EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**AND**	**Respondent**
Ms A Barron		UCU

Heard at: London Central **On**: 3-5, 9-13, 16-20, 23-27 April & 28 June 2018.

Before: Employment Judge D A Pearl
Ms C I Ihnatowicz
Mr I McLaughlin

Representations
For the Claimant: In person
For the Respondent: Mr T Brown (Counsel)

JUDGMENT

The unanimous judgment of the Tribunal is that the claims of direct discrimination, harassment and victimisation all fail and are dismissed.

REASONS

1 By ET1 presented on 31 March 2017, the Claimant, an Associate Professor of Law at the London School of Economics, made claims under the Equality Act against her union. The narrative at the outset of the 17 pages of particulars states: "(a) the UCU has engaged in direct discrimination against me … by (i) blocking me from becoming a candidate for the position of Chair of my branch of the union on the basis of my sex, (ii) failing to properly investigate my complaints about unlawful conduct (including the discriminatory conduct) by UCU staff and members; and (b) that the UCU has harassed me… by persistently (through its staff and representatives on the branch committee of LSE UCU) engaging in conduct which has created an intimidating, hostile, degrading, humiliating and offensive environment for me as a member of the branch committee …"

2 By the time of this hearing matters had moved on. There is no need to recite interlocutory orders and developments. We began this case with an agreed list of issues, annexed at A. The Claimant made an initial application to amend the issues in some respects and we have allowed these: we refer to the amendments in our conclusions below. However, shortly before written submissions were exchanged and about a week before the parties were due to attend to make final oral submissions, the Claimant submitted a more extensive amendment application. We deal with this in our conclusions. We heard the parties' submissions on 28 June 2018. On 13 July the Claimant made further written application to amend her claim; and the Respondent objected. Again, we will deal with all matters of amendment in our conclusions.

3 This has been a complex piece of litigation. The documents run to over 8000 pages. Mr Brown's helpful chronology, which sets out the email correspondence in chronological order (the bundles being notably unchronological) runs to 56 pages. Inevitably, these Reasons will be lengthy. Numerous witnesses have been called to give evidence and in some instances they were re-called. We set out below their identities and roles as follows:

- Anne Barron, Claimant, Associate Professor (Reader) in Law. Member of Branch Committee, departmental rep., 2013. 22 June to 24 September 2015, Vice Chair & acting Chair. Member as departmental rep., thereafter.
- Dr Shakuntala ('Shaku') Banaji, Associate Professor, Department of Media & Communications, Member of Branch Committee, departmental rep., 2010. Branch Treasurer 2013-2014. Vice Chair 2016
- Dr Kathleen Meagher, Associate Professor in Development Studies. Member of Branch Committee, departmental rep., from about 2013.
- Mike Cushman, Guest Teacher, Department of Management in 2017, previously employed in other roles. Member of Branch Committee, hourly paid rep., 2007. Branch Secretary 2008-2013. Membership Secretary 2013-2015. Fixed term and hourly paid officer 2016-2017.
- Dr Patrick McGovern, Associate Professor (Reader) in Sociology. Departmental rep., 2007-2010. Membership Secretary 2010-2012. Branch Chair, 2013-2015.
- Solomon Hughes, Librarian. Departmental rep., 2013-2017.
- Dave Morris, Academic Support Manager. Branch Chair, 2010-2013. Branch Secretary 2013-2015. Health and Safety officer 2015-2016. Thereafter, Chair in circumstances where his appointment was and continues to be disputed by the Claimant.
- Barry Jones, Regional Officer (Higher Education, London North). Line manager of Mr Young.
- Andrew Young, Regional Support Officer for the Respondent, reporting to Mr Jones.
- Prof. Francine Tonkiss, Professor of Sociology.Treasurer 2015 to 2017. Chair 2017 to date.
- Sally Hunt, General Secretary.
- Robin Goodfellow, President, 1 June 2016 to 31 May 2017.
- Barry Lovejoy, National Head of Regional Organisation and Nations.
- Paul Cottrell, Head of Democratic Services.

- Helen Carr, National Head of Equality and Participation.

FACTS

General observations and issue estoppel

4 The evidence has been voluminous. We are not required to resolve each and every dispute of fact that can be detected in the papers. Many of the primary facts are agreed, in that they are to be found in documents and, in particular, emails of which there are about 10,000 in the bundles, including many duplications. Where the parties are in great dispute is in the interpretation of the evidence and the motives that, consciously or unconsciously, actuated the relevant witnesses. Our findings are, therefore, restricted to those that are necessary for the resolution of the issues. We consider that we have read all the relevant emails, but will only cite a fraction of the total.

5 We also need to note that the Claimant challenged the Union over alleged breaches of rules in proceedings that were heard by the Assistant Certification Officer, HHJ Stacey ("the ACO".) The adjudication was broadly against the Claimant and at the time of our writing, the Claimant's appeal to the EAT has been dismissed under rule 3(7) with no rule 3(10) hearing having yet taken place. This has given rise to an argument about issue estoppel.

6 It is evident that we are bound by the rulings made by the ACO as to the alleged breaches of Union rules. We do not understand the Claimant to suggest otherwise. However, the Respondent argues that we are bound by factual 'findings' or conclusions which appear in the adjudication. Mr Brown has particularised 66 paragraphs of findings, but has not broken these down, particularised them or otherwise made clear what we are bound to accept, beyond suggesting that the entirety of those paragraphs bind us. In paragraph 14 of his written submission he excludes findings about the reason for the Claimant's treatment, saying that there are no such findings. He continues: "But the ACO did make findings about [the Claimant's] behaviour, and the conduct of the LSE UCU branch by its officers, committee members and support officials. Those were central findings of the ACO's decision." He immediately goes on to say that these findings are central to the Claimant's tribunal case and he paraphrases this as "her own behaviour could not have justified the reactions she received …" He continues: "Since the issues of [her] behaviour and the administration of the branch were matters directly in issue and distinctly put in issue and an essential element of UCU's defence on the question of enforcement, and where the issue of [her] conduct is the same in the later action as in the earlier judgment, issue estoppel applies to prevent [her] from re-litigating in the ET those matters that were authoritatively determined by the ACO."

7 This is a troubling submission, because taken at face value it seems to suggest that the trial of these issues has been unnecessary; it needs to be remembered that this submission appeared towards the conclusion of the hearing. The Claimant makes some understandable complaint about this.

8 Mr Brown cites Deman v AUT (7 October 2003) as an illustration of how the doctrine of issue estoppel may function in discrimination cases in this jurisdiction. His lengthy citation is helpful. But it is clear therefrom that the submission that was rejected by the EAT was that a claimant "should be free to raise by way of substantive complaint a matter that a previous tribunal has considered by way of 'background' in its determination of a different complaint." Where there is a complete factual overlap and, almost certainly, an exact overlap of cause of action, it is evident that the doctrine should apply so as to prevent a needless multiplicity of claims and hearings. That is not the case here. We are not dealing with Anya background. Facts were set out by the ACO in her determination of a claim that specific acts done by UCU breached its rules. It is not clear to us that the facts of our case were "directly in issue" in the sense of that phrase, as used in Jones v Lewis [1919] 1 KB 328. Even there, the reasons that led the ACO "to his decision on the precise point" do not bind this tribunal.

9 Nor do we think that these facts fit within Diplock LJ's dictum in Mills v Cooper [1967] 2 QB 459, 468 that a party canot make against the other "an assertion, whether of fact or of the legal consequence of facts, the correctness of which is an essential element in his cause of action or defence, if the same assertion was an essential element in his previous cause of action or defence" in previous proceedings; and was found in those proceedings "to be incorrect." We consider that on a purely technical level, each part of the formula can be distinguished. It is not an essential element in her claim here that she behaved throughout in a reasonable manner or in a way that cannot be criticised. Even if she has been unreasonable she has the right not to be discriminated against or victimised. Equally, the essential factual element in her challenge to the union before the ACO did not depend on her acting reasonably. We would hold that the doctrine does not operate so as to bind us in the way suggested. Further, the ACO's hearing was one day only and the scope of witness evidence and documentation was much less than the evidence we have been dealing with. We are free to come to our own conclusions on the material before us. Finally, if we were wrong about that, we have expressed no view about whether the Respondent is free to raise issue estoppel at such a late stage. Other principles derived from case law may prevent it doing so, but this is not something that has been raised with the parties.

Overview

10 The Claimant first became an elected representative of the LSE Law department during 2013 and she therefore joined the Branch Committee of the Respondent union. In 2015 she was elected Vice-Chair and was also acting Chair of the committee because no candidate for Chair had been nominated before the AGM and none had come forward. On both 30 July and 17 August 2015 she indicated her intention to stand down from both positions imminently. The positions of Chair and Vice-Chair remained vacant.

11 At the AGM on 23 May 2016 there had been, and were at the meeting, no nominations for Chair or Vice-Chair. Nobody volunteered. A process was agreed for seeking to fill those posts (although the Claimant disputes this.) Later, Mr Morris and Dr Banaji agreed to take the positions of Chair and Vice-Chair

respectively. The Claimant subsequently raised various points under the local rules as to whether or not correct processes had been followed. On 8 November 2016, at a Branch Committee meeting, those present confirmed the positions of Chair and Vice-Chair as well as the membership of the rest of the committee. By this point the Claimant and the Union Branch, its officers in particular, were in great dispute and she was also making allegations of unreasonableness and unfairness against the Regional officers.

12 On 9 December 2016 Mr Jones in the Regional Office raised a complaint against the Claimant under the Union's dignity at work procedure ("DAW".). On 14 December Mr Young did the same. On the same day the Claimant wrote to the Respondent's General Secretary to complain about Mr Jones, Mr Young and Ms Holroyd under the policy we refer to as the MSC. On 20 December Ms Holroyd (part-time Branch administrator, an employee of the UCU) complained against the Claimant under the same policy. On 12 January 2017, Mr Morris, Ms Mizgailo and Dr Banaji raised a complaint against the Claimant under the Union's policy (a third policy) for the Regulation of the Conduct of Members: the Rule 13 complaint.

13 Dr Roger allowed the complaint against the Claimant to go forward on 25 January 2017 and the Claimant complained to the Respondent about this. The General Secretary told the Claimant that her complaint against the three employees had not been upheld on 26 January 2017. On 31 January 2017 the Claimant applied to the Certification Officer for declarations that the Respondent had breached Union rules in nine instances.

14 Mr Cottrell dismissed the Claimant's complaints on about 25 January 2017. Dr Roger was replaced by Mr Anderson and he recommended the dismissal of the complaint made by the Committee members against the Claimant on 14 February. By 21 March the Claimant and Mr Cushman had both been nominated for the post of Secretary of the Branch. She subsequently withdrew her nomination after a dispute arose concerning the identity of the returning officer.

15 This is only an outline chronology, a summary guide to some of the more important dates, so that the detailed chronological account below can more easily be followed. We attach as Annex B a flow chart provided by Mr Brown that summarises these complaints under the three procedures.

16 The Claimant divides the facts between the 'background', which occupies about a half of her witness statement, and the events from November 2016 onwards when the legal claims begin. We will follow the same scheme.

Background facts

17 The Claimant has been a member of a union since her first university teaching job in 1984. At the LSE she became active after the June 2013 AGM. Her witness statement suggests that even at this point she realised that the Branch was dominated by a small group of men who had been running its affairs for some years. They were Mr Morris, Dr McGovern and Mr Cushman. She makes a number of specific allegations against Mr Morris (who was elected Branch Secretary in 2013.) He was "largely invisible" and she had "difficulty in

understanding how he had acquired a position of such centrality within the Branch." He had been Chair for the past three years. Mr Cushman was overbearing, sometimes aggressive and was suspicious and intolerant of anyone "he regarded as a potential threat to his dominant position." His style would deter women and others from participating. Dr McGovern could be condescending or mocking and the Claimant, in particular, relies on the 'ornithological' email exchanges below.

18 These are sweeping allegations and the evidence does not support them. At the 2013 AGM the treasurer, the health and safety officer and the equality officer were women. The Claimant says that these roles were considered, presumably by the males she names, to be peripheral, although that seems to be unlikely in the case of the treasurer's position. As to the email exchanges with Dr McGovern, the Claimant's evidence is in some ways baffling. There had been a discussion by email which touched on the use of Twitter. Dr McGovern injected a light note into the exchange when he wrote on 25 October 2013: "check out the latest tweet on LSE UCU on twitter. You might consider re-tweeting (or whatever it is that you twitterers do)." The Claimant responded: "Done. But one little tweet? There should be floods of tweets, particularly in the run-up to the strike! I wasn't being frivolous about LSE UCU getting serious about Twitter …" Dr McGovern replied saying that he had spent four days a week on union business and the Claimant then said that she was not suggesting that he should do Twitter as well. The next day Dr McGovern responded to this last point by saying: "not asking me? Do you think I wouldn't tweet sweetly like the morning lark :-)" This is clearly a light-hearted comment. In her response the Claimant wrote: "we don't need a morning lark, we need a big oul' crow to make a lot of raucous noise. ME!?" She signed the email "AnnE." This was because in previous emails the day before Dr McGovern had on two occasions spelt her name "Ann." The Claimant told us that this was in her view sexist. In any event, Dr McGovern responded to this last email by saying: "Nah, you're more like a corncrake, also a noisy bird!"

19 Three days later she sent Dr McGovern by email a picture of a corncrake saying that it was a small little bird with an amazingly strong voice. He responded: "I nearly fell off the chair laughing! Ok, it is a prettier bird than an auld crow. Now stop fishing for compliments." We received some oral evidence about these matters from both the Claimant and Dr McGovern and we fail to see how these exchanges could indicate any sexism on the part of the latter. They cannot reasonably be read in that way. The further point we would make is that Dr McGovern's explanation for forgetting the correct spelling of the Claimant's first name struck us as honest and straightforward. The Claimant did not deal with it in a straightforward way. On 29 October she said of Twitter that she made no apologies for harping on about it and added in parentheses "even if that makes me a 'corncrake' - thanks Pa." Again, she was deliberately omitting the final letter from Dr McGovern's name, as she told us. We also note that during these exchanges, on 28 October, she wrote to Mr Cushman: "Hurrah! My sixth recruit since becoming rep in June. 'Thank you Anne'. You're welcome, UCU." The Claimant accepted that this was a sarcastic email.

20 The Claimant maintains, in summary, that the culture of the committee that she joined was paternalistic and male-dominated. During the case she began to develop in questions a more detailed description of the patriarchal culture at the

Branch. By the time of closing submissions she set out a detailed critique of the Respondent based upon the sex discriminatory union culture arising from 'comradeship.'

21 The further evidence against Dr McGovern includes her reference to the "daddy/mummy" email that we turn to below. We have rejected this as any basis for either alleging or finding sexism on his part. In other respects, we found the Claimant's allegations in the background facts and events to be unconvincing.

22 Against the Claimant's evidence, and her expansion and elaboration thereupon in final submissions, is substantial evidence from the Respondent's witnesses that denies any sexist culture and takes issue with the Claimant's points. In order to recite the relevant findings, it is necessary to examine more than these witnesses' statements, because they were written in response to the pleadings and the pleadings are less pointed than the Claimant's oral evidence.

23 Dr Banaji recalls that Mr Cushman, then the Branch Secretary, was welcoming in 2010 and keen to get more members actively involved in the Union. He asked her to be a representative for her department, she agreed and she was co-opted onto the Committee. Dr Banaji recalls that the Committee was gender-balanced and she names a number of women in paragraph 7 of her witness statement. She describes Mr Cushman as her informal mentor. In 2011 she got to know Mr Morris. From 2012 she worked closely with Dr McGovern, Mr Cushman and Mr Morris, as well as Mr Young from the Regional Office. She states she "never at any point experienced UCU members or committee members as taking me and my ideas less seriously because of my gender or race." In paragraph 12 she names 8 other women who "were involved in 2012-13 and thereafter." She relates that in 2013 the Claimant was one of the people Mr Cushman tried to get involved in Union affairs. She says there was no internal animosity in the Committee which in 2014 was joined by Ms Mizgailo who in due course became Branch Secretary. She also says that by 2014-2015 there was a good balance between men and women in the Committee. There was also a good balance between academic and professional staff. The negotiations with the employer at this time were, she says, demanding and involved both genders. She and Ms Pickard drove a particular part of the negotiations. In June 2015 she was approached to be Chair. Her detailed evidence about 2016 is relevant for our later findings, however it is evident that she has no point of agreement with the Claimant as to any of the Claimant's allegations concerning a sexist culture within the Union.

24 In cross examination Dr Banaji described some of the Claimant's allegations as upsetting and offensive. She insisted, for example, that Mr Cushman always spoke of the Committee as a team: "he did not speak of himself. It was collegial." On several occasions he encouraged her to be Chair. He said it would be wonderful to have a woman of colour in that post. She considered the Claimant to be a strong woman, as she herself is. When Dr Banaji was asked about the circumstances in which Mr Morris became Chair in 2016 (which we shall later recite in detail) she expressly rejected the Claimant's allegation that she was acting in a sexist way or participating in a patriarchy.

25 None of this evidence strikes us as inaccurate or unrealistic. As to the overall suggestion by the Claimant that the women have all participated in a sexist institution and, in effect, have furthered the aims of the men under the guise of 'comradeship', we will comment on this a little further on. At this point, we also note our finding that Dr Banaji gave forceful evidence and has every appearance of being her own person. We regard it as improbable that she could have been under the control or influence of any other Committee member.

26 Dr Meagher pointed out that the Branch lacked active members and that there were always more Committee vacancies than volunteers. Other comparable institutions had more members and more activists. In mid-2015 Mr Cushman urged her and the Claimant to accept Committee posts. She was at variance with the Claimant about much of the latter's chronological account, and we will refer to this below. The Claimant did not cross examine her on the basis that she was furthering the sexist intentions or agendas of the males.

27 Prof. Tonkiss gave evidence on the 18th day of the hearing, by which point the Claimant had more detail in her challenges concerning the sexist cuture she alleged. Prof. Tonkiss flatly denied that in November 2016 she supported Dr Banaji because that was a way to support Mr Cushman and preserve his power. The Claimant suggested that Prof. Tonkiss had been inducted into the Union core group by 3 dominant males, that she and other trusted women were inducted in their male ways and thereby were treated as trusted comrades. Prof Tonkiss said she was not recruited by anyone and that she and others volunteered as the Branch was desperate, indeed the Claimant asked her to stand as Chair. She said that if the Claimant's allegations were true, she would have been "suffering from false consciousness." She did not know Mr Cushman that well and she did not experience a male culture on the committee. She denied being an uncritical supporter of Dr McGovern and observed that she had not stopped the Claimant voicing her criticisms. None of this evidence supports the Claimant and we have no reason to conclude that Prof. Tonkiss was seeking to mislead us. Our assessment of her as a credible witness is also based on the detailed evidence that we shall come to further on.

28 When Mr Young came to give evidence the Claimant was in a position to put her case fairly and squarely, at the outset of day 14. She said he was the arch-discriminator and arch-harasser. In 2016 he caused Mr Morris to become 'de facto Chair' when Dr Banaji was better qualified. Further, a year earlier, he had prevented the Claimant from being able to continue as acting Chair, in any meaningful sense. She alleged that in November 2016 he stopped Mr Morris from standing down. He was orchestrating discrimination and harassment and pulling the strings.

29 The Claimant, when explaining her challenges, also made clear that of the entire group of witnesses: "there was a kind of unconsciousness. Behind all their acting, thinking and deciding is a culture comprised of a series of tacit understandings which are taken as read in everything they do, a set of assumptions that systematically deliver male hierarchy as their outcome." Unsurprisingly, Mr Young denied this. For the detailed rebuttal of the Claimant's allegations about the chronology, we need to refer to our findings below, at those

points where Mr Young was involved. However, as for the generalised allegation, we comment at this stage that it is based on a theory that has no support anwhere in the evidence. We will need to return to this, but the notion that the Branch Officers, including the females, were unconsciously executing sexist and hierarchical stereotypes and decisions at the behest of the Regional Office is not only implausible but, in our view, borders on the absurd. A full account of the chronology indicates with clarity that this could not be the case and that the Claimant has come to make a number of serious and misconceived allegations. It suffices at this point to note our conclusion that the background affords her no assistance in making these claims. Much further detail appears below, where we shall also refer to the evidence of Mr Morris, Mr Cushman and Dr McGovern.

November 2013 to June 2014

30 The Claimant maintains that she clashed with Mr Cushman in November about the arrangements for a 'teach-out' that was held at the time of a strike called by the UCU. The evidence overall establishes that she was instrumental in organising the teach-out through what was known as the LSE Action Forum. The disagreement with Mr Cushman was over the branding of the event, because, on the Claimant's account, he told the strike committee that he was advertising the event, she said that the union should not annex it and he replied that it would not be happening without the strike. He also said the union was financing it. The email exchanges take the matter no further and we find that this was a dispute of a sort that can easily arise within a union[1]; and that, as Mr Cushman told us, some had complained to him that they thought that the Claimant was taking undue credit. The incident has no significance for the issues. Further, we note the emails of December 2013, January and March 2014 (pages 5687, 5652 and 5591) that indicate that the Claimant was enjoying cordial relations with Dr McGovern. We understand that also to be her evidence for this period. On 6 May 2014 (page 5577) she thanked Dr McGovern for his courageous and always good-humoured leadership.

31 The Claimant makes complaint that an email sent by Dr McGovern to union colleagues on 20 June 2014, page 5500, demonstrates sexist attitudes. Mr Cushman had been at a meeting of the joint negotiating committee known as JNICC the previous day. The email says: "first, a huge thanks for your contributions, especially to Anne for spotting the issue and to Mike Cushman for raising it at JNICC yesterday (and indeed for covering for me in organising and leading the unions at yesterday's meeting)." At the end of the email he also referred to the Claimant when saying that neither she nor he could attend the next Academic Board meeting. The Claimant is affronted that her work was not properly recognised and that she was only being complimented for spotting the issue. She maintains that no reference should have been made to Mr Cushman at all. This latter complaint is very difficult for the tribunal to understand, since he had been at the meeting and had raised the question. We cannot agree with the Claimant that this is an example of "the anointing of a male colleague as the crucial agent" or that she was "a mere handmaiden." She also has made the allegation that the

[1] [1] The Claimant in her witness statement says that her "co-organisers were voicing their frustration-in my view understandably-with what they perceived as a colonisation of their efforts, and by a union whose agenda they did not wholly endorse."

metadata on a PDF of her document showed Mr Cushman as being the author and that this should have been removed. This strikes us as unrealistic and in cross examination she accepted that failing to remove the metadata is not a claim to authorship of the document. This is because it is automatically generated by the computer. In any event, on the same day, 20 June, she sent an email in which she referred to there having been a "good team effort by UCU." Again, we see no significance in this incident for any of the issues in the case.

Mid-2015 to November 2015

32 There is no relevant detail to record until May 2015. On 1 May 2015 Mr Cushman wrote to his colleagues as follows: "As you know I intended to step down from being a branch officer at the end of last session but agreed to carry on for this session, but I will not stand again. Pat has long made it clear that he has done his stint and also will not be standing again. Dave is standing down as Secretary and, subject to the AGM's approval, Veronique will take over the post. Dave has said he is happy to go back to doing the Health and Safety post that Veronique will be relinquishing. Please can you consider if you want to stand for one of the vacant posts at the AGM. I am happy to talk to anyone who is interested … I can't speak for Pat but I would be surprised if he wouldn't also be happy to do the same … I will be teaching again next session and so around LSE and will be willing to offer any advice and support to new officers they may ask for but I do not want to take on any responsibilities on my own."

33 Dr McGovern then immediately followed up with an email clarifying his own position and said that he would remain a member of the Casework committee and one of the negotiating teams; and he would also provide help to the new officers. Dr Banaji wrote soon afterwards: "likewise, colleagues. After these two years, I would be very grateful if someone will offer to take over as branch treasurer; I'd happily assist with advice …" She said she would remain on the JNCC committee and also as a departmental rep. Dr McGovern also then reminded people that there was relief from teaching offered at two hours a week for 20 weeks for certain officers.

34 There is a bald conflict of evidence in relation to an allegation made by the Claimant that, in about mid-May 2015, Dr McGovern told her "that the Chair of the branch should be a man, because management would only take the branch seriously if it were headed up by a man." Dr McGovern says that he remembers a telephone conversation in the spring of 2015, because it was the Claimant who raised the topic and asked him whether he thought that the management of the LSE might prefer to deal with a male Chair. He says that in this conversation he replied that whatever the LSE preferred, that would never be the position of the Branch. He says he thought the point was too obvious to require emphasis and he adds that he would never say the Chair had to be a man. The other witnesses for the union who gave evidence about this also contend that such a sexist view would be inconceivable.

35 In assessing the evidence, we found that the Claimant's testimony was unconvincing. Leaving aside the point that women were approached to become Chair, the Claimant struck us as being in difficulty when questioned about why she

had not at any stage raised a protest about this comment and she put forward a number of different explanations. She also slightly softened the allegation and referred to the words being "it should really be a man." Confusingly, she goes as far as to say that in some way she agreed with this, although she turms this round and says it was because the union was male-dominated. She also says that she was shocked at the comment, notwithstanding that she told nobody about it. She has also rationalised matters, in our judgement, by adding a piece of evidence in relation to what she said at the AGM and we will come to this below. Against all of this, we found the evidence of Dr McGovern to be clear and cogent. We regard it as implausible that he would have been voicing a blatantly sexist opinion of this sort which would, among other problems, have put him in a very poor light had the Claimant simply repeated it in the email chains. We do not think that the comment was ever made.

36 Dr Banaji notes as a point of detail, and we consider it is correct, that Dr McGovern had serious personal matters deal with and that he had already been unable by this point to carry out his full responsibilities for several weeks.

37 The AGM was held on 22 June 2015. 17 members attended as well as Mr Young from the Regional Office. As the Minutes record, nobody was prepared to nominate themselves for the position of Chair. The Claimant volunteered to be Vice-Chair. Ms Mizgailo became Secretary. Dr Meagher became Membership Secretary and Prof Tonkiss agreed to be Treasurer. Mr Morris was Health and Safety Officer and Mr Cushman stayed on as Visiting Academic rep, a new post. The Minutes then state that "it was agreed that a recruitment campaign would be undertaken to fill the role of branch Chair and that Anne Baron would be acting Chair in the meantime." The text also makes the point, by way of encouragement of members to stand, that the Chair was supported by a strong Branch structure and the casework committee of five. Two of these were women. Dr McGovern also stated that the role conferred its own gravitas and status within the School.

38 In her oral evidence the Claimant added a new point which we have little doubt is a rationalisation after the event and is not accurate. She told us, in answer to a tribunal question, that she said at the AGM, when she volunteered, that she knew that Vice-Chair was as high as she could go. We doubt that she said this and it seems implausible. When questioned further about this, on day 4, she told us that, objectively, she could have been seen as capable of leading the union, but that the responsibility lay with the men. They should have made clear their knowledge "of my objective capabilities with a willingness to encourage me for a role which they knew I was able to fulfil." Thus, she has moved from the position where she volunteered to be Vice-Chair to one of outright criticism of the males. She developed this as she was speaking (at the beginning of day 4): "it was not for me to tell Dr McGovern I could lead the union and this is how discrimination works. In most environments those decisions are shaped by the environment that systematically encourages them [women] not to believe in themselves. I 'knew' I couldn't do it but that is the result of discrimination. Women are built up and treated as supporters and servants of men and nothing else."[2]

[2] We might add that the Claimant addressed this and related topics for about 30 minutes during the morning on day 4. Her answers included an element of theoretical explanation, for example in explaining how women lacked full agency because of the history of male domination in the Branch. She suggested that it

39 The next day, 23 June, Dr McGovern wrote to the members: “the second challenge is to find an academic to take up the position of Branch Chair. A search committee has been formed … If you would like to make a difference, please contact Anne Barron, Fran Tonkiss or myself.” He then wrote, at page 5385, to the Claimant saying that he was not in the School as often as normal and they should meet up for coffee. There were things that he said should be sold, i.e. put to the members. Examples were that the committee had a large number of departmental reps and that the busiest period in the history of the Branch had now passed. This was then followed by a separate bullet point that reads as follows: “what did you do during the ‘Age of Austerity’ daddy/mummy.” And it is followed by a smiley face. He then went on to say that he had approached Mr Hopkin, Mr Mason and Mr Otsuka and they had all refused in various ways. He said that two other possible candidates had left or were leaving the School and he also suggested approaching another person, Mr Ramsay. The Claimant has two main criticisms of this email. One is that Dr McGovern had only approached males (or only referred to males.) The second is the ‘daddy/mummy’ comment.

40 The Claimant responded to Dr McGovern with a list of 12 named individuals who could be approached. She also suggested three other named males and four females. She opened her email by saying that she had written to one of the males named by Dr McGovern already and added the comment “I think he’d be really great.” In response Dr McGovern said he knew something about all of the people that she had named and that most had family responsibilities or complications, some of which were challenging. One of the females was anxious to finish a book but would still be worth approaching and he asked her to keep the names flowing. This email, at page 5384, indicates that he was open to a female Chair. We also note that the 3 males he had referred to in his earlier email that day were said by him to be “some of the people I approached directly.” No male preference or bias can be inferred.

41 Dr Banaji confirms that she was approached to stand for Chair and that she also approached Dr Meagher to do so. “Both of us simply felt we were under too much work pressure in our department to spare the kind of time needed for the role of Chair and we said so.” She adds that there were various meetings where ideas were raised and that “all these efforts channelled back the fact that no one was willing to take on the position of Chair, which remained empty. This appeared to be because of the time and skills required and the risk, perceived or otherwise, of retribution by the School that came with it. Undoubtedly, the role is demanding.” In the view of the tribunal, nobody associated with this Branch, including Dr McGovern, Mr Cushman or Mr Morris, would have had the slightest objection had a woman volunteered to be Chair. On the contrary, we are able to find on the basis of abundant evidence that there would have been an overwhelming sense of relief if anyone had stepped forward. It is simply not credible that any male was trying to prevent any female from standing or that women, whether academics or not, were deterred from doing so by a history of sexism in the Branch.

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was "literally inconceivable" that a female could take a powerful role such as Chair and that to question her about these matters was a continuation of discrimination.

42 The suggested line "what did you do during the 'Age of Austerity' daddy/mummy" is, in our view, one of the Claimant's weakest points. The suggestion that it connoted a male Chair is misconceived. It is evident, as Dr McGovern states, that he was amending the words of the well known First World War poster. In evidence, the Claimant suggested that sexism could be seen in the word order and that he should have reversed 'Mummy' and 'Daddy'. This makes little sense. Dr McGovern used the words of the poster and then added 'Mummy' to indicate that he was looking to both genders to fill the role.

43 Two issues arose at about the same time on 24 June and both are relied upon by the Claimant as demonstrating sexism on the part of Mr Cushman and Mr Morris. The first concerned an Academic Board that afternoon at which intellectual property matters were under discussion. Mr Cushman was anxious to circulate something in advance to the members, together with a request that as many as possible come to the meeting. In setting out the various issues that concerned the union, and which arose from a paper that was to be before the Board, various members of the Committee engaged in email exchanges. Dr Banaji wrote at 7:55am with various concerns. The Claimant wrote at 9:59am and thanked her for her hard work. She added various technical points of her own, intellectual property being one of her academic specialisms. Dr Meagher made a contribution at 11:47am and thanked both her colleagues for their insights. Mr Cushman wrote at 11:51am and asked for somebody to compose a summary of the argument that could be circulated to members in advance of the afternoon meeting. Dr Banaji then put a draft together at 12:24pm and Mr Cushman, five minutes later, sent out to the members an email that incorporated much of her drafting. The Claimant did not take too kindly to this and said to Mr Cushman that she was intendng to amend it and asked him to 'take his finger off the trigger'. At 12:36pm he responded by saying "time is very short and I took the view that getting something good enough out ASAP took precedence over quality."

44 This has led to the Claimant criticising Mr Cushman for circulating the text to members without any further consultation. What emerges clearly from the evidence, and is our finding, is that all concerned appreciated that there was a degree of urgency involved. It is impossible for the tribunal to see any indication of prejudice, disadvantage, sexism or detriment to the Claimant in what occurred.

45 Between pages 5277 and 5281 is a series of emails about Prof. Tonkiss and the Claimant being editors, owners and administrators of the UCU email list. The Claimant makes complaint about this, saying she was undermined and humiliated by Messrs Morris and McGovern. The tribunal fails to understand how this could reasonably arise from these emails, which are collaborative and helpful.

46 On 27 July the Claimant wrote to colleagues in the union saying that an issue had come up recently concerning PhD studentships and the terms upon which they were awarded (pages 5243 to 5245.) She referred to some of these terms and she commented that she had sounded out some employment lawyer friends informally and they believed that the scholars could have employee status in law. Her proposal was that the LSE should be asked to draft new terms and conditions which would, among other matters, give them rights such as maternity rights, described by the Claimant as rights equivalent to those afforded to

employees. Dr Meagher responded swiftly and mentioned that it was not in the union's interest or that of the students to have training situations governed by employment law. We can detect something of a debate in the exchange between Mr Keenan and Dr Meagher that followed. Dr McGovern then wrote to all addressees, including the Claimant: "we had a long … unresolved set of discussions with the School when the scheme was set up. Mike Cushman led our side so would probably help to bring him into the loop." To this the Claimant replied seven minutes later: "Happy to. Mike, would you like to share your experiences with us?" The Claimant criticises Dr McGovern's intervention for reasons that she sets out in her witness statement, but when we look at the matter objectively we fail to see how she could have been offended by such a mild intervention which, at the time, she seemed to accept as helpful. In this context, Mr Cushman responded on 3 August (page 5207) and this also attracts the Claimant's criticism, on grounds we find difficult to accept. She describes it as a cynical and negative email but that is not apparent. He said that the LSE had not been clear about the amount of work required and the employment status of these students. Now, they were confronted with a fait accompli and the School was failing to negotiate. "We have to say that we are prepared to negotiate on this in the next JNCC meeting but [the] way they are informing us of this, outside the agreed framework is totally unacceptable. They never worked out who is responsible for sorting this out on their side …"

47 On 30 July 2015 the Claimant informed colleagues (page 5221) that she felt unable to continue in her "current role(s)" beyond the end of the summer and that it was urgent find a new Chair. She summarised what had happened at the AGM in her email on page 5221, saying that hands had tentatively been raised to volunteer assistance, but that no systematic brief or handover note had been provided to those taking up the posts. She states that she, Ms Mizgailo, Prof. Tonkiss and Dr Meagher were all inexperienced. She also noted that she had approached Mr Ramsay as a possible candidate for Chair. A precipitating factor appears also to be an email from HR asking about the composition of the JNNC committee. Dr McGovern responded the next day saying that he did not see this as a big issue, but he was unable to assist because of domestic difficulties he was dealing with.

48 Dr Banaji responded the same day as the email from the Claimant saying that she was sorry that she found herself in this situation but was unable to help as she was completely overwhelmed. She suggested sending a holding email concerning the HR enquiry. The Claimant responded: "thank you, Shaku - you are a wonderful colleague. This is good advice and I will follow it." She hoped that when she was less busy she might have some time to talk through some of the issues with the Claimant and she added: "what I need more than anything is a feel for how things are done in these settings - battles and wars, when to hold/fold et cetera -and who the key personnel (and personalities) are." She thanked her again in her last line (page 5218).

49 Another complaint that has surfaced concerns the induction leaflet drafted by Mr Cushman on 3 August at page 5186. This was to be used to try to recruit members at the induction due to take place on 8 September. The leaflet specified the "main officers" for that year as Ms Mizgailo, the Secretary, and Dr Meagher,

the Membership Secretary. The Claimant says that this undermined her because it was an attempt to erase her from her recently elected positions as Vice-Chair and Acting Chair. On 4 August she asked colleagues to check out this leaflet "that Mike Cushman has very kindly put together" and let her know if they wish to make any changes. She did not ask Mr Cushman to insert her name. His reason for not including her as a main officer is that she had served notice that she was standing down at the end of the summer and that it could be confusing to have two Chairs in place, if that were to happen, on 8 September. We do not find anything suspicious about his evidence and we would also, as an aside, make a specific finding that he was wholly prepared in the summer of 2015 for the Claimant to be appointed as Chair, had she ever volunteered to do so. He told us that he expected that she would put herself forward at the AGM, although in the event she opted for Vice-Chair. We have no doubt that the Claimant would have been accepted as Chair of the Branch, and at this point in the chronology we can detect no animosity towards her or serious disagreement, such as surfaced in 2016.

50 That the Claimant has been prepared to make extravagant claims against the Respondent is illustrated by a relatively small point as follows. On 3 August, at page 5899, she sent Mr Young some correspondence and said she looked forward to discussing it with him when he returned from holiday. On 17 August, after his return, he said that he was chasing his tail the next couple of days but suggested discussing matters later in the week. This is dismissed by the Claimant as an offhand and dilatory response. There is no basis for such a finding, indeed the contrary is the case.

51 The same day she told Mr Young by email (page 5163) that unfortunately she had decided she had no option but to step down from her posts and that she could be contacted the next morning. They did speak then and the evidence of the Claimant is that Mr Young adopted a threatening tone and intimidated her. We find this inherently improbable. He states that he was trying to persuade her not to step down from her posts because of the difficulties of finding a new Chair. He encouraged her not give up and said that if she did so, it would send an unhelpful message to the School. He recalls that she agreed to delay stepping down until Branch Committee had met. On the balance of probabilities, and bearing in mind how the Claimant has, in our view, embellished part of her evidence after the event, and also taking into account other issues below about the Claimant's credibility, we accept the evidence of Mr Young.

52 We note a civil exchange between the Claimant and Mr Young the next day, 19 August. He suggested arranging a Committee meeting in September. She said she expected that he would chair it. She also said she accepted that she would be resigning at a later date in September. He replied that although he was happy to be chair, ideally one of the reps/officers should do so. She responded that they could chair the meeting jointly.

53 The Claimant makes complaint about Dr McGovern's email to Mr Ramsay, copied to the Claimant and dated 21 August. She had told colleagues on 30 July that she had spoken to Mr Ramsay as a possible candidate for Chair and Dr McGovern recited this and went on in the email to talk about his having been Chair. He said that despite there being a vacancy on the academic side, the Branch was

otherwise in a relatively good position with an active set of departmental reps, a casework committee and a growing membership. If Mr Ramsay was interested, he said he would be happy to meet him. The Claimant's criticism of this in her witness statement is difficult to accept or understand. She says that she felt humiliated and undermined. She believes that Dr McGovern's ideal Chair would be a male, this belief deriving, she says, in part from his 'Daddy/Mummy' email of 23 June. In our view, this is pure surmise, but the point goes further because the Claimant also describes her belief that Mr Young must have been in contact with Dr McGovern recently. From all of this she formed the view that a male clique, co-ordinated by Andy Young, was dominating the Branch committee and that she had been set up to fail as Vice-Chair and acting Chair: paragraph 47 of her statement. We need to emphasise that there is no evidence of any sort in this case that any of these suspicions have a foundation in fact.

54 On 8 September she wrote to colleagues to confirm that she would be standing down from her two roles at the next Branch meeting on 24 September. She apologised for the inconvenience and trusted that it would not come as a surprise. She wrote: "it has been made much easier by the evident commitment of our former branch officers to remain at the helm at this time." Her evidence about these words was that they were infused with sarcasm, but that she did not wish to make people feel bad. We can see nothing that would suggest that the reader of the words would understand that she was speaking with a forked tongue.

55 On 21 September 2015 Mr Morris asked the Claimant (page 5065) whether she had any items for the committee meeting agenda. She took this amiss and asked Ms Mizgailo whether she was the Secretary and therefore responsible for the agenda. We can see that the explanation for this intervention by Mr Morris is that some eight days earlier Ms Mizgailo had written to him saying that she was signed off sick until 28 September. She specifically asked him to fill in for her at a meeting and also to keep an eye on the Secretary's inbox. We find this unremarkable.

56 We note that in the run-up to the meeting the Claimant sent two emails to Mr Young, at pages 5020 and 5018-19, that are very sharp in tone. The second took him to task for not knowing who the current reps on the committee were. Nothing turns on this exchange, but it probably demonstrates that the Claimant was by this point somewhat suspicious of Mr Young's motives.

57 At the 24 September Branch meeting the Claimant arrived late and, before she came, Mr Morris was asked from the floor to chair the meeting and he agreed to do so. This is supported by a short note at the beginning of the Minutes on page 5000. He recites that the Claimant declined the chair when it was later offered to her. Dr Banaji relates that the Claimant sat somewhat apart and appeared not to look pleased. Both she and Mr Cushman criticise the way in which the Claimant conducted herself at the meeting. In particular, she interrupted Mr Cushman while he was speaking and made a series of criticisms about how he had been behaving in email correspondence. This irked him and he told her to stop and it is more than likely that he raised his voice in doing so.

58 We consider that the Claimant in her witness statement has mischaracterised what occurred. It is neither accurate nor fair to say that Mr Morris had now taken over as Branch Secretary because he had taken the chair in her absence. She also alleges aggressive behaviour by Mr Cushman towards her and says that nothing was done to stop his intimidation. This ignores what we find happened, namely that she interrupted and was acting in an aggressive manner. We consider that Dr Banaji is accurate in remembering that the Claimant interrupted Mr Cushman on a number of occasions and also that this was behaviour that had not been exhibited by her at previous meetings. Mr Young was present and he comments that her performance, as he terms it, was surly and rather childish and turned the meeting into an unpleasant experience. We regard these accounts as more accurate than the Claimant's. Mr Young's account of the meeting, in oral evidence, was persuasive and we accept that he has an independent recollection of what happened. He recalled that the Claimant sat apart although this detail may reflect no more than her late arrival. He recorded that she was talking over Mr Cushman and interrupting him while he was talking and, as he put it, muttering over him. He did raise his voice in response but he was not shouting. Mr Young described the atmosphere as very frosty and he remembered several people afterwards asking him what that was all about. They could not understand what had occurred. We accept this evidence and also that he had not read Dr Banaji's witness statement.

59 The Claimant complains that when the Minutes were produced she was not sent a copy. The straightforward explanation is that this was an error and about a week later (page 4987) Mr Morris sent sincere apologies to her and also copied to her an email from Dr McGovern. This is the email at page 227 of the Claimant's supplemental file 1 which was not sent to the Claimant because, as we can see, Dr McGovern replied to all the addressees in the email that he had been sent and these omitted the Claimant. Whatever the Claimant's suspicions, there is no reason to doubt that an error was made and that Mr Morris's apology was a genuine one.

60 The Claimant has drawn attention to another exchange of emails which arose from proposals being made for new academic career structures. In our view, there is no significance for the issues in this case and the email chain documents the kind of difference in views that can easily arise within a union when confronted by the need to respond to proposals of this sort. The Claimant in an email at page 4938 sought to summarise a view being expressed by some members of the Committee. It is evident that Dr McGovern was annoyed by this and wanted know who these people were. Then Prof. Otsuka joined in and said that strong exception had been taken to what the Claimant had written because some people had read it as an accusation that certain committee members were management lackeys. The Claimant replied that this had not been her intention. We regard the exchanges as irrelevant to the issues we have to decide.

61 In her witness statement the Claimant in paragraph 59 makes a broad but serious allegation concerning the way in which Ms Holroyd, who became the Branch Administrator on a part-time basis in about December 2015, was being manipulated. She contends that because she was an employee of the Regional Office she was being used as a means of enabling that office to exert influence

over the Branch at LSE. She also states that it is her belief that Ms Holroyd was inducted by Mr Cushman into the ways of the Branch; and that he and Dr McGovern were in effect running the Branch. This, she implies, was done with the knowledge and approval of the Regional Office and Mr Young in particular. It is a set of criticisms employed by the Claimant in aid of her overall case that the male-dominated hierarchy, with Mr Young's support, was retaining its control of the Branch. We will have to return to this topic in due course.

December 2015 to November 2016

62 The relevant chronology begins in March 2016. A peripheral issue so far as the tribunal is concerned, but one that we think should be noted, is that on 10 March 2016 Mr Wilson, a member, wrote to the Secretary and others, including Ms Holroyd, and asked for a Branch meeting to discuss various recent developments. Ms Holroyd then wrote to the Committee, copying Mr Wilson's email, and said that it woud be useful to call a Committee meeting. She asked the Committee to let her know if they agreed and, if so, she would get dates together. About two hours 40 minutes later she sent another email saying that the responses so far were in favour of calling a meeting. As is evident from the paperwork, the Claimant in her subsequent grievance did not believe that Ms Holroyd received any responses. The next day, 11 March, Ms Holroyd wrote again and told the Committee that "next Wednesday lunchtime at midday to 1 pm is currently in the lead." Our observation here is that the allegation must have been that Ms Holroyd has deliberately lied to the Committee in these emails, or had been told to do so. It strikes us as being an extreme and unlikely allegation. However, so far as the Claimant's witness statement in these proceedings is concerned, she takes a different point, which is that Ms Holroyd had no authority to call a meeting under the local rules. It is the first of the rules-based challenges that we can see in the papers. As a matter of record, the Assistant Certification Officer in her decision dated 19 December 2017, rejected this complaint both because it fell outside her jurisdiction but, in the alternative, on its merits. We also note from the Minutes of the Committee meeting that Ms Mizgailo chaired it; and that the meeting unanimously agreed to the co-option of two members (males) as reps and they were also to join the Negotiating Team.

63 The Claimant next complains of the email dated 12 April 2016 that Mr Cushman sent in which he suggested certain rule changes: page 4854. She maintains that this was an illegitimate attempt to expand the committee and she believes that he was attempting to put more people, seven of whom were men, onto it. This is inaccurate, in our view, and the explanation set out by Mr Cushman in paragraph 15 of his witness statement is correct. He notes that the Committee had expanded greatly and that it was becoming difficult to convene quorate meetings. His proposed rule change was that the elected departmental reps should themselves choose, if they so wished, to be full members of the Committee (who could attend and vote) or could choose to be ordinary reps (who could attend but not vote.) He wanted to reduce the size of the Committee and therefore the quorum. He states, with every appearance of accuracy, that he did not mind or care who elected to stay on the Committee. In any event, at the meeting on 18 April 2016 he did not think that he had persuaded his colleagues of the merits of his suggestion and he withdrew it. He also notes, as we accept, that at this time

he was trying to withdraw gradually from Branch activity. There is nothing here that assists the Claimant in her wider allegations.

64 Dr Banaji notes in her witness statement that in the period ending with the 2016 AGM, on 23 May, she recalls no overt ill-feeling at Committee meetings, although the Claimant made "occasional acidic comments" that were aimed at Dr McGovern, Mr Cushman or Mr Young. The tribunal can see from the documentary evidence that she was harbouring some suspicion of all three by this point. Dr Banaji also recalls that Ms Mizgailo was by the time of the AGM increasingly unwell. No member volunteered to stand for Chair or Vice-Chair at the AGM. Ms Mizgailo said she would stand down as Secretary if matters were not resolved within four months. The meeting agreed to try to find a Chair and Vice-Chair and it is clear that the Claimant expressed no disagreement with this. Nor did she volunteer to take up either of these posts. It is likely that any such offer would have been gratefully received, especially as the documentation up to this point discloses no great level of acrimony or dispute in the email correspondence. This was to come later. In cross-examination the Claimant accepted that she would have been welcomed if she had taken the post.

65 We find Dr Banaji to be accurate in her following recollection. On 8 June 2016 at a joint negotiating meeting, management urged the union side to find a Chair as soon as possible. Mr Young and Mr Morris were present at that meeting. Dr Banaji then says: "Feeling guilty about not having taken up the role the previous year, which meant that Veronique Mizgailo, an initially inexperienced member, had struggled on alone; and embarrassed that we were the only Branch in London without a Chair, I suggested to Andrew Young that if a willing Chair was not found in the following two weeks then perhaps David Morris (an experienced Committee officer) and I, an experienced caseworker and negotiator, could be Co-Chairs."

66 She recalls that as Mr Morris then declined to be Chair and she did not want to be Chair alone, the matter was shelved. Subsequently, after further discussions, Mr Morris relented and they both agreed to tell Mr Young that they would be Co-Chairs.

67 Mr Young, on hearing this suggestion, said that it would be less confusing to members if only one of them agreed to be Chair and the other agreed to be Vice-Chair. She said that in that case she would take the latter post, because her research took her off-campus for two days a week and Mr Morris was usually on-campus. He agreed. The Claimant puts an entirely different interpretation on these events and argues, in effect, that Mr Young used his position and influence in order to manoeuver Mr Morris into the position of Chair. As the Claimant has put it in final submissions, from Mr Young's "sexist perspective he had to occupy that position"; Dr Banaji and Mr Morris went along with his preferences; and the major reason for elevating Mr Morris was that he was a man. Further, in the making of the decision, Dr Banaji, as well as the two men, shared a bias in favour of a man for the role of Chair on the ground of gender alone. Dr Banaji was more capable of fulfilling the post, according to the Claimant, but Mr Morris was awarded the prestigious post because of his gender.

68 We reject the Claimant's attempt to neutralise the Respondent's evidence as being inaccurate and we also reject the inferences that she asks us to draw. What follows is a summary of our reasoning. Dr Banaji was cross-examined by the Claimant about paragraph 40 of her witness statement and she was categorical ("absolutely certain") that Mr Young did not tell her that Mr Morris should be the Chair. On the contrary, she is sure that Mr Young wanted her to be Chair. She spoke forcefully and said the following. "I had tried everyone I knew - Fran Tonkiss multiple times. I asked several women. Fran gave very good reasons [why she would not do the job]." Dr Banaji said that she was loyal to the Branch and felt it was the only way forward to fill the breach, although in retrospect she would never have taken the post, she said, if she knew what was going to happen over the next 18 months. She also denied in absolute terms any possibility that Mr Morris was recruited to the post because she is in some way a submissive female. She told us that she accepts that women can participate in a patriarchy, perhaps unwittingly, but she insisted that what she did was simply pragmatic. Three women had turned her down for the post. "Dave Morris gave in to my pressure because he's a kind and giving person." Nor did it strike her at any stage that it would be better to have a man. On the contrary, she said she did realise that it would be "wonderful to have a female professor to head it." She also said that LSE had taken her perfectly seriously. She noted that Mr Morris had been the shop floor rep for many years and that his knowledge and experience was very useful. She named the three people who had turned her down as Fran, Miriam and Kate. She pointed out that the Claimant and others had also been asking around but there had been no volunteers. This was compelling evidence and we have no basis whatsoever for finding any part of it to be inaccurate.

69 Mr Morris's witness statement differs from Dr Banaji in that he states that, after the proposal that they be Co-Chairs was put to Mr Young, Mr Young said it would be less confusing for members if he became Chair and she was Vice Chair. In our view, this difference of recollection has no particular significance, because Dr Banaji was adamant that she did not wish to be Chair. Mr Morris's recollection does not lead to any inference that Mr Young preferred a male. Mr Morris was not cross-examined about this. He was asked no questions by the Claimant about how he became Chair.

70 Mr Young was asked by the Claimant about these matters and his evidence is not only clear and credible but also explains how Mr Morris could have phrased matters as he did in his witness statement. He recalls the meeting in question and he told us that this was the only significant branch without a Chair. He said it was certainly his view that Dr Banaji should be Chair but that she was not prepared to do it. He would have accepted the proposal for co-Chairs if they had insisted on this, but they accepted his suggestion, which was that one of them become Chair. He denied that he wanted a man to be Chair. And he added in passing that the only other two people that he had spoken to about becoming Chair were female, namely Prof. Tonkiss and Ms Pickard. He said that he was happy when later on Prof. Tonkiss became Chair. He also told us that he was not present to hear Dr Banaji's evidence in tribunal and that nobody had reported her evidence to him. Putting all these matters together, we are left in no doubt that Dr Banaji expressed in forcible terms to her colleagues that she was not prepared to do the job, although she was happy to be Vice- Chair. Whatever the precise words used by Mr Young,

he must have known her view and he would have realised, when he suggested that one Chair would be preferable, that Mr Morris would have to be the candidate. The evidence does not support any finding or inference that (a) he wanted a male to fill the position; (b) Dr Banaji has come to give false evidence; (c) Mr Young has also testified falsely; or (d) that he had any purpose in denying the post to a female. On the contrary, it is inherently unlikely that anyone at Regional Office or in the Branch would have wanted to block a woman from the post of Chair. As we have found, it was the Claimant's for the asking, had she wanted to do it. The same applies to the Vice-Chair.

71 We next note that the Claimant has made various challenges to the way in which the Union conducted itself between March and October 2016, in terms of its own rules. These challenges were taken to the Assistant Certification Officer ("ACO") whose adjudication we have referred to. Complaint 1 was failing to ensure that a negotiating committee was elected at the 2016 AGM. That complaint failed: see paragraphs 82 and 83 of the decision of HHJ Stacey. Complaint 2 was that the Union breached rules by failing to ensure the appointment of a returning officer at the 2016 AGM. This complaint was well-founded (paragraph 86 of the decision) but the ACO declined to make any order by way of remedy and agreed with submissions that were advanced on behalf of the UCU. She said that the appointment of a full-time Regional Officer was appropriate for the role and complied with the rules; that a returning officer had now been appointed and that an enforcement order would be inappropriate.

72 Complaint 3 was that after March 2016 the Union had been in breach of the rules by failing to ensure that the powers of the Branch Secretary had only been exercised by a person entitled to exercise them. This complaint was dismissed as a matter of jurisdiction but the ACO also, in the alternative, said she would have dismissed it in any event (paragraphs 87 and 88.) There was insufficient evidence to establish that the Branch Administrator was acting outside the scope of her role or that she subverted the role of the Branch Secretary. Local rules did not preclude delegation and the Secretary was not required personally to make the arrangements. In the absence of a Secretary, the Committee decided that Mr Morris would perform those functions. Further, the Administrator had been careful to act as a conduit rather than a decision taker and this was self-evident from the emails. Other reasons are also given and the ACO said that "on any interpretation the complaint would fail …" Leaving aside our being bound by this decision, there is nothing we have seen to contradict it.

73 Complaint 4 was an alleged breach of the rules by appointing Mr Morris as Chair and Dr Banaji as Vice Chair "otherwise than by a decision of the Branch Committee to fill those vacant positions." This was firmly dismissed by the ACO (paragraphs 90 to 94) who concluded that both on a literal and reasonable construction, the procedure followed complied with local rule 8.7 which dealt with the filling of a casual vacancy. She held that the Committee was empowered to fill the vacancy and that the Branch was more transparent than the rules required because the process set out at the AGM involved the membership. She ruled that Mr Morrison and Dr Banaji were validly appointed and that notification was given by the Administrator on 11 July 2016, which is page 4814 of our bundle. In so far as these paragraphs contain some factual findings, we consider that each of them

is accurate and there is nothing in our foregoing chronological account that could contradict them.

74 Complaint 5 is that at the end of September there was a breach of the rules, being the appointment of Mr Morris as Health and Safety Officer and this was also dismissed: paragraph 104 of the decision.

75 By this point in the chronology the Claimant was embarking on a series of procedural disputes with the rest of the Committee or its officers in which she alleged actions in breach of the rules of the Union. Where she did not allege breach of the rules she sometimes alleged breach of procedures. For example, on 29 September 2016 Mr Cushman wrote to members and the subject was 'Your help needed: LSE bungles changes to the studentship scheme.' This was about the research students and reference should be made to pages 4776 to 4778. The Claimant's objection of the next day was that the text he sent should have been agreed by the Branch Committee and she ended: "please stop running your own campaigns under the LSE UCU banner." In these proceedings the Claimant continues to make stringent criticism of Mr Cushman and also of the response from Dr Banaji and others that we will presently turn to: see paragraphs 70 and 71 of her witness statement. The substance of his email had upset her, and this is a matter we need not delve into, but she also alleges that Mr Cushman was exercising a power that was reserved to the Secretary. These procedural points are made prolifically in the ensuing email correspondence and some of them led to allegations of breaches of the Union's rules, as we have set out above.

76 An email on 30 September from Dr Banaji, Prof. Tonkiss, Mr Morris, Ms Mizgailo and Dr Meagher (the principal officers) was, as we find, a clear and joint attempt at closing down the sort of objection the Claimant had raised which they regarded as unhelpful, although they couched their response in judicious terms and did not mention the Claimant, save for one reference. Mr Cushman in his initial email about the research students of the day before said that in the previous week some students had received cheques that were £800 short and after the receipt of letters from LSE that had come without any warning. He stated that this had produced a surge of justifiable anger from members and non-members alike. The officers in their joint response the next day noted that they get called upon for a range of school-related issues; and Mr Cushman had been requested to take responsibility for the studentships. They note that the crux of the matter, as they put it, was the new and urgent development which had led students to approach the casework committee within the last two weeks. They noted, in effect, the impracticability of Committee members being party to dozens of emails. "In the interests of sharing the workload as effectively as we can, individual officers have discretion to mail the membership directly on matters relating to their remit, particularly requesting information or support. This has previously been custom and practice when time was tight …" Other points are then made and the only reference to the Claimant, towards the end, is that they hoped that she would reconsider and contribute as she had done so far. This joint email from the officers was, we find, a proper and sensible response and the Claimant's criticisms of it have no substance.

77 On 10 October the Claimant made complaint to colleagues about the addressees to be found on distribution lists to which emails had been sent. The immediate prompt appears to have been Dr McGovern's email of about an hour earlier but the Claimant probably had other emails in mind as well. She said that people whom she did not recognise were being sent emails and that this thereby enlarged the Committee. She blamed Mr Cushman for having done this some days earlier when three people were named and we note that these three had also been named as addressees in the email that seems to have preceeded her interjection. She said that the rules were being breached.

78 Dr Meagher sent a conciliatory response but Dr McGovern was clearly irritated and his email reads: "I am unable to comment on the branch distribution list. As for acting like a team, could Anne Barron tell us when she was last on the picket line?"

79 On 11 October another issue arose after Ms Holroyd informed Committee members that two of the three named people we have referred to were now co-opted onto the Committee. The Claimant wrote back that "this is another clear breach of our rules: rule 7.3.3, to be exact," and she said that co-options had to be approved by the AGM. "I will not recognise these people as members of our committee until I have been given the chance to approve, or contest, their nominations at an AGM. Once again, I am troubled by the contempt that has been shown for the basic principles of branch democracy, and the committee colleagues, by senior members of this committee who should know better." We note in passing that on the wording of local rule 7.3.3 at page 627 of the Claimant's supplemental bundle 2, co-options by the committee are permitted as well as co-options by an AGM. Ms Holroyd had noted that these two people had been co-opted in March. On 4 October the Committee agreed that the same two people should be invited to attend the next Committee meeting.

80 Dr McGovern responded on the same day by making the point that it was difficult to appoint certain reps at an AGM in June. His short email ended: "it would be most unfortunate it [sic] if we were unable to help out more vulnerable members because of excessive rule following." Ms Mizgailo wrote a few minutes later that "this seems to be escalating needlessly into a disrespectful exchange." She wanted the matter resolved and for leadership to be shown " … before it gets out of hand and people start metaphorically 'walking off' in a huff or scaring off other reps and members."

81 Dr Banaji responded that she would draft a letter to the three officers which she said would be measured. She made five points. The first dealt with picketing and we need not cite it. The second was that people in this committee "need to raise issues in a considered and respectful way in the group or take their issues off the list. The language in these exchanges has become unnecessarily snide, rude and off-putting to everyone." Her third point was that on points of policy they would accept co-options of willing reps and members by email "when in need because otherwise we cannot carry out the basic work of this branch." The fourth was that the Claimant was correct that they needed to amend the distribution list but recent co-options had to be included. The fifth was that she was an academic Vice Chair and was working hard at it.

82 Mr Young broadly agreed with what she had written and observed as follows. "I'm not quite sure why Anne is so outraged by this, but I'm afraid her interventions have been largely negative for some time. You might want to ask if she is aware of other GTA's [general teaching assistants] who wish to stand, in which case we can hold an election."

83 A further exchange after 8pm on 11 October, at pages 4675 to 4674, from one of the addressees who had seen the emails, shows a level of discomfort about "accusations flying about." The Claimant responded and also said, perhaps in frustration, that she was happy to resign if there was a will that she should do so and it would come as a huge relief.

84 The final version of the joint email that was sent by Dr Banaji is at page 4699 and opened by regretting the increasing animosity and angst in recent exchanges. The three officers said they were writing in an effort to get the Committee back on track "and to put an end to unnecessary tensions." The most recent tension that had arisen in the correspondence had occurred overnight after the Claimant had responded to a request by email by Dr McGovern for someone to accompany him to a meeting and also an invitation for further comments about some new procedures. The Claimant had said that this was a display of contempt for colleagues because these two things were functions of the Chair or Vice-Chair and that any decision by the Chair or Vice-Chair to delegate such tasks to others must be approved by the Committee. This was sent to Mr Young who commented early on 12 October that the Claimant was focusing on rules in a petty way and that this did not assist the Branch. In any event, the joint email we have referred to was sent a few hours later, shortly after midday on 12 October. The Claimant responded in a conciliatory manner by referring to it as a thoughtful, constructive and balanced letter. In response Dr Banaji wrote to her saying that they could not take responsibility for individual committee members' actions but "we are working hard to ensure that no one unfairly berates anyone in the public forum … There has already been far too much of this going round and the whole group is unsettled by it."

85 The Claimant replied on 13 October. She said she had been calling out abuses of power and she said that the Branch " at its worst mirrors or even surpasses the bad behaviour it condemns when carried out by management." She said she could write pages about it. Although this was inflammatory, she ended by referring to the jointly written email in complimentary terms, as a model of mature leadership. Dr Banaji forwarded the email to Mr Young without comment.

86 On 16 October Ms Holroyd removed the co-opted GTA volunteers from the email list, temporarily. Mr Cushman said he was upset by this and that it was difficult to recruit these volunteers. The Claimant then wrote and said, inter alia, that Mr Morris was no longer on the Committee after the last AGM and would have to re-join it, in accordance with her interpretation of the rules. His appointment and Dr Banaji's were defective and had to be regularised.

87 Dr Banaji forwarded this to Mr Young who sarcastically commented: "This will clearly assist in building the branch and committee!" She responded, saying

that the Claimant had been "shooting herself and all of us in the foot for some time with contradictory rules and pressures." She was nevertheless prepared to accept an EGM to regularise matters.

88 On 21 October Dr Banaji, Ms Mizgailo and Mr Morris sent a lengthy response to the Claimant. They said that the two positions that Mr Morris and Dr Banaji occupied were always going to be confirmed by a General Meeting and they had planned to use the meeting on 16 November for this purpose, when they would "ask again if any others would like to come forward to be Chair and Vice Chair in our place (since neither of us want to do these jobs) or to confirm the positions formally. We still plan to do so." They went on to deal with the position of the other reps and the evidence that the reps had agreed to be Committee members. They concluded as follows.

> "If you are not satisfied by our time-consuming efforts to lay out the situation, then also you are welcome to ask us to convert the November 16 GM into an EGM, and to get the required signatures to ask us to rerun the entire AGM and election process, this time with Andy Young as our returning officer. While rerunning the AGM and committee elections would be a dispiriting and counter-productive activity in our view, both in terms of its impact on our ability and time to run the branch in the next two months and in relation to how we are perceived by membership and management, we are willing to do so if that will finally allow everyone in the committee to get on with the business of the branch. If you would like to take on Shaku's role of Vice Chair she would be more than happy to hand over and do this in the proper manner at the November 16th GM."

89 The Claimant did not accept this and on 22 October expressed astonishment that her advice had not been followed and said that the officers' interpretation of the rules was "not remotely plausible." Although she proposed regularising the Chair and Vice-Chair at a committee meeting, she still did not accept the invitation to put herself forward for these roles. We can omit here the further exchanges of 24 and 25 October.

90 On 26 October the five principal officers wrote to Committee members. They said that the Claimant had raised a series of points, one of which, concerning the circulation of committee emails, was particularly relevant and helpful. They said that recently they had found the tone and tenor of the emails to be increasingly problematic

> "because they suggest an attendance to the letter rather than the spirit of the local rules, and a lack of understanding of the realities of the workload we have as core branch officers. The exchanges occasioned by these email chains (attached …) have taken up a significant amount of our time and energy. In fact, we are, quite frankly, being prevented from carrying out the day-to-day duties of the branch, from taking swift action via email when we need to agree how to proceed or to allocate tasks, and from attending to members' interests with management as we should be. We have sought advice from Andy Young, our regional officer, and he is of our opinion on this matter. We cannot continue in this way."

They said that they had therefore added an item for the 8 November General Meeting, on branch rules.

91 The Claimant took issue with much of this by email of 27 October and elaborated her views concerning the interpretation of the rules.

92 On 31 October Mr Jones at Regional office wrote to the Claimant and colleagues. This email included the following.

> "Without getting into a detailed analysis of the branch rules and their status, I think we would all agree that their purpose is to guide and facilitate. I am not aware that you have suggested that there is any practical, industrial or democratic problem in the branch at the moment. Could you clarify if you are saying that there are actual problems at this moment? Could you also tell me whether you think that anybody has in fact been denied the opportunity to join the committee or otherwise participate in the business of the branch who would otherwise have wanted to do so?"

93 He went on to say that his view was that thanks should be recorded to those who had stepped forward, including Ms Mizgailo, Dr Banaji and Mr Morris. He said that he had seen no evidence that the officers or Committee had at any stage acted contrary to the interests of the union or its members at the LSE.

Chronology for claims: 1 November 2016 onwards

94 The Claimant responded on 1 November saying that the rules were being ignored at the Branch and that the custom and practice there had been either to ignore the rules completely or apply them inconsistently. She said that she had been denied the opportunity of chairing the committee and that she wanted to chair the Branch again. She understood that the position of Chair was currently vacant because the position had not been properly filled in accordance with the rules. She asked whether she would be allowed the opportunity to compete for the position now.

95 Mr Jones responded on 2 November. He said that the Committee members had either been elected at the AGM or had been confirmed through the process that had been agreed at the AGM (with the exception of two reps). He said that Dr Banaji and Mr Morris were validly in post and that there were no vacancies.

96 The Claimant responded on 3 November and she disagreed with this last contention. Her principal point was that the Committee needed to fill positions before their appointments became rule-compliant. However she did not propose an election at which she would stand.

97 The reply from Mr Jones at page 2508 on 3 November is issue 4. He said that he did not propose to engage in a long dialogue as it would be unproductive and it was clear

> "that your approach to this matter is having a deleterious effect upon the branch committee and officers. Since you have now declared an interest in chairing the branch, please allow me to suggest that you might consider the need to work in a collegiate fashion for the best interests of all concerned. You had the opportunity to stand for chair at the AGM and immediately afterwards when we were all very concerned to find a candidate for the position. You chose not to take that opportunity, and are now disrupting the branch to no clear benefit to UCU members."

He then said that he had already dealt with the question as to whether any Committee member may not have complied with rules for election or with the

process that he said was explicitly agreed at the AGM. He described the Claimant's suggestion that the Chair was not filled appropriately to be misguided. He concluded: "your suggestion that the exercise of identifying branch officers was conducted by the regional office is not true. It is true that we were supportive and engaged in encouraging the process to be concluded as quickly as possible, but we did not determine the outcome or 'fill' any vacancies."

98 The Claimant disagreed (at page 2509, to which reference should be made.) Also on 3 November, at page 4085, Dr Banaji told the other Officers that she had just returned from hospital with a herniated disc. She was totally immobilised.

99 We pause to consider the intra-union emails. On 1 November Mr Young said to Dr Banaji that he was amazed that the Claimant wanted to be Chair and he wondered why she had not stood at the AGM. He also said at about this time "we really need the committee to make it clear to Anne how they feel about her being Chair next week - as I suspect half or more would resign?!" Dr Banaji said that if Mr Morris resigned, so would she.

100 On 2 November Mr Young suggested that two contrary proposals for rule changes, Prof. Tonkiss's and the Claimant's, should go before the meeting. The same day Dr Banaji told Mr Morris, Mr Young and Dr Meagher, with others copied in, that she considered some of the Claimant's conversations to constitute harassment and she was now feeling bullied. For completeness, we note that we have not cited all the matters emanating from the Claimant.

101 On 2 November Mr Jones said in an email to Ms Holroyd that he thought the Claimant's behaviour was "beyond acceptable". The Claimant had just written to the membership. Ms Holroyd was annoyed at something in this email to the members which suggested that Ms Holroyd had made some error and she said to Mr Jones that day that she would be speaking to her own union shop steward. Her union is a different one to the Respondent and there is no doubt that she was joining others in voicing worry and concern about the effect of the Claimant's communications.

102 At the Branch Committee meeting of 8 November those present (Mr Morris was absent sick) voted to confirm the Chair and Vice Chair and all current Committee members and departmental reps in their positions, by 9 votes to 0 with one abstention. No other candidates were proposed.

103 There was a heated exchange at this meeting which is dealt with relatively briefly by the Claimant in paragraph 95 her witness statement. As noted above, Dr Banaji had been ill and had been immobilised, although she was able to work on her phone and, as we accept, send and receive emails with the assistance of her husband. There was a JNICC meeting due to take place on 10 November and the School had sent papers in advance, but they had not been distributed to the Committee. This irritated the Claimant and she wanted to know why this was. Dr Banaji gives a detailed account of the increasingly angry exchanges in paragraphs 58 and 59 of her witness statement. The Claimant's response is that many of these assertions are lies. Both Dr Banaji and Mr Young were cross-examined

extensively by the Claimant and she has put her challenges squarely to them. The first point of dishonesty she alleges is that Dr Banaji is accused of saying at the meeting that the School had sent the papers out late. Dr Banaji denies this as does Mr Young and they note that Dr Banaji, Ms Holroyd and Mr Morris had all been ill. On their account they said at the meeting that they had seen the papers the day before and they did not say that the papers had been sent the day before. The Claimant says they are lying.

104 The first finding we make is that the very angry exchanges did not involve any questioning as to when the papers had been received. This only arose later, after the Claimant learned that they had been sent out by the LSE in time. The issue raised by the Claimant was why they had not been forwarded to members and the focus was on Dr Banaji. We have no doubt that she explained that she had been ill as others had been. Dr Banaji told us that in the week before the meeting she was either on her back or in traction. After traction, she was on opioids. She had been in great pain. It is likely that at the meeting she did not descend to the full level of medical detail, but we find that she and Mr Young made it clear that there had been a major health problem.

105 The more significant finding is that the Claimant, in common parlance, went for her. We accept Mr Young's description of the way in which the Claimant behaved and he terms it aggressive. He confirmed that her focus was on why Dr Banaji had not forwarded the papers earlier and we accept this as accurate. He says that she was visibly ill at the meeting and we also accept that. We also find that the Claimant's accusations against Dr Banaji were relatively trivial and insignificant.

106 That behaviour is documented, in our view, with accuracy by Dr Banaji in her witness statement and Mr Young corroborates her evidence. The Claimant said to her that it was not good enough and that she had not been doing her job. The Claimant was angry. She accused her of pulling faces. At one point she mimicked her accent. The Claimant accepts that she told Dr Banaji "don't grimace at me. If you can't manage your facial expressions you can't be an effective negotiator." (Dr Banaji was at the time in pain.) When cross-examined, the Claimant was not prepared to accept that she was in pain, but did concede that she had been on pain medication. She remarked that Dr Banaji had not put in medical evidence to the tribunal to corroborate the pain she was in.

107 We find that these exchanges at the meeting were heated and angry on the Claimant's part. Dr Banaji's statement continues: "I felt harassed by Anne Barron. Whatever phrase I used, I felt completely undermined as Chair of the meeting by her repeated challenges, demands, interruptions, mimicry, aggression, her comment about how I could never negotiate, and deeply belittled in front of my Committee colleagues. Francine Tonkiss and Kathleen Meagher tried to calm Anne Barron and mollify her, and the meeting proceeded in uneasy calm to its conclusion."

108 Dr Banaji said either "this is harassment" or that she felt harassed. In context, the difference between these two formulations is immaterial. We recall that Dr Banaji had already said in an email that she felt bullied. When after the

meeting she sought to smooth matters over with the Claimant, she was told "do you even know what harassment is? Accusing me of harassment! Tell me who put together the list of all my letters? I'll show you harassment." Dr Banaji says that the Claimant then shouted at her so that she felt physically intimidated. Further, she then later told Mr Young that she felt like stepping down from her role because she felt harassed and threatened but that he persuaded her not to for the good of the Branch. "I was so upset and horrified by how Anne Barron had treated me that day that I cried for several days afterwards and racked my brains over whether I myself had done something wrong to provoke such untoward bitterness and hostility. Ever since that meeting I have never been able to be in a room with Anne Barron without thinking about that incident and how I felt that she was going to assault me." We do not consider that Dr Banaji has exaggerated her evidence and we find that the incident was deeply unpleasant. Having heard the protagonists at some length, we find Dr Banaji's evidence to be convincing and accurate and in certain respects not denied by the Claimant.

109 In the subsequent correspondence the Claimant raised a large number of emails during the course of which she questioned the various versions of the minutes that were being produced in relation to this incident. It would be disproportionate to refer to them all. From all of the evidence, written and oral, we find that the Claimant set out to establish that Dr Banaji had "lied". Her first concern was to have it recorded that Dr Banaji said she was *being* harassed or words to that effect. The reason was that the Claimant, taking a legalistic view of harassment, considered that she had not been harassing her and therefore the allegation of harassment was untrue. Secondly, when Dr Banaji offered to amend the minutes so that her words were "I'm feeling harassed" the Claimant objected, saying this was a further untruth. In other words, she was using disputes over the wording of the minutes to manoeuvre Dr Banaji into a position of tactical disadvantage. We now turn to some of the evidence.

110 The Claimant's email of 9 November 2016, pages 4020 to 4021, set out her basic complaint that she had neither harassed Dr Banaji in law nor by reference to the LSE's anti-harassment policy; and that the allegation was a ridiculous slur. She then asked for a public apology: page 4019. The Claimant continued in like vein, for example at pages 4000 to 4001 where she quoted section 26 of the Equality Act.

111 At page 4010 is Dr Banaji saying that the minutes would say she was "feeling harassed". The Claimant objected - page 3944. On 30 November, page 3877, she accused the Union, in her email to Mr Jones, of "countless breaches of UCU rules and abuses of power, over a long time."

112 On 6 December a version of the minutes was circulated and the "feeling harassed" formulation was used. The Claimant objected, page 3237 - see point 5(a). In this email, dated 7 December 2016, she told her fellow committee members that the various misrepresentations in the minutes were deliberate and connoted bad faith. "I further believe that there is a concerted strategy by the London regional office to cover up malpractice by those who occupy positions of power in this branch of UCU and to bully those who challenge this behaviour." (At one point in the hearing the Claimant readily agreed that these criticisms included

an attack on Ms Holroyd.) It was this that led Dr Banaji, within the hour, to write to Mr Jones attaching the email and saying, "I think you have to step in on Isabel's behalf - I am so upset even though we expected this."

113 Mr Jones then wrote the following to Mr Lovejoy.

> "Unfortunately, over the last few months, a situation has developed within the LSE branch, where one single member of the branch committee has taken it upon herself to wage a destructive war against the branch officers, the regional office, and everybody else who might disagree with her and her approach. I will send you the whole file, but I feel I need to bring the email below to your attention, because it specifically accuses us, and all but names Isabel as the branch administrator, of 'bad faith' and 'malpractice'. This is an entirely characteristic communication from her, though possibly the most offensive we've yet seen. I intend this afternoon to provide the LSE branch committee with a copy of the UCU Dignity at Work policy so that we can invite them to abide by its terms, and we will each (Isabel, Andy and myself) need to consider whether we need to raise a complaint."

114 In the period we have been dealing with, 8 November to 7 December 2016, there were many other emails which amply document the dysfunctional situation that was emerging at the Branch. We touch on a sample only. On 11 November Dr Banaji referred to her still feeling harassed by the emails that were being generated by the Claimant. She described them as endless and pointless and characterised them as a form of online bullying. She raised the possibility of standing down at the end of the term "for my health and sanity." On 14 November the Claimant herself referred to a crisis in the Union but she blamed the other people involved for numerous rule breaches and so forth.

115 There was correspondence preceding the general meeting of the Branch on 16 November, at which rule changes would be proposed. And on that day the Claimant raised various protests in her email at page 3746. After the meeting, at page 3744, she accused Mr Morris of having determined the agenda for the general meeting the day before and said he had no authority under the rules to do so. She was upset that the rival rule change proposal of Dr Banaji had been taken first and approved. At the meeting it was then proposed and agreed that there was no need to move on to the Claimant's contrary proposal for a rule change. Having heard the evidence, it is evident to this tribunal that the way in which the meeting handled the matter was correct. As to the further allegations about what happened at this meeting, see paragraphs 182 and 183 below.

116 On 17 November she alleged malpractice on the part of Mr Jones, Mr Young and Ms Holroyd to Mr Cottrell who is employed at UCU head office and who features later in the chronology. He told her that she was free to complain about any members of staff or any aspects of the service that she received as a member. We also note her earlier email to him in which she said she had evidence that the support officer, who was Mr Young, had lied to the Committee in order to cover up a rule breach by one of the 'officers'. The quotation marks around that last word doubtless reflected her view as to the legality of their appointment. She was raising other issues about the rules on 17 November and this in part led Dr Meagher to write saying "can we please stop with all this endless tirade about the Rules." She made various other points and said that she would no longer read or respond to any UCU-related emails that involved needless meddling in things that are not one's job. In response the Claimant told her that it was alarming that she did not

know what the rules were. Clearly, by this point, the Claimant was in wholesale dispute with virtually everybody with whom she came into contact in the Union. It is also evident from the emails that a number of officers were concerned about criticisms of Ms Holroyd and one example only is at page 3639.

117 We can see that on 28 November the Claimant in a critical email to Dr Banaji opened by saying "when you took (and I use the word advisedly) the role of Vice Chair … " Unsurprisingly, Dr Banaji was affronted by this. On the same day she wrote an email in which she referred to Dr McGovern as Great Leader McGovern. He responded that he was taking note of her mocking language. She said he should take a look at himself as "mocking, dismissive, condescending and insulting language is your stock in trade." Later on she said he could dish it out but couldn't take it and he should grow up. We note that various issues were intertwined in the course of the email exchanges. By 7 December, as we have noted, the Claimant, having been sent minutes of the 8 November meeting, was writing again with her complaints about them. We find that her relationship with the other officers, with the exception of Mr Chandra who largely supported her in correspondence, had broken down some weeks before 7 December. What happened on that day was written confirmation on the part of Mr Jones that the situation was untenable because (he said) of the Claimant's behaviour.

118 On 7 December 2016 Mr Jones sent the Dignity At Work policy ("DAW policy") to the Committee, including the Claimant. He said that it was regrettable to have to send the policy to them but they would understand that the Claimant's public allegations were unacceptable. The Claimant responded (page 3031) by saying that bullying and harassment only occurred if competent colleagues were criticised. Her implication was that the colleagues she was criticising were incompetent.

119 The next day, 8 December, Mr Lovejoy, National Head of Regional Organisations and Nations, wrote to her in respect of her last two emails and said they included "very serious public allegations against UCU members and staff." He said that she should desist and use the formal complaints procedure if she wished.

120 Earlier that day Dr Chandra wrote an email concerning the 8 November meeting. He said that he supported the Claimant and he admired her courage in standing up to group pressures. In response Dr McGovern wrote the email at pages 3045 to 3046 in which he asked whether Dr Chandra agreed with the Claimant in alleging that "this document's misrepresentations are deliberate"? He continued as follows:

> "Also following on your comment that you 'are supporting Anne' do you further support her claim that 'there is a concerted strategy by the London Regional Office to cover up malpractice by those who occupy positions of power in this branch of UCU, and to bully those who challenge this behaviour'? If so, you now need to produce verifiable evidence and take them through the appropriate procedures. Until you make your position clear, I cannot see how you can send any more emails - even with changed headings - and expect to retain any credibility. Among other things, you have to will [sic] have to continue to work with our very branch administrator and regional officers so you need to make your position very clear."

121 Not very long afterwards Dr Banaji tendered:

> "a full and public apology to Anne if I use the phrase 'this is harassment' when I should have said 'I feel harassed'. I have already expressed regret to the committee at the meeting for the fact that we did not send out the JNICC agenda and papers when I, Veronique and Dave were off sick, and Isabel was not working for LSE UCU on the 4th and 7th of November. I concur with others in rejecting the denigration of our regional colleagues' work and motives, and in noting that we are very fortunate that they are as patient and supportive as they are. Warm regards as always and hoping we can have a fresh start in the New Year."

122 At 1 pm on 8 December Mr Jones wrote to the officers the email at page 3018 which forms the subject of issue 7. In the first paragraph he said that he had no choice but to take action in relation to the Branch in light of his line management responsibilities to Ms Holroyd and Mr Young. Recent events had caused great distress and he was obliged to act under paragraph 6 of the DAW policy. "With deep regret, I have to advise you that as of today, and until such time as the situation can be normalised, I am asking Isabel and Andy to cease support for the LSE branch committee, including in relation to the administration of meetings and support for the JNICC/JNCC." He said that while the situation prevailed he would not respond to any member of the Committee other than the officeholder. He said that he was acting in order to protect his colleagues from breaches of the DAW policy.

123 Ms Mizgailo then asked how it would be best to break the news to the committee and at 1.53 pm she informed them: page 840. We omit here the further 28 emails passing between Committee members that day. They all expressed concern about the Claimant's conduct and how the situation could be remedied.

Events from first 'grievance', 9 December 2016 to 20 March 2017

124 The email correspondence continued the next day. Prof Tonkiss expressed the view (page 2945) that practically and ethically it was necessary to remove the Claimant from the Committee. Dr Meagher said that her view was that the Claimant was trying to disrupt and take over the Committee.

125 At 5.42 pm the Claimant told Mr Lovejoy that she would be preparing a formal complaint over the weekend. At 8.47 pm Mr Jones formally set out his complaint under the DAW policy, at pages 2935-2936. He alleged that the Claimant's behaviour over some months had had the effect of bullying and harassing Ms Holroyd, Mr Young and himself. He said that he had tried to resolve matters informally with the Claimant but that she, in effect, made matters worse by her response.

126 On 12 December the Claimant complained to Mr Jones that emails she had written over the last three weeks had attracted no response and she contrasted this with an email that had been sent to the rep, Mr Hughes, by Mr Jones on 9 December. This reads in its entirety: "thank you for your work on this. I will come along to the meeting on 24th January, and I will speak to Andy about background to the issues." (These were pay and conditions for support staff.) The Claimant, in effect, also said that she was considering legal action against the Union.

127 Mr Morris and Dr Banaji wrote to the Branch Cmmittee on 13 December 2016, page 2913. They said that the unseemly dispute must be brought to a close and they referred to the "unhelpful and discourteous tone" of some recent correspondence. The Claimant was not mentioned but there is no doubt that they were referring to her. They said they would seek further guidance from Head Office.

128 On 14 December 2000 (pages 2844-2850) the Claimant made a formal complaint to the General Secretary under the procedure enabling members to complain about the standard of service provided by the Union. This 'members' service complaint' we will refer to as the MSC complaint. A number of her complaints are reflected in the claims that she has made to this tribunal. The same day the Claimant raised an MSC complaint against Mr Young and Ms Holroyd: pages 2776 - 2780. She alleged collusion between Ms Holroyd and Regional Officers to cover up malpractice by the Branch officers, among other matters. She sought the permanent removal of Ms Holroyd as Administrator for the Branch and also the permanent removal of Mr Young as Regional Officer for the LSE.

129 On the same day, 14 December, Mr Young formalised his earlier DAW complaint against the Claimant: pages 2768-2771.

130 On 15 December Dr McGovern wrote again to Dr Chandra and asked him whether he agreed with the Claimant that the Regional Office had taken part in a concerted cover-up of malpractice by the Branch and also the further allegation that the Claimant had been bullied for challenging the malpractice. This is issue 6.

131 On 19 December Mr Cottrell, Head of Democratic Services, wrote to the Claimant (page 2235) and said that in her 14 December complaints there were missing papers in the supporting documentation. He sent this to her private email address. On 21 December he forwarded it to her email address at LSE. The Claimant responded and suggested that she had attempted to send him everything, although there had been a lot of paper. She said that she would send hard copies in the New Year. In her witness statement she criticises Mr Cottrell for using "the anonymised (and little-used) email address from which I had been corresponding with him" rather than the email address that accompanied the complaints of 14 December. She suggests that UCU must have lost the documents. Mr Cottrell points out, as we find, that he asked the General Secretary's PA to check that the pack had been properly photocopied; and he also mentioned the missing pages to various colleagues.

132 On 20 December Mr Lovejoy wrote to the Branch Committee the letter at page 2076. This stated that a member had made an MSC complaint and that staff had raised a DAW complaint. No names were mentioned. It went on to record the withdrawal of Mr Jones and Mr Young from providing support to the Branch. Ms Holroyd had also been withdrawn and this was specified. These arrangements were said to be pending determination of the complaints and he asked them to retain confidentiality.

133 On 20 December Ms Holroyd, at page 2055, raised a DAW complaint against the Claimant. She referred to the Claimant's "inflammatory emails" and "a number of unfounded criticisms and some serious allegations … about my work, and disseminated to the whole LSE UCU Committee; with at least one criticism of my work being sent to the whole LSE UCU membership."

134 On 12 January 2017 Dr Banaji, Mr Morris and Ms Mizgailo submitted to the General Secretary a complaint against the Claimant under 'Rule 13'. This is a procedure "to censure or bar a member from holding any office" or to suspend or expel a member for conduct in breach of the Rules or conduct "deemed to be a matter of significant detriment to the interests of the Union." Any member or employee of UCU can bring such complaint.

135 There is annexed at B a flowchart that may be useful in following the procedural chronology of these lines of complaint under the three separate written procedures.

136 Mr Cottrell has been employed by the Respondent or one of its constituent predecessors (the AUT) since 1985 and at one point he was Assistant General Secretary of the AUT. He advises the Respondent's General Secretary, national officers and the National Executive Committee, as well as branches, about rules and procedures. He also has overall responsibility for the complaints procedures.

137 After some preliminary approaches by the Claimant in the autumn of 2016, in which she remained anonymous, he received an email which identified her on 16 November 2016. He sent her the MSC procedure. On 8 December Mr Lovejoy copied various emails to Mr Cottrell. The next day the Union received the Jones DAW complaint against the Claimant. On 13 December Mr Cottrell set out his approach to the various complaints and potential complaints: page 5824. We find nothing to criticise in what he wrote. He further set out his reasoning in paragraph 16 of his witness statement to which reference should be made. We find that he was aware of potential conflicts of interest and understood how to avoid them.

138 The documents show how he responded to the complaints. On 19 December the General Secretary asked him to investigate the Claimant's MSC complaints of five days earlier. At that point Mr Cottrell realised that there were some missing pages in the documentation, as we have recorded above. He deals with the allegations about the missing pages in paragraph 22 to 29 of his witness statement. Having heard the witnesses and read the documents, we regard his evidence as unimpeachable. Allegations of dishonesty and bad faith that have at various points been made by the Claimant about these matters have no basis, in our view.

139 We find that he began his investigation into the complaint against Ms Holroyd on his return in the New Year. We accept that considerable time needed to be spent on them. He regarded some of the complaints as falling outside the relevant procedure, but his view was that he should investigate all of them in view of their seriousness, and also in terms of the remedy that the Claimant was seeking. (This included £18,300 in compensation.)

140 He interviewed the three members of staff individually and also Ms Mizgailo by telephone. He also held one collective meeting with all three concerning their DAW complaints. Mr Cottrell was challenged about this in cross examination, but he was "absolutely certain" about the individual meetings and he relied on his email at page 5786. This stated that he would meet them "separately in relation to Anne Barron's complaint." We find that this is what happened. On 11 January 2017 he asked the Claimant if she wished to meet with him. She declined, saying that the rules said nothing about "hearings." She said that she had no time to meet, largely because UCU had lost her papers and thereby caused her lost time and inconvenience. Mr Cottrell then wrote his report towards the end of January.

141 His report on the Claimant's MSC complaint against Ms Holroyd is dated 25 January 2017 and is at pages 1145 to 1150. After dealing with the procedural point that the complaint about "the standard of service provided to my branch" was outside the procedure, he then went on to deal with the merits for the reasons that we have mentioned. It is necessary to record some of the detail.

142 He first dealt with the allegation of collusion by Ms Holroyd in preparing minutes that covered up malpractice by Officers; and the further allegation that she generally supported those Officers in neglecting their duties. He recorded the Claimant's view that Ms Holroyd had a "sorely limited" ability to take minutes and a "poor grasp of the issues under discussion". He said there was no evidence to support these accusations and that they were untrue. Having examined the minutes of the Branch, the Committee and the AGM he concluded that they were prepared to a good standard and normally approved with only minor correction. The Branch Secretary was very happy with the minute taking. He found Ms Holroyd to be "an experienced, professional minute taker with an excellent understanding of UCU and its branch organisation." The Claimant was entitled to challenge the minutes but Ms Holroyd "does not control or direct this process or act as a decision-maker or have responsibility for the final content of the minutes." He said of the Claimant's portrayal of the Administrator's role in this process, that it bore no relation to reality.

143 Of the allegation that Ms Holroyd had intervened impermissibly in the affairs of the Branch, called meetings and breached rules and standing orders and also withheld important papers, he stated this: "[Ms Holroyd] has no independent power to call branch meetings. She simply cannot do that and would not get away with it even if for some bizarre reason she were to make the attempt." He went on in respect of one of these allegations to note that the Claimant's email evidence was "a dense thicket of confusing annexes and highlighted and commented emails, the vast majority of which are about [her] running battle with the branch officers …"

144 He found that there was no evidence to suggest that Ms Holroyd had withheld papers and of this allegation he said: "this appears to be another example of [the Claimant] deciding retrospectively to attack the member of staff trying in difficult circumstances to do her job. The idea that [Ms Holroyd] was part of some conspiracy to deprive members of access to papers for a meeting has no basis whatsoever in evidence and is patently absurd."

145 He rejected other complaints. In paragraph 26 of his report he identified an error made by Ms Holroyd and noted that it was a rare and honest mistake of no significance "… unless, of course, one sees conspiracies lurking behind every email." In the context of another relatively minor allegation he said that the Claimant "has no compunction about unearthing emails from many months ago, which apparently gave her no cause for concern at the time, and distorting their meaning in an attempt to concoct an impression of incompetence and conspiracy out of nothing."

146 He said in his conclusion that he could not understand why she had launched a vitriolic attack on Ms Holroyd and in all conscience call for her sacking. He thought she painted

> "a fantastic picture of the LSE branch as under the control of a powerful, dominant group, conspiring to manipulate agendas, minutes and papers with the guileful support of the branch administrator as their willing assistant in crime. In fact this is a UCU branch which has been struggling to function over the last few years, relying on volunteers to fill officer positions and an excellent, part-time administrator working at full capacity to keep the engine ticking over."

147 We note in passing that the ACO in her determination at paragraphs 32 to 33 and 87 to 89 rejected the complaint against Ms Holroyd in so far as they fell within the third complaint with which she was dealing. We consider Mr Cottrell's conclusions to be sound and we concur with the additional points made by the ACO.

148 In cross examination of Mr Cottrell, the Claimant began by accusing him of sitting directly behind her while she was being cross-examined, in order to intimidate her. She agreed that she had not mentioned this at the time. He denied the general allegation as well as the specific location that he was said to have occupied. We can record that this suggestion by the Claimant came as something of a surprise to the tribunal.

149 The next allegation was that Mr Cottrell had a preconceived plan before the formal complaint was made by her. This plan was to find out who the Claimant was and who was being complained about, so that he could then tip them off. He denied doing any such thing which would be "grossly unprofessional … I would never think of doing it …" He said that the only reason he normally wants to know the identity of somebody enquiring is so that he can be sure that he is dealing with a member of the union. We find Mr Cottrell's evidence to be clear and given with every appearance of accuracy. That he would act in this way and then lie about it to the tribunal and also, in the process, lie about the way he goes about dealing with complaints generally is, in our view, unlikely. Indeed, it is inherently improbable. The Respondent handles up to 20 complaints a year and the allegation that he deals with them in a biased way is one we consider to be extravagant and unfounded.

150 He then explained in evidence how he initially thought he should steer clear of the DAW complaints against the Claimant because of the possibility of conflict. However he then discussed this with the Head of HR and he received strong advice that, because of the overlapping issues, he should deal with all the complaints.

The General Secretary agreed and after the two separate meetings, so did Mr Cottrell. It was the degree of overlap that led him to this conclusion.

151 When taken to internal emails on 19 December 2016 which he had been copied into, he told us that he ignored them and was focused at that point only on the Claimant's complaints. There is nothing to indicate to the tribunal that he is being disingenuous about this.

152 The Claimant then advanced her case under issue 14 (and in relation to 19 December) as follows. "These guys, C Elford, P Cottrell and B Lovejoy, were buying time until Ms Holroyd got a complaint in, so sending the email of 21 December (page 5859) to the wrong address is buying time and it is victimisation. And the losing of pages was deliberate." Mr Cottrell denied this and in our view he did so conclusively. He pointed out that the private email address used on 19 December was the one that he had previously used. We note that it had been supplied by the Claimant and we also note that just six days before Christmas, it might have been the obvious email address to use in any event. Mr Cottrell told us that it never crossed his mind that she would not see the email sent to that address. However, he wrote again to the LSE address two days later because he was concerned that he had received no response and the LSE address had appeared on the complaint itself. His email said that he hoped that she would not mind his forwarding the email to the LSE address. The Claimant then did later that day reply from that same email address.

153 Therefore the Claimant's case is that Mr Cottrell set out on a deliberate course of delay by using the Claimant's personal email address even though there is no evidence that she would not be replying from that address promptly, or that he suspected that this would happen. Then, two days later, he wrote to her other address at the LSE taking care to mask his true intentions with the courteous words of his email. He then came to the tribunal knowingly to lie about what he had done as well as his true motives. We regard the allegation as irrational. In our view, the Claimant has combed through the documents after the event and constructed here a theory of deliberate and concerted disadvantage to her, which is implausible.

154 Mr Cottrell explained why on 11 January he said that he would meet the three employees collectively in respect of their own complaint and individually concerning the Claimant's complaint. (Page 5786.) In the tribunal's view this is unexceptionable. He confirmed (with "absolute certainty", to use his words) that he first investigated the Claimant's service complaints and interviewed the three separately; and later he interviewed them together concerning their complaint. We accept this evidence.

155 The Claimant put her case to Mr Cottrell under issue 15, that his email to her dated 16 January 2017 was victimisation. This email began as follows:

> "We have received complaints against you from three members of our staff: Isabel Holroyd, Andrew Young and Barry Jones. A copy of our Dignity at Work Policy and Procedure is attached. The complaints were initially submitted by the complainants to their line manager and forwarded to our Head of Personnel, Charles Elford. They were then referred to the General Secretary under paragraph 10 of Appendix A of the procedure. Because of the overlap in the events and documentation relating to these

> complaints and your own complaints against the three members of staff, the General Secretary has asked me to investigate the Dignity of Work complaints on her behalf and to report back to her with findings and recommendations."

156 There is no threat of disciplinary action in this email. The Claimant put to Mr Cottrell that the DAW policy could not be used by an employee against a member. Mr Cottrell disagreed. A straightforward reading of the policy supports him. Paragraph 3 states: "UCU also recognises that it has a responsibility to protect employees from bullying or harassment at work by members of the UCU and its elected representatives (see Appendix A)." Appendix A, paragraph 10, states that a staff member made the subject of inappropriate criticism by an elected member or of behaviour felt to be "in contravention of these guidelines" should report it. The recipient of the report may consider other "appropriate action under the DAW Policy and Procedure and the rules of the UCU." It does not appear to the tribunal to be correct to say that this procedure could not be invoked by an employee against the Claimant. Mr Cottrell's evidence is therefore correct in that regard.

157 He also made it plain that after he had read the Claimant's annotated documents, he had no doubt that she was alleging a conscious conspiracy and collusion among the staff to cover up malpractice at the Branch. He also thought her complaints were "vitriolic" because the attack on Ms Holroyd was a devastating one for her. He told us that he remembered very well that the first thing she told him was that she was unable to enjoy the Christmas break because of the complaint.

158 There were various other points that arose in his cross examination and, where relevant, we will return to these in our conclusions.

159 In paragraph above, we have referred to the Rule 13 complaint against the Claimant that was made by Messrs Banaji, Morris and Mizgailo on 12 January 2017. This is to be seen on the right hand side of the flowchart at Annex B. The letter of this date, pages 1776 - 1777, is a strong statement from the three Branch Offices that the Claimant's behaviour had almost paralysed the Branch Committee. They concluded by asking the Union to suspend the Claimant from holding Branch office "before all three of us step down to avoid further UCU work-related stress."

160 Ms Hunt, the General Secretary, asked Dr Roger to be the Investigating Officer for this Rule 13 complaint. The ACO set out the relevant procedural rules in her determination. The first step is that the Investigating Officer must determine whether the complaint was received in time; whether it was set out in the correct form; and whether the subject matter is within the scope of Rule 13.1. If the answer to any of these questions is in the negative, she must dismiss the complaint. On 20 January Dr Roger, after meeting with Ms Helen Carr, National Head of Equality, considered that the Rule 13 complaint should be investigated.

161 On 25 January the Claimant brought her own Rule 13 complaint against Dr Roger. Her main point was that Dr Roger ought to have dismissed the complaint against her on the procedural grounds that we have referred to; and that her failure to do so constituted misconduct. The Claimant wanted Dr Roger to be disciplined

and permanently disqualified from ever investigating any complaint under the Union's rules. Ms Hunt thought that this was a misconceived complaint by the Claimant, but she also removed Dr Roger from dealing with the original complaint, as the Claimant had no confidence in her.

162 The ACO said in paragraph 98 of her determination that "the Claimant's Rule 13 complaint does not fall within Rule 13 - even if correct in its allegation, it is outside the scope of Rule 13. I agree that it is utterly misconceived and without merit." However she agreed with the Claimant that Ms Hunt ought not to have rejected it without going through the specific Rule 13 procedure that required another Investigating Officer to be appointed in order to see, inter alia, whether the complaint was within the scope of Rule 13. Therefore, the Claimant's complaint to the ACO would have succeeded, but for the fact that the ACO separately found that the Rule 13 procedure was not part of the Union rules. Nevertheless, the ACO said, in the alternative, what she would have done if this last contention were wrong: paragraph 112. An enforcement order would have been inappropriate, she said, because the Rule 13 complaint was without merit and misconceived. She also said (a) that the Claimant's behaviour was in this regard challenging and inappropriate; and (b) that the Claimant ended up with what she wanted, i.e. a new Investigating Officer (Mr Anderson) who did in due course dismiss the Rule 13 complaint against the Claimant on procedural grounds.

163 When Ms Hunt was questioned by the Claimant, it was put to her that she "knew very well" about the situation at the LSE and, in particular, that the Claimant had made complaints of sex discrimination on 14 December; and this is why Ms Hunt endorsed the reports made by Mr Cottrell. Ms Hunt was categorical in denying this. "All the way through this I have wanted myself and others to follow procedures in an open and transparent way … Concerning Dr Roger, I took the extra step of going the extra mile, of asking her to recuse herself." She said that she believed that Mr Cottrell had done a thorough job. The Claimant then suggested that her 'technical breach' was subconsciously or consciously because of the Equality Act complaint that she had made, which Ms Hunt also denied. None of Ms Hunt's evidence struck us as either being rationalised after the event or misleading in any way. She was also a candid witness.

164 As to Dr Roger, she told the tribunal why she reached the decision she came to on the Rule 13 complaint. Three Officers were considering stepping down and the Regional Office had withdrawn staff. The Claimant alleged that Ms Carr, with whom Dr Roger had met, had shaped her thinking. Again, Dr Roger disagreed and insisted that she had taken the lead in the discussion - it was her decision and her responsibility to take it. She had never heard of staff being withdrawn from a Branch and it is evident to the tribunal, as we find, that this was a significant part of her reasoning. The Claimant ended her questioning by telling us that her victimisation claim here was now against Ms Carr and not Dr Roger. She said that she would be inviting the tribunal to draw an inference from Ms Carr's absence as a witness.

165 Ms Carr was then called. She said that she knew nothing of the 14 December complaint or any allegations that the Union or its employees or officials

had contravened the Equality Act. Nor did she believe that the Claimant might make such allegations. She first knew of the discrimination complaint in early May 2017. She gave detailed background evidence to us about her role and we found this to be both credible and accurate.

166 We return to Mr Cottrell. He completed his MSC reports between 25 and 31 January 2017. His DAW reports were completed between 2 and 8 February 2017. We have already referred to his conclusions in the MSC report against Ms Holroyd. The MSC report concerning Mr Young included his finding that there was no evidence that Mr Young had selected the Branch Chair or Vice-Chair. "This complaint is simply an expression of belief by [the Claimant] without any foundation of fact." He rejected all of the other complaints against Mr Young and this was as a separate finding to his concluding that none of the complaints fell within the MSC procedure. On its merits the MSC complaint against Mr Young was "unfounded, unreasonable and vexatious."

167 As to the MSC complaint against Mr Jones, he reached the same conclusions, adding that the Claimant's "totally unjustified attack on [Mr Jones] is malicious." He held that two of the three complaints against Mr Jones did fall within the MSC procedure. He concluded that the Chair and Vice-Chair positions had been legitimately filled by the Committee in 2016. He described the Claimant's written contention in November 2016 about the role of the Regional Office as "a deliberately perverse reading of [Mr Jones's] email, it is a provocative, fantastic accusation with no basis in reality." He dismissed the other complaints and his language included a reference to the Claimant's "onslaught of critical emails". An allegation that Mr Jones "openly declared his indifference to the UCU rules" was described by him as "another outrageous allegation of the utmost seriousness, which is patently untrue and in my view malicious."

168 Turning to the three DAW complaints, Mr Cottrell upheld all three. He recommended that the Rule 13 procedure be invoked against the Claimant. Some of his language is trenchant. For example, in the Jones complaint he describes an email from the Claimant dated 28 November 2016: "this is both barrels, liberally laced with sarcasm." The Claimant "will not brook disagreement; she will not accept that the branch committee operates by consensus or democratic decision; she will not participate as one committee member among others - it's her way or watch out." Of another email he said: "More sarcasm, and insulting tone and the repetition of the accusation, now free from euphemism, of 'lying' at committee meetings." In the Holroyd complaint Mr Cottrell referred to the Claimant's "bullying and harassment of [Ms Holroyd] [it] was malicious, insulting, publicly critical, demeaning, undermining and unfair." We will need to return in our conclusions to these findings made by Mr Cottrell and his language, specifically in relation to the claims raised by the Claimant.

169 Ms Hunt was, therefore, faced with the following. First, the Rule 13 complaints brought by the three Branch Offcers against the Claimant ended with Mr Anderson's decision that they be dismissed for failing to meet the criteria in Rule 6.1. Ms Hunt accepted this (as she was bound to) and informed the three complainants. She did not tell the Claimant and this was because the rules did not require it. What is unusual here is that, because of the original ruling by Dr Roger,

the Claimant knew of the complaints. Ms Hunt now accepts that it would have been better to have informed the Claimant of the outcome.

170 Second, she had the six reports from Mr Cottrell. She did not, when she received these, invoke Rule 13 because the Rule 13 complaints above were in the process of being dealt with. Thereafter no action has been taken against the Claimant so far as the tribunal is aware.

171 The final complaint in the sequence is the Claimant's complaint against Ms Hunt, on 17 February 2017, page 779 and also referred to on the right-hand side of the flowchart. She complained of unlawful bias by Ms Hunt and the complaint was brought under the MSC procedure. Mr Goodfellow, the then President of the Union, dealt with it under the rules. The Claimant had referred in her letter to the necessity of starting employment tribunal proceedings. Mr Goodfellow passed the complaint on to lawyers. They drafted the response sent out in his name at pages 582 to 583. The complaint was rejected, principally on the ground that it was without merit and that it was within the General Secretary's discretion to reject misconceived complaints. Further, it was said that Dr Roger had not breached the rules.

172 It is a relatively small point, but this letter was sent electronically to the Claimant in two sections as two pages were being scanned and were sent individually. The Claimant wrote to the PA, Liz Smith, "at least have the courtesy to send this to me in hardcopy form as a letter-in one envelope." She then immediately continued in a separate paragraph: "Your organisation is a disgrace." This is a peremptory email without a greeting and we find that it was Ms Smith's personal organising ability that has been criticised by the Claimant. As Ms Smith noted within 20 minutes, she was shocked to read this email

Subsequent Events

173 On 21 March 2017 Ms Mizgailo resigned as Branch Secretary, saying that this was because of a campaign of sustained harassment. She had complained to the HR Department of the LSE. Clearly, she was complaining about the Claimant. Others then agreed with her by email.

174 On 27 March 12 signatories wrote to the Claimant and we need to cite the letter in full.

> "We have observed with growing distress your constant insinuations of malpractice by other members of the LSE branch committee who are working hard to advance the interests of our members.
>
> You may be procedurally correct that under the pressure of keeping branch business going not every dot and comma of the local rules has been followed. However, at no point have you ever provided any evidence that rules have not been followed in this manner in order to frustrate the working of the branch or for any malevolent intent.
>
> Your demanding and accusatory emails have caused extreme stress, wasted the scarce time and energy of our officers and other branch members and interfered with our task of representing our members.

> We do not know what you are hoping to achieve through your actions as you have never expressed any vision for the branch that you perceive as being frustrated by other branch members.
>
> We must ask you to cease persistently aggressive behaviour so we can restore the branch to its previous high standard of effectiveness and allow your fellow members to get satisfaction from their voluntary efforts to make LSE a better place to work."

175 On 28 March the Claimant indicated that she wanted to stand for the post of Secretary. Mr Hughes wrote to colleagues two days later as follows:

> "My personal point of view is that it would be a very bad thing for Anne Barron to be Branch Secretary on any basis - temporary or permanent. I feel that it is completely obvious the Committee would not appoint Anne on temporary basis and that to either not understand this, or pretend to not understand it, by itself shows that Anne is completely unfit for the post - the most important role for any Union Branch Sec is to mobilise and organise as many members as possible in Union activity. But Anne has, as far as I can tell, consistently aggravated and irritated other active members of the union, and adds to this problem by refusing to acknowledge this is the case. The last thing the union needs is a lot of what seem to me to be long and either passive aggressive or just plain aggressive emails coming from the Branch Secretary."

176 Mr Cushman was nominated for the Secretary's post. On 31 March the Claimant said that there must be an election and proposed a returning officer by name. Dr Banaji and Mr Morris then pointed out that all members were entitled to stand. The Claimant objected to a Regional Office employee acting as the returning officer, which had always been the tradition in the Branch. However, the dispute as to whether the returning officer could be someone from Regional Office was overtaken by events.

177 On 25 April 2017 Mr Morris and Dr Banaji, the Chair and Vice-Chair of the Branch, wrote to the Committee as follows:

> "We are writing to inform you that due to our sense of a repeated and systematic refusal to respect our dignity at work in the roles we hold as chair and vice chair by individuals on this committee, we will not be standing again as chair or vice chair, but will be stepping down together at the AGM in June. Until then, with your support, we will continue to undertake out duties as well as those of the Secretary when necessary … Given the proximity of the AGM … the fact that we have not yet settled on a returning officer, we suggest to you that there is now no time for an additional election for the post of Secretary. Calls for nominations for all three posts will go to the whole branch shortly."

178 The Claimant responded the same day. She began by accusing Mr Morris and Dr Banaji of stepping down without dignity or grace. She also objected to their exercising the role of Secretary, pro tem.

179 On 2 May the Committee was informed by Mr Morris that a Ms Sackur (from the Regional Office) would be the returning officer. The Claimant's evidence is that she then decided that there was no point in her standing for any officer post as she had no confidence "that the UCU could be independent in relation to any election …"

180 On 15 May the Claimant wrote to the Committee (page 332) to revive her earlier proposals for changes to be made to the local rules. Prof Tonkiss replied

saying that Mr Morris and Dr Banaji were undertaking the Secretary's role; that the rules provided for this and that no election was needed; and that "it would be advisable to forward" her proposal to them. The Claimant in reply said this was a ridiculous suggestion. For completeness, the ACO dismissed the Claimant's complaint that the Union had failed to call an election. In paragraphs 102 to 103 the ACO held that the local rule 8.7 did, indeed, enable the Committee to fill a casual vacancy in the way that it had. Although this is binding on us, we also see no conceivable argument to the contrary.

181 The AGM was held on 5 June 2017 and the Claimant's rule changes were tabled for discussion. By the time the item was reached, the meeting had become inquorate and therefore it was not taken. The Claimant sought an EGM. Prof Tonkiss, who had been elected Chair at the AGM, took advice as to whether this fell within Rule 16 and was told by Head Office that it did not. She explained this to the Claimant on 12 June - pages 39 to 40. She said that the Claimant's motion should be considered at a Branch general meeting and should be given priority. The Claimant alleged in response that Prof Tonkiss had given no reasons for the decision and that she would now refer this issue to the Certification Officer.

Other matters

182 There is a claim of harassment based on the conduct of Mr Morris and Mr Cushman at the Branch general meeting of 16 November 2016. The Claimant's witness statement says that Mr Cushman shouted her down when she challenged him while he was giving a report that dealt with PhD Studentships. Mr Cushman says it was a complex topic and he needed to take five minutes and he did so slowly and carefully so that members could follow the detail. He says that the Claimant interrupted and started speaking over him; that Mr Morris asked her not to do so; she ignored this; and that he, Mr Cushman, had to raise his voice to be heard over the interruptions. Dr Banaji corroborates this and says that he did not shout her down: paragraph 63 of her statement.

183 In evidence, the Claimant told us that she may have tried to speak while Mr Cushman was speaking. She thought he had "gone on long enough." She did interrupt. "He then shouted over me so my interruptions could not be heard." We also find that she asked Mr Morris to time limit Mr Cushman and Mr Morris declined. Mr Young also said that she interrupted Mr Cushman. Mr Morris corroborates the evidence of Mr Young, Mr Cushman and Dr Banaji.

SUBMISSIONS

184 We are grateful for the substantial industry that the Claimant and Mr Brown have devoted to their respective submissions, some of which are referred to below.

THE LAW

185 Section 13(1) of the Equality Act 2010 provides that a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others. Sex is a protected characteristic.

Section 23(1) provides that: "On a comparison of cases for the purposes of section 13 … or 19 there must be no material difference between the circumstances relating to each case."

Section 27 of the 2010 Act in its material part provides that A victimises B if A subjects B to a detriment because – (a) B does a protected act, or (b) A believes that B has done, or may do, a protected act.

A protected act is any of: (a) bringing proceedings under the Act; … (c) doing any other thing for the purposes of or in connection with the Act; (d) making an allegation (whether or not express) that A or another person has contravened the Act.

Section 26 provides that "(1) A person ('A') harasses another ('B') if – (a) A engages in unwanted conduct related to a relevant protected characteristic and (b) the conduct has the purpose or effect of – (i) violating B's dignity; or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B …

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account – (a) the perception of B; (b) the other circumstances of the case; (c) whether it is reasonable for the conduct to have that effect."

Section136(2) provides that: if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. It is then provided that this subsection does not apply if A shows that A did not contravene the provision. This provision is mirrored in the antecedent legislation and there is no discernible difference in statutory intent.

As to burden of proof, the older law in **Igen Ltd v Wong** [2005] IRLR 258 still applies and the guidance is as follows:

" (1) Pursuant to section 63A of the Sex Discrimination Act 1975, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of section 41 or 42 of the SDA is to be treated as having been committed against the claimant. These are referred to below as 'such facts'.

(2) If the claimant does not prove such facts he or she will fail.

(3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that 'he or she would not have fitted in'.

(4) In deciding whether the Applicant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the

Tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

(5) It is important to note the word 'could' in section 63A(2). At this stage the Tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a Tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

(6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.

(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with section 74(2)(b) of the SDA from an evasive or equivocal reply to a questionnaire or any other questions that fall within section 74(2) of the SDA.

(8) Likewise, the Tribunal must decide whether any provision of any relevant code of practice is relevant and, if so, take it into account in determining such facts pursuant to section 56A(10) SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since 'no discrimination whatsoever' is compatible with the Burden of Proof Directive.

(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.

(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the Tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice."

There was further analysis of the burden of proof provisions made by Elias J in **Laing v Manchester City Council** [2006] IRLR 748, as well a re-consideration of burden of proof issues by the Court of Appeal in **Madarassy**. This case has confirmed the Laing analysis. In particular, we refer to paragraphs 56 to 58 and 68 to 79. Paragraph 57, in relation to the first stage analysis, directs us to consider all the evidence. "'Could conclude' … must mean that 'a reasonable tribunal could properly conclude' from all the evidence before it." All the evidence has to be considered in deciding whether there is a sufficient prima facie case to require an explanation.

We would also note guidance about the burden of proof contained in well known passages in **Amnesty International v Ahmed** (EAT) [2009] UKEAT/0447 at

paragraph 24 and, to the same effect in **Hewage v Grampian** [2012] UKSC 37. In the latter Lord Hope stated at paragraph 32: " … as Underhill J pointed out in Martin v Devonshires Solicitors [2011] ICR 352, para 39, it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other."

CONCLUSIONS

Amendments: preliminary considerations

186 The case is unusual in that the Claimant has twice, at a comparatively late stage, sought to amend her claim and in the case of the last application, this was received after the close of the case when all written and oral submissions had been completed. Following these applications has been no easy matter because the Claimant on each occasion has made amendments to the amended Particulars of Claim that she compiled after a preliminary hearing on 11 September 2017, with tracked changes to that document. Thus, on 19 June 2017 this amended document ran to 76 pages. On 13 July 2018 it had expanded to 80 pages. However, the amendments are much less in each case. On 19 June the Claimant grouped her amendments under 15 heads and on 13 July she specified a further seven more. The Respondent has accepted some of the amendments and opposed others.

187 The agreed position, when submissions were heard on 28 June, was that for the 19 June amendments that were then before the tribunal, we would take a decision during our Chambers deliberations. If an amendment was allowed and it was one that the Respondent had not had any opportunity to deal with in evidence, we would be obliged to make that clear and, further, to give the Respondent an opportunity to deal with the new claim. We also made clear that if an amendment was allowed, but it could be dealt with in the existing evidence, we would find accordingly. As to the 13 July application to amend received after we had started deciding the case, the Respondent has had an opportunity to state its objections in writing.

Amendments: the correct approach

188 As is well known, one of the important considerations in deciding on whether to allow amendment is the timing and manner of the application. However there is a further consideration that arises when complex applications are made at such a late stage after we have heard all of the evidence. This, of course, has happened twice here. The tribunal's view is that we are entitled first to make findings and reach conclusions on the case as pleaded and as was agreed at the outset (subject to one caveat.) The decision on amendment cannot, in reality, ignore the conclusions that we have reached. We cannot decide on these amendments in a vacuum and it would also be disproportionate to do so. We therefore intend to visit the question of amendment further on in these conclusions.

189 The caveat is that on days 1 and 2 the Claimant wished to argue that Dr McGovern's acts in the list of issues were, alternatively, acts of victimisation. We were prepared to entertain this as a 're-labelling' exercise.

The Claimant's 'comradeship' arguments

190 The Claimant's written closing submissions are cogent and structured. She refers to organisations being run on the basis of tacit understandings and accepted norms. The organisational culture is, she says, in this Union Branch biased against women and "inherently tainted by bias in favour of men." Individuals are inducted onto the Committee and, therefore, into the culture. An inner core and an outer core can be identified. There is a close bond of 'comradeship'. Only comrades are allowed into the inner core. It is uncomradely to criticise or challenge the core of comrades; and, if this happens, the critic has to be publicly retaliated against and shamed. It is an uncomradely to rely on the rules. The Chair should be a man and must be a comrade.

191 Thus, says the Claimant, the "culture is inherently sexist … The central idea sustaining the (LSE) UCU culture is that of 'comradeship' … and that this is in fact an idea of fraternal solidarity - no less so because several women have committed themselves to it. Time and time again, it is male power which has been enhanced through the enforcement of this idea, with women serving as supports to the consolidation of that male power." In oral submissions she referred to the fraternal clique, a band of brothers with the addition of a few women carefully chosen to support them.

192 This is a short summary of some of the arguments she advances. The detailed contentions of principle are to be found between pages 5 and 12 in the written submission.

193 What is evident to the tribunal is that the Claimant has elaborated and developed this theme as the case has proceeded and as the Respondent's witnesses were cross-examined.[3] Mr Brown put it in these terms. "[She] developed a case theory during the hearing that she was the victim of comradeship within the branch." He pinpoints the weekend at the end of the second week of the hearing as the point in time when the Claimant appears to have crystallised this theory.

194 The tribunal has come to the conclusion that the Claimant's arguments, as summarised above, do not fit the facts of the case. We will return to this below.

195 **Issue 1** (treated less favourably than Mr Morris when seeking to become Chair, October 2016 or 1 November 2016).

(a) Essential background. Our findings of fact are at paragraphs 64 to 70. The chronology starts in May 2016 and by the time of the AGM on the 23rd the Claimant could have been elected Chair if she had wanted the post. LSE management

[3] Mr Goodfellow, in particular, was questioned about this. It is of some interest that he firmly disagreed with the Claimant's suggestion that comradeship was a military, male concept. He maintained that it was a political notion and he gave examples.

encouraged the Union to find a Chair. Dr Banaji and Mr Morris said they would be co-Chairs, but Mr Young suggested that a sole Chair would be preferable. Where the Claimant fails is to persuade us that Mr Young wanted a male Chair. We have come to the opposite conclusion. Dr Banaji is correct, as a factual matter, to say that Mr Young preferred her to be Chair. We have dealt at length with the Claimant's challenges and for the reasons set out at paragraph 70 her case in relation to the background has failed to persuade us of its merits. The evidence of Mr Morris, Dr Banaji and Mr Young is clear and compelling. Moreover, the Claimant had been Acting Chair the year before.

(b) This issue. The Claimant says that information that was tainted by sex discrimination stereotyping was circulated to the Committee; and, further, that this led to the 8 November decision that she could not compete with Mr Morris for the Chair.

196 This is, we conclude, a mis-characterisation of the true facts. These are set out at paragraph 73 above. We have recorded there our agreement with the ACO that Messrs Morris and Banaji were validly appointed. In October the various disputes sharpened. We refer to our findings as to the animosities being voiced by 11 October. Yet by late October the situation had only deteriorated and the Claimant could not accept the legitimacy of the Chair and Vice-Chair. So, on 1 November, she insisted that the Branch was ignoring the rules. Again, the emails show a deteriorating situation and an allegation from Mr Jones on 3 November that the Claimant was disrupting the Branch. On 8 November the Chair and Vice-Chair were confirmed.

197 Our conclusion is that the Claimant fails to establish any facts from which we could find or infer sex discrimination. Her complaint concerning tainted information is misguided. It was the Claimant who was pursuing invalid arguments and she was responsible for the worsening atmosphere in the Committee. The Claimant's attempt to find direct sex discrimination in these events, whether by comparison to Mr Morris, by comparison with a hypothetical male, or otherwise, can only succeed if her version and understanding of events can be upheld. We have come to the contrary conclusion and this is that her version is the opposite of the true factual situation. This is not a case of the Claimant being stereotyped or of the comrades jointly shutting her out from an inner core. She was developing and using arguments that were incorrect and she is the party who bears the responsibility for the worsening situation which by this point amounted to a breakdown in relationships. There was no vacancy for Chair or Vice-Chair and there is no room for a claim of direct discrimination succeeding.

198 **Issue 4** (Mr Jones's email of 3 November 2016.) We refer to our findings at paragraph 97 above. The claim is that this is harassment. We can deal with this shortly and our comments apply also to the other claims of harassment. What is said in this email is in no sense related to sex. An attempt by the Claimant to tie these remarks into male domination, or a male culture, or comradeship is bound to fail. The essential foundation for a claim of harassment is therefore absent and the claim fails for that reason. However, Mr Brown is also correct, in our view, to submit that the comments in the email related to and arose from the Claimant's own conduct. Beyond that, there is no possibility that the email was written with

the purpose of creating a hostile or otherwise impermissible environment for the Claimant within the terms of section 26. Nor could the comments reasonably have such an effect.

199 On 31 October 2016 (paragraph 92 above) Mr Jones had taken issue with the Claimant in very moderate terms. The Claimant on 1 November said that the rules were being ignored and that this was the custom and practice within the Branch. Clearly the parties were moving into substantial dispute. When Mr Jones in this 3 November email again responded to the Claimant, he did so in terms that were polite but forceful, alleging that the Claimant was disrupting the Branch. This was to repeat a point made by the five principal officers of the Branch on 26 October. It was also true. However offended the Claimant may be when reading these words, her assessment that she was being subject to harassment in the legal sense is, we conclude, misguided and unreasonable.

200 **Issue 5A** (the Branch meeting of 16 November 2016 - Mr Morris's treatment of the Claimant and Mr Cushman shouting her down.) We refer to paragraphs 182 and 183 above. The evidence all points one way, given that we consider that none of the Respondent's witnesses were being untruthful. The simple position is that the Claimant talked over Mr Cushman while he was giving a complicated report because she thought that he had been going on for too long. We refer to the evidence she gave us orally. He raised his voice to be heard over her interruptions. This was not shouting her down and the claim of harassment related to sex is unsustainable on the same ground as set out above. As to Mr Morris's conduct, on the facts that we have found the tort of harassment cannot be asserted.

201 **Issue 6** (Dr McGovern's emails of 8 and 15 December 2016.) We refer to paragraphs 120 and 130 above. Dr McGovern was challenging Dr Chandra who appeared to be associating himself with the Claimant's allegations of malpractice and cover-up. It is impossible, in our opinion, to argue that Dr McGovern's two emails were in any sense related to sex. In any event, he was entitled to raise these matters with a fellow Committee member and it could not reasonably be said that an offensive or hostile environment was being created for the Claimant, nor do the other words of the section apply to these facts. The Claimant is here, in effect, challenging as tortious behaviour the sort of interaction between Committee members that is very likely to arise in such a fraught situation. It is incorrect to characterise Dr McGovern's robust emails to a colleague as actionable sex harassment of her.

202 **Issue 7** (Mr Jones's email of 8 December 2016.) We refer to paragraph 122 above. It is impossible to see how this important email could be related to sex. The Branch was facing what we would, having reviewed all the evidence, describe as a major crisis. The Claimant accepts that she was publicly criticising the Regional staff and was alleging a conspiracy. The decision to withdraw support was reasonably open to the Regional Office and in our view it was justifiable in the circumstances. Again, to convert this into a claim of sex harassment is to distort the facts in order to fit in with an overarching belief that the Respondent's Regional Officers were orchestrating a gender-based campaign against the Claimant. This claim of harassment inevitably fails.

203 Circulating the email to the Committee was something that the Secretary was obliged to do and this part of the harassment claim we consider to be misconceived.

204 **Issue 3** (Claimant treated less favourably than Mr Morris, Mr Young and Mr Jones or a hypothetical male concerning the Respondent's treatment of her complaints – 14 December 2016, 25 January 2017 and 17 February 2017.) It is convenient to deal with this claim of direct sex discrimination at this point.

205 We note the formal pleading to which this refers, which is paragraph 5.6 of the amended particulars document and the further paragraphs and sub-paragraphs that follow on - pages 50 to 52 of that document. This is a complex and convoluted pleading. The Claimant claims less favourable treatment and the particulars include: (a) the complaints were not fully and fairly considered. (b) Mr Cottrell told her she had no standing to bring the complaints. (c) They were said to be vexatious. (d) Mr Young's and Mr Jones's DAW complaints were investigated, but they had no standing to bring their complaints. (e) Their complaints were wrongly upheld but her complaints against them were wrongly rejected. (f) The investigations by Mr Cottrell and the complaints against her themselves were tainted by sexist prejudice. (g) Mr Cottrell supplied information to Ms Hunt and this was discrimination and/or victimisation. (h) Mr Morris's Rule 13 complaint should have been dismissed for breach of rule 6.1, inter alia, because it was vexatious and calculated to harass her. (i) Ms Hunt dismissed out of hand the Claimant's complaint about Dr Rogers's preliminary decision. (j) The Claimant's complaint against Ms Hunt was wrongly dismissed.

206 All of these suggested acts of direct discrimination are misconceived. Her MSC complaints were fully and fairly investigated and ruled upon. In this regard we endorse Mr Brown's submission. The Claimant objects to the findings and conclusions that Mr Cottrell came to, but her case that he has instigated or perpetuated sex discrimination, whether by using 'tainted' evidence or otherwise, has no evidential basis. He clearly had a poor opinion of the way in which the Claimant had conducted herself within the Branch. On the available material, he was entitled to that opinion and it was almost inevitable that any experienced investigator would find her correspondence to be unnecessarily adversarial and also, on technical issues, relating to the rules, simply wrong.

207 Mr Cottrell said that she had no standing to bring her complaint on behalf of the Branch. These last five words are omitted from the pleading, but Mr Cottrell was correct. Nevertheless, given the seriousness of the allegations, he went on to investigate them.

208 The DAW complaints were made under a different procedure to the MSC procedure the Claimant had used and it is incorrect to say that these complainants lacked standing. They were not wrongly upheld. There is no evidence of any sort that taints the complaints with gender prejudice. There is no support anywhere in the evidence for the claim of either discrimination or victimisation as to the information (or reports) that Mr Cottrell sent to Ms Hunt.

209 Mr Morris's complaints under Rule 13 (and those of the two other women) were not acts of harassment as they were not related to sex and they certainly were not vexatious, in our judgement. As the ACO has found, and we would independently have also found, the complaint against Dr Rogers's decision is misconceived. Ms Hunt made a technical slip up but this is far removed from any realistic or real-world complaint of sex discrimination. How it is that the General Secretary of this Union could be said to be advancing the interests of the male patriarchy is something that has not been explained to us, but which we in any case regards as incredible, in the narrow sense of that term.

210 It follows that we endorse a number of Mr Brown's specific arguments. He notes that the Rule 13 complaints against the Claimant were led by two women out of three complainants and that Mr Morris said he had not been the instigator. The handling of Ms Holroyd's complaint does not reveal sex discrimination. And if their complaints were treated more favourably than the Claimant's complaints, there is no room for a finding of sex discrimination. The Claimant does not begin to make a prima facie case. All of this is correct, but the overriding concern for the tribunal is that the complaints against the Claimant were based in objective fact, whereas hers were largely based on a misunderstanding of the rules and lack of any acknowledgement that her behaviour could reasonably be criticised. The Respondent's treatment of the Claimant, whether as complainant or person complained about, was no different to its treatment of her protagonists. If Mr Cottrell was unusually robust in the language that he used, that only reflects the extent to which he genuinely believed that the Claimant's behaviour was open to strong criticism.

211 **Issue 8** (the Rule 13 complaints of January 2017 as harassment or victimisation.) In terms of unwanted conduct, which this certainly was, it is impossible for all the reasons that we have given above to say that the Rule 13 complaints related to sex. Nor could they reasonably be said to have the effect of creating a hostile or otherwise impermissible environment for the Claimant. As to victimisation, we can defer at this stage whether there is any further protected act after 14 December 2016. The Claimant fails to overcome stage 1 of Igen because there is no evidence from which victimisation could be inferred. As to the state of knowledge of protected acts by the alleged victimisers, we note that of the original protected acts, the 14 December complaint was known about by Mr Cottrell and Ms Hunt only. The other alleged perpetrators were unaware of it. There is, however, a much larger point to be made, which is that the Claimant was in dispute with the entire Committee (save for Dr Chandra) and the Regional Office by 17 November 2016 at the latest. All of the email exchanges we have cited between paragraphs 109 and 117 amply demonstrate this to be the case. At a point seven days before the first protected act set out in the list of issues, it is crystal clear that the Regional Office was thinking in terms of using the DAW procedures to curb the Claimant's "public allegations": paragraph 118 above. There is then a good deal of intervening dispute and Dr Banaji, Mr Morris and Ms Mizgailo raised their Rule 13 complaints on 12 January 2017. The only possible explanation in the evidence for doing so is that the Claimant's persistent behaviour had become so extreme that they wanted the Respondent to consider disciplining her. There is simply no room for any possibility that their actions were because of any protected act. Taking an objective view of matters, we conclude that the Branch, that was so

dependent on the voluntary efforts of its Officers, had in most important respects ceased to function. Support had been withdrawn and the Claimant's behaviour was seen (reasonably seen, in our view) to be the sole effective cause of a state of affairs that strikes this tribunal as lamentable.

212 **Issue 9** (Mr Cottrell's criticisms in his reports January/February 2017.) This is said to be harassment and this issue is referring to the 3 DAW reports. They are not related to the Claimant's gender for all the reasons that we have set out above. Even if we were dealing with a claim of direct discrimination here, we would have no hesitation in concluding that a hypothetical male would have attracted the same findings from Mr Cottrell and that he would have expressed himself identically. There is no need to set out extensive citations from the evidence or the reports. Mr Cottrell was affronted by the Claimant's behaviour and its consequences, which he saw as having caused great damage to the Branch. The attempt to frame his decision-making as harassment within section 26 is unsustainable.

213 In her submissions (page 51) the Claimant contends that all of Mr Cottrell's investigations were tainted by sexist prejudice. She makes allegations of dishonesty, conspiracy and cover-up against him, for example in relation to the 'missing page' issue that we deal with below and she asks us to draw inferences of gross malpractice on his part. She says we should disbelieve his detailed evidence, including his replies given in cross examination. These include his testimony as to when he interviewed the complainants. Again, if she were to succeed, we would have to accept that Mr Cottrell had participated in a concerted and elaborate plan to do her down, followed by the use of great deceit in the cover-up thereafter. Mr Cottrell and others would necessarily have perjured themselves in the tribunal. The Claimant says that he and the General Secretary managed the complaints "and that their overarching project was to ensure that the Claimant was fired at from every angle so that her challenge to the Respondent union could be eradicated." Indeed, she continues to argue that the DAW procedure could only be used against employees and not members.

214 All of this, together with the remaining submissions, finds no favour with the tribunal. The direct evidence from the Respondent's witnesses is accurate, in our estimation. The huge effort that would have been required (a) to set up such a plan and (b) to then cover it up and ensure that the tribunal only received a mass of thoroughly dishonest evidence, is so unlikely as to be inherently implausible. In any event the numerous emails and rule-based arguments, together with the Claimant's incorrect interpretations of the rules, affords a large body of evidence to the contrary. It was the campaign that she carried on in email correspondence, and sometimes its tone, that was correctly seen by Mr Cottrell as having nearly brought the Branch to a standstill.

215 **Issue 10** (Mr Goodfellow's dismissal of the Claimant's complaint on 10 March 2017.) This was an MSC complaint against the General Secretary and it is set out on pages 775 to 778. It concerned Ms Hunt's decision on the Claimant's Rule 13 complaint against Dr Roger that we refer to in paragraphs 161 to 162 above. Ms Hunt had dismissed the complaint as she believed it to be misconceived. As the ACO determined, Ms Hunt ought to have appointed a further

Investigating Officer to decide whether the complaint was within the scope of the Rule. The Claimant now alleged to Mr Goodfellow that Ms Hunt, in making this technical error, was discriminating against her. This issue, number 10, alleges harassment, in particular, on Mr Goodfellow's behalf. The short answer is that his decision has nothing to do with gender at all. There is nothing in the facts that raises any prima facie case and the claim fails.

216 In cross-examining Mr Goodfellow, the Claimant established that he had at one point asked Mr Cottrell for advice, but he was adamant that it was the lawyers who had drafted his response to the complaint for him. We were told that his first request for advice to the lawyers was at 3.31 pm on 2 March 2017. He was challenged by the Claimant about his rejection of her complaint, it being said that it was because she had referred to discriminatory conduct by the UCU. The principal reason why his denial is an answer to any claim, whether of harassment or victimisation, is that the evidence shows with clarity that the view was taken both by lawyers and Mr Goodfellow that the Claimant's complaint here was baseless. She was initially complaining about Dr Roger's decision and it was that complaint which the ACO, the Union's lawyers, Mr Goodfellow and the tribunal regard as misconceived. This is why Mr Goodfellow followed the advice and rejected the appeal and it constitutes the entirety of his reasoning.

217 **Issue 11** (email of 27 February 2017.) Whether framed as harassment, victimisation or direct discrimination, any Equality Act claim based on this email inevitably fails. Factually, the 12 signatories were correct to say that the Claimant had constantly insinuated malpractice by colleagues on the Committee; and had written emails that were both demanding and accusatory. The evidence we have seen is overwhelming and it is regrettable that the Claimant appears never to have acknowledged the damage that her actions had caused to the Branch. For example, at one point in cross examination she insisted that her emails were more cogent and accurate than those from Dr Banaji and she said: "mine are largely way ahead in terms of the understanding of the rules, the rationale for complying with rules, [and] there is clearly a competent expertise underlining everything I was writing. It clearly was not obstructive …" We conclude that the evidence suggests otherwise.

218 **Issue 12** (Mr Hughes's email of 30 March 2017.) The Claimant said that she wished to be Branch Secretary and Mr Hughes expressed himself with some force of a contrary view: paragraph 175 above. As he said, it was a personal point of view and again the Claimant fails to establish, or point to any facts, from which a tribunal could infer any actionable tort. Whether harassment or victimisation, given the evidence that we have recited above we have come to the conclusion that Mr Hughes would have sent such an email if any person, regardless of gender, had behaved in a similar manner to the Claimant and sent similar emails, and whether or not they had ever alleged discrimination.

219 **Issue 2** (direct discrimination in the Respondent's treatment of the Claimant when seeking to become Secretary in March 2017, compared to Mr Morris.) Between pages 44 and 49 of the Claimant's closing submission is a detailed exposition of the reasons why she alleges direct discrimination which runs through the period from the date that she said she wished to be Secretary up to the AGM

in June 2017. At that AGM, as the Claimant had decided not to stand, and no other candidates came forward, no Secretary was elected. From the date of Ms Mizgailo's resignation on 21 March 2017, Dr Banaji and Mr Morris had been fulfilling the functions of Secretary. The Claimant had challenged their doing so without an election but this was a challenge under the rules that was rejected by the ACO.

220 The way in which the Claimant advances her case is to stitch together the events that she describes and it is central to that case that this tribunal should make all or most of the findings that the Claimant seeks. Thus, she submits that the 30 March 2017 email from Mr Hughes and the 27 March email from the 12 signatories were "implicitly sexist." She says this is how strong and ambitious women are put down. It demonstrates, she says, the sexist ideology of comradeship and nobody could obtain a position of power within the Branch who was not endorsed as fit by the inner circle that was predominantly male. Sexism was why her candidacy was opposed. The attribution of bad faith to herself is a sexist characterisation of her suggestions that were obviously sensible and fair. If Regional Office had only appointed an independent returning officer, she would have stood and probably would have been elected.

221 This analysis is not one that we would adopt because it is at variance with the facts that we have found. Prof Tonkiss was elected Chair at the 2017 AGM and it must follow from the Claimant's submission that this was permitted by the inner core so that Prof Tonkiss could perpetuate the male culture and domination. Having seen the witnesses, this is an unsustainable analysis and is not respectful of Prof Tonkiss. We would here note that the tribunal was impressed by the moderation and commitment of all the female witnesses called for the Respondent. The Claimant's criticisms of them have been convincingly rebutted. For example, Prof Tonkiss, the last witness to be called, was cross-examined on the basis that she had been siding with the majority, which was where the power lay. She did not accept that and insisted that the Committee made corporate decisions. She had no interest in power, she said, and "if I was, I wouldn't get involved in a small trade union branch. It is not the route to power."

222 Consistent with the Claimant's beliefs, she suggested to Prof Tonkiss that she had been complicit in the falsification of documents and also knew that emails were being cooked and fabricated. Some of this referred back to the disputes we have mentioned about the minutes. Overall, the Claimant put her case very fully to this last witness, but has failed to persuade the tribunal of any of the essential planks on which this claim of direct discrimination is based. The Respondent's proposed returning officer was a person who does not feature anywhere else in the story. The Claimant chose not to stand and there is no question, we conclude, of any less favourable treatment or treatment because of of sex. No prima facie case can be detected.

The Claimant's "Reynolds" argument; and amendment

223 The Claimant says that the analysis that this case gives rise to is of considerable importance to her claim. It is the basis of much of the 19 June 2018 application to amend. The main point in Reynolds is that the provision of tainted

information can found a claim against the provider of that information. The facts in that case were straightforward: the two directors were motivated by the Claimant's age. They provided information to the third director who was the sole person to effect a dismissal. Where this case in particular differs is that the acts that are specified in the list of issues were not based on any earlier or other information that was tainted by discrimination. We are able to conclude on the basis of the evidence we have heard, together with the documents, that the Claimant's claim here fails on the facts.

224 We turn to the 19 June amendment at paragraph 5.7 of the Particulars document. This says that the Claimant was treated less favourably than a hypothetical male because she was "singled out as the focus of persistently negative characterisations or 'tainted information' …" and was thereby demonised.

225 The particulars given are that the main sources of the information are ten people, Mr Young, Mr Morris, Ms Mizgailo, Dr Banaji, Dr Meagher, Dr McGovern, Mr Cushman, Mr Jones, Mr Hughes and Prof Tonkiss.

226 The Claimant goes on to say that relevant information is said to be tainted by "sex discriminatory prejudice insofar as it involved assessing my qualifications and character as 'un-comradely' - an inherently sexist ideal of solidarity - with a view to defending the sexist culture of comradeship that has sustained (LSE) UCU since its inception from a woman who was intent on challenging it."

227 The relevant people are said each to be liable for each discriminatory act in the entire process. Alternatively, Mr Young and Mr Jones orchestrated the production of the negative characterisation.

228 Mr Brown's closing submissions urged us to reject the amendment application because the Claimant had failed to put the 'tainted information' challenges in this form to the witnesses. To do so, and for the tribunal thereafter to adjudicate, would, he submits, be a huge, complex and costly undertaking.

229 We do not agree with all of that submission. Certainly, some additional points in cross examination were not taken and if the Respondent were to recall witnesses there would quite possibly be extensive questioning by the Claimant who might, we suspect, wish to go over much of the same material for the purposes of the amended claim. We remind ourselves that the evidence in the case was heard over 18 days. The Claimant began cross-examining on day six at 11:55am. She questioned witnesses over 12 days. A massive number of emails were referred to including many of those in which negative views or criticisms of the Claimant were voiced.

230 It is an integral part of our decision-making that we have examined all of this material. We are satisfied that there is no prospect at all that the tainted information case could be made out, or that findings could be made from which such a case could be inferred. We have always been aware of the Claimant's criticisms of the people she names. The case based on tainted information, as the amendment demonstrates, is tied to the comradeship analysis. We have rejected this. This is, in our view, an attempt by the Claimant to press into service a Court

of Appeal decision about a dismissal, and to employ the principle of law emerging from that case, so as to find an additional ground of liability on the part of some of the witnesses who might be said not to have taken relevant decisions. It is a claim that is doomed to fail. It cannot survive our fact-finding. On this basis we reject the application to amend, as we consider case law says we may, because the amendment is to present a hopeless claim. (We refer to Woodhouse v Hampshire etc UKEAT 0132/12 where HHJ McMullen QC observed that in cases of an early application to amend, investigation of the merits is irrelevant. But he also said "It is true that in the assessment of the balance of hardship and the balance of prejudice there may in all the circumstances include an examination of the merits – in other words, there is no point in allowing an amendment to add an utterly hopeless case." This applies with redoubled force when an application is made after all of the evidence has been heard.)

The victimisation claims

231 The overwhelming difficulty for the Claimant in all her claims of victimisation is that there is the clearest evidence as to the motivation for the various acts of which she complains and this evidence negates any victimisation claim. We set aside the separate question of whether there are protected acts and assume for these purposes that she succeeds in all her contentions in that regard. All of those at whom victimisation claims are directed gave evidence which we have accepted as to why they acted in certain instances. Thus, to take one prominent example, which is **Issue 16**, when Dr Banaji, Mr Morris and Ms Mizgailo raised their Rule 13 complaint on 12 January 2017, in the view of the tribunal it defies all common sense to say that this could in any way, however small, have been influenced by any protected act. We have already dealt with this and we refer to paragraph 212 above. The claim is unsustainable.

232 This reasoning applies throughout. **Issue 18** claims that Mr Cottrell's reports were victimisation, but it is impossible for the tribunal to say, on its findings of fact, that the Claimant has raised a prima facie case. The Claimant having done a protected act or acts is entirely beside the point, since if she had not written the emails that constitute protected acts it is abundantly clear that Mr Cottrell would have made exactly the same findings and used exactly the same language. To adopt Mr Brown's written submission, his reasons for doing so were "a genuine, bona fide consideration of the material and reasonable evidence-based conclusions based on the terms of [the Claimant's] complaints and the material available to him." This case is perhaps unusual in the volume of documentary evidence from which the motivation for these various acts can clearly be seen.

The only way in which a case of victimisation can be constructed is to maintain that all of the relevant actors at whom the victimisation claims are aimed were acting in concert so as to preserve male domination (or similar) in the Branch. As we have rejected this analysis, there is little more that needs to be said. It is the Claimant who has constructed this analysis because she will not recognise that she bears the responsibility for what occurred in the Branch.

233 Her approach has led her to claim, in **Issue 14**, that when Mr Cottrell used the email address we have referred to, he was victimising her. We have dealt with

this above: see paragraphs 152 and 153. There is no basis for any victimisation claim.

234 Our factual findings at paragraphs 155 and 156 dealt with **Issue 15**. The victimisation claim cannot survive our factual findings and Mr Brown is, in our estimation, correct in submitting that if no protected act been undertaken by the Claimant Mr Cottrell would not have behaved any differently.

235 Even more remote is the victimisation allegation in **Issue 19** against Dr Roger. We dealt with this at paragraphs 160 to 162 and there is no detriment because of any protected act, because Dr Roger took a rational decision that was within the rules, to allow the Rule 13 complaint against the Claimant to proceed; and that decision would inevitably have been the same whatever protected acts had or had not been raised by the Claimant.

236 The same reasoning applies to all the claims. In **Issue 17** Mr Lovejoy's emails of 20 December 2016 (summarised at paragraph 132 above) and 20 February 2017 are said to be acts of victimisation. The Respondent maintains that these were rational and appropriate emails that could not have been influenced by any protected act and the tribunal agrees. Mr Lovejoy's 20 December letter to the Committee is factual, moderate in tone and informed the Committee of the temporary withdrawal of support. It is impossible to see any link to any protected act and the claim of victimisation is not easy to understand. The 20 February letter said that the three members of staff would be returning to their duties. This is indeed a rational letter to write to the Committee. The claims of victimisation have no substance, but it is of interest to note how these letters are dealt with by the Claimant at page 96 of her closing submission.

> "On [Mr Lovejoy's] insistence, both letters were sent to the entire … Committee, not just to the core group of comrades who already solidly antagonistic to the Claimant: the Claimant contends that this was designed to cause maximum damage to her. These letters led members of her committee to perceive, or confirmed them in the perception, that she was the blameworthy party in the situation that had arisen in the LSE branch … And that the Respondent employees were withdrawn 'on welfare grounds', i.e. because their welfare was at stake due to her criticism of their conduct … Consequently, her position on the 2016 to 17 committee became virtually untenable. Detriment resulted to her because UCU's employees and agents were emboldened thereby to openly label her a troublemaker who undermined the branch committee's work and its members rather than contributing to that work despite suffering abuse from its members …"

237 This is one illustration, of many examples in the submission, of an approach to the facts (in this case, unexceptional correspondence) that arises from the Claimant's holistic analysis. She maintains that almost everything that was said and done, certainly by this point in the chronology, was to entrench sexist-inspired disadvantage. Her submissions are based upon numerous assumptions, although even here it is difficult to detect a link to the Claimant's protected acts. It will be evident that we have made none of the essential factual findings that could assist her in these claims. As to the new (alternative) way in which this claim is framed, we deal with this in paragraph 248 below.

238 Ms Hunt is involved in the victimisation claims in **Issues 20 and 21**. Mr Goodfellow in involved in Issue 20. Ms Hunt rejected the Claimant's complaint

against Dr Roger: paragraphs 161 to 163 above. This was the technically incorrect summary dismissal of a groundless complaint against Dr Roger. In view of our findings, there is nothing to suggest that Ms Hunt was or could have been influenced by any protected act. Mr Goodfellow's decision on this is dealt with at paragraph 171 and again, in light of our findigs, victimisation is ruled out and no prima facie case is made out on the facts. Mr Brown correctly points out that the Union was arguing for an implied power to dismiss a misconceived complaint and this has nothing to do with any protected act.

239 It is perhaps unnecessary to make this observation, but in all the cases of alleged victimisation there is a body of reliable evidence about why the Respondent's employees or officers acted as they did. This evidence, which we have accepted, removes the motivation for individual acts a long way from any protected act. The dispute with the Claimant was protracted and minutely documented. Her protected acts in which she alleged discrimination were a very small fraction of the whole. There is also a marked lack of any evidence to suggest that they played any part in the motivation for the impugned acts. Each email relied upon by the Claimant is a small addition to a much lengthier catalogue of complaint and dissatisfaction that she had raised for a number of months.

240 As to **Issue 21**, no credible case has been raised by the Claimant for victimisation in the way her rule change proposal was dealt with and in our opinion such a claim is baseless.

241 We therefore turn to the subsidiary questions of the protected acts themselves and the amendment application. Dealing first with the 14 December 2016 complaint, we consider that this is a protected act as she referred to sex discrimination as Mr Jones had denied her the opportunity to compete for the Chair. (3rd paragraph on the first page and 1st paragraph on the 5th page.) This is a closely argued, six page letter in which the Claimant raises very many other key aspects of her case involving alleged breaches of the rules. It appears from the first of these two references to the Equality Act that the Claimant is making the claim "given that I am female, and the person appointed is male" and she says that she has a primary concern about sex discrimination. Mr Brown criticises this as being false logic and an insufficient basis to allege or infer discrimination. Be that as it may, it is an allegation that there has been a contravention of the Act and that suffices for section 27. Mr Brown argues that the allegation was false and made in bad faith. In our view it was false, but to succeed on the defence of bad faith, the Respondent must meet a relatively high hurdle. Although the Claimant had convinced herself that the Union was in the wrong and that she was in the right, when the evidence pointed the other way, this does not amount to bad faith and we would rule that this was a protected act.

242 On 17 February 2017 the Claimant alleged that Ms Hunt's "conduct towards me … has been motivated by unlawful bias and threatens to bring the UCU into disrepute." This is near the beginning of a shorter document which runs to about two pages. Further on she said it was her belief that Ms Hunt's "inexplicable conduct is motivated by unlawful bias. This is not the first time that I have had occasion to complain about discriminatory treatment by UCU …" She then referred to the 14 December letter. We would again disagree with Mr Brown's submission

and would hold that this was a protected act, even though sex discrimination was not specifically referred to.

First application to amend

243 The Claimant seeks by her first set of amendments that were discussed during the closing submission to add three new protected acts. The first is an email of 12 December 2016 to Mr Jones that picked up on his email three days earlier to Mr Hughes that we cite at paragraph 126 above. Because Mr Jones had written to Mr Hughes, after he had earlier said that he would not respond to committee members other than the officeholders, the Claimant commented: "if any more evidence were needed of your discriminatory attitude to committee members, it is here, in the message …" In the last paragraph she noted that she had written last Friday to Mr Lovejoy that there are "… other, more consequential, fora than Microsoft Outlook for obtaining redress. You can be sure that I am now exploring all of them." When we examine the email she was citing, it can be seen that she had written to Mr Lovejoy on 9 December as follows. "I most certainly will submit this complaint, but be assured that I will expect a fair outcome after expending these efforts, and that I will take it as far as is necessary to ensure that the wrongs it identifies are put right." She was referring to the formal complaint to the Union and making no reference to discrimination.

244 We conclude that the Claimant has failed to established that the sending of this email to Mr Jones falls within section 27(2)(c) or (d). The reference to a discriminatory attitude to committee members cannot be taken in isolation. It has to be seen in the context of very many emails alleging rule breaches and the like. Referring to members in the plural also suggests that this was not a complaint in connection with the Act or an allegation of a contravention of the Act.

245 Beyond this, the claim is bound to fail. We consider that it is unarguable that this reference to discriminatory conduct could be said to have had the slightest influence, or even relevance for, the complaints in issues 14 to 21 that are said to be the acts of victimisation. This is, in our view, a last minute attempt by the Claimant to find a protected act in the chronology upon which she can fasten for some part of her argument, but in the light of all the facts that we have found such an argument is unrealistic and has no prospect of success.

246 The second new protected act is the ACAS conciliation process. As Mr Brown correctly submits, this would open up brand new avenues of enquiry as, in itself, that process does not necessarily involve doing protected acts and we would need to enquire what the Claimant told the conciliation officer, what the conciliation officer told the Respondent and what information was passed on within the Respondent. Beyond this, the claim also looks to be an impossible one to assert and it is pure speculation on the Claimant's part that information was passed which had, or could have had, any influence on those subjecting her to the acts that she describes as detrimental. We do not allow this amendment.

247 The ET1 is plainly a protected act: 31 March 2017 was the date of presentation. Mr Brown points out that none of the relevant witnesses were asked about what they knew about the claim. But this is a technical objection that ignores

the larger point that the last item of (originally) pleaded detriment has its own set of findings and it appears fanciful to suggest that this claim could have any chance of success. We have described this as a baseless claim and when hearing the evidence we were aware that an ET1 had been filed at about the end of March, a fact we regard as immaterial. We allow the amendment for the purpose of dismissing it as the basis for any claim of victimisation.

248 A further item of amendment is that the Claimant seeks to add to her further particulars (paragraph 7.2.9) a new type of protection for section 27 purposes, namely that the Lovejoy emails of 20 December and 20 February (paragraph 236 above) caused him to believe she might bring proceedings alleging discrimination. Mr Brown makes protest about this, but Mr Lovejoy told us that the first he knew of the sex discrimination complaint was in these proceedings. Further, Mr Lovejoy was cross examined for a little over 3½hours. The Claimant repeatedly put to him that his motivation was to victimise her and he denied each and every allegation. This was on the basis of the positive reasons for acting as he did (for example in sending various email, both before and after the matters of complaint.) It would add nothing to have him recalled and we are satisfied that he was denying all allegations of victimisation, however they come to be framed. His evidence was clear and direct and we have accepted it. He answered convincingly on all the detailed challenges put to him about individual emails. This late amendment adds nothing to the claim. Our decision is to allow it but reject the claim asserted, which is bound to fail.

249 The other amendments in 7.2.11, 7.2.12, 7.2.13, 7.2.14, 7.2.15, 7.2.16, 7.2.17 (another 'belief' basis for Mr Goodfellow contravening s.27) are drafting amendments to reflect the Claimant's case and we can allow these. They do not affect any of the above conclusions.

250 7.20 and 7.22 add a new aspect to the claim of 'failing to protect' the Claimant from detriment because she had done a protected act, or was believed to be someone who may do one. This is completely new and Mr Brown's protest is valid. It is a new way of putting the claim in substance, comes far too late and on a consideration of all the circumstances should be rejected on the ground of prejudice, including cost, to which the Respondent would be put. We reject the amendment application.

Second application to amend

251 This is dated 13 July 2018, after the last hearing in the case which had been for the purpose of oral argument, and in large part seeks to address Unite the Union v Nailard [2018] EWCA Civ 1203. This concerns an argument to be found in the pleadings as to whether or not Committee members and others were acting as agents of the Respondent. In light of our findings the agency issue seems to this tribunal to be academic. In the alternative, the Claimant adds a 'failure to protect from the acts of third parties' argument. Our conclusion is that these amendments are not required as we have not needed to address the basis upon which tortious behaviour on the part of any of these individual might be grounded in law, either because they were agents for the Respondent or on the Claimant's

alternative argument. If the proposed amendments as to these points cannot assist the Claimant, there may be no point in granting the amendment.

252 Nevertheless, the Respondent by letter dated 13 July raised objection to the amendments being allowed. The essence of the objection was that they had come too late, would cause prejudice to the Respondent, would delay the proceedings, had not been addressed in argument, were contrary to the overriding interest and the Respondent would seek to address these points if we allowed the amendments to proceed.

253 As none of these amendments affect the overall decisions we have come to, we have decided that the amendments can be granted, provided that we make clear that because of their lateness there has been no substantive response by the Respondent. On the findings that we have made we do not consider that any is called for. There being no obligation for the tribunal to decide moot points or issues that are not strictly required for adjudication, we will leave matters there.

Summary

254 The Claimant's claims are fully worked and particularised in extensive pleadings. They are supported by a detailed account that includes assumptions and factual inferences that she asks us to adopt. These include the Regional Officers coordinating a targeted campaign against her. The basis of all the disadvantage she believes she suffered is sexism in this Union Branch, whose Officers, including the women, sought to entrench male domination and hierarchy. On this basis, the acts of which the Claimant complains are all capable of being analysed in terms of torts under the Equality Act, whether direct discrimination, harassment or victimisation. The tribunal has been unable to support this analysis in any particular. The factual findings contradict the Claimant on every major point and the inferences she asks us to draw, and which we do not draw, are extravagant and unjustified. Although each claim requires individual adjudication, the factual platform upon which the Claimant places them has not been made out. On the contrary, the Respondent's evidence has withstood the closest scrutiny and it prevails over the Claimant's.

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Employment Judge Pearl
Date 29 November 2018

JUDGMENT & REASONS SENT TO THE PARTIES ON

30 November 2018

FOR THE TRIBUNAL OFFICE