Case Number: 2200606/2017

Reserved Judgment

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**and**	**Respondents**
Ms L Coats		**(1) Great Marlborough Productions Ltd** **(2) Ms S Fell** **(3) Mr B Bocquelet**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

SITTING AT: London Central **ON: 11-14 February 2019; 15 February 2019 (in chambers)**

BEFORE: Employment Judge A M Snelson **MEMBERS: Mrs M Pilfold, Ms L Moreton**

On hearing the Claimant in person and Mr S Sweeney, counsel, on behalf of the Respondents, the Tribunal adjudges that:

(1) The Tribunal has no jurisdiction to determine the 'Smear Claim' identified in the accompanying Reasons.
(2) The 'BAFTA Claims' identified in the accompanying Reasons are not well-founded.
(3) Accordingly, the proceedings are dismissed.

REASONS

Introduction

1 The First Respondent is an entertainment production company. One of its creations is a series called *The Amazing World of Gumball* ('*Gumball*'). The Second and Third Respondents were at all material times senior employees of the First Respondent. The Claimant was employed by the First Respondent as a script editor from November 2013 to November 2014, when she was dismissed.

2 In proceedings under case no. 2201005/2015 ('the first case'), the Claimant brought complaints under the Equality Act 2010 ('the 2010 Act') of harassment and victimisation and under the Employment Rights Act 1996 of victimisation on 'whistle-blowing' grounds. The matter was heard over 17 sitting days with six further days of private deliberations in chambers. By a reserved judgment issued on 3 June 2016 with reasons running to 82 pages, all claims[1] were dismissed. The Tribunal's findings and conclusions must have made uncomfortable reading for the Claimant. Every one of her claims was rejected as unfounded. Some of her evidence was simply disbelieved. One 'whistle-blowing' claim was defeated by a finding that she had acted with an ulterior motive. Not one of her countless criticisms of Ms Fell was vindicated. Her appeal to the Employment Appeal Tribunal was rejected as raising no arguable point of law.

3 In the current proceedings, issued on 15 March 2017, the Claimant complains of post-employment victimisation. All claims are resisted.

4 A list of issues was agreed prior to the hearing. It identified 11 'protected acts' and the following six detriments:

> **(a) The second Respondent allegedly falsely telling colleagues between the period 11 November 2014 and October 2015 that a letter which had been hand-delivered to her home on 11 November 2014 was an 'unpleasant communication' which had shocked, intimidated and threatened her, leading those colleagues to believe it was "hate mail". The Claimant's case is that this was not true as the letter was expected and contained a copy of the formal grievance with a polite note. The Claimant found this upsetting and contends that the second Respondent was 'demonising' her with this "smear". The Claimant became aware of this from the sworn witness statements in case number 2201055/2015. This claim is also brought against Ms Fell's employer the first Respondent.**
>
> **(b) The first second and third Respondents did not notify the Claimant that the two shows she co-wrote and script-edited had been nominated for BAFTA awards thus denying her the excitement and satisfaction that news of such a double nomination would have brought.**
>
> **(c) The second and third Respondents permitted the Claimant's replacement Ms Paglia to attend the televised winners' interviews conducted by BAFTA and broadcast worldwide on its website, thus diverting the recognition due to work carried out by [the Claimant] to her replacement who played no part in their success. Industry viewers will assume that it was not [the Claimant's] work being recognised, but her replacement's at a later date. This claim is also brought against the first Respondent, as employer of the second and third Respondents.**
>
> **(d) The second and third Respondents permitted the Claimant's replacement to pose as a winner with them in the BAFTA official winners' press photographs. These photographs are published worldwide. The Claimant's case is that this authenticated the untruth that the work being recognised was not carried out by her, but carried out by her replacement at a later date. The Claimant says that this made it almost impossible for her to capitalise on her success as Google searches would indicate that it is the Claimant who is taking credit for the work of her replacement, rather than the other way**

[1] There were over 40 numbered 'Allegations' but many divided into discrete elements, so that the total number of claims was much greater.

round. This claim is also brought against the first Respondent as the employer of the second and third Respondents.

(e) When [the Claimant] complained to the first Respondent it, and the second and third Respondents, refused to take any steps to correct the misleading impression they had given to the industry and the wider public.

(f) For almost a month after the Claimant had complained the first, second and third Respondents refused to allow her to have a photograph taken holding the awards.

We will refer to the first item as 'the Smear Claim' and the other five as 'the BAFTA Claims'.

5 We will not recite the long and painful case management history, which seems out of all proportion to the straightforward claims at issue. But it is material to record that, by a reserved judgment sent to the parties on 29 August 2018, Employment Judge Lewis rejected the Respondents' application for the Smear Claim to be struck out under the rule in *Henderson v Henderson.*

6 The case came before us on 11 February 2019 for a final hearing confined to liability only, with six days allowed. The Claimant appeared in person and Mr Seamus Sweeney, counsel, appeared for the Respondents. Having read the witness statements and key documents on day one, we heard evidence over days two and three and then, to allow the Claimant preparation time, adjourned to the afternoon of day four, when closing arguments were presented. With the agreement of the parties, we then reserved judgment. Our private deliberations occupied day five.

7 While we were deliberating in chambers, we were made aware of certain email communications from the parties. The Employment Judge read enough of them to understand that they were seeking to make further points concerning the suggestion advanced by the Claimant before us that the First Respondent had consented to her request for the opportunity to be photographed with the BAFTA award only after being made aware that she was about to issue legal proceedings. The evidence was closed and final submissions had been delivered. The case was almost two years old and concerned events which happened over four years ago. It had been litigated (we might say over-litigated: the file is about a foot thick) enough. We were quite satisfied that it would be entirely wrong to permit either party to seek to re-open the evidence and/or deliver fresh submissions. The emails were left unread on the file.

The Legal Framework

8 The 2010 Act protects employees and applicants for employment from a number of forms of 'prohibited conduct', including victimisation. The protection extends to ex-employees where the unlawful treatment "arises out of and is closely connected to a relationship which used to exist" between the parties (s108(1)).

9 By the 2010 Act, s27, victimisation is defined thus:

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

10 When considering whether a claimant has been subjected to a detriment 'because' he or she has done a protected act, the Tribunal must focus on "the real reason, the core reason" for the treatment; a 'but for' causal test is not appropriate: *Chief Constable of West Yorkshire v Khan* [2001] ICR 1065 HL, para 77 (*per* Lord Scott of Foscote). On the other hand, the fact of the protected act need not be the sole reason: it is enough if it contributed materially to the outcome (see *Nagarajan v London Regional Transport* [1999] IRLR 572).

11 Victimisation is prohibited in the employment field by s39(4) which, so far as relevant, states:

> **(4) An employer (A) must not victimise an employee of A's (B) –**
>
> **…**
> **(d) by subjecting B to any other detriment.**

A 'detriment' arises in the employment law context where, by reason of the act(s) complained of a reasonable worker would or might take the view that he or she has been disadvantaged in the workplace. An unjustified sense of grievance cannot amount to a detriment: see *Shamoon v Chief Constable of the RUC* [2003] IRLR 285 HL.

12 2010 Act, by s136, provides:

> **(1) This section applies to any proceedings relating to a contravention of this Act.**
>
> **(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.**
>
> **(3) But subsection (2) does not apply if A shows that A did not contravene the provision.**

13 On the reversal of the burden of proof we have reminded ourselves of the case-law decided under the pre-2010 legislation (from which we do not understand the new Act to depart in any material way), including *Igen Ltd-v-Wong* [2005] IRLR 258 CA, *Villalba-v-Merrill Lynch & Co Inc* [2006] IRLR 437 EAT, *Laing-v-Manchester City Council* [2006] IRLR 748 EAT, *Madarassy-v-Nomura International plc* [2007] IRLR 246 CA and *Hewage-v-Grampian Health Board* [2012] IRLR 870

SC. In the last of these, Lord Hope warned (as other distinguished judges had done before him) that it is possible to exaggerate the importance of the burden of proof provisions, observing (judgment, para 32) that they have "nothing to offer" where the Tribunal is in a position to make positive findings on the evidence. But if and in so far as it is necessary to have recourse to the burden of proof, we take as our principal guide the straightforward language of s136. Where there are facts capable, absent any other explanation, of supporting an inference of unlawful discrimination, the onus shifts formally to the employer to disprove discrimination. All relevant material, other than the employer's explanation relied upon at the hearing, must be considered.

14 By the 2010 Act, s123(1) it is provided that proceedings may not be brought after the end of the period of three months (plus any extension under the Early Conciliation provisions) ending with the date of the act to which the complaint relates, or such other period as the Tribunal thinks just and equitable. "Conduct extending over a period" is to be treated as done at the end of the period (s123(3)(a)). In *Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] EWCA Civ 640, Leggatt LJ reminded us that the 'just and equitable' discretion under s123(1) is wide and unfettered. On the other hand, wide as it is, the power to extend time is to be used with restraint: its exercise is the exception, not the rule (see *Robertson v Bexley Community Centre* [2003] IRLR 434 CA).

Oral Evidence and Documents

15 We heard oral evidence from the Claimant and her supporting witness (and partner), Mr Timothy Mill and, on behalf of the Respondents, Mr Bocquelet, at all relevant times Executive Producer and Creator, and Ms Fell, Executive Series Producer. All gave evidence by means of witness statements.

16 We also read the documents to which we were referred in the two-volume bundle of documents running to over 1,000 pages, to which certain additions were made in the course of the hearing. Some printouts of internet searches were also handed up loose.

The Primary Facts

17 The evidence was quite extensive. We have had regard to all of it. Nonetheless, it is not our function to recite an exhaustive history or to resolve every evidential conflict. The facts which it is necessary to record, either agreed or proved on a balance of probabilities, we find as follows.

Protected acts

18 In closing the Claimant confined herself to the protected acts identified in the agreed list, para (ii)(f)-(k). These (all issuing from the Claimant personally) were: an email of 22 October 2014 to Ms Ellie Browne, Vice-President Legal in the First Respondent's parent company, complaining of harassment by Mr Bocquelet; complaints about sexual harassment by Mr Bocquelet and other matters in a meeting with Ms Patricia Hidalgo, Senior Vice President, on 27 October 2014; a text message of 7 November 2014 to Ms Fell complaining of bullying and

victimisation; a letter of complaint to Mr Giorgio Stock dated 8 November 2014 (referred to below); a letter to Ms Fell of 11 November 2014, copying most of the 8 November letter (also referred to below) and the commencement of the first case on 30 March 2015. There was no dispute that those communications were made.

The Smear Claim

19 It was common ground that the Claimant and Ms Fell have known each other for many years and were friends for some 13 or 14 years up to the collapse of their relationship in 2014. It was Ms Fell who brought the Claimant into the company. There was a disagreement as to the extent to which the friendship had become soured or at least strained by the time to which this part of the case relates. We note the following findings made in the first case. In the narrative concerning events shortly before an incident on 22 July 2014 which was central to the dispute[2], the Reasons record:

> **5.32 Ms Fell found the claimant increasingly intimidating and difficult to deal with.**

A little later, they continue:

> **5.34 There is clear evidence of difficulties in working relationships prior to 22 July 2014. The claimant thought the atmosphere toxic, she complained of being sidelined and she had contemplated leaving.**

The Reasons document instances of the Claimant allegedly bullying two members of the writing team, reducing one to tears (para 5.21). Para 5.23 includes:

> **Mr Bocquelet became aware that the claimant had fallen out with Mr Ben Locket, a music scorer, whilst drinking one evening, a week or two before 22 July 2014. Mr Bocquelet witnessed the claimant being, as he describes it, aggressive … Mr Ben Locket formed the view that the claimant was an aggressive and difficult character; he was wary of her thereafter. Mr Bocquelet formed the view that the claimant was, rather than solving problems, making the working environment problematic. He did not envisage the claimant would be there for the long term.**

The Reasons further noted:

> **5.99 The respondent's attempt to mediate [on 7 August 2014] had not been successful. The claimant was openly hostile to Ms Fell and her relationship with Mr Bocquelet was severely damaged. We have no doubt that she continued to have significant difficulty with Mr Bocquelet. This became much clearer later on when she decided to pursue the allegation that the events of 22 July 2014 [were] deliberate acts of harassment. We have no doubt that Mr Bocquelet did consider that the claimant remained hostile to him and he feared further false allegations.**

In a passage which appears to refer to late August 2014 or thereabouts, the Reasons include:

[2] The Claimant alleged that on that day Mr Bocquelet subjected her to treatment which she later characterised as "sexual harassment".

> **7.140 … It was the claimant's own continuing negative attitude, and her inability to engage with the respondent's reasonable attempts to salvage the working relationships, which caused the continuing difficulties.**

20 The documents in the bundle before us are consistent with the background supplied by the earlier Reasons, evidencing complaints and recriminations on the part of the Claimant starting within weeks of the commencement of her employment. Commenting on the mediation meeting of 7 August 2014, Ms Fell in an email to the Head of HR remarked:

> **[The Claimant] did not want to just have a moving it forward meeting, and it was all fairly uncomfortable and very confrontational. …**
>
> **The main ongoing problem seems to be with me. …**
>
> **At the moment I think we can just about move on for the sake of the production schedule, however I cannot see us being able to extend her contract, and need to have an exit plan. …**

21 Dealing with 'Allegation 23', a complaint that Ms Fell had failed to respond to a letter from the Claimant of 29 October 2014, the earlier Reasons include:

> **This concerns an allegation by the claimant that Ms Fell failed to respond to a specific matter. That may be correct: there was a failure to respond. However, by this time, the claimant had complained about Ms Fell and she had sent numerous letters, many of which Ms Fell found difficult, confusing and distressing.**

22 Following a complaint by the Claimant alleging victimisation of her by Ms Fell, an investigation meeting was held on 31 October 2014. The notes of that meeting, the accuracy of which we have no reason to doubt, include these remarks by Ms Fell:

> **By the time we hit the main incident [22 July 2014] I was dealing with well over 10 complaints from LC …**
> **So I went to HR – from that moment onward there was a complete collapse of our working relationship. …**
> **Although she is very good with the scripts, she is a very disruptive individual in a large team…**
> **If you try and discuss problems it becomes extremely aggressive and everyone has become very intimidated. …**
> **… I have … asked for HR support … have been exposed to some very upsetting situations with no support …**
> **I have been bullied in the workplace, been confronted with openly hostile emails and been under the constant threat of legal action. …**
> **… whenever LC was not happy she accused someone of bullying, being rude, or being hostile.**

23 On 7 November 2014 Ms Fell was notified that the Claimant's complaint of victimisation had not been upheld and that she (Ms Fell) would not face disciplinary proceedings.

24 On the evening of the same day the Claimant sent a text message to Ms Fell which included the following:

> **Sarah I will send you a copy of my complaint to Giorgio Stock [the President of the first Respondent's parent company]. … I don't believe that you are driving this but that you are being made the front for it. I can't prove that – it's just what I guess. Unfortunately because you are my line manager who is telling me this cock and bull story about 'new voices' it is you, technically who is victimising me by not renewing my contract. But this is not about bullying personally by you. Victimisation in this case is about losing my job when I have done nothing wrong and after I stood up to sexual harassment from Ben [Bocquelet]. … I see HR referring to some sort of generalised bullying. That is not the case. I want you to be quite clear about what I am complaining about so you will get a copy of the letter – as a blind copy – delivered to you at home. It will be marked private and confidential so please don't copy it … Thanks**

25 The promised letter of complaint was addressed to Mr Stock and dated 8 November 2014. The Claimant personally delivered a document to the home address of Ms Fell on or about 11 November 2014. It was marked **"STRICTLY PRIVATE AND CONFIDENTIAL"** and read as follows:

> **Dear Sarah,**
>
> **Please find below a summary of my complaint to Turner[3]. I'm giving you this information so that you can know precisely what I am complaining about and not have to rely on an inaccurate account from the HR Department which has some very serious questions to answer itself. Please understand that this is 100% private and must not be copied or processed in any way.**
>
> **None of this complaint is personal as I hope you have understood. This is about standing up against sexual harassment in spite of the unpleasant consequences for doing so. I hope that at the very least it will spare another employee in the future from having to go through this sort of thing which you never forget actually. It is real abuse.**
>
> **I hope you are okay.**
>
> **L**

Beneath was a copy of most of the letter sent to Mr Stock (the opening two lines were certainly omitted). The Respondents challenged the proposition that the letter contained nothing personal to Ms Fell. They pointed out, as is the fact, that it contains numerous references to her (and to other individuals besides Mr Bocquelet, the principal target of the complaints) and includes allegations that Ms Fell was victimising the Claimant through the non-renewal of her contract and obstructing investigation by refusing to answer complaints.

26 Ms Fell told us that she was upset and distressed to receive the Claimant's letter and that what troubled her the most was the fact that it had been personally delivered to her home address. She rejected as entirely insincere the expressed hope that she was "okay".

27 The Claimant dismissed as false the account offered by Ms Fell. She told us that she could see no possible objection to the delivery of the document to her home address. She also drew attention to some contemporary communications

[3] The First Respondent's parent company

between her and Ms Fell which, she said, gave the lie to the latter's statement that she felt intimidated by her.

28 The Tribunal in the first case found (Reasons, para 7.195):

> **The Claimant also provided Ms Fell with a copy of the letter. The claimant hand-delivered it to Ms Fell's home address. Ms Fell felt violated by this.**

29 Quite late in the evening of 13 November 2014 the Claimant sent an email to Ms Fell which attached parts of a message sent the same day to HR. It included these passages:

> **Well, do you know what, Felly? I've had enough of this. I'm not the one who has done anything shameful … I'm not happy with people coming innocently to work for you and they are exposed to this poison, abuse and subsequent victimisation.**
>
> **I'm over the embarrassment. This is important. And I'm going to stand up and be counted so that people like you and Ben don't get to do this to anybody else in the future.**
>
> **By the way I recorded all my meetings with you and Ellen[4] because I knew you couldn't be trusted. I tell you this as a favour so you don't go lying through your teeth in a way which will get you into even more serious trouble. I do this out of affection and respect for your parents.**

30 The Smear Claim as pressed before us was that Ms Fell told at least two colleagues, Mr Ben Locket and Mr Charles Klein, that the Claimant had sent "hate mail" to her. Her case was that she became aware of these matters for the first time when reading witness statements in the first case.

31 Ms Fell told us that she could not recall whether she had used the expression "hate mail" or not. She said that she certainly felt intimidated by the Claimant's behaviour and, in particular, her act of hand-delivering the letter to her home on 11 November 2014. She accepted that she had discussed these matters with Mr Locket and Mr Klein.

32 In his witness statement in the first case, Mr Locket stated (para 15):

> **I was not surprised to hear from Sarah Fell, at a later date, that she was receiving what she described as "hate mail" from the Claimant. I found it distressing that the Claimant would do this. I also found it worrying that the "hate mail" was hand-delivered by the Claimant to Sarah's personal address.**

33 Mr Klein in his witness statement in the first case said that he had learned of the fact that the Claimant had hand-delivered a message to Ms Fell, which he had found "disturbing".

34 An email of 20 November 2014, which the Claimant addressed to three individuals and copied to three others including Ms Fell, made more allegations of serious misconduct on Ms Fell's part. It resulted in her dismissal, and is the subject of detailed findings by the first Tribunal (Reasons, paras 7.204-9).

[4] Ellen Browne, Vice-President, Legal

The BAFTA Claims

35 On 20 October 2016 Ms Fell was informed that *Gumball* had been nominated in the Best Animation and Best Writing categories for that year's BAFTA awards. She received that information by email but it was and always is widely available by other means. In particular, news of nominations is published on the BAFTA website and circulated widely through social media.

36 The Claimant's first complaint is that the Respondents omitted to inform her of the nomination.

37 It is right that they did not inform her. Nor did they inform any other person who had, or might have had, an interest but was no longer in the organisation. Nor is it their practice to contact former employees in such circumstances.

38 The second and third complaints relate to events at the BAFTA awards ceremony.

39 In the Best Animation category, the nomination was for an episode called 'The Money'. For Best Writer the two-part episode, 'Origins' was selected.

40 In both cases, the Claimant was the first draft script editor and one of several who contributed material to the first draft. In each case the second draft, completed under the leadership of Mr Bocquelet, was the work of several individuals who did not include the Claimant.

41 The nomination in the Best Animation category named three individuals: Mic Graves, Mr Bocquelet and Ms Fell. In the Best Writer category, the nomination simply referred to the writing team.

42 It was common ground that the production of cartoon animations is a team venture. Many skills and disciplines are involved. We were told without challenge that as many as 150 individuals would have contributed in one way or another to the work which went into 'The Money'. Of those, a good number (probably over 20) would have played some form of creative part in the exercise. The members of the writing team acknowledged as having contributed to 'The Origins' numbered nine.

43 The award ceremony was fixed for 20 November 2016. Nominees are entitled to be represented at the ceremony but numbers do not permit all persons involved to attend. Inevitably some who would wish to be present miss out on invitations. One such was Ms Nicole Paglia, who had worked for the First Respondent on *Gumball* as successor to the Claimant, but not on either of the nominated episodes (although she was with them at the time when both were screened). She left the organisation in May 2016. Having got wind of the nomination, she sent an email to Ms Fell asking if there were any spare tickets for the ceremony. Ms Fell replied that she was not able to offer her a ticket but would keep her in mind. Ms Paglia wrote a fortnight later to say that she had been provided with a ticket by Disney. The exchange was cordial and there was no

suggestion before us that Ms Paglia had left the First Respondent otherwise than on good terms.

44 The First Respondent had a table at the ceremony, as did Disney. Ms Paglia sat at the Disney table.

45 Both *Gumball* nominations won BAFTAs. Representatives of the First Respondent went up to the stage to accept their awards and give the usual speeches. Ms Paglia did not join them on either occasion. No mention was made of the Claimant or Ms Paglia. On both occasions Mr Bocquelet expressed thanks to "the members of the team", including those not present on the night.

46 As is routine, at the end of the evening the winners went backstage and short interviews were conducted and photographs taken. Ms Paglia approached Mr Bocquelet and asked if she could join the group at that point. He said that she could. She attended the interview of the Best Animation winners and was photographed with them. We were shown photographs and video footage in some of which she can be seen holding a BAFTA comedic mask. She did not speak at the interview. It seems that she played no part in the interview and photo session relating to the Best Writer category. Some of the publicity material shown to us named Ms Paglia. None of it stated what her connection with the First Respondent was, let alone credited her with any contribution to either award.

47 The Claimant's fourth complaint is that the Respondents wrongfully failed to correct the "misleading impression they had given to the industry and the wider public" concerning the BAFTA awards and the individuals who had contributed to the work which had won them.

48 It is plain that the Claimant was aware almost immediately of the fact of the two awards. She wrote repeatedly to the solicitor then acting for the Respondents in the first case, purporting to raise questions and challenges arising out of the publicity (including photographs) following the awards ceremony. In part, she maintained that events to do with that ceremony somehow cast doubt on the validity of the first Tribunal's findings. In one message she referred to "people who should not be there" (*ie* at the ceremony). The solicitor identified the episodes which had won in each of the two categories and stated that the Best Writer category was a team award. He also advised, as was the fact, that an inquiry had been raised about obtaining BAFTA certificates for each member of the writing team. (These were subsequently delivered at a cost to the First Respondent of £450 and distributed to all who had been team members at the relevant time, including the Claimant.)

49 The final complaint is that for "almost a month" the Respondents refused to allow her to be photographed holding the award.

50 The Claimant made a request to the First Respondent's solicitor on 24 November 2016 for the opportunity to be photographed with the award. The request was repeated four days later (also to the solicitor) and again, this time addressed to Ms Browne, on or about 12 December 2016. Ms Browne replied on 20 December 2016 saying that she was happy to make arrangements for

photographs with the award at the First Respondent's offices and suggested that a date be agreed in the week beginning 9 January 2017. That did not suit the Claimant but her counter-proposal of 1 February 2017 was accepted and on that date the photographs were taken.

Secondary Findings and Conclusions

The Smear Claim

51 The Claimant repeatedly expressed outrage at the use of the expression "hate mail" in Mr Locket's witness statement. She was determined to confine that reference to the document which she delivered to Ms Fell's address. In doing so she adopted a somewhat legalistic construction of a witness statement made over three years ago by someone who did not give evidence before us. It is, however, illuminating that the witness statement used the past continuous tense ("was receiving"). It seems to us much more likely than not that what Ms Fell complained about to Mr Locket was not the isolated incident of the delivery of the letter but a course of conduct which included that incident. We have quoted from correspondence directed at Ms Fell before and after the delivery of the letter. We have noted in particular the personal references including the mention of Ms Fell's parents in the message of 13 November 2014. We have also noted the finding of the first Tribunal about the impact of the delivery of the letter to her home. We can well understand why the Tribunal made that finding. We accept that she found the constant barrage from the Claimant distressing and disturbing. In the context of what had happened before and what happened after the delivery of the letter, we find that she did feel that she was being persecuted and that the words she used to describe her experience, to Mr Locket and Mr Klein, reflected that sentiment, whether or not she used the precise words "hate mail".

52 In our view the Claimant's treatment of Ms Fell was disgraceful and she has no possible reason to feel aggrieved on learning of how she felt about it. There was no 'smear'. Accordingly, if the Claimant's declared sense of grievance is genuine, we are satisfied that it is in any event unwarranted and unreasonable. It follows that no detriment is made out and the complaint of victimisation necessarily fails.

53 Even had a detriment been established the claim would have failed. Proceeding on the footing that all communications relied upon were protected acts, we are quite satisfied that the fact that the Claimant had exercised her right to raise complaints was not what lay behind Ms Fell's remarks to Mr Locket and Mr Klein. Rather, it was her behaviour in writing incessant, personal, intimidating and wholly unreasonable correspondence. For these reasons, we find that even if there was a detriment it was not an act of victimisation.

The BAFTA Claims

54 These claims are entirely without merit. The Claimant raises legal claims based on events about which she has simply no reasonable ground to complain.

55 There was no practice of advising former employees of BAFTA nominations. It was no detriment for the Claimant not to be told the news.

56 The events on the night of the awards ceremony are quite incapable of sustaining any legal claim. The Respondents did not favour Ms Paglia. They did not engineer her attendance on the evening. They did not enable her to misrepresent herself or her achievements. They merely responded in a friendly way to a request by a former colleague who had worked on the relevant show to join the festivities backstage. The idea that Ms Paglia would be able to advance her career by joining the party is absurd and, self-evidently, did not figure in the thinking of Mr Bocquelet or Ms Fell (or anyone else). The assertion that they had such an intention is all the more fantastical. The absurdity of the Claimant's case is heightened by two further stages in the reasoning. The first was the suggestion that the supposed plan to promote Ms Paglia's career development was motivated by a desire to undermine the Claimant's by giving the impression that she (the Claimant) had not contributed to the BAFTA-winning work. The theory needs only to be recited to be seen as preposterous. To state the obvious, to allow X to be present at a celebration of an award cannot be seen as implying that Y did not make a contribution to the work which won it over two years earlier. The second extension consisted of the Claimant's argument that if she (quite properly) claimed credit for what she had contributed to the award-winning episodes she would be putting herself at risk of being suspected by potential employers of attempting to take credit from Ms Paglia. We simply cannot accept that that this argument is sincere. In evidence she spoke in of the supposed danger of mentioning the BAFTA awards on her CV but when asked if she had in fact done so she told us that she could not remember. We do not believe that answer. As she knows very well, there was no detriment to her on the night of the awards.

57 Nor was there any detriment in the alleged failure to clear up the "misleading impression" resulting from the BAFTAs publicity. The fact that someone was photographed at a festive occasion did not create a misleading impression. The complaint is hopeless.

58 Nor was there any detriment in relation to the alleged delay in permitting the Claimant to take photographs with the award. The chronology speaks for itself. She suffered no disadvantage and the lion's share of the delay was at her behest. Moreover, there is no evidence to sustain the theory that permission was given only once the First Respondents became aware that the Claimant intended to bring legal proceedings. There is no evidence that they were aware that she had contacted ACAS at the time when Ms Browne sent her email of 20 December 2016. The theory fails for the further reason that, as we have noted, the Claimant had signalled an intention to bring legal proceedings well before that**.**

59 These claims fail not only because they are based on matters about which no sensible complaint can be raised but also because in any event the things complained of were not connected in any way to any protected act. If, which we do not accept, they are connected personally to the Claimant, the natural inference would be that the explanation lies in the acrimonious relationship between the parties resulting from the Claimant's extraordinary behaviour as documented by the first Tribunal. In line with the *Hewage* case, we arrive at this conclusion simply

by weighing the relevant evidence. We have not needed to apply the burden of proof provisions. But had we done so, the same result would have followed. We would have found that the burden was not shifted and that, even if it was, the Respondents had amply discharged it by demonstrating that their actions were not materially influenced by the fact that the Claimant had done any of the things relied upon as protected acts.

Time

60 The logic of our reasoning so far is that the claims all fail on their merits. That necessarily leads to the conclusion that the Smear Claim fails for the further reason that it is out of time. The Claimant contacted ACAS for the purposes of Early Conciliation on Thursday, 15 December 2016. She was aware of the alleged 'smear' in November 2015 and the conduct actually complained of dated back further still. There was no "conduct extending over a period" to bring it within time. The Claimant invokes the 'just and equitable' discretion but demonstrates no possible ground for extending the primary period. The length of the delay and the absence of any good reason for it argue compellingly against an extension. We reject as untrue her evidence that she was inhibited from complaining by a natural reluctance to raise a complaint. It is a statement of the obvious to say that the history of her relationship with the First Respondent (as chronicled by the first Tribunal) and its aftermath is not easily reconciled with that statement. She also said that she was not aware of the power of the Tribunal to extend time on "just and equitable" grounds. We reject that evidence too. She was well aware of the rules on time because they figured in a significant way in the first case. She may well have been, as she said, very busy studying for postgraduate degree, but that did not make presentation of a timely claim impossible or even problematic.

61 Moreover and in any event, since of necessity we are addressing the jurisdictional question at the end of the case and have concluded that the first claim has no merit, it would be a manifestly irrational exercise of discretion to extend time.

Outcome

62. For the reasons stated, the claims all fail and are dismissed.

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EMPLOYMENT JUDGE SNELSON
27 February 2019

Judgment entered in the Register and copies sent to the parties on 27 Feb. 19

..... for Office of the Tribunals