the High Court)

Notes for guidance are available which will help you complete this form. Please read them carefully before you complete each section.

For Court use only	
Appeal Court Ref. No.	
Date filed	17 Jan 2022



CA-2022-000041

SEAL

Submitted Date -
11 Jan 22

Section 1 Details of the claim or case you are appealing against

Claim or Case no.	QB-2021-000171	Fee Account no. (if applicable)	
Help with Fees - Ref no. (if applicable)	H W F		
Name(s) of the	Claimant(s) <input type="checkbox"/> Applicant(s) <input checked="" type="checkbox"/> Petitioner(s) <input type="checkbox"/> T KOSTAKOPOULOU		
Name(s) of the	Defendant(s) <input type="checkbox"/> Respondent(s) <input checked="" type="checkbox"/> UNIVERSITY OF WARWICK, A. SANDERS, C. ENNEW OBE, A. LAVENDER AND D. OPIK		

Details of the party appealing ('The Appellant')

Name

Theodora Kostakopoulou

Address (including postcode)

32 Sneyd Avenue, Westlands, Newcastle - u - Lyme,
Staffordshire, ST5 2PP

Tel No. 01782 662716

Fax

E-mail dorakostakopoulou@protonmail.com

Details of the Respondent to the appeal

Name

University of Warwick, Professor Stuart Croft

Address (including postcode)

University House, University of Warwick,
Coventry, Warwickshire, CV4 8UW

Tel No. 02476574951

Fax

E-mail S.Croft@warwick.ac.uk

Details of additional parties (if any) are attached

Yes ☐ No ☒

Section 2 Details of the appeal

From which court is the appeal being brought?

- ☐ The County Court at
- ☐ The Family Court at
- ☐ High Court
- ☒ Queen's Bench Division
- ☐ Chancery Division
- ☐ Family Division
- ☐ Other (please specify)

What is the name of the Judge whose decision you want to appeal?

Sir Nicol

What is the status of the Judge whose decision you want to appeal?

- ☐ District Judge or Deputy ☐ Circuit Judge or Recorder ☐ Tribunal Judge
- ☐ Master or Deputy ☒ High Court Judge or Deputy ☐ Justice(s) of the Peace

What is the date of the decision you wish to appeal against?

21 December 2021

Is the decision you wish to appeal a previous appeal decision? ☐ Yes ☒ No

Section 3 Legal representation

Are you legally represented?

☐ Yes ☒ No

If Yes, is your legal representative (please tick as appropriate)

- ☐ a solicitor
- ☐ direct access counsel instructed to conduct litigation on your behalf
- ☐ direct access counsel instructed to represent you at hearings only

Name of your legal representative

--

The address (including postcode) of your legal representative

--

Tel No.	
Fax	
E-mail	
DX	
Ref.	

Are you, the Appellant, in receipt of a Civil Legal Aid Certificate?

☐ Yes ☒ No

Is the respondent legally represented?

☒ Yes ☐ No

If 'Yes', please give details of the respondent's legal representative below

Name and address (including postcode) of the respondent's legal representative

Mr Tim Smith BLM 30 Fenchurch Street London EC3M 3BL
--

Tel No.	02078653313
Fax	
E-mail	tim.smith:blmlaw.com
DX	
Ref.	

Section 4 Permission to appeal

Do you need permission to appeal?

☒ Yes ☐ No

Has permission to appeal been granted?

☐ Yes (Complete Box A)

☒ No (Complete Box B)

Box A

Date of order granting permission

Name of Judge granting permission

Box B

I T. Kostakopoulou

the Appellant(s legal representative) seek permission to appeal.

If permission to appeal has been granted **in part** by the lower court, do you seek permission to appeal in respect of the grounds refused by the lower court?

☐ Yes ☐ No

Section 5 Other information required for the appeal

Please set out the order (or part of the order) you wish to appeal against

I hereby request permission to appeal against:

a) Sir Nicol's decision of 21 December 2021 striking out my claim for breach of human rights and primary and secondary EU law (Articles 8 and 14 ECHR (taken with s 6 HRA 1998), 1,7, 21 and 31 EUCFR, 6(3) TEU, 20 and 45(2) TFEU and Article 7(1) of Regulation 492/2011 and the general principles of EU law of proportionality and the right to be heard), libel and/or malicious falsehood on the grounds that it is wrong and unjust and amounts to a denial of fair trial under common law and Article 6(1) ECHR and substantive legal rights;

and

b) his Order of the same date requiring me to pay unreasonable and disproportionate costs of £ 75,000 to the Defendants who have been in breach of the pre-action protocol, have failed to consider and to participate in ADR and been in breach of CPR rules and Court orders which are outlined below;

and

c) to request a stay of the execution of the enforcement of the payment of £ 75,000 which is not consonant with justice, is punitive and threatens the imposition of serious hardship on myself and my family.

Have you lodged this notice with the court in time?

(There are different types of appeal - see Guidance Notes N161A)

☒ Yes ☐ No

If '**No**' you must also complete
Part B of Section 10 and Section 11

Section 6 Grounds of appeal

Please state, in numbered paragraphs, **on a separate sheet** attached to this notice and entitled 'Grounds of Appeal' (also in the top right hand corner add your claim or case number and full name), why you are saying that the Judge who made the order you are appealing was wrong.

☒ I confirm that the grounds of appeal are attached to this notice.

Section 7 Arguments in support of grounds for appeal

- ☒ I confirm that the arguments (known as a 'Skeleton Argument') in support of the 'Grounds of Appeal' are set out **on a separate sheet** and attached to this notice.

OR (in the case of appeals other than to the Court of Appeal)

- ☐ I confirm that the arguments (known as a 'Skeleton Argument') in support of the 'Grounds of Appeal' will follow within 14 days of filing this Appellant's Notice. A skeleton argument should only be filed if appropriate, in accordance with CPR Practice Direction 52B, paragraph 8.3.

Section 8 Aarhus Convention Claim

For applications made under the Town and Country Planning Act 1990 or Planning (Listed Buildings and Conservation Areas) Act 1990

I contend that this claim is an Aarhus Convention Claim ☐ Yes ☐ No

If Yes, and you are appealing to the Court of Appeal, any application for an order to limit the recoverable costs of an appeal, pursuant to CPR 52.19, should be made in section 10.

If Yes, indicate in the following box if you do not wish the costs limits under CPR 45 to apply. If you have indicated that the claim is an Aarhus claim set out the grounds below

Section 9 What are you asking the Appeal Court to do?

I am asking the appeal court to:-
(please tick the appropriate box)

- ☒ set aside the order which I am appealing
- ☐ vary the order which I am appealing and substitute the following order. Set out in the following space the order you are asking for:-

- ☐ order a new trial

Section 10 Other applications

Complete this section **only** if you are making any additional applications.

Part A

- ☒ I apply for a stay of execution. (You must set out in Section 11 your reasons for seeking a stay of execution and evidence in support of your application.)

Part B

- ☐ I apply for an extension of time for filing my appeal notice. (You must set out in Section 11 the reasons for the delay and what steps you have taken since the decision you are appealing.)

Part C

- ☐ I apply for an order that:

(You must set out in Section 11 your reasons and your evidence in support of your application.)

Section 11 Evidence in support

In support of my application(s) in Section 10, I wish to rely upon the following reasons and evidence:

I have been instructed to pay unreasonable and disproportionate costs of £ 75,000 to the Defendants for their strike out application. The Defendants have been in breach of the pre-action protocol, have failed to consider and to participate in ADR and been in breach of CPR rules and Court orders. I pursued a strong and legitimate claim and believe that it is struck out for reasons other than its merits. The Defendants abused me, raised false and malicious allegations, put me under a disciplinary process lasting 9 months, suspended me for six months on no evidence of wrong doing and dismissed me thereby destroying my reputation. I sought justice and to clear my name and do not believe that justice is done.

Since July 2021 I have been alerting the High Court about the Defendants' strategy on costs and my information about past occurrence of the same strategy of highly inflated, astronomical costs imposed to victimise the applicants. My warnings have been consistently ignored. The University of Warwick has insurance to cover its costs. I do not. I am a litigant in person who has been seriously wronged and injured by the Defendants and is fighting for justice.

There is also the issue of breaches of rules by the Defendants (envisaged by r 44(3) CPR);

The Defendants have displayed:

- a) non-compliance with the pre-action protocol;
- b) non-compliance with the CPR's rules on the submission of the defence (rules 15.2 : 'A defendant who wishes to defend all or part of a claim must file a defence', 15.4(1)(b) and the extension granted under the HC's Order, below);
- c) non-compliance with Master Sullivan's Order to serve the defence on 9 July 2021, and the deemed time of 4.30 pm.;
- d) non-compliance with PD 23(A) 2.7 in relation to bringing the strike out and/or summary judgment applications early, that is, before the extensions of time for filing the defence they sought and the volume of requests for the inspection of documents and for further information they directed to the Claimant;
- e) non-compliance with CPR r 31.14(1) on the provision of documents referred to in a witness statement for inspection within 7 days;
- f) refusal to make admissions after being served with several notices to admit facts under CPR r 32.18 which has costs consequences. These notices were served on 13 September, 14 September and 21 September 2021;
- g) failure to comply with the prohibition of false and misleading statements in witness statements verified with a statement of truth (CPR r 32.14 and PD supplementing CPR Part 32 para 20.3);
- h) breach of case management directions imposed by the Court; the bundle for the hearing which was due to be submitted on 17 September 2021 (following an extension agreed by the parties) to the Claimant was submitted on 22 September 2021 at 13.14 pm containing more than 1500 pages;
- i) a very large number of pages from the Claimant's filed evidence were missing and this obstructed significantly the Claimant's drafting of the skeleton argument. No attempt was made for the deficiency to be rectified within a few days following formal notification;
- j) breach of the Court's direction for the authorities on which the Defendants relied to be submitted to the Claimant on 22 September by 10 am (- they were submitted at 2.40 pm).

The costs implications of those breaches and their impact on the innocent party must not be ignored.

I would like to request an urgent stay of the execution of the enforcement of the payment of £ 75,000 which is not consonant with justice, is punitive and threatens the imposition of serious hardship on myself and my family.

Statement of Truth – This must be completed in support of the evidence in Section 11

I believe (The appellant believes) that the facts stated in this section are true.

Full name

Name of appellant's legal representative firm

signed 

Appellant ('s legal representative)

position or office held

(if signing on behalf of firm or company)

Section 12 Supporting documents

To support your appeal you should file with this notice all relevant documents listed below. To show which documents you are filing, please tick the appropriate boxes.

If you do not have a document that you intend to use to support your appeal complete the box over the page.

In the County Court or High Court:

- ☐ three copies of the appellant's notice for the appeal court and three copies of the grounds of appeal;
- ☐ one additional copy of the appellant's notice and grounds of appeal for each of the respondents;
- ☐ one copy of the sealed (stamped by the court) order being appealed;
- ☐ a copy of any order giving or refusing permission to appeal; together with a copy of the judge's reasons for allowing or refusing permission to appeal; and
- ☐ a copy of the Civil Legal Aid Agency Certificate (if legally represented).

In the Court of Appeal:

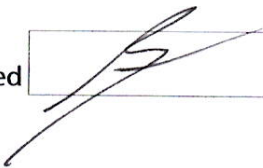
- ☒ three copies of the appellant's notice and three copies of the grounds of appeal on a separate sheet attached to each appellant's notice;
- ☒ one additional copy of the appellant's notice and one copy of the grounds of appeal for each of the respondents;
- ☒ one copy of the sealed (stamped by the court) order or tribunal determination being appealed;
- ☐ a copy of any order giving or refusing permission to appeal together with a copy of the judge's reasons for allowing or refusing permission to appeal;
- ☐ one copy of any witness statement or affidavit in support of any application included in the appellant's notice;
- ☐ where the decision of the lower court was itself made on appeal, a copy of the first order, the reasons given by the judge who made it and the appellant's notice of appeal against that order;
- ☐ in a claim for judicial review or a statutory appeal a copy of the original decision which was the subject of the application to the lower court;
- ☒ one copy of the skeleton arguments in support of the appeal or application for permission to appeal;
- ☒ a copy of the approved transcript of judgment; and
- ☐ a copy of the Civil Legal Aid Certificate (if applicable)
- ☐ where a claim relates to an Aarhus Convention claim, a schedule of the claimant's financial resources

Reasons why you have not supplied a document and date when you expect it to be available:-

Title of document and reason not supplied	Date when it will be supplied

Section 13 The notice of appeal must be signed here

Signed



Appellant('s legal representative)

IN THE COURT OF APPEAL

Claim No.: QB-2021-000171

BETWEEN:

PROFESSOR THEODORA KOSTAKOPOULOU

Claimant

-and-

**(1) UNIVERSITY OF WARWICK (Corporate Body incorporated by Royal Charter
under Royal Charter Number: RC0006678)**

(2) PROFESSOR ANDREW SANDERS

(3) PROFESSOR CHRISTINE ENNEW OBE

(4) PROFESSOR ANDY LAVENDER

(5) MS DIANA OPIK

Defendants

GROUND OFS OF APPEAL

1. The Judge erred in law in striking out the human rights limb of the claim without dealing with the question of whether the University of Warwick by raising false accusations of misconduct and gross misconduct had unjustifiably and disproportionately interfered 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 (POC, para 44(a)).

2. The Judge erred in law in failing to examine whether the suspension of the Claimant and her ban from the University of Warwick campus, her office and from all contact with her

undergraduate students, postgraduate students and colleagues amounted to an unwarranted and disproportionate interference with Article 8 ECHR and Article 7 EUCFR and her absolute right to equal human dignity under Article 1 EUCFR (POC, para 44(b)).

3. The Judge erred in law in failing to engage with the pleading that, by ignoring the Claimant's multiple submissions about her innocence and the accompanying documentary evidence for more than six months and intentionally maintaining the dissemination of damaging allegations that were untrue in substance and in fact and keeping her in suspension for more than six months (16 January – 20 July 2020), the University of Warwick breached Article 8 ECHR, 7 EUCFR and her inherent dignity under Article 1 EUCFR (POC, paras 44 (c) and (d)).

4. The Judge erred in law in failing to examine whether by dismissing the Claimant on the basis of false gross misconduct charges the First Defendant breached Articles 8 ECHR, 7 EUCFR and 1 EUCFR.

5. The Judge erred in law in failing to engage adequately with the pleading that the Claimant was the victim of discriminatory treatment prohibited by Article 14 ECHR and Article 21 of the EU Charter of Fundamental Rights taken together with Articles 8 ECHR and 1 and 7 EUCFR and failing to provide a reasoned decision on this.

6. The Judge decided to strike out the claim without dealing with the question whether the First defendant had acted procedurally ultra vires by suspending the Claimant without giving her advance notice and the opportunity to be heard.

7. 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 Judge overlooked the

Claimant's request for her suspension to be declared unlawful and thus void as a matter of law.

8. The Judge erred in law in overlooking whether the First Defendant had acted disproportionately to the nature of the Claimant's actions.

9. The Judge erred in law in failing to examine whether the First Defendant had breached the Claimant's rights under Article 31 EUCFR (the right to working conditions which respect a worker's health, safety and dignity) Article 20 TFEU (EU Citizenship) and the right to equal treatment as regards other conditions of work and employment under Article 45(2) TFEU which has been implemented by Regulation 492/2011 (Article 7(1) of Reg. 492/2011 on non-discrimination of EU nationals in respect of other conditions of employment and work) replacing Regulation 1612/68.

10. The Judge did not examine whether 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.

11. The foregoing errors and the striking out of the public law related limb of the claim expose the Claimant to a flagrant denial of justice and remedies in contravention of the rights to fair hearing conferred by common law and guaranteed by Article 6(1) of the Convention and EU law and to effective judicial protection.

12. The Judge misdirected himself in holding that Friend provides an unanswerable defence for the Defendants in this case and wrongly proceed to strike out the defamation limb of the claim on this basis

13. The Judge arrived at an erroneous conclusion of fact in para 72 concerning to what the Claimant had actually consented as part of her contract of employment as well as the evidential absence of consent in 2019/2020.

14. The Judge erred in law by not giving sufficient weight to legal authorities pre-dating and post-dating Friend and to statutory requirements enacted following Friend.

15. The Judge erred in failing to explain his conclusion why ‘there is not arguable case of malice’ and ‘the present pleading is hopeless’ and to provide reasons by engaging with the Claimant’s sufficiently particularised in the pleadings about each Defendant in the particulars of claim, her skeleton arguments and the evidence that has been produced

16 The Judge acted upon wrong principles in arriving at his conclusion that the defendants have an unanswerable defence of qualified privilege given that malice is a question of assessment on the facts.

17. The Judge erred in law in that it wrongly proceeded to apply the Johnson principle concerning the manner of the dismissal to causes of action, such as breaches of human rights, breaches of EU law rights, of proportionality and the right to be heard and malicious falsehood, which is not even dependent on proof of actual damage if the words were calculated to cause pecuniary damage in respect of the Claimant’s office, profession and so on, which accrued six months before the dismissal and are independent of it.

18 The Judge erred in placing the defamation cause of action and the suspension of the Claimant on 16 January 2016 within the *Johnson* exclusion area

19 Sir Nicol erred in failing to apply the principle in *Hoddinott* concerning the effect of the statutory submission to the Court’s jurisdiction.

BETWEEN:

PROFESSOR THEODORA KOSTAKOPOULOU

Claimant

-and-

**(1) UNIVERSITY OF WARWICK (Corporate Body incorporated by Royal Charter
under Royal Charter Number: RC0006678)**

(2) PROFESSOR ANDREW SANDERS

(3) PROFESSOR CHRISTINE ENNEW OBE

(4) PROFESSOR ANDY LAVENDER

(5) MS DIANA OPIK

Defendants

SKELETON ARGUMENT

1. I hereby wish to request permission to appeal against Sir Nicol's decision of 21 December 2021 striking out a claim that has emerged from prolonged injustice and suffering on the grounds that the decision was wrong and unjust. The claim has three limbs, namely, a) breaches of human rights and primary and secondary EU law (Articles 8 and 14 ECHR, 1,7, 21 and 31 EUCFR, 6(3) TEU, 20 and 45(2) TFEU and Article 7(1) of Regulation 492/2011 and the general principles of EU law of proportionality and the right to be heard), b) libel and/or c) malicious falsehood.

2. The strike out amounts to a denial of fair trial under common law and Article 6(1) ECHR and substantive legal rights and is not justified.

3. Guided by the Overriding Objective under r 1(1) CPR of the fair and just disposal of a case and her duties to assist the Court in furthering the Overriding Objective under r 1(3) CPR, the Appellant submitted to a detailed factual background of the case in paras 7-42 of the Particulars of Claim as well as in paras 1-104 of her Skeleton argument for the High Court hearing of 18th and 19th October 2021. Extensive documentary evidence provided to the HC and the Defendants' legal team between June and October 2021.

4. Instead of relying on the *Thomas* principle, namely, in a strike out application before a defence is filed the facts pleaded in the Particulars of Claim have to be assumed to be true (*Thomas v News Group Newspapers [2001] EWCA Civ 233* at [3]), the Appellant sought to prove the facts she relied upon on 18th and 19th October 2021 in the High Court.

5. The factual background of the Judgment from that Hearing does not accurately depict those facts. Instead of writing another factual background, the Appellant will outline the omissions and inaccuracies.

6. In paras 13-16 of the Judgment, there is no reference to the facts that on 23 June 2016, the day of the Brexit referendum, Professor Probert, former Head of Warwick Law School wrote a letter of commencement of disciplinary proceedings against the Appellant/formerly Claimant; the Claimant protested her innocence and complained about victimisation to HR Department on 27 June 2016 and to Professor Croft, Vice Chancellor of Warwick University on 9 July 2016 outlining the breaches of natural justice, the law and the University's procedures; on 22 July 2016, Professor Croft invited the Claimant to submit a grievance against Professor Probert, but following the Claimant's second letter of 24 July 2016 detailing the substantive unfairness of Professor Probert's actions, Professor Croft suspended the Claimant on baseless allegations of harassment without giving her an opportunity to be heard (POC, paras 9-14). The Claimant was on annual leave.

7. The Claimant suffered a psychiatric injury as a result of her mistreatment, and she suffered a second psychiatric injury when, having written to Professor Croft on 9 September 2016 protesting her innocence and requesting the lifting of her suspension, Professor Croft did not reply to her letter for more than 50 days and continued to keep her in suspension. Instead, he subjected her to disciplinary hearing which took place when the Claimant was ill and without her evidence and, when she appealed, her appeal was dismissed by Professor Ennew, the third defendant on 23 February 2017 (POC, paras 15-20).

8. Eighteen (18) applications the Claimant made to employment tribunals and courts for further information on what she was supposed to have done wrong were refused. Her applications to the ET on other matters in the proceedings she commenced at the Employment Tribunal in June 2017 were either refused or consistently ignored and to date she had not received decisions on them.

9. During the course of legal proceedings in the EAT and the Court of Appeal, the Claimant submitted information about her bullying and victimisation by Professor Sanders, the second defendant, Head of Warwick Law School, to the Civil Appeals Office on 18 October 2019, 18 November 2019 and 9 December 2019 (POC, paras 20-24). This is an important omission of facts because on 4 December 2019 Professor Sanders falsely reported the Claimant to the University for not meeting with him while he knew about the Claimant's pre-arranged contractual duties to other Universities and bodies off campus and had been offered by the Claimant several alternative days for a meeting. And although Professor Sanders had received the Claimant's email communication of 3 December 2019 and a memorandum relating to the completion of her tutorial responsibilities and he could independently verify this information at click of a button in Tabula, the University of Warwick's online student monitoring system and did not have any student complaint, he accused the Claimant of not fulfilling her contractual obligations on 4 December 2019.

10. In para 21 of Sir Nicol's Judgment, Professor Sanders' allegations are erroneously depicted as three (she had failed to comply with reasonable management requests, had failed to attend various meetings and not fulfilled her responsibilities in good faith), whilst evidence showed that it was the Claimant's unavailability to meet with Professor Sanders owing to her performance of pre-arranged professorial duties elsewhere that became a failure to comply with his reasonable management request. Similarly, despite the completion of her tutorial responsibilities, on 10 December 2019, the day of the national election, Professor Ennew widened the allegation so as to cover the entirety of the Claimant's duties and added a false 'bad faith' charge to the allegation without any particularisation or supporting evidence (Skeleton argument, paras 47-68).

11. Another significant material omission which would indicate the presence of a victimisation motive on the parts of both Professors Sanders and Ennew can be noticed in para 22 of the Judgment. The Defendants were named in the grievance the Claimant submitted on 6 January 2020 for breaches of the Equality Act, human rights, workplace health and safety and the professional code of conduct by making false accusations about the Claimant and subjecting her to a disciplinary investigation which had no legitimate aim (Skeleton argument, para 72-78; POC, para 29). As the Claimant wrote, she wished to report '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'.

12. In para 23 of the Judgment, Sir Nicol did not truthfully depict the new fabricated defamatory allegations made by Professor Ennew, creating the misleading impression that complaints had been made by students whilst in reality there was no student complaint. The Judge wrote: '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'.

But the written fresh allegations, which resulted in the suspension of the Claimant are the subject matter of the claim, 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 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.'

13. The wording 'complaints they may have made against you', the absence of any evidence showing that the Claimant engaged in any conduct that falls within the definitions of harassment under the Dignity at Warwick Policy and threatening and intimidating conduct coupled with the absence of any informal or formal complaint made by a student under Students' Complaints Resolution Procedure or any signed witness statement by any student qua complainant of the Claimant's conduct have been edited out in this section of the Judgment.

14. The Claimant's formal internal grievance against Professor Ennew to Sir David Normington for malice, bullying and victimisation and for breaches of the law and the University of Warwick's policies submitted on 17 January 2020 has not been referenced.

15. Other significant factual omissions which also impact upon the conclusions reached by Sir Nicol with respect to the Defendants' consent ('Friend' case law) and qualified privilege submissions include (- as stated in Skeleton argument, para 165) are as follows.

16. The Claimant's 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's policies (DE, pp. 148-161) was followed by the Claimant's letter of 22 January 2020 to the Chair of the Council, Sir Normington, in which the Claimant complained that the University's

internal policies had not been complied with by Professor Ennew and Professor Sanders (that is, provisions 3.7 and 7.2 of the Disciplinary Procedure, 6.1 and 6.2 of the Dignity at Warwick Policy, 7.1, 7.2, 8.4 of the Grievance Procedure) and requested without any further delay the complaints/accusations in writing, signed and dated, and containing details of specific data, incidents, dates, times, what happened and so on and why these matters are matters of misconduct as well as the prima facie supporting evidence. As the Claimant wrote:

‘Their actions lend support to my formal grievances about targeted malice and a victimisation intention. After all, the above are basic requirements of fairness, due process and standard reasonable behaviour.’ (DE, pp. 326-328)

17. On 25 January 2020, the Claimant wrote again to Sir Normington requesting an investigation of her formal complaint of bullying, victimisation, abuse of power, malevolent and false allegations (DE, pp. 270-271).

18. On Friday 31 January, the Claimant wrote to Professor Lavender and Sir Normington, Chair of the Council, complaining about the breaches of the Dignity at Warwick policy, malice and falsehood and noting that Professor Sanders had breached internal procedures by writing this communication to HR (DE, pp. 195-198). She noted that neither the Student Complaints procedure of the University of the University of Warwick nor the Dignity at Warwick Policy permits a head of department to write complaints/allegations on behalf of a student. She requested Sir Normington to review and lift the suspension within hours and to right the wrongs inflicted by Professors Sanders and Ennew (DE, p. 198).

19. On 11 February 2020, the Claimant submitted an internal grievance against Professor Sanders complaining about serious acts of gross misconduct: *‘Maliciously making false allegations and intentional and unwarranted statements violating the dignity of a professor, her honour, reputation and professional integrity in order to procure a suspension is not only unethical and unlawful behaviour but also gross misconduct.’*

20. In the Grievance, the Claimant write that the Disciplinary Policy of the University of Warwick does not confer upon Professor Sanders, and/or Professor Ennew, an unrestricted and unbridled licence for every possible attack upon the dignity of another employee and the abridgment of her rights, including her rights to health and well-being, to exercise her profession and teach her students and to an undisrupted and peaceful enjoyment of her private and family life.’ (DE, pp. 306-325).

21. The Claimant subsequently requested formal written notification of the reasons for her continued suspension and the indication of the length of it as required by the law, case law, the ACAS code of practice and the University’s own policy (Provision 10.3 of the Disciplinary Policy). She was not provided with this information. She also requested a review of her suspension (it had exceeded 30 days) and an explanation of how the tests of proportionality and reasonableness had been met. She was not provided with this information.

22. The Claimant continued to write letters and to protest for months. Although, it would take several pages to include all those dissenting submissions, the subsequent grievances should be mentioned.

23. The Claimant complained about the falsehoods in Professor Lavender’s report to the Chair of the Council, Sir Normington, on 8 June 2020. This formal grievance contained detailed explication and substantiation of his mistruths (DE, pp. 227-49). On 6 June 2020, the Claimant had also written to the Chair of the Council of the University of Warwick, Sir Normington, and to the Deputy Chair, Ms Cooke (DE, p. 269

24. On 6 June 2020, the Claimant had also submitted to all the members of the University of Warwick’s Council a long document (of more than 3,500 words) containing information not only about her mistreatment but also about the treatment of women in the law School (DE, pp. 272-280).

25. Other materially significant information absent from the judgement concern the following:

26. In para 26 of the Judgment, The Defendants' submission about the overlap of the cases at the High Court relates to the public law related claim only (- and not to the Particulars of Claim in the present proceedings as stated there).

27. In para 29, The Claimant complained about the falsehoods in Professor Lavender's investigation report and for continuing victimisation to Sir David Normington on 8 June 2020 by submitting a formal grievance. This was ignored.

28. In para 31, a disciplinary hearing was arranged when the Claimant was ill and the University of Warwick had been notified by means of a doctor's certificate. The hearing was chaired by Professor Caroline Meyer, Professor Ennew's Deputy who proceeded to dismiss the Claimant in absentia.

29. Concerning the procedural history section of the judgment, on the other hands, faithfulness to crucial facts would also require references to Defendants' refusal to engage with the Pre-action Protocol's requirements and the invitation to consider and participate in ADR with a view to procuring a resolution of the dispute.

30. Instead, they declared their intention to defend the whole claim on 20th May 2021 and shortly before the expiry of the prescribed time limit under CPR rules they sought a further extension of the service of the defence until 9 July 2021. Despite having obtained more than 60 days in order to serve their defence, the Defendants' legal representative, Mr Smith, then allowed the deadline, that is, 4.30 pm on 9 July 2021 as prescribed by the CPR 6.26 and 2.8 and Practice Directions 5B and 6A to expire. He subsequently applied for a strike out application and/or a summary judgment at 18.10 pm on 9 July 2021, having breached the CPR

and the HC's Order with the intention of stifling the Claimant's right to activate CPR 15.3, that is, her CPR-based right to invoke the sanction provided for under the CPR rules. He did not apply for an extension of time for serving a defence.

31. The Claimant was concerned about the fact that the Defendants effectively sought twice to override or disapply the CPR and considered the Defendants' tactical late application as manifestly unfair to the innocent party. By that time, the Defendants had already imposed significant requirements on her as well as unreasonable demands to her with a view to, and explicit expectation of, filing their defence, such as (i) regular email communications and letters, (ii) the disclosure of 44 documents and files, (iii) 40 requests for further information containing c. 90 questions to which the Claimant responded on 25 June 2021, and (iv) a request for five more documents the following week thereby raising their own costs, as well as the costs of the Claimant, to a phenomenal level. She believed that on the balance of probabilities the Defendants had anticipated the non-submission of the defence but they had not complied with PD 23(A)(2.7).

32. The Claimant communicated her concerns to QBD and Master Sullivan in the morning of Monday 12 July 2021 stating that she had received by mimecast the Defendants' Notice of Application and enclosures after business hours on Friday, 9 July 2021 and intended to make submissions on the application which she regarded as an abuse of process and her applications within five working days. But on the same day, Mr Justice Nicklin, that is, on Monday 12 July, accepted the Defendants' application and promulgated an Order containing directions for a hearing of 1,5 hours of the Defendants' application which was sealed on Tuesday 13 July and was served to the Claimant by email at 8.58 am on 13 July 2021. Mr Justice Nicklin made this Order without giving the Claimant the opportunity to make submissions (- a serious procedural irregularity) essentially treating the Defendants' application as an application without notice and extended time for the defence without an application from the Defendants who had been in default. By means of an application of 20 July 2021, the Claimant requested Mr Justice Nicklin's order to be set aside on procedural and substantive grounds. This application was refused by Mr Justice Nicklin.

33. On 23rd July the Claimant requested the Court to order the Defendants to provide information particularising the charges they had made against her – information they had withheld for more than one year and half. She requested information on the dates, location, time, specific factual conduct, the names of the recipients of her conduct, that is, information on what, when and how she had allegedly committed gross misconduct. She argued that this information was mandated by natural justice, fundamental rights, and was needed for the preparation of her argumentation for the forthcoming hearing. The Claimant also argued that it was dictated by many judicial authorities, such as *King and Others v Stiefel and Others* [2021] EWHC 1045, at para 368: ‘where particulars are required it is not permissible to avoid the need for giving particulars by saying that particulars will be given at a later stage’, *Duchess of Sussex v Associated Newspapers* [2020] EWHC (Ch), [2020] EMLR 21 at para 59 noting that allegations of improper conduct should not be made, if the party cannot give details of what was done and when, and ‘the suggestion, ... that particulars cannot be provided or should not be expected until after disclosure is contrary to the long-standing principle that a party alleging misconduct must give particulars before obtaining disclosure’; the continuing obligation to disclose information and documents under *Scott v Inland Revenue* [2004] IRLR 713 CA and the common sense approach highlighted in *L. M. White v The University of Manchester* [1976] IRLR 218 at para 14 among others.

34 It was a brief (less than 10 questions) and proportionate request; the Claimant had responded to the Defendants’ 90 questions (- answers to 14 more questions the Defendants required was provided by her on 25 August 2021).

35. Mr Justice Nicklin refused the Claimant’s application on 29th July 2021 and refused it again on 13th September when it was renewed following misleading statements made by Smith to the HC. Mr Justice Nicol threatened the Claimant with a civil restraining order.

36. Because the requested information was of significant material importance, the Claimant had to embark upon additional and time-consuming work of drafting, submitting, filing, serving and substantiating with documentary evidence a number of Notices to Admit Facts in September 2021. These Notices to Admit Facts were included in the Bundle, were relied upon at the High Court Hearing of Monday 18 and Tuesday 19 October. They made it clear that the Claimant had been unlawfully framed and defamed by Professors Sanders and Ennew. There was no evidence of any harassing behaviour, any threatening and intimidating conduct by her nor was there any student complaint under stage 1 or 2 of the University of Warwick's student complaints and resolution procedure and, in order for the Defendants to harm the Claimant, they had breached the University's own procedures and data protection law. More importantly, both Ms Opik, the fifth Defendant, and Student X, her boyfriend at that time, had received excellent care by the Claimant – Student X had their meetings with the Claimant in weeks 1, Term 1 (2019) and 1 Term 2 (2020) and Ms Opik had frequent meetings in her first year (the Claimant saw her on almost a weekly basis) and had her Autumn term meeting in 2019 within 4 working days of request of service (on 18 November 2019). Accordingly, the filed documentary evidence showed that Student X never reported to the University of Warwick that he had been questioned by the Claimant in relation to complaints he might have made against her and that the Claimant had attempted to influence him when he met with the Claimant during her office hours on Thursday 9 January 2020 in her office and that Professor Ennew's reference to 'students' in plural was untrue.

GROUND OFS OF APPEAL

HUMAN RIGHTS and EU LAW RELATED GROUND 1-11

37. The right to a fair legal process constitutes a fundamental right and an integral part of the rule of law. The gravity of a strike out of a legitimate claim cannot be underestimated. It deprives a party of a fair trial, substantive legal rights and remedies. A hearing is just only

when it is consonant with the rules of natural justice. One such important requirement is that the court acts in good faith respecting the fundamental rights of the parties [Mr Justice Slynn in referring to the comments of Harman J in the case of *Byrne v Kinematograph Reuters Society Ltd* [1958] IWLR 762]. The ECtHR has held that the requirement of fairness applies to proceedings in their entirety and not only to the final hearing (*Stran Greek Refineries and Stratis Andreadis v Greece*, para 49).

38. Fairness also requires that when a Claimant brings claims to a court and makes pleadings, these must be ‘actually heard’, that is duly considered and properly examined. They cannot be ignored. There is a positive legal duty on the part of the adjudicator to address the legal questions and issues and to provide a reasoned decision on them. Following the enactment of the Human Rights Act 1998, courts and tribunals have a positive obligation to render their decisions fundamental rights compliant and it has long been accepted that a person must pursue his/her claims to judicial protection in conditions which respect his/her fundamental rights and demonstrate that she is truly heard because her submissions have been taken seriously (*Donadze v Georgia*, para 35). In other words, the Judge has a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties (*Kraska v Switzerland*, para 30; *Hurk v the Netherlands*, para 59). In order for the right guaranteed by Article 6(1) ECHR to be effective, the authorities must exercise ‘diligence’ (*Kerojarvi v Finland*, para 42; *Frette v France*, para 49).

39. By affirming the equality of arms and ensuring the highest standard of protection of fundamental rights, judicial authorities render law fully effective and safeguard the essence of the right to a fair hearing. Having a right to something that is purely illusory and cannot be acted upon is worthless.

40. The Claimant brought a number of false and defamatory allegations and statements before the HC made by the Defendants. These were framed in a general and vague way without factual references to names, dates, places, specific characteristics of conduct and

why those fell within the definitions of misconduct under the policies of the University and the law and without any signed and dated complaint by any recipient of the alleged conduct in accordance with the University of Warwick's own procedures. The Claimant acted swiftly to protest her innocence and demonstrate this by submitting documentary evidence. She demanded the right to know the facts and complained about malicious bullying allegations and victimisation. Her integrity and dignity as a professional and human being were assailed. She was suspended in a humiliating way while there was no prima facie evidence for Professor Ennew believing that she had committed misconduct and without being given an opportunity to make representations. She did not hesitate to inform the Defendants about the negative impact of her mistreatment on her dignity, reputation, health and well-being, private and family life and the breaches of the law. She made internal and external disclosures about Warwick University's practice of punitive suspensions of indefinite duration and the breaches of laws, the ACAS guidelines, human rights and health and safety. Her defamation remained acute causing her distress and professional harm for several months and the suspension had no end. She was rendered an invisible woman with no voice and was treated with profound disrespect by the First Defendant which is obliged to comply with its own policy of Dignity at Warwick, its whistleblowing code, the public sector equality duties and human rights and EU law related obligations. She made valid claims as a matter of law and had the legitimate expectation that the Court would restore her reputation and afford her just satisfaction for the breach of her fundamental and EU law related rights.

41. E. J. Woffendon at Birmingham Employment Tribunal made it clear in her decision of 27 October 2021 granting a stay in the proceedings that although the ET must act compatibly with Convention rights, there is no free standing jurisdiction to award damages for breaches of those rights in the employment tribunal. Nor is there a free standing right for any breaches of EU law in the ET and that the appropriate venue would thus be the High Court.

42. Despite this, Sir Nicol wrote in para 70: '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)'. By abdicating his legal obligation to deal with the alleged

infringements of fundamental rights under EU law, Sir Nicol essentially deprives the Claimant from effective judicial protection and effective remedies.

43. Sir Nicol struck out the human rights and EU law claim without engaging with the Claimant's protection under Article 8 ECHR (the right to respect for private and family life) which includes the right to good reputation (*Perez v France* [70]) and one's right to engage in social relationships and contacts with the outside world and the complementary equality clause under Article 14 ECHR which prohibits unjustified differential treatment. Limitations to this right are permitted if they are provided for, respect the essence of the right, can be justified and meet the test of proportionality.

44. The test of proportionality involves questions of the suitability of the limitation to address the problem identified, its necessity and whether the aim pursued could be achieved by less restrictive means. This legal test was not performed with respect to the Claimant's pleaded breaches of her rights under Articles 8 and 14 ECHR and 7 and 21 of the EUCFR. The First Defendant had no lawful justification or excuse to concoct damaging disciplinary allegations against the Claimant, to suspend her, to maintain them for six months and to dismiss her.

45. In paragraph 70 of the Judgment, Sir Nicol wrote that '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', but this does not amount to an adequate justification and a duly reasoned argument explaining why the false and defamatory statements used to dismiss the Claimant did not interfere with her Convention and EUCFR rights. The Claimant has not argued that all dismissals engage Article 8 ECHR; she requested the Court to deal with the defamatory underpinnings of her own dismissal.

46. Article 1 EUCFR, on the other hand, is an absolute right. It permits no limitations. Bespattering a person with foul imputations and making defamatory statements to produce hurtful and harmful effects concerning a fellow human being and college infringe human

dignity. Respect for human dignity also constitutes an integral part of the general legal tenets of EU law. The protection of the dignity of a worker is also enshrined in Article 31 EUCFR on fair and just working conditions respectful of one's health, safety and dignity which is a directly effective right invocable in national courts.

47. Directly effective rights also stem from Article 20 TEFU (EU Citizenship) and the right to equal treatment as regards other conditions of work and employment under Article 45(2) TEFU which has been implemented by Regulation 492/2011 (Article 7(1) of Reg. 492/2011 on non-discrimination of EU nationals in respect of other conditions of employment and work) replacing Regulation 1612/68. None of the Claimant's British colleagues in Warwick Law School has been targeted in a similar way and has been recipients of a similar hostile and undignified treatment.

48. The right to be heard before a decision affecting the rights of an individual is taken is based on the common law principle of legality (also known as Simms principle of legality) and is a mandatory requirement of natural justice (- the earliest case I am aware of is Dr Bentley's case against Cambridge University in 1723 where it was held that 'the objection for want of notice can never be got over'; see also *Att-Gen v Ryan* [1980] AC 718 and *Ridge v Baldwin* [1964] AC 40). It is also a general principle EU law (Case C-413/06P *Bertelsman and anor v Independent Music Publishers and Labels Association* [2008] ECR I-4951; Case 85/76 *Hoffman-La Roche v Commission* [1979] ECR 361] the violation of which is a ground for the annulment of a measure and a ground for an action for damages. The Claimant was not afforded the right to be heard by Professor Ennew, the third Defendant. Instead, she was presented with the suspension letter and was ordered to leave her office and the University of Warwick and not to come back on 16 January 2020. This renders her suspension unlawful, but Sir Nicol overlooked this.

CONSENT OR LEAVE AND LICENCE AND FRIEND

AG 12. The Judge misdirected himself in holding that Friend provides an unanswerable defence for the Defendants in this case and wrongly proceed to strike out the defamation limb of the claim on this basis

49. In *Friend* it was held that it was only the republication of the defamatory statement was covered by the employee's consent since the limitation period of the original publication of the written memoranda had expired. At p16-7 Hirst LJ (with whom Millett and Brooke LJ agreed) explicitly referred to an employee's '*consent to the re-publication of the accusation or complaint*' and accepted that Captain Friend's case was an exceptional one because he could not challenge the original defamatory statements because the limitation period had passed.

50. If this limitation had not existed, Captain Friend could have sued over the original publications and could have obtained damages from their republications. As L.J. Hirst put it clearly: '*..but the present problem, which must be rare if not unprecedented, stems entirely from Captain Friend's predicament that any claim in relation to the original publications is statute-barred*' (p. 23). The time of the original publication of the defamatory statement was thus the crucial issue - not whether the defamatory statements were published in the context of an activated disciplinary procedure or not. And discerning the time of a publication is a matter of fact.

51. Professor Ennew's statements were articulated for the first time on 16th January 2021 and are thus original publications. The evidence shows that on 16 January 2020 Professor Ennew made the original allegations of '*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.' These statements had not been articulated before the 16th of January 2020.

52. The Claimant has also submitted in para 162 of her skeleton argument that all the statements complained of with respect to Professor Ennew in paras 50-52 of the POC, Professor Lavender in paras 95, 96, 98 of the POC and 101 and Professor Sanders and Ms Opik with the exception of Professor Sanders' email communication of 12 January 2020 (- its date will be proved) are original publications (two are republications of original publications within the time limit) and thus do not fall within the 'Leave and Licence' scope of *Friend*. There is no re-publication and thus no scope for the application of *Friend* and consequently the strike out.

AG 13. The Judge arrived at an erroneous conclusion of fact in para 72 concerning to what the Claimant had actually consented as part of her contract of employment as well as the evidential absence of consent in in 2019/2020.

53. The Claimant's contract of employment contained an overarching dignity clause (clause 33). Accordingly, she had consented to be treated by the University of Warwick '**with dignity and respect at all times during the employment and all members of staff are required to conduct themselves in accordance with this principle. The University is committed to ensuring that no harassment or victimisation in the workplace, whatever the motivation or manner, is overlooked or condoned**' as well as to work within a healthy and safe working environment (clause 21 of the employment contract). The clear and unambiguous wording of the prohibition of violations of dignity at work at Warwick University which is also enshrined in Statute 11 of the University means that any activation and operation of the disciplinary policy and procedure had, and has, to take place in full compliance, and not in contravention, with the Dignity at Work Policy and Procedure. In this respect, the wording of paragraph 72 of the draft judgment is not factually accurate; it cannot be assumed that by signing a contract

of employment which includes a disciplinary code, any false and malicious allegation is made with the employee's agreement.

54. A disciplinary procedure does not give licence to tell lies, to engage in bullying complaints and victimising campaigns and to harm one's profession and reputation. For this reason, disciplinary procedures (including Warwick University's) explicitly make false and malicious complaints disciplinary offences. An abusive or unjust activation of a disciplinary process is also viewed as a repudiatory breach of contract on the part of the employer.

55. In addition, explicit and strong dissent, opposition and protest against the bullying, vexatious allegations and the defamatory statements of the Defendants and requests for retractions were displayed consistently by the Claimant (Claimant's skeleton argument para 165). There is voluminous documentary evidence on this.

AG 14. The Judge erred in law by not giving sufficient weight to legal authorities pre-dating and post-dating Friend and to statutory requirements enacted following Friend.

56. At a fairly early stage, the British judiciary found it necessary to distinguish between knowledge of a risk (*sciens*) and consent to assume the risk (*volens*) (*Smith v Baker and Sons* (1891) AC 325). Knowledge of the risk of injury is not enough. Instead, 'volens' presupposes an act of conscious balancing of facts and various options and their relevant future consequences; a free choice to opt for a certain course of action and thus to assume a risk of injury; and an agreement to waive any rights and/or damages if the risk materialises and some form of harm takes place. Because the prospect of such a freely given agreement in the workplace is rather unlikely since there is a clear power imbalance among the parties, it has been established that *volenti non fit injuria* only seldomly applies to the relationship of subordination between employers and employees.

57. In any case, an employee's consent must be informed as well as unequivocal. In *Otu v Morley* [2017] EWHC 2186 (QB), Justice Eady confirmed that by arguing at [1] and [9]: 'In order to succeed, defendant must show that the claimant has unequivocally consented to the publication of the defamatory allegations and with full knowledge. That will turn on issues of disputed fact. It must be very unusual, therefore to find a case where such a defence is so clear that the case can be disposed at the pre-trial stage'. 'It has to be shown that the Claimant's consent was given with a full understanding of the relevant circumstances and that it was unequivocal'.

58. This means that an employee is entitled to deny or revoke it at any time – a fact that makes the application of *Friend* not so straight forward.

59. Further complications are generated by a number of post-Friend legislative acts. These were: the Human Rights Act 1998 and the protection of reputation under Article 8 ECHR, the Data Protection Act 1998 with its requirements about lawful and fair processing of personal data and informed consent and the Public Interest Disclosure Act 1998. More followed afterwards: the Employment Equality (Religion or Belief) Regulations 2003 SI 2003/1660, the Employment Equality (Sexual Orientations) Regulations 2003 SI 2003/1661, the Employment Equality (Age) Regulations SI 2006/1031, the Equality Act 2010, and its public sector equality duties to eliminate victimisation and discrimination as well as the EU Charter of Fundamental Rights which prohibits any restriction on the absolute right to human dignity and which has the status of primary EU law.

60. It is impossible for one to abrogate such rights and duties today as well as to assume that a person/employee can lawfully consent to his/her bullying, victimisation and discrimination, to injuries to his/her health and well-being, to breaches of his/her fundamental right to data protection and his/her defamation. Accordingly, by signing a contract of employment an employee can never consent, either expressly or impliedly, to an unwarranted and

disproportionate limitation of his rights under Article 8 ECHR. Public authorities, in turn, have a distinct duty to prevent any such limitations.

61. In the field of data protection law, too, any data employers collect must observe the data protection principles and its processing must be based on the employee's qua data subject's informed consent. Employers are not free to contrive false and malicious pieces of information about employees, to keep them in employees' files and to re-circulate them without giving an employee's rights to access that information and to demand the correction and removal of the incorrect information without any delay.

62. *Friend* is not consonant with data protection law principles today. Employers have reinforced duties to process employee data, and thus, any complaint about a named employee, a) fairly and for a legitimate purpose, b) with the employee's freely given and informed consent and c) in strict observance of the data protection principles which include fair and lawful processing, accuracy and in accordance with the rights of data subjects. There is no consent that is implied within the parameter of data protection law; instead, it has to be freely given, informed, specific and unambiguous and can be withdrawn at any time. And in the light of data subjects' rights of rectification and restriction of processing of inaccurate data, an employer is also duty bound to take reasonable steps to verify the accuracy of the data.

63. The Defendants do not have an unanswerable defence based on *Friend* and the claim was wrongly struck out.

QUALIFIED PRIVILEGE

AG 15. The Judge erred in failing to explain his conclusion why ‘there is not arguable case of malice’ and ‘the present pleading is hopeless’ and to provide reasons by engaging with the Claimant’s sufficiently particularised in the pleadings about each Defendant in the particulars of claim, her skeleton arguments and the evidence that has been produced

64. The conclusion reached by Sir Nicol is based on general assertions without engaging with the particularised pleadings of the primary facts relied on.

65. There has been considerable evidence of lying on the part the Defendants and the making of bogus disciplinary allegations provides a strong prima facie case of malice which the Defendants would have to answer in trial. The grossest kinds of libel is charging somebody with acts she never committed, placing someone in a disciplinary process lasting nine months and under suspension for six months while at the click of a button there exists clear evidence about the falsity of the allegations. Nobody sits down to write false and defamatory grounds in good faith and nobody seeks to force those false statements on an innocent person for several months. Defamation does not happen by necessity; it is purpose-driven.

66. The Judge’s statement that the present pleading is hopeless is not justified by the weight of evidence which was not rebutted by Mr Munden by means of the production of documentary evidence and witness statements showing that the Defendants made statements that were fair or reasonable and made in good faith. As a brief example to illustrate the above point, no evidence has been produced to rebut the Claimant’s pleadings in the Particulars of Claim with respect to Professor Ennew in para 58 of the Particulars of Claim:

‘ 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 organisation, 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-delegable 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 process';

(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.'

AG 16 The Judge acted upon wrong principles in arriving at his conclusion that the defendants have an unanswerable defence of qualified principle given that malice is a question of assessment on the facts.

67. As the Defendants have not filed a defence and the Claimant has not provided reply, at this stage the correct test is not whether the Claimant has proven malice, but whether on the basis of the primary facts pleaded, an inference of a victimisation motive or dishonesty or

reckless disregard for the truth or falsity of the defamatory statements is more likely than an inference of innocence or negligence. Lying tilts the balance and justifies an inference of dishonesty. If it does, the case needs to go forward. The same applies with respect to the Claimant's protracted suffering owing to a failure to discover falsity when the circumstances dictated further inquiry and prompt action.

68. For a summary judgment application to succeed, as May LJ stated at 342 in *S v Gloucestershire County Council* [2001] Fam 313, the Court 'would need to be satisfied that all substantial facts, which are reasonably capable of being before the court, are before the court and that these facts are undisputed or that there is no real prospect of successfully disputing them; and that here is no real prospect of oral evidence affecting the court's assessment of the facts'. It cannot be argued that this test has been met and that all relevant documents and factual evidence are in the possession of the court. Witness statements and witnesses cross-examination would enable the Judge to determine where the truth lies and to test the evidence. This generally makes the issues of qualified privilege and malice unsuitable for a summary determination.

69. The same conclusion is derived from the application of the *Easyair* principles (*Easyair Ltd v Opal Telecom* [2009] EWHC 339 [15]: in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial; 'although the case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment';... 'if it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success...' For this reason, the evidence that would be produced at a trial and the defendants' own testimonies would be paramount.

THE JOHNSON PRINCIPLE

AG 17 The Judge erred in law in that it wrongly proceeded to apply the Johnson principle concerning the manner of the dismissal to causes of action, such as breaches of human rights, breaches of EU law rights, of proportionality and the right to be heard and malicious falsehood, which is not even dependent on proof of actual damage if the words were calculated to cause pecuniary damage in respect of the Claimant's office, profession and so on, which accrued six months before the dismissal and are independent of it.

70. The human rights, EU law causes of action and malicious falsehood are unrelated to the *Johnson* principle. The prescribed remedies for these are corrective in the sense of aiming to put the Claimant in the position she would have been without those breaches and, if the claim is struck out, the principles of effectiveness of EU law would also be breached since the remedies are required to be 'effective, proportionate and dissuasive'.

AG 18 The Judge erred in placing the defamation cause of action and the suspension of the Claimant on 16 January 2016 within the Johnson exclusion area

71. When the Claimant was subjected to false and malicious accusations and was suspended on 16 January 2016, there was no dismissal process. A disciplinary hearing in absentia which led to the Claimant's dismissal took place on 20 July 2020. Similarly, the objectionable defamatory statements in January, February, March, April and May 2020 were not made in the course of the dismissal. They are not part of the same process. Sir Nicol was incorrectly wrote in para 91 '*The Claimant was suspended in the course of the dismissal process*' and in para 100 that '*it is for the Employment Tribunal and not this court to determine Claimant's complaints about the manner of the dismissal*'. Both those statements are not factually correct. Similarly, the statement in para 95 '*...Lord Dyson in Chesterfield expressly considered*

the manner of the 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 in her position' inaccurately entangles the defamatory and/or malicious falsehood statements made by the Defendants seven months before the dismissal with the manner of the dismissal.

72. It was submitted in writing (para 131 of the skeleton argument) and orally that in *Edwards* (paragraph 99) a separate claim for defamation is envisaged and that suspension can give rise to a separate claim, independently of any unfair dismissal claim. Suspensions which are humiliating, such as mine, have a negative impact on one's reputation and impair human dignity and result in restricted future opportunities (- this was elaborated upon during the hearing) are cases in point. E. J. Woffendon has confirmed that the Employment Tribunal cannot adjudicate defamation and malicious falsehood complaints. Nor can the Employment Tribunal fruitfully address breaches of human rights law and EU law.

AG19 Sir Nicol erred in failing to apply the principle in Hoddinott concerning the effect of the statutory submission to the Court's jurisdiction

73. As regards *Hoddinott* (*Hoddinott v Persimmon Homes (Wessex) Ltd* [2007] EWCA Civ 1203), I respectfully submit that this point relates exclusively to the Defendants' argument that the Employment Tribunal has exclusive jurisdiction to determine loss arising by reason of the Claimant's dismissal and not to 'the other bases for strike out' as it is stated in paragraph 93 of the Judgement.

74. The pleading was that the Defendants had fully accepted that the High court has jurisdiction over the whole claim and that it should exercise its jurisdiction. They did not tick the relevant box on the filed acknowledgment of service form of 20 May 2021 indicating that the jurisdiction is being challenged and did not issue an application notice seeking an order

declaring that the court has no jurisdiction or should not exercise any jurisdiction it might have because the claim is barred by the principle on *Johnson* or the claim for loss as a result of the dismissal is so barred within the following 14 days (CPR 11(4)). This statutory submission to the jurisdiction in terms of Part 11 CPR and *Hoddinott* as well as their subsequent conduct (i.e., the failure to withdraw the acknowledgment of service with the permission of the court (see CPR Part 10, PD 54), being granted a further extension to serve to defence, serving a Part 18 request for information to c. 90 questions and so on) which confirmed continuous unequivocal submission to the Court's jurisdiction meant that they had waived any subsequent jurisdictional objection be it on *Johnson* or on any other hypothetical future ground (Skeleton argument, paras 134-142).

75. This is a rigorous test (*Deutsche Bank AG London Brance v Petromena ASA* [2015] 1 WLR 4225).

76. Accordingly, the written statements in para 94, 'an alternative way of putting the procedural objection was articulated by the Claimant', '*it was not now open to them to argue that they did not need to serve a defence at all*', '*again, it was unreasonable for them to argue now that the claim should be struck out*' do not present the pleading accurately.

77. The same applies to the statement in paras 96 and 97 of the Judgment '*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*' and '*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*'. The Appellant's pleading does not concern strike outs and it is not an alternative way of putting the procedural objection.

Statement of Truth

I believe that the facts stated in this witness statement are true and 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.

Theodora Kostakopoulou

Signed:

A handwritten signature in black ink, appearing to be 'Theodora', written over a horizontal line.

Appellant

11 January 2022

CHRONOLOGY OF RELEVANT EVENTS

1. Between 30 August 2019 and 31 October 2019 the Claimant had activated proceedings before the Court of Appeal (A2/2019/2197 on 30 August and A2/2019/2613 on 21 October 2019) and had concurrent legal proceedings under s. 27 of the EA and s 47B of the ERA before the EAT. Unlawful victimisation by the University of Warwick, Professor Croft, Professor Probert and Ms McGrattan was the basis of the legal actions.

2. The Claimant was experiencing continuing negative actions at Warwick Law School and she informed Mr Tai (Civil Appeals) about her victimisation by Professor Sanders, Head of the Law School, because of her legal proceedings by submitting complaints and documentary evidence on 6 and 18 October 2019, 18 and 19 November 2019. On 22 November 2019 Mr Tai confirmed by email to her that her submissions would be added to the Court of Appeal bundle for the Judge to see them. The Claimant approached Mr Tai again on 9 December 2019 presenting more documentary evidence.

3. On 4 November 2019 the Claimant wrote to Professor Andrew Sanders requesting access to, and the removal of statements made about her in, a secret word file stored on a Law School Computer which was the product of unlawful, unfair and non-transparent processing of personal data by Professor Roger Leng in the summer of 2017. She did not receive a reply from Professor Andrew Sanders and subsequently wrote to the Data Protection Officer of the University of Warwick on 19 November 2019.

4. On 29 October 2019, Professor Sanders was informed about the Claimant's short-term sickness by Ms Huber and the re-scheduling of her office hours from the beginning of the week to Thursday 31 October 2019. On the same day Professor Sanders instructed Ms Huber to write to the Claimant's 25 tutees without copying her into the correspondence with pre-framed questions in order to elicit possible complaints about the Claimant. On 29 October 2019, he also wrote to the Claimant asking her to go to his office on the 7th of November 2019 at 11.45 am. The Claimant, who had to be at Keele University on the 7th of November, informed Professor Sanders about her unavailability.

5. On 5 November 2019, Professor Sanders emailed the Claimant 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, the Claimant 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. On the same day, 6 November 2019 at 13.04 pm, Professor Sanders sent another email to the Claimant which concluded 'If you do not come to see me tomorrow then I require you to see me on Tuesday 12th November (time to be confirmed)'. On 12th and 13th November the Claimant had been invited by the University of Amsterdam to deliver a public lecture.

6. On 8 November 2019, Professor Sanders accepted the Claimant's pre-arranged commitments in the Netherlands, but he later accused her of misconduct for failing to meet with him on the 12th and 13th of November 2019.

7. Subsequently, Professor Sanders unilaterally chose the 2nd and 3rd of December for a meeting when the Claimant had external examining duties at the University Southampton. The Claimant explained this to him and suggested alternative dates for January 2020 since the term was about to end that week.

8. On 2nd December 2019 at 17.04 pm, when the Claimant was at Southampton University, Professor Sanders sent another email to the Claimant threatening disciplinary action if she did not meet him on the following day, 3rd December 2019 at 14.00 pm. The Claimant, who was away, did not read this email until the following day at 18.00 pm.

9. On 3rd December the Claimant travelled back to Warwick University arriving there at 3 pm to see her PhD student and then her tutees from 4 to 6 pm. She subsequently checked her email, saw Professor Sanders' email and replied to him explaining that he knew that she was away on duties and that she needed time to travel back. She reminded him of the range of alternative dates she had suggested and complained about targeting and victimisation to him and HR. The Claimant also sent to Professor Sanders and to the Director of Undergraduate Studies a memorandum confirming the completion of her office hours and the tutorial responsibilities for that academic term.

10. On 3rd December 2019, the Claimant also updated for the final time TABULA, the University's online student attendance monitoring system, which recorded her meetings with her tutees and her notes about them that term. The Claimant had updated TABULA also in the beginning of November and the middle of November 2019.

11. On 4 December 2019, Professor Sanders wrote to the Claimant claiming that she had not demonstrated to him that she had fulfilled her contractual obligations and on 10 December 2019, Professor Christine Ennew accused the Claimant of failing to fulfil her responsibilities in good faith and to comply with reasonable management requests by non-attending at five separate meetings Professor Sanders had unilaterally called when the Claimant was performing duties off campus. She appointed Professor Lavender as an investigator.

12. On 9 December 2019, the Claimant had lodged a formal complaint activating her data subject rights to access and erasure under the GDPR and the Data Protection Act 2018 - the complaint to ICO was under case reference number RFA 0897317.

13. As soon as the Claimant received by post Professor Ennew's letter on 13 December 2019, she immediately wrote to her complaining about 'bogus allegations', institutional retaliation and

victimisation due to her legal proceedings and requesting prima facie evidence for ‘the vague and unreasonable allegations’.

14. On 18 December 2019 the Claimant also wrote to Christine Ennew complaining about her treatment in breach of the prohibition of victimisation and the dignity at Warwick policy . She also informed Christine Ennew about the health harming impact of her letter.

15. On 6 January 2020, the Claimant submitted a grievance against Professors Sanders and Ennew to Sir David Normington, Chair of the Council of the University of Warwick, and to Mrs Cooke, Deputy Chair, complaining about malice, bullying, defamation, unlawful victimisation and the breach of the Equality Act 2010. She provided evidence of the falsity of Professors Sanders and Ennew’s statements, her contract with Southampton University, her train ticket and a photographic copy of Tabula of 3 December 2019.

16. On 16 January 2020, the Claimant’s meeting with her supervisee is interrupted and Professor Ennew’s suspension letter containing new accusations that the Claimant had harassed, threatened and intimidated students and had attempted to influence potential witnesses was hand-delivered to her. She was ordered to leave the University immediately and to refrain from contacting any member of staff and student. The Claimant was shocked and disoriented; she asked for factual information and where the relevant formal complaint was. She was told: ‘we do not know, but we assume there was a complaint’.

17. On 17 January 2020, the Claimant submitted a grievance against Christine Ennew to Sir David Normington and Ms Cooke complaining about reprisals, vexatious allegations damaging her reputation and standing, breaches of proportionality and human rights and unlawful treatment.

18. On 22 January 2020, the Claimant wrote to Sir David Normington: ‘I write because I have not received any information about the investigation arrangements of my formal grievances submitted to you on Monday 6 January 2020 against Professors Ennew and Sanders for malice, bullying and victimisation and for breaches of the law and the University’s policies and on 17 January 2020 against Professor Ennew for abuse of power, re-victimisation, unlawful and wrongful suspension, a persistent pattern of false and malicious allegations, breach of the duty of care and health and safety regulations, libellous statements and knowingly breaching the University’s policies and the law.... Professor Ennew and Professor Sanders have breached University policies...Their actions lend support to my formal grievances about targeted malice and a victimisation intention. After all, the above are basic requirements of fairness, due process and standard reasonable behaviour.’

19. On 25 January 2020, the Claimant wrote again to Sir Normington ‘noting that once a formal complaint of bullying, victimisation, abuse of power, malevolent and false allegations constituting harassment is formally submitted to the University of Warwick, both the law and the Dignity at Warwick impose a clear duty to investigate, to end the victimisation without delay and to review and

lift my unlawful suspension. This duty flows from the Charter of the University of Warwick, several statutory rules and the employer's duty to provide a safe and healthy working environment free from discrimination, harassment, bullying and victimisation...'

20. At the end of January 2020, the Claimant activated the whistleblowing policy of Warwick University by writing to Sir Normington, Chair of the Council, highlighting in yellow ink the relevant parts of the whistleblowing policy and the infractions which formed part of the internal protected disclosures. She requested an investigation.

21. On 31 January 2020, the Claimant wrote to Sir David Normington and Andy Lavender outlining breaches of anti-discrimination law and the University's own Dignity policy and making a formal request that the Claimant is afforded fair treatment with dignity and respect and the immediate lifting of the suspension. She protested her innocence and explained why Professor Ennew's statements of 16 January 2020 were baseless and made in bad faith.

22. On 11 February 2020, the Claimant lodged a grievance lodged against Andrew Sanders for libellous statements contained in a letter of complaint against the Claimant he wrote on behalf of a student in breach of the professional code of conduct, the University of Warwick's own procedures and policy on Dignity at Warwick, the Equality Act and the law.

23. Professor Lavender's investigation had stopped at the end of January 2020 and resumed on 1 April 2020. By that time, the Claimant had been in suspension for 2,5 months – she submitted an employment tribunal complaint on 24 February 2020.

23. In February, March and April 2020, the Claimant wrote several letters and email communications to the University of Warwick, the Registrar, Sir Normington, HR and Professor Lavender pleading for compliance with the laws of this country, human rights, EU law, proportionality, tort law and the policies and procedures of the University.

24. On 20 May 2020 Professor Lavender completed his investigation report.

25. On 1 June 2020 Professor Ennew informed the Claimant of her decision to proceed with a disciplinary hearing which was arranged for 29 June 2020.

26. The formal Grievance of 8 June 2020 was submitted to Sir Normington and Ms Cooke outlining the falsehoods in Professor Lavender's report and the existence of a victimisation agenda.

27. The Claimant submitted complaints and made protected disclosures to Sir Normington and Ms Sandby-Thomas on 11 June 2020, to the Members of the Governing Council of the University of

Warwick on 6 June 2020, to Sir Normington and Ms Cooke on 13 June 2020, to Sir Normington, Members of the Council and the Executive on 24 June 2020 and to Sir Normington, Members of the Council and the Executive on 28 June 2020.

28. By that time, the Claimant's health had suffered and was medically certified 'unfit for duties' until 21 July 2020.

29. The doctor's certificate was sent to the University on 1 July 2020 by the Claimant's husband, Dr Dochery, who had already informed the University about the Claimant's ill health on 29 June 2020 and had expressly requested that: 'Please note that Professor Kostakopoulou is in communication with her doctor and, until such further notice of her being able to communicate with you, I would advise that you refrain from all direct communications with Professor Kostakopoulou and to direct all communications to my email address'.

30. In the beginning of July 2020, HR proceeded to refer the Claimant to Occupational Health for expert advice as to how they should proceed with respect to the disciplinary hearing.

31. Instead of waiting for the outcome of the meeting of Claimant with Occupational Health and the report of Occupational Health's doctor, the University of Warwick proceeded to convene a disciplinary hearing in the Claimant's absence and to dismiss her on 20 July 2020.

32. The only witness at the disciplinary hearing conducted by Professor Meyer (Professor Ennew's deputy) and Professor Steele was Professor Lavender. There were no signed witness statements by any student and there had been no student complaints under the University's relevant policies.

33. Professor Lavender left the University of Warwick shortly afterwards.

34. The Claimant was notified about the outcome of this disciplinary hearing on 29 July 2020. She proceeded to submit an employment tribunal complaint on 4 August 2020 which has not progressed at all since then.

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

Claim Number: QB-2021-000171

SIR ANDREW NICOL (SITTING AS A JUDGE OF THE HIGH COURT)

BETWEEN:

PROFESSOR THEODORA KOSTAKOPOLOU

- and -

**(1) UNIVERSITY OF WARWICK (CORPORATE BODY INCORPORATED BY ROYAL CHARTER
UNDER ROYAL CHARTER NUMBER: RC000678)**

(2) PROFESSOR ANDREW SANDERS

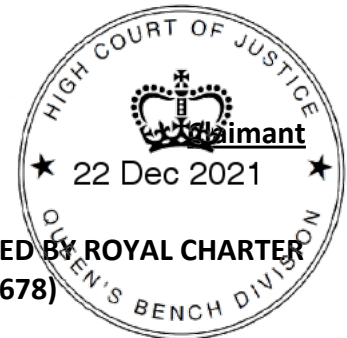
(3) PROFESSOR CHRISTINE ENNEW OBE

(4) PROFESSOR ANDY LAVENDER

(5) MS DIANA ÖPIK

QB-2021-000171

Defendants



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.

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 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



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

Claimant

Defendants

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 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 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.



Claim Form

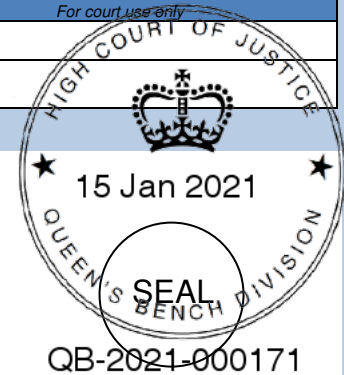
In the High Court of Justice, Queen's Bench Division, Media and Communications List	
Fee Account no.	PBA0079786
Help with Fees – Ref. no. (if applicable)	H W F - <input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/>

You may be able to issue your claim online which may save time and money. Go to www.moneyclaim.gov.uk to find out more.

	For court use only
Claim no.	
Issue date	

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

For further details of the courts www.gov.uk/find-court-tribunal.

When corresponding with the Court, please address forms or letters to the Manager and always quote the claim number.

N1 Claim form (CPR Part 7) (06.16)

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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.	
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Does, or will, your claim include any issues under the Human Rights Act 1998? ☒ 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 OF 5 MAY 2021
INCORPORATING THE REQUEST FOR FI under Part 18**

*The 40 Requests for Further Information (- and the c. 90 questions) are incorporated into the text of the Particulars of Claim, underneath each related paragraph in a box and in blue ink for accuracy, ease of reference and identification. The response is included in a box underneath each request.

** If BML would like me to repeat the Responses/information provided, here, in another format, I would be pleased to provide an additional letter and/or word file.

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 voluntarily 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 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

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| <p>i)</p> <p>ii)</p> | <p>Please explain whether it is the claimant's case that Professor Croft was under an obligation to provide:</p> <ul style="list-style-type: none">(a) Advanced warning of his decision.(b) To consult the claimant.(c) To make her aware of the circumstances surrounding his decision. <p>and, if so, identify the basis for any such assertion.</p> <p>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:</p> <ul style="list-style-type: none">(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. |
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Response:

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| <p>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.</p> <p>ii) Claim No. QB-2021-000171 does not contain any personal injury claim.</p> |
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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 cruellest 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, also referring 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 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 paragraphs.

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 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.'

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 health 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 into 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 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 for 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 Aquinas'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 identification 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 the 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.***

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 influence witnesses, students who had complained about me.
- ii) That was the meaning understood by the recipients evidenced by my continued suspension for six 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 from 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 the allegations discursively 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 without notice 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 organisation, 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-delegable 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 process’*;

(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 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 have been identified in paragraph 84 below and were 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 from 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 individually 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 that 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 that 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 fulfil my responsibilities in good faith, my protected disclosures and my ongoing legal proceedings. The slanderous falsehoods became libellous 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

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 from 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 undermine the ongoing investigation into the fulfilment 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 external 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.

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 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 Fifth Defendant), but Professor Sanders (the Second Defendant) 'as a consequence of his interpretation of the situation' - a manifestation of gross misconduct on Professor Sanders's part.

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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.

¹ Square brackets in the original

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*’, ‘*he had found no evidence to explain why DK would not meet with AS*’, ‘*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 conjunction with the Claimant's grievance against Professor Lavender of 8 June 2020 which the University of Warwick never addressed. 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:

The crucial role played by Professor Lavender's investigation report and oral statements to the disciplinary panel consisting of Professor Meyer, Professor Ennew's Deputy, and Professor Steele, in my summary dismissal can be evidenced by disciplinary outcome letter of 29 July 2020 written by Professor Meyer and the disciplinary hearing notes referred to above. These documents are in the possession of BML, which also has in its possession my grievance against Professor Lavender and the associated documentation about the falsehoods of his investigation report submitted to Sir Normington on 8 June 2020. This grievance was completely ignored by the University of Warwick and remained unaddressed.

All the other requested information has been provided in the foregoing paragraphs; please see inter alia my Responses with respect to paragraphs 53, 54, 82, and 94 above.

It also has been stated above that the figures include tax at 40%. The net monthly figure following the deduction of tax, NI contributions and USS Pension Contributions of £ 789,61 is £ 5,025.30.

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 20 th July 2020 to 6 May 2021 at £ 8,225.08 a month	
(6) Future loss of salary from 6 May 2021	to be quantified
	<u>Total</u> <u>to be quantified</u>

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 this Response to the Request for Information under Part 18 CPR 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 Kostakopoulou

Claimant

25 June 2021

TO: Court
Defendants

Ref: KL/MGC

3 May 2012

PERSONAL

Professor D Kostakopoulou
32 Sneyd Avenue
Westlands
Newcastle under Lyme
ST5 2PP

Dear Professor Kostakopoulou

I have pleasure in writing to offer you an appointment a Professorship in the School of Law with effect from 1 September 2012.

The initial salary attached to this appointment will be £85,000 per annum on level 9 of the University grade structure. Salaries are paid monthly by BACS transfer to a bank or building society account.

Please find enclosed the terms of employment for Academic, Research only and Teaching only staff. By signing this offer letter you accept the terms as set out in this document. These terms of employment will apply during your period of employment as varied, altered or amended from time to time by national collective agreements or local collective agreements. These conditions and this formal notification are issued in accordance with the provisions of the Employment Rights Act 1996.

To find out more information about the new terms of employment and associated policies, please refer to the Human Resources web-pages at www.warwick.ac.uk/go/hr under the section "Information for New Starters". (If you do not have access to a PC and require access to hard copies of the information then please contact Human Resources on ext 72900.)

The terms of employment include provision for notice.

You are eligible to join USS on the commencement of your employment and full details of the Scheme are available from Human Resources Pensions or by visiting the USS website at www.uss.co.uk. Your potential membership of and rights under USS are subject to the rules of USS from time to time in force and at the discretion of the Trustee of USS.

Professor Koen Lamberts
Deputy Vice-Chancellor

The University of Warwick
Coventry CV4 8UW United Kingdom
Tel: +44 (0)24 7652 2380
Fax: +44 (0)24 7652 4578
Email: K.Lamberts@warwick.ac.uk

If you are eligible to join USS and elect not to do so, you must submit a signed pension waiver form (Form ME31) which is available from Human Resources Pensions. Should you initially elect not to join USS, you may have the option of subsequently joining subject to USS rules and USS Trustee discretion on eligibility from time to time in force. However, membership and pension benefits would not be backdated.

If you wish, as an alternative to membership of USS, the University can facilitate access to a stakeholder pension scheme. If this is an option you wish to consider, please contact Human Resources Pensions. Human Resources Pensions can be contacted at hr.pensions@warwick.ac.uk.

Pension scheme and PensionsPlus booklets are enclosed. PensionsPlus is a form of salary sacrifice applicable to members of the University of Warwick Pension Scheme (UWPS), the Universities Superannuation Scheme (USS) and the University of Warwick Stakeholder Scheme. If you elect to join the relevant pension scheme above you will be automatically included in PensionsPlus unless you contact Human Resources Pensions, within two weeks of the commencement of your employment. PensionsPlus will enable you to benefit from National Insurance, as well as tax saving if you elect to join a participating scheme.

The current duties of the post are as described in the Further Particulars, a copy of which is also enclosed. Please note that the precise nature of your duties and place of work within the School may be varied from time to time at the discretion of the Head of School.

The University will contribute towards the allowable costs of your removal and travel in accordance with the Relocation Policy, if appropriate. Please contact the School for further assistance in the first instance.

I hope that you will be willing to accept this appointment, and I should be grateful if you would let me have your response by Friday 18 May 2012.

If you wish to accept this appointment, please sign the enclosed copy of this contract and return it, along with a passport sized photograph (including your name on the reverse) to Human Resources, University of Warwick, University House, Coventry, CV4 8UW. Failure to return these forms will result in delays in processing your salary.

In signing this letter you are confirming your acceptance on the terms stated above, and consenting to the use and processing of your personal data in accordance with the Data Protection Act 1998, for purposes relating to the business of the University, which may include disclosure for statutory reasons or to third parties such as HESA and Trades Unions. You should retain this letter for your own reference.

Upon commencement of your employment please bring your completed Personal Record Form, pension application or exemption form and P45. You must hand these documents to Rose Le Breton Bagley in the School of Law who will forward them to Human Resources to activate your salary payments. You will subsequently be issued with your staff card.

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We look forward to welcoming you to the University.

Yours sincerely



Professor Koen Lamberts

Before returning your copy of this letter, please tick one of the following statements:-

I am not aware of any health conditions or disability which might impair my ability to undertake effectively the duties of the position which I have been offered.

☐

Or

I do have a health condition or disability which might affect my work and which might require special adjustments to my work or at my place of work.

☐

I accept the above appointment on the conditions set out in this letter.

Signed Date
[Professor D Kostakopoulou]

Encs: Terms of Employment
Further Particulars / Job Description
Personal Record Form
Personal Record Form Guidance Notes
Pension Booklet
PensionsPlus Booklet

JOB DESCRIPTION

POST TITLE: Professor of Law

DEPARTMENT: School of Law

POST RESPONSIBLE TO: Professor Alan Norrie, Head of the School of Law

SALARY IN THE RANGE: Salary Negotiable

REFERENCE NUMBER: 31387-012

CLOSING DATE: 16 March 2012

JOB PURPOSE:

To demonstrate strong academic leadership, a continuing commitment to innovative teaching and research and experience of academic administration. You will be expected to make a significant contribution to advancing the research culture of the school in conjunction with offering high quality teaching at both the postgraduate and undergraduate level.

DUTIES AND RESPONSIBILITIES:

1. To provide senior academic leadership in teaching and research at all levels.
2. To take a leading role in carrying out research of international quality.
3. To take a leading role in developing research applications and to demonstrate capacity to generate research income.
4. To contribute to the development of research strategies within the School.
5. To undertake such postgraduate and undergraduate teaching, as may be appropriate, and to supervise PhD students.
6. To contribute to the development of new teaching programmes within the School.
7. To contribute to senior level administration within the School and the University.

PERSON SPECIFICATION

POST TITLE: Professor of Law

DEPARTMENT: School of Law

The Person Specification focuses on the knowledge, skills, experience and qualifications required to undertake the role effectively.

REQUIREMENTS The post holder must be able to demonstrate:	ESSENTIAL (E) or DESIRABLE (D) REQUIREMENTS	MEASURED BY: a) Application Form b) Test/Exercise c) Interview d) Presentation
Outstanding record of international level publications and research and planning for future research.	E	a , c
Strong record of generating external funding (grants, contracts etc.) to support research projects.	E	a , c
Considerable experience of teaching within one of the core or major areas of undergraduate law.	E	a , c
Experience of teaching and research supervision at postgraduate level.	E	a , c
Capacity to work with and support other staff in developing both their teaching and research potential.	E	a , c
Strong academic leadership within a University environment.	E	a , c
Senior level administrative experience within a University setting.	E	a , c
Experience of development of new and innovative teaching programmes at undergraduate and postgraduate level.	D	a , c
Experience of promoting externally funded research and degree programmes both domestically and internationally.	D	a , c
Strong communication and presentation skills.	E	a , c , d

FURTHER PARTICULARS

The University

For further information about the University of Warwick, please visit our website at <http://www2.warwick.ac.uk/services/humanresources/jobsintro/furtherparticulars>

School of Law

For further information about the School of Law, please visit our website at <http://www2.warwick.ac.uk/fac/soc/law/>.

As part of a process of expansion, Warwick School of Law invites applications for a number of posts at professorial level.

It is intended that one professorial post will be designated the Hogan Lovells Chair, and be occupied by an academic in the areas of commercial, contract or consumer law, depending on the research interests of the holder. The post will be in a new European Centre for Business Law and Policy. Further details are available below.

With regard to the other professorial posts, the Law School is interested in adding to those areas where we have existing strengths, and exploring the development of new areas of excellent research activity. We will do so while meeting our teaching needs in a research-led teaching environment.

Founded in 1968, the Law School is proud of its distinctive, 'law in context' approach to legal studies, which it is constantly in the process of updating. School research follows many tracks, emphasising historical, international, comparative, theoretical, interdisciplinary and cross-cultural approaches. We have Research Centres in Criminal Justice, Human Rights in Practice, and Social Theory (with the Department of Sociology), and research clusters in Comparative Law and Culture, Contract, Business and Commercial Law, Development and Human Rights, Gender and Law, International Law, Law and Humanities, Legal Theory, and Regulation and Governance.

Research quality will guide our appointments process, as it underpins how we teach, leading to distinctive research-led modules at undergraduate and postgraduate levels. With colleagues gaining two National Teaching Fellowships and four Warwick Awards for Teaching Excellence over the last three years, we emphasise the importance of good quality teaching within a broad and imaginative curriculum.

We invite applications from scholars in all areas of law while highlighting that we have specific teaching needs in areas such as contract, commercial law, company law, competition law, English legal system, family law, human rights, intellectual property, legal theory and property law, and, at the masters levels, in the international economic law area. Generally, we encourage colleagues to develop options of their choice at the under- and postgraduate levels as well as offering teaching on mainstream undergraduate teaching courses.

Informal enquiries: Professor Alan Norrie, FBA, Head of Law School
(A.W.Norrie@warwick.ac.uk).

it is also planned to maintain and develop close links with other centres in the UK and on the continent at which research and teaching in european private law is taking place, such the Centre for the Study of European Contract Law at the University of Amsterdam, the European Legal Studies Institute at the University of Osnabrück and the Institute for European and Comparative Law at the University of Oxford. The intended focus of the Centre is not limited to domestic and european contract, consumer and commercial law. It is hoped that strong links can be developed across the common law world and with jurisdictions with other legal traditions. The Centre will be in Europe but not limited to european law and policy.

The Centre is intended to act as a catalyst for the interchange of research ideas with the profession. Commercial law in particular is a topic where it is crucial to know what is happening in practice, and where much of the expertise is in law firms rather than universities. The Centre can bring the opportunity to develop research links not only with Hogan Lovells (who have expressed keen interest) but with other firms, including Herbert Smith LLP (who are already generously supporting a PhD scholarship in this field). Both have expressed willingness to ask some of their younger practitioners, who have experience and time to take part in joint activities, to come to Warwick to contribute to research and staff seminars.

Teaching

Warwick School of Law wishes to attract not only the best staff but also research students. Staff appreciate the chance to use their research to inform their teaching in a way that is not always feasible at undergraduate level. Research students often chose to stay on at institutions where they have already studied at a higher level. For these reasons, it is planned that the Centre will also mount an LLM programme. To make the programme attractive to a wide range of students from around the world and to avoid direct competition with other LLM programmes in the UK, the current plan is that the programme would concentrate on european and international commercial law, consumer law and contract law, with "core" modules in those areas. Students would also have the opportunity to study closely related topics such as competition law, corporate law, employment law, financial and banking regulation or tax, drawing largely on modules already offered under existing LLM programmes. (For details of LLM programmes and modules currently offered, see <http://www2.warwick.ac.uk/fac/soc/law/pg/pgprogram/> .) The LLM might be designated by the general rubric, "European and International Business law".

Staff joining the centre would also be expected to use their expertise to contribute to the development of a wider range of undergraduate options.

A focus for links with the profession

The Centre is intended to provide a way of developing closer links with the profession, not just for the purposes of research (see above) but also at the teaching level. Their expertise can be harnessed to give undergraduate and postgraduate models additional relevance and excitement. A number of law firms have indicated interest. The Centre may also be a channel for financial support.

Attracting staff to Warwick

There is strong competition among Universities for first-rate staff, particularly in the core fields such as commercial law, consumer law and contract law. The Centre, together with the prestige of the person appointed to the Hogan Lovell chair, would provide a strong

The Post

Hogan Lovells Chair

Applications are invited for a Professorship in the Warwick School of Law, sponsored by Hogan Lovells LLP. The Chair will be in one of the fields of: commercial law, consumer law, contract law or european contract or commercial law.

The appointment is part of an initiative to establish a centre for research and postgraduate study in those areas at Warwick, provisionally entitled the European Centre for Business Law and Policy. It is planned that the holder of the Hogan Lovells Chair would join Professor Hugh Beale in finalising the planning of the Centre, and at the appropriate time would act as its Director or Co-Director. A number of existing Warwick staff who have interests in cognate areas of law will contribute to the work of the Centre, and the School of Law plans to make further appointments in the relevant fields at assistant or associate professor level.

1. *The Hogan Lovells Chair*

The appointment to the Chair will be in one or more of the following fields: commercial law, consumer law, contract law or european contract or commercial law. The candidate will be expected to contribute fully to the research, teaching and administration of the department. Teaching would be at the undergraduate level as well as on the proposed LLM (see below).

2. *The proposed European Centre for Business Law and Policy*

The School of Law intends to use the opportunity of the appointment to this prestigious new chair to create a new centre for research and teaching within the School. The Centre is provisionally entitled the European Centre for Business Law and Policy. The person appointed to the Hogan Lovell chair will be expected to contribute to and help to refine the plans set out below.

The proposal has four principal aims: to bring together at Warwick enough researchers in the areas of commercial law, consumer law, contract law or european contract or commercial law to create a critical mass; to develop Warwick's teaching capabilities in those fields, at postgraduate and undergraduate level; to foster greater contact with practitioners in the areas concerned; and to attract and retain more first-rate staff in those fields.

Research

The very best research often seems to flow from bringing first-rate researchers together in one place. We are fortunate to have colleagues whose work (e.g. in competition law, employment law, financial and banking regulation, property law and tax) is directly relevant and would certainly contribute enormously to a Centre, but we wish to create a critical mass in commercial law, consumer law and contract law on either the domestic or the european level. Our aim is to have at least three or four full-time staff working in these core fields within the next two or three years.

The core of the Centre would be the study of law and legal policy. However, it is planned to develop explicit links to other disciplines, since good research and sound policy-making must always at least consider what other disciplines can contribute. Links to other disciplines are likely to include (1) Economics (a joint law-and-economics module has recently been established); (2) Philosophy; and (3) Warwick Business School.

TERMS OF EMPLOYMENT

ACADEMIC, RESEARCH ONLY & TEACHING ONLY POSTS

Except where otherwise stated these terms govern appointment to Academic, Research only and Teaching only staff.

The appointments of all members of staff are subject to the Charter, Statutes, Ordinances and Regulations of the University, which the University may amend or vary from time to time in conjunction with the Privy Council where required, and to the agreements reached from time to time between the University and the relevant Trade Union referred to in the Procedure Agreements.

1. **Position/Role**

This is set out in your letter of appointment ("Letter of Appointment").

2. **Main Duties**

These are set out in your Letter of Appointment, role description, or as reasonably required by your Head of Department or Line Manager from time to time.

The University reserves the right to ask you to undertake other work activities on behalf of the University in line with your grade as may be reasonably required from time to time.

3. **Date of Start of Employment & Continuous Employment**

These are set out in your Letter of Appointment, as appropriate.

4. **Grade of Post**

This is set out in your Letter of Appointment. The University operates a single job evaluation scheme. The generic requirements and grading of Academic, Research only and Teaching only posts are outlined in the University's generic role profiles for Academic, Research only and Teaching only posts as developed, agreed and amended from time to time between the University and the relevant Trade Unions.

The University's procedures for academic progression and promotion are outlined in the academic promotion guidelines as amended from time to time, which can be found on the University's Human Resources (HR) website (<http://go.warwick.ac.uk/academicpromotions/>).

5. **References**

The offer of appointment from the University may be conditional upon the receipt by the University of satisfactory written references and proof of qualifications. If, for any reason, the University has not received satisfactory references and/or proof of qualifications by the start of your appointment, your appointment to the University will remain conditional and the University may elect to terminate your offer of employment without notice, or the University may agree a revised date by when it must receive satisfactory references and/or proof of qualifications.

Further detail on the normal University requirements for academic references can be found on the HR recruitment website (<http://go.warwick.ac.uk/references/>). The exact requirements for references and/or proof of qualifications for any given post

will be determined in each case by the Chair of the appointing panel or Head of Department/Line Manager.

6. Medical condition

The University reserves the right to require you to complete a medical questionnaire, eye test and/or undergo a medical examination as a condition of an initial appointment and, if considered necessary, to any future internal transfer to a different post.

7. External Funding

If your employment is dependent on funding from an external body or organisation, details will be set out in your Letter of Appointment. If this is the case, your appointment and continued employment will also depend on the continued availability of funding as outlined in your Letter of Appointment. If employment is terminated this will be subject to the notice period specified in Section 8 'Termination/Notice Period'.

8. Termination/Notice Period

Your appointment may be terminated by either you or by the University with three (3) months' written notice, to expire at the end of a University Term (i.e. on 31st December, 31st March or 30th June). However, termination can take effect at the end of the Summer Vacation, provided notice is given by 1st June. If you give notice after 1st June, then your notice period will end as at 31st December as outlined above.

The University reserves the right to require individuals to work their full notice unless otherwise agreed in writing by the Head of Department. Your notice in writing must be sent to the Registrar with a copy to your Head of Department.

If you are appointed for a fixed term, this will be set out in your Letter of Appointment. For fixed-term appointments, the rights on notice of termination as outlined above apply only during the period of the fixed term and will terminate no later than the end of the fixed term, but if no further notice is given your employment will automatically terminate at the end of the fixed term.

9. Probationary Period

A probationary period may apply to your appointment and if so is set out in your Letter of Appointment. The probationary requirements and procedures for Academic, Research and Teaching posts are set out in a separate University policy, as amended from time to time, which can be found on the University's HR web-site (<http://go.warwick.ac.uk/probation/>).

It is expected that you will successfully complete your probationary period, but where this is not the case, either your appointment may be terminated with due notice or your probationary period extended. In any case where the appointment is not confirmed because you have not successfully completed your probationary period, you may appeal against the decision and have the right of representation in line with the probationary procedures for your post.

If your appointment is for a fixed-term period, which is less than the standard probationary period for your post, your probationary period may be extended in

line with usual probationary requirements if your contract of employment is extended.

10. Place of Work

Your normal place of work is one of the campus locations of the University of Warwick. If your normal place of work is not within the University campus this will be stated in your Letter of Appointment.

The University may request that you change your normal place of work to such other premises of the University or any other location as may reasonably be required in order to fulfil the duties and requirements of the post. This may be on either a temporary or indefinite basis.

11. Residence

You must live within a reasonable travelling distance of your place of work in order to fulfil all of the duties and responsibilities of your role. The University has a relocation policy, for which you may be eligible, details of which can be found on the University's HR website (<http://go.warwick.ac.uk/relocation/>).

12. Hours of Work

There are no normal hours of work specified for Academic, Research only and Teaching only posts graded at level 6 and above in the University's grading structure. The duration of your working time is largely not measured or pre-determined and can be self-determined to a significant extent. You are expected to work such hours as are necessary to meet the responsibilities of your position and while not bound by the provisions of the Working Time Regulations' limits on average working hours, you are not expected to work excessive hours. If you find that you are regularly working excessive hours you should bring this to the attention of your Head of Department.

The notional working week is 36.5 hours and you are not eligible for overtime payments.

The University operates its activities over seven (7) days.

If you are appointed to a post graded at level 5 or below in the University's grading structure, the standard working week will be 36.5 hours (excluding meal breaks) normally worked from Monday to Friday. You may also be requested to work on Saturday or Sunday if necessary. Your actual time of starting and finishing work will be determined by your Head of Department or Line Manager in line with department requirements. You will be eligible for overtime payments in line with the University's policy on overtime payments. However, such overtime will not be excessive or unreasonable. You may if you wish opt out of the Working Time Regulations' limits on a maximum 48-hour average working week. To do so you should contact your Line Manager or link HR Adviser.

13. Salaries and Increments

Your starting salary is specified in your Letter of Appointment.

Your salary will normally be paid on the 24th day of each month or the preceding working day by BACS transfer into a bank account nominated by you. It is your responsibility to notify the Payroll Office in writing of any changes to your bank details.

For staff in posts levels 5 to 8

Increments for staff at level 5 in the University's grading structure are paid on 1st August each year, until reaching the maximum of the grade. If you are appointed after 1st February, you will receive your first increment on 1st August in the following year.

Increments for staff at levels 6–8 in the University's grading structure are paid on 1st October each year, until reaching the maximum of the grade. If you are appointed after 1st April, you will receive your first increment on 1st October in the following year.

For staff in posts at level 9

There are no increments for staff in posts at level 9 in the University's grading structure. You will be included in an annual Senior Salary Review Scheme conducted by the Vice Chancellor. Salary increases as a result of the review process are paid on 1st August each year. This scheme, and how it is applied, is entirely discretionary and non contractual. The University reserves the right to amend or withdraw the scheme with or without notice.

14. Pension

Staff in posts at levels 5–9 in the University's grading structure will normally be eligible to join the Universities Superannuation Scheme (USS). Full details of USS are available from the HR (Pensions) department. Your potential membership of and rights under USS are subject to the rules of USS from time to time in force and at the complete discretion of the Trustees of USS. USS is contracted out of the State Second Pension Scheme.

If you are eligible to join USS and elect not to do so, you must submit a signed pension waiver form to this effect to the Pensions Office within HR. Should you initially elect not to join USS, you may have the option of subsequently joining subject to the USS rules and USS Trustees' discretion on eligibility from time to time in force. However, membership and pension benefits would not be backdated.

The University can facilitate access to a stakeholder pension scheme if you wish, as an alternative to membership of USS. If this is an option you wish to consider, please contact the HR (Pensions) department.

PensionsPlus

PensionsPlus is a form of salary sacrifice applicable to members of the University of Warwick Pension Scheme (UWPS), The Universities Superannuation Scheme (USS) and The University of Warwick Stakeholder Scheme. If you elect to join the relevant pension scheme above you will be automatically included in PensionsPlus. PensionsPlus will enable you to benefit from National Insurance savings if you elect to join a participating scheme.

You do not have to take any action if you wish to participate in PensionsPlus as by accepting our offer of employment and electing to join a participating pension arrangement you are confirming your agreement to be included in PensionsPlus. If you do not wish to participate in PensionsPlus you must submit a completed 'opt-out' form within two weeks of the date of this formal offer of employment or within

two weeks from the commencement of your employment, whichever is the later. You can obtain an 'opt-out' form from the HR (Pensions) department.

15. Annual Review/Training

The University has implemented an annual review which applies to all staff, and you are expected to participate in the annual review process.

The purpose of annual review in the University is broadly to provide a regular, supportive review of the performance, potential and development needs of staff. It creates an opportunity for you and your Head of Department/Line Manager to take an overall view of your progress, to look back on your achievements during the appraisal period, and to consider your training and development needs. It incorporates an appropriate range of assessment, informal but structured interviewing and directive counselling. You are expected to undertake any agreed learning and development outcomes from the review in accordance with the University's training and development plan.

If required you must participate in any general mandatory training/development activities during your employment. Wherever possible any training identified will be arranged within your normal working hours.

Further information on the policy and procedures for annual review, as amended from time to time, can be obtained from your Head of Department or Line Manager, link HR Adviser or from the University's HR website (<http://go.warwick.ac.uk/annualreview/>).

16. Study Leave

You may be eligible for a period of study leave during your employment. You may request a period of study leave. However, each request is considered on its merits and is granted at the University's discretion.

Academic Staff

Academic Staff may apply for a period of study leave, on the basis that they accrue one (1) term for every six (6) terms worked. The maximum period of leave is one (1) year, subject to their fulfilment of conditions specified in the Study Leave Guidance which can be found on the HR web site (<http://go.warwick.ac.uk/studyleave/>).

Research-only Staff

Research Staff at the University with a period of three or more years' continuous service and subject to support for the application from the department shall be entitled to apply for Study Leave. Research staff accrue eligibility to apply for 10 weeks' leave every two years, details of which can be found on the Human Resources web site (<http://go.warwick.ac.uk/studyleave/>).

Teaching-only staff

Teaching-only staff may apply for a period of study leave under the conditions specified in the Study Leave Guidance which can be found on the HR web site (<http://go.warwick.ac.uk/studyleave/>).

For further information please contact your Head of Department/Line Manager and/or see the University's HR website (<http://www2.warwick.ac.uk/services/humanresources/>).

17. Holiday Entitlement

For staff in posts level 5

Your annual leave entitlement is 30 working days in each leave year (pro rata to hours worked for part-time staff). This will be implemented on a phased basis over three (3) years from 1st October 2009 to 1st October 2011.

For staff in posts levels 6–9

Your annual leave entitlement is 34 working days in each leave year (pro rata to hours worked for part-time staff). This will be implemented on a phased basis over five (5) years from 1st October 2009 to 1st October 2013.

For all staff

From the annual leave entitlement outlined above, the University may require you to take a number of customary days or specific shutdown periods as specified by the University or your Head of Department/Line Manager from time to time, plus eight (8) statutory days, pro rata to hours worked for part-time staff.

Holidays must be taken only by prior agreement with your Head of Department/Line Manager and at times convenient to the University. Academic and Teaching-only members of staff are expected normally to take their annual leave entitlement outside of the University term times.

The University's leave year runs from 1st October to the following 30th September. Any annual holidays which have not been taken by 31st March in the calendar year following the leave year shall lapse.

Should you give notice of termination of your employment you should, before you leave, take any accrued but untaken annual holidays proportionate to the period of actual service completed in the current leave year.

If, with the prior permission of your Head of Department/Line Manager, you are unable to take some or all the accrued holiday before you leave, you will be paid in lieu of the accrued but unused holiday entitlement on the termination of your employment.

The University is entitled to make a deduction from any payments made and due to you at the end of your employment for each day's holiday taken in excess of your entitlement.

Further details of the University's policy on holiday including arrangements for term-time-only staff can be found on the HR website (<http://go.warwick.ac.uk/annualleave/>).

18. Sickness Notification and Sick Pay Entitlement

The policies and procedures for the management of sickness absence are contained in a separate policy as amended from time to time, and they can be found on the HR website (<http://go.warwick.ac.uk/absence/>).

It is your responsibility to notify the University of periods of sickness absence in accordance with the Sickness Management Policy.

Your entitlement to sick pay is summarised in the table below.

Year of Service	Full Pay	Half Pay
During first year of service	3 months	3 months
Second year of service	4 months	4 months
Third year of service	5 months	5 months
Fourth year and thereafter	6 months	6 months

Your overall entitlement to University sick pay is determined by your service at the first date of absence, less any days that have been taken as sick in the twelve (12) months immediately prior to the first date of absence.

You are entitled to University sick pay and statutory sick pay only if you comply with all of the University requirements on sickness notification and if you are genuinely ill. If the University reasonably concludes that you have not complied with the notification requirements or that your illness is not genuine, it is not obliged to pay you sick pay. If so, you will be notified of this, including a statement of the grounds of the decision.

When you are off work with sickness, or if your health appears to be affecting the performance of your duties, the University is entitled to require you to submit yourself to a medical examination of the University's choosing. This process may be managed through a referral to Occupational Health, details of which are contained in the University's Sickness Management Policy.

If you are a member of USS, the provisions relating to ill health retirements are determined by the pension scheme rules. Further information is contained in the University's Sickness Management Policy.

After your sick pay entitlement is exhausted in any rolling year, any sickness absence in the three (3) months following your latest return to work (after any agreed phased return period) will be unpaid. At the end of this fixed three (3) month period your entitlement to University sick pay will be restored subject to the standard qualifications outlined above.

19. Disciplinary and Grievance

The disciplinary and grievance procedures that apply to Academic, Research-only and Teaching-only Staff 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. These are contained in the University Calendar, which can be found on the University's website (<http://www2.warwick.ac.uk/services/gov/calendar/>), or via a hard copy, which is held by your Head of Department.

20. University Financial Regulations

All members of staff are required to comply with the University's Financial Regulations as amended from time to time at the discretion of the University.

Copies of the University's Financial Regulations can be found on the Finance website (<http://www2.warwick.ac.uk/services/finance/resources/regulations/>) or via your Head of Department. If you fail to comply with the University's Financial Regulations, you may be subject to disciplinary action under the disciplinary policy.

21. Health and Safety/Uniform

You have a statutory duty to observe all health and safety rules and to take all reasonable steps to promote the health and safety at work of yourself and work colleagues. Breaches of the University health and safety Policy may be subject to disciplinary action.

You may be required to wear protective clothing as part of your role. Where the University provides protective clothing and/or safety equipment you must wear/use such items whilst undertaking your role.

22. Other Policies and Procedures

There are a significant number of other policies and procedures which apply to employment at the University. The policies and procedures can be found via the HR web pages on the University's website (<http://www2.warwick.ac.uk/services/humanresources/>) and will be updated from time to time at the discretion of the University or in agreement with Trade Unions (if appropriate).

If you do not have access to a PC, please contact your Head of Department or Line Manager for PC access to review the relevant University policies or to receive a hard copy.

You must familiarise yourself with all the relevant policies and procedures (including the others specifically referred to in this contract, such as the disciplinary and grievance, and health and safety procedures) within the first three (3) months of employment, and at all times abide by the requirements of all relevant policies.

If you have any questions about your obligations under any University policy, you should contact your Head of Department/Line Manager or your link HR Adviser.

If you wish to receive any specific policies prior to commencing employment at the University, please visit the University's HR website (<http://www2.warwick.ac.uk/services/humanresources/>) or contact the HR Adviser named on your Letter of Appointment, who will be able to advise you.

23. Trade Union Recognition Procedure Agreement

The University currently recognises a number of Trade Unions as the appropriate Trade Unions with which to conclude collective agreements for staff. These are UCATT, UCU, Unison, Unite (Amicus section) and Unite (TGWU section). The relevant Procedural Agreements, information on the categories of employees covered, and contact details can be found on the University HR web-site.

All current and future local collective agreements agreed under the Procedure Agreement, and all current and future relevant national collective agreements (agreed between relevant unions and joint negotiating bodies) that the University adopts, have contractual effect and will apply to all staff whether they are a member of the relevant Trade Union or not.

24. Retirement

Unless otherwise specified in your letter of appointment, there is no normal retirement age which applies to your employment. The University may however terminate your employment, in accordance with the notice provisions set out in your terms and conditions, for any reason unrelated to retirement which would apply to any employee. Your pension and retirement rights under the Universities' Superannuation Scheme (USS) are entirely separate, and are at all times governed by the rules of the USS in force and as amended from time to time.

25. Outside Work

You must obtain prior written approval from the Vice-Chancellor before you take on any paid external commitments (other than external examinerships) which may conflict with your duties.

(For Academic, Research-only and Teaching-only posts below level 9 in the University's grading structure, the Vice-Chancellor has delegated this authority to Heads of Department.)

It is your responsibility to assess whether prior approval is required. If you do not obtain the required prior approval, and/or if you wrongly assess that prior approval is not required, the University may take disciplinary action against you when it becomes aware of the potential conflict. The obligations in this paragraph are in addition to any other obligations on Conflicts of Interests set out in the University's Financial Regulations and associated Financial Procedures.

In line with the University's Financial Regulations, the University maintains a register of external interests of staff where these could represent a conflict of interest with University activities or professional responsibilities. You must declare any interest which could represent a conflict of interest in the appropriate register as set out in the Financial Regulations, copied to your Head of Department (or, if you are a Head of Department, to the Registrar) and keep your entries updated accordingly as and when any change in circumstances occurs. The University's Financial Regulations and Financial Procedures can be found on the University's Finance website (<http://www2.warwick.ac.uk/services/finance/>), and hard copies can be obtained from the Finance Department.

26. General Obligations

You must perform your duties with good faith and diligence and undertake all reasonable and lawful instructions the University gives you.

27. Confidentiality

You agree that, both during and at any time after the termination of your employment, you will not (except in the proper course of your duties or services to the University) use, copy, divulge or communicate to any person, firm, employer or organisation any Confidential Information about the University or about any of the University's students, staff, suppliers, agents, customers, funding bodies, collaborators, organisations, or other stakeholders including those in respect of which the University owes an obligation of confidence to a third party as may be drawn to your attention from time to time.

"Confidential Information" means

- (a) trade secrets and details of and information relating to the University's employees and workers, students, customers, agents, suppliers, funding bodies, and other stakeholders, and any information for which the University has a duty of confidentiality to a third party including patients;
- (b) any information, the release of which would damage the University's commercial interests, endanger staff or students, together with any information which is legally privileged.

Both during your employment and for a period of twelve (12) months after the termination of your employment (or such longer period as required by statutory obligation) you must

- (a) not (except in the proper course of your duties or services to the University) use, copy, divulge or communicate to any person, firm, employer or organisation any Confidential Information;
- (b) not without proper authority remove any Confidential Information from the University's premises;
- (c) if the University requests, electronically delete or otherwise destroy all Confidential Information in your possession or under your control and destroy all other documents and tangible items (including back ups and/or extracts of them) in your possession or under your control which contain or refer to any Confidential Information.

This restriction does not apply to Confidential Information which comes into the public domain (other than through your unauthorised disclosure or that of a third party) or which is revealed as required by law.

28. Garden Leave

The University reserves the right, at its sole discretion, to require employees who have resigned with or without the appropriate notice, or who have been given notice to terminate their contract by the University, not to attend their place of work and/or not to undertake all or some of their duties for all or part of the notice period.

In these circumstances, your contract will continue in force until the end of the notice period, and you will continue to receive full pay and other contractual benefits in the normal way until the effective date of termination. You will remain bound by all the obligations and restrictions set out in your contract of employment (including any confidentiality clauses and restrictive covenants contained in your contract), save the duty to attend work where not required. You must, within reason, remain available to be contacted by the University.

Under such circumstances, you will not be permitted to take up employment elsewhere during the notice period (whether that be paid or unpaid) without the prior agreement of the University.

The University reserves the right to allocate the duties and/or responsibilities of your post to a third party during the period of garden leave and to request you to undertake other appropriate work activities.

29. University Property

At the end of your employment, you must return to the University via your Head of Department/Line Manager any University property which may be in your possession or under your control and obtain a written receipt for the safe return of these items from your Head of Department or Line Manager.

In some circumstances a Head of Department/Line Manager may grant exclusion from the above constraints, for example in relation to the specific terms of a research grant or photocopies of lecture notes. Where no specific, written, exclusion is granted, you must return all property as above.

30. Intellectual Property/Copyright

The University has a policy on Intellectual Property, which is detailed in Regulation 28 within the University Calendar (<http://www2.warwick.ac.uk/services/gov/calendar/>) and in the University's Financial Regulations and Financial Procedures as amended from time to time at the discretion of the University and which can be found on the University's Finance website (<http://www2.warwick.ac.uk/services/finance/>).

31. Deductions

If the University has made an overpayment to you of any salary or other remuneration, you agree it is entitled to make the relevant deduction from your subsequent salary payment(s). At the University's discretion, members of staff may be given the option to make any such repayments over a period of time, in line with an agreed re-payment plan.

If, during or at the termination of your employment, you owe the University any payment or expense or you fail to return University property, you agree that the University is entitled to make the relevant deduction from your salary (or final salary) payment.

The University will let you know and agree with you in advance of the relevant deduction, but its failure to do so will not affect its right to reclaim the money.

32. Reimbursement of Expenses

You are entitled to claim reimbursement for expenses you incur during the proper performance of your duties in line with the University's Expenses policy, as amended from time to time, details of which can be found on the University's Payroll website (<http://go.warwick.ac.uk/expenses/>).

33. Dignity at Work

Every employee has the right to be treated with dignity and respect at all times during their employment, and all members of staff are required to conduct themselves in accordance with this principle. The University is committed to ensuring that no harassment or victimisation in the workplace, whatever the motivation or manner, is overlooked or condoned. The University has a number of policies and procedures to help members of staff, details of which can be found on the University's HR website (<http://go.warwick.ac.uk/dignity/>).

STRICTLY CONFIDENTIAL

SENIOR STAFF REVIEW 2014

NARRATIVE OF PERFORMANCE & CONTRIBUTION FORM - PROFESSORS

Name of Colleague	Dora Kostakopoulou
Department	Law
Participated in Senior Staff Review	Yes / No (delete as appropriate)

ASSESSMENT OF CONTRIBUTION FROM 1 MAY 2013- 31 DECEMBER 2014

Please provide your assessment against each relevant aspect of performance. Please use academic metrics where appropriate and available as evidence to support your narrative. Please comment on any wider contribution of the individual and any other external contribution made by the colleague to the good reputation of the Department and the University as well as any other contribution of which the Advisory Group should be made aware.

Research

An exceptionally productive period, huge energy

Teaching

Has carried her share and taken lead in first year course

Leadership & Collegiality

Acted as catalyst in School through 'conversations' seminar series, brought prestigious scholars and seminar series to Warwick.

Administration

Chaired research committee for part of period.

RECOMMENDED FEEDBACK SUMMARY FOR COLLEAGUE

Please note that the below comments will be included in the award letter to the colleague.

This should consist of a summary of one to three brief sentences giving your recommended feedback to the colleague. Please highlight strong aspects of performance and include any key development messages, if any.

VCAG reserve the option to amend or expand this where appropriate. The narrative will form the core from which personalised material will be included in the letter confirming the outcome of the Review to the colleague.

Has brought great energy and attracted leading speakers to School, together with a prestigious seminar.

RECOMMENDED PERFORMANCE RATING SCORE

The recommended score should reflect the overall performance and contribution the colleague has made in the year 1 May 2013 to 31 December 2014. The score should be justified by the narrative and relate to the Performance Rating Score Descriptions.

4.6

SUPPORTING INFORMATION

Please provide any additional information that supports your recommendations

NAME OF FEEDBACK PROVIDER: Alan Norrie DATE: 24 March 2015

Please send completed forms to Faculty Chair by 7 April 2015 with a copy to reward@warwick.ac.uk

Statute 11: The Employment of Staff

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The University will have in place policies and procedures governing its employees.

- (1) Such policies and procedures where appropriate will apply to all employees to ensure objectiveness, fairness and equity amongst all staff groups.

The University will ensure that where there is demonstrable need for procedural

- (2) differences between staff groups, these are appropriately reflected in the policies and procedures.

The University will ensure that individuals are appointed on the most appropriate contract recognising the nature of funding for the role to which they have been

- (3) appointed. The University will seek to minimise the use of fixed term contracts, noting that there are exceptions to this provision, such as, for example postgraduates who teach and those appointed to provide cover for a limited time, for example maternity leave cover.

Excepting where changes arise as a result of amendments to legislation or terminology, the policies governing disciplinary, grievance, redundancy and removal for incapacity on medical grounds will be:

- (4) (a) subject to negotiation with Trade Unions with a view to reaching agreement.
(b) subject to final approval by Council after consultation with Senate.

Any reference in this Statute and Ordinance to legislation or terminology, shall be taken

- (5) to be a reference to that legislation or terminology as it may have been amended or superseded from time to time.

Excepting any changes made in this Statute as a result of legislation or terminology, any

- (6) subsequent amendments to this Statute 11/ or Ordinance 11 shall be subject to the governance processes in place at the time of amendment.

- (7) The University's policies and procedures will adhere to the following guiding principles:

- to ensure that Academic Staff have freedom within the law to question and test
- (a) received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs and privileges;
- (b) to enable the University to provide education, promote learning and engage research efficiently and economically;
- (c) to apply the principles of justice and fairness as prescribed in relevant legislation, regulation and good employment practices; and
- (d) to avoid unlawful discrimination and promote equality of opportunity, dignity at work and good relations.

This Statute will apply to:

- (8) (a) Academic Staff, employed on Academic (including Clinical Academic) terms of employment.
- (b) the Vice-Chancellor to the extent and in the manner set out in the Annex to this Statute.

- Council will be the Appropriate Body which decides whether a reduction in the Academic Staff (as defined in Statute 11 (8) (a)) is desirable in all or part of the University, where such a reduction would arise from restructures, reorganisations or
- (9) closures. In such circumstances, Council will have oversight of any resulting dismissals by reason of redundancy. Council does not require oversight of dismissals which arise under the contract of employment (e.g. the expiry of fixed term appointments or contracts of an indefinite nature linked to identified named funding sources).

In all other respects, the University's policies and procedures (and where applicable Ordinance 11) will apply.

The University will have in place a procedure for the review of whether Academic Freedom (as defined in Statute 11 (7) (a)) has been infringed in cases involving the potential dismissal of Academic Staff (as defined in Statute 11 (8) (a)) on grounds of:

- (a) Gross misconduct
- (10) (b) Cumulative misconduct potentially leading to dismissal
- (c) Redundancy through the Redundancy Policy and Procedure

- (11) The detailed procedure for the review of the potential infringement of Academic Freedom (as defined in Statute 11 (7) (a)) will be laid out in Ordinance 11 .

ANNEX: Provisions as to the Vice-Chancellor

- (1) The Council may request its Chair to remove the Vice-Chancellor from office on legitimate grounds in accordance with the procedure described in this Annex.

- (2) A complaint seeking the removal from office of the Vice-Chancellor on legitimate grounds must be made by at least three members of the Council to the Chair of the Council and/or from a resolution of Senate.

- (3) If it appears to the Chair of the Council, on the material before them, that the complaint, if proven, would constitute sufficient grounds for dismissal or removal from office they will request that the Council appoints a Tribunal to hear and determine the matter.

- (4) If it appears to the Chair of the Council that a complaint made to them under sub-paragraph (1) is trivial or invalid, they may recommend to the Council that no further action be taken.

- (5) When the Council has appointed a Tribunal under sub-paragraph (2) it will instruct a solicitor or other suitable person to formulate the charge or charges and to present, or arrange for the presentation of, the charges before the Tribunal.

A Tribunal appointed by the Council will comprise:

- (a) an independent Chair; and
- (6)
- (b) one member of the Council, not being a person employed by the University; and
- (c) one member of the Academic Staff.

- (7) Subject to the principles of justice and fairness and good employment practice the Tribunal can determine its own procedure to hear and determine the matter.

- (8) The Tribunal will send its decision on any charge referred, together with its findings of fact and the appropriate penalty to the Chair of the Council and to the Vice-Chancellor, drawing attention to the period of time within which any appeal should be made.

- (9) Individuals appointed to hear such an appeal will be independent of the University and will comprise:

- (a) a Vice-Chancellor or Chair of Council from another University who shall act as Chair; and

(b) two people being nationally renowned Senior Academics external to the University.

- (10) The individuals appointed will, subject to the principles of justice and fairness and good employment practice, determine the procedure to be adopted in hearing the appeal.

- The individuals appointed to hear an appeal will send their reasoned decision, together
(11) with any findings of fact different from those already determined by the Tribunal to the Vice-Chancellor and to the Chair of the Council.

- Where a complaint is to be referred to a Tribunal under this Statute, the Chair of the
(12) Council may suspend the Vice-Chancellor from their duties and may exclude the Vice-Chancellor from the University or any part thereof without loss of salary.

'The general split between research, teaching and administration for colleagues on full academic contracts is 40:40:20.

Research

The assumption is that 40% of academic time (636 hours) is devoted to research. This would include:

- academic research and writing papers, articles and books
- engaging in activities to further the impact of one's research
- writing research grant applications; grant administration
- attending and presenting at seminars, workshops and conferences
- collaborations within and outside the University
- other scholarly activities which promote an international research profile

Teaching, supervision and administration

Continuing professional development

Advice and feedback hours

We are all expected to set aside two hours each week (60 hours over the course of the year) during which we commit to being in our office and available to advise students.

Personal tutees

We are all expected to meet with our personal tutees at least once a term, as well as providing advice and references as needed. 3 hours will be allocated per tutee to reflect this.

Convening a module

Convening a module involves a number of responsibilities – ensuring the website is up-to-date, organising the module materials, setting exam questions, vetting meetings, exam boards, exam administration, and organising the module review. This will be reflected by a basic allowance of 20 hours for half modules and 40 for full modules.

Lectures, Seminars

Dissertations, Supervising a dissertation and marking a dissertation, Marking, Supervision of a PhD or LLM by Research

Time Analysis Survey 2019-20

wk 16 (week commencing 18/11/2019)

Week/Period:
Name:
Post Title:
TAS Department reference:
University ID:
If part-time, percentage of full time worked:

wk 16 (week commencing 18/11/2019)	
Dora Kostakopoulou	
Professor	
LA	
11/2959	
100%	

Return by end of day
Return Email:

25/11/2019
TAS.info@warwick.ac.uk

Overview

The only use of this Time Allocation Survey is to allocate costs to sources of funding / income as part of the statutory TRAC return the University must complete.

The overall principle of classifying your time is that it should follow the funding to which it relates:

1. if you can allocate an activity to teaching or research (or support of those activities) then it should sit there
2. if an activity is not teaching or research but has or could have been funded/income generating then classify this time as other (or supporting those other activities)
3. if the activity is not Teaching, Research, Other, or supporting any of those then use Admin & non-Teaching/Research Development (1.3.4)
- 4 The last category "Leave" is not used to allocated costs, however is required to sense check total hours and ensure the form is complete.

Numbered references below refer to full guidance available here:

<https://www.trac.ac.uk/wp-content/uploads/2018/11/TRAC-Guidance-version-2.3.1-Final-Web.pdf>

Type of activity (primarily based on where funding comes from)

Examples / summary of guidance included below for your convenience (the full guidance is linked above - follow the number references)

DIRECT TEACHING (1.3.1) Read this section first -->

The 3 teaching categories (UG, PG & Special) include direct teaching, supervision, mentoring, tutoring, prep, marking, exam time, labs, seminars, tutorials, fieldwork, projects, dissertations, outreach where teaching is the underlying activity, etc for Home, EU and Overseas students.

1 Undergraduate (1.3.1.2)

The support for teaching category includes activities such as teaching conferences, committees, timetabling, admissions, initial course development, school liaison etc. This includes UK award/credit bearing undergraduate courses (includes UG degree apprenticeships).

2 Postgraduate-taught (1.3.1.2)

This includes UK award/credit bearing postgraduate-taught courses (includes UG degree apprenticeships).

3 Special Courses (1.3.1.3) i.e. Non-Publicly Funded

Teaching activity which is not UG and PG taught courses, e.g. closed courses (excluding degree apprenticeships), short courses, summer courses.

Support for Teaching (1.3.4.2) anything else teaching related

Anything else related to teaching e.g. exam boards, committees, conferences (related to teaching), timetabling, mentoring, admissions, initial course development, prospectuses, module reviews, quality assurance, writing books/publications, advancement of skills, schools liaison, etc.

Postgraduate-Research (to be reported below)

PGR funding is classified research for TRAC purposes therefore time associated with students in supervision and training should be reported in research below "PGR Research".

Teaching Total (inc support)

3.0 7.8%

RESEARCH (1.3.2) Read this section first -->

Research definition (Frascati): Research and Experimental Development (R&D) comprise creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society and the use of this stock of knowledge to devise new applications. R&D is a term covering three activities: basic research, applied research and experimental development. Research can be a specific project or blue skies / speculative in nature, but for this survey, research has an external sponsor or is reasonably expected to lead to some research output. "Research" also includes PGR training / supervision.

Research also includes institutions' own-funded research that are solely funded by the institution (including through the Funding Council/Research England block grants), and that are not directed by an external sponsor. They come under the research sponsor category of 'institution own-funded' research. Please note there is also a separate category "Support for Research" which includes professional development related to research activity (this professional development should not be included in institute own funded).

PGR Research [Supervision & Training] (1.3.2.4)

Time spent supervising & training PGR students including training in research methodology, review of drafts and preparation of theses, and external examining etc.

Research Councils (1.3.2.5)

Time spent on research activities funded by Research Councils.

Other Government Departments (1.3.2.5)

Time spent on research activities funded by UK central government bodies / local authorities, health and hospital authorities.

European Union (1.3.2.5)

Time spent on research activities funded by grant and contract income for European Union (EU) government bodies, including the European Commission.

Charities UK based (1.3.2.5)

Time spent on research activities funded by UK-based charities.

Other externally funded (1.3.2.5) includes industry

Time spent on research activities funded by any of the following: industry, commerce and public corporations, Non-UK based charities, and other sources.

Institution Own-Funded (1.3.2.3)

Institute own funded research covers research with no direct external sponsor (could be funded through Funding Council/Research England block grant, other initiatives, or by the University. This must be expected to lead to an external research output (publication, conference presentation, etc). Professional development in furthering an individuals knowledge related to research should be included in Support for Research (below).

Overview	
Hours	% time
Teaching	3.0 7.8%
Research	28.0 73.1%
Other	0.0 0.0%
Support (Admin & CPD)	7.3 19.1%

Total Hours

38.3 100.0%

Enter Hours below

3.0	7.8%
0.0	0.0%
0.0	0.0%
13.20	#VALUE!

3.0 7.8%

Enter Hours below

1.0	2.6%
0.0	0.0%
0.0	0.0%
0.0	0.0%
0.0	0.0%
0.0	0.0%
16.0	41.8%

Type of activity (primarily based on where funding comes from)	Examples / summary of guidance included below for your convenience (the full guidance is linked above - follow the number references)
Support for Research (1.3.4.3)	includes drafting and redrafting proposals for new work and supporting bids to external bodies, quality assurance, peer review, refereeing papers, publicity for research facilities and opportunities, professional development which directly contributes to the academic's research work, unpaid work advising government departments or committees, unpaid work for professional bodies or agencies in relation to research matters, institute and academic department committee work supporting Research, blocks of time in other institutions on research exchange schemes, etc.
Research Total (inc support)	
OTHER (1.3.3) Read this section first -->	Other time includes everything that could, or does generate income/funding but is not categorised as Teaching or Research
Other Income Generating Activity (1.3.3.1)	Include time spent on activities that generate income or could potentially generate income, e.g. consultancy (where there is a contracted party), including advisory work, journal editing, feasibility studies, other services such as routine testing, non-research clinical trials (i.e. activities not covered under the definition of Research), work carried out through trading/commercial companies that is not teaching or research, technology transfer work if remunerated through the institution (e.g. directorships of start-up companies and/or consultancy contracts for the companies), also include outreach here if its not specifically teaching or research related
Other Clinical Services (Med/dental School only) (1.3.3.2)	Time spent on services provided to the NHS under knock-for-knock arrangements by academic departments of clinical medicine and dentistry
Support for Other (1.3.4.4)	e.g. proposals for new work, supporting bids, negotiating contract terms and conditions with external bodies for consultancy and other services rendered, technology transfer work that is not private e.g. supporting patent applications, licence negotiations, formation of start-up companies.
Other Total (inc support)	
Admin & non-Teaching/Research Development (1.3.4)	Only put administrative tasks / professional development time here if it is does not relate to Teaching, Research or Other categories above (Otherwise it should be classified as Support for Teaching, Support for Research, Support for Other categories)
General Support / Admin (1.3.4.5)	e.g. faculty boards, senate, committees, management duties (not relating to teaching or research), e.g. deans and heads of admission, staff management, publicity, representative work on behalf of the institution or academic department, information returns, quality assurance contribution to sector (if not related to teaching or research), secondments, exchanges, and anything else not attributable to other categories.
Professional Development (1.3.4.6)	Professional development (not related to teaching or research), covers maintenance and advancement of own personal knowledge and skills (reading literature, attending professional conferences, maintaining professional or clinical skills, acquiring new skills etc).
Support Total	
LEAVE	
Leave	Holiday/Vacation/Jury service/Sickness/Maternity/Paternity/Military Service/etc
Unpaid sabbaticals, Unpaid study leave, etc	
Leave Total	
Optional: Enter any feedback / queries about the form / process below	
comment	

11.0	28.7%
Enter Hours below	
0.0	0.0%
0.0	0.0%
0.0	0.0%
Enter Hours below	
7.3	19.1%
0.0	0.0%
0.0	0.0%
Enter Hours below	
0.0	0.0%
0.0	0.0%

Dora Kostakopoulou <dorakostakopoulou@protonmail.com>

Stored with zero-access encryption09:28Star message

To:Tipp, James, Smith, Tim, Richard Munden, Parameshwar, Abhinav

Show details

Has 2 attachments

Mark as unreadMove to trashMore options

Custom filterMove toLabel as

ReplyReply allForward

Dear Mr Tipp,

I write because it was only this morning that I managed to locate my pre-contractual discussion with Professor Croft (Vice Chancellor of Warwick University) and Professor Norrie (former head of Warwick Law School). I was searching file after file for several months for this evidence which originated in May 2012 (- I joined Warwick University on 1 September 2012), but I could not find it. Please find it attached. My contract excluded any unjust cause for detrimental action (i.e. bogus allegations of harassment, intimidation of students and threatening students on no factual evidence that I engaged in such action and on no complaint by any student qua recipient of my conduct in accordance with the rules of the University).

In addition, I decided to write an academic paper on the application of *volenti non fit injuria* in employer defamation and discovered some important legal authorities which I have a duty to bring to the Court's attention with a view to averting a miscarriage of justice.

Volenti no fit injuria is not available to employers as a defence for breaches of statutory duties; this was confirmed by the House of Lords in the 1964 case of *Shatwell* (I have highlighted some passages from the decision in the second attached file).

There are important public policy considerations justifying the consistent disallowing of this defence where the employer is in breach of statutory duties in UK law. (*Friend* is inapplicable to my case on the basis of law)

Volens does not include mere knowledge of the risk, but a freely entered agreement to assume the risk and to waive any rights to recompense for any injury in which the risk might result. (*Friend* is inapplicable to my case on the basis of both law and facts (i.e., my written objections to the raising of false and malicious allegations, grievances, letters and email communications)).

Mr Justice Eady was reluctant to follow *Friend* in *Spencer v Sillitoe* insisting that 'in this branch of the law the decision turns on the particular facts' [34] and [35] and unwilling to accept that it was dispositive. I have included the judgment for Mr Justice Nicol's convenience (highlighting the relevant paragraphs).

In the same judgement, Mr Eady confirmed that bogus disciplinary allegations would almost certainly result in a finding of malice in consequence [para 15]. I would almost certainly imagine that repeatedly telling the respondents (for more than 50 times) that these allegations are false, malicious, in breach of the law and the policies of the universities and being ignored for months whilst they continue their unethical and malevolent agenda and keeping me in

suspension and under disciplinary investigation would provide completely unanswerable grounds of malice/demonic disposition.

I read the QBD Guide 2021, once again, and felt that I had a duty to communicate the above to the Court in the interest of justice and in compliance with the Overriding Objective.

Thank you,
Dora Kostakopoulou

Sent with [ProtonMail](#) Secure Email.

90.71 KB 2 files attached

Download all

Contractual promises.pdf(41.97 KB)Download Contractual promises.pdf

Case No.docx(48.73 KB)

Norrie, Alan <a.w.norrie@warwick.ac.uk>

To: dkostakopoulou@yahoo.co.uk

Tue, 8 May 2012 at 08:11

Thanks Dora. I was fairly confident there wasn't a problem. I look forward to the signed contract.

Kind regards

Alan

Sent from my iPhone

On 7 May 2012, at 23:47, "dora kostakopoulou" <dkostakopoulou@yahoo.co.uk> wrote:

Thanks, Alan. Given that the position is tenured, it is fine; termination is subject to the 'just cause' requirement ('any reason unrelated to retirement' would apply to breach of contract, misconduct and downsizing and not to political beliefs or 'your services are no longer needed'). It is the retirement clause (24), indeed. It states:

'Unless otherwise specified in your letter of appointment, there is no normal retirement age which applies to your employment. The University may however terminate your employment, in accordance with the notice provisions set out in your terms and conditions, for any reason unrelated to retirement which would apply to any employee. Your pension and retirement rights under the Universities' Superannuation Scheme (USS) are entirely separate, and are at all times governed by the rules of USS in force and as amended from time to time.'

Best,

Dora

From: "Norrie, Alan" <A.W.Norrie@warwick.ac.uk>

To: "Croft, Stuart" <S.Croft@warwick.ac.uk>

Cc: dora kostakopoulou <dkostakopoulou@yahoo.co.uk>

Sent: Monday, 7 May 2012, 22:22

Subject: Re: Contract

Dora

I've looked at my own contract and clause 24 is the retirement clause in it. It's been changed recently to reflect the law, I guess. If you have an electronic version of it, can you send me it? I'm happy to look at it with you in case you are still concerned.

Best

Alan

Sent from my iPhone

On 7 May 2012, at 22:14, "Croft, Stuart" <S.Croft@warwick.ac.uk> wrote:

Ah, if that is what you mean yes, precisely that!

On 7 May 2012, at 22:11, "dora kostakopoulou" <dkostakopoulou@yahoo.co.uk> wrote:

Many thanks for your prompt response, Stuart. I assume it is a tenured post (-reasons for termination are death and resignation on my part and breach of contract, misconduct/dismissal and perhaps financial exigencies leading to redundancies on the part of the university).

With all good wishes,

Dora

From: "Croft, Stuart" <S.Croft@warwick.ac.uk>
To: dora kostakopoulou <dkostakopoulou@yahoo.co.uk>
Cc: "Norrie, Alan" <A.W.Norrie@warwick.ac.uk>
Sent: Monday, 7 May 2012, 21:16
Subject: Re: Contract

Yes Dora, it is an open contract. I am not sure what you are asking with regard to (ii)?

Best wishes, Stuart

On 7 May 2012, at 21:12, "dora kostakopoulou" <dkostakopoulou@yahoo.co.uk> wrote:

Dear Stuart,

I hope you have had a good break. Many thanks for the contract which arrived last Saturday.

As the contract is somewhat different from the contracts I have signed to date which have entailed explicit references to the permanent basis of the post, could I confirm that (i) the position offered by Warwick is a permanent one and (ii) the statement on page 9 (clause 24 of the 'Terms of employment') 'The University may however terminate your employment, in accordance with the notice provisions set out in your terms and conditions, for any reason unrelated to retirement which would apply to any employee' includes the 'just cause' requirement underpinning full tenure?

I would be grateful if you could clarify the above.

With all good wishes,

Dora