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EMPLOYMENT TRIBUNALS

Claimant		***Respondents***
Mr R Davda	**AND**	Institute and Faculty of Actuaries

Heard at: London Central **On**: 14-17 January 2019 &
18 January 2019 (In Chambers)
& 3 May 2019 (resumed hearing)

Before: Employment Judge Brown
Mr G W Bishop
Mr M Reuby

Representation
For the Claimant: Mr J Jupp, of Counsel
For the Respondent: Ms A Del Priore, of Counsel

JUDGMENT

The unanimous judgment of the Employment Tribunal is:

1. The Respondent directly discriminated against the Claimant, a British national because of race in respect of the number of opportunities it gave him to pass examinations to qualify as a Fellow of the Respondent, compared to the number of opportunities it gave to Indian nationals.

2. Alternatively, the Respondent subjected the Claimant to indirect race discrimination by offering only 2 sittings of its examinations per annum, while granting exemptions to equivalent examinations set by the Indian Actuarial Institute and in the circumstances that the Respondent's introduction of Curriculum 2019 gave the Claimant only 2 years in which to pass the relevant outstanding exams.

3. The Respondent did not subject the Claimant to indirect race discrimination by requiring that, in order to be regarded as a fully qualified

actuary of the Respondent, a member of the Respondent must be appointed as a Fellow of the Respondent.

4. The Respondent subjected the Claimant to direct race discrimination by directly or indirectly instructing, causing, inducing and or aiding the Indian Actuarial Institute not to admit British nationals as students.

REASONS

Preliminary

1. The Claimant brings four claims of race discrimination under the Equality Act 2010, two for direct race discrimination and two for indirect race discrimination. His protected characteristic for the purposes of this claim is his British nationality. Claim one and claim two are pursued as alternatives to one another.

2. The Respondent accepts that it is a qualifications body within *s.53 Equality Act 2010*. The Claimant's case is that the Respondent has discriminated against him in the arrangements that it makes for deciding upon whom to confer a relevant qualification. The parties had agreed an extremely lengthy list of issues:

	Claim	**Nature**	**Status**
1	Direct Discrimination (nationality)	UK students are disadvantaged because Indian students have 4 opportunities per year to pass exams (and in 2018, 5 opportunities) and British students only have 2	Reinstated following reconsideration
2	Indirect Discrimination (nationality)	Alternative to 1. Same facts as above.	Reinstated following reconsideration
3	Indirect Discrimination (nationality)	Swiss Actuaries can qualify as fellows of R by reason of mutual recognition when they have far less onerous qualification requirements	Reinstated following reconsideration
4	Direct Discrimination (nationality)	R directly or indirectly instructed, caused, induced and/or aided the IAI not to allow British students to join the IAI and yet permitted Indian national to be members of it	Not struck out

Claim 1 – Direct Discrimination (nationality) s.13 EA

Claim 1 is an alternative to claim 2.

Has C, a British national, been treated less favourably by R than an Indian national R treats or would treat others because of his British nationality in respect of the number of opportunities to pass examinations to quality as a fellow of R?

Who is the comparator?

- C relies on a hypothetical Indian student member of R. C's case is that Indian member is in materially the same circumstances as C.
- R says the correct comparator is a hypothetical non-British student of R who is in materially the same circumstances as C, inter alia, not being a student member of IAI.

What is the less favourable treatment by R?

- C's case is that he is treated less favourably than the Indian member because the Indian member has the opportunity to join the Indian Actuarial Institute ("IAI") and set exams which are recognised by the R for which exemptions are given.
- R denies that it has treated C as alleged.
- R denies that its treatment of C has caused the disadvantage C relies upon in saying he was treated less favourably.
- R will say that C's complaint lies against the IAI, not it in respect of the alleged less favourable treatment.
- R denies that it prevents C, by reason of his nationality, from being a member of both it and IAI.
- It is R's case that the IAI admits British Nationals to IAI student membership.

Note:

The following facts are agreed:

a. R offers two sittings of its exams per annum.
b. That it is possible for an Indian student member of R who is also member of the IAI to sit the IAI exams and equivalent R exams in the same year.

The following facts are not agreed:

a. That IAI has a PCP of denying entry to British nationals to its student membership.
b. Whilst it is agreed that the R grants exemptions to its exams for passes in equivalent IAI exams passed by the IAI, there is a dispute as to whether this is at the discretion (R's case) or a fixed Policy (S's case)/

Claim 2: Indirect Discrimination (nationality) s.19 EA

This is an alternative to claim 1.

What is the PCP that C relies on?

C advances the following PCPs:

a. (PCP 1) The rule or policy of R of offering two sittings of its exams per annum
b. (PCP 2) The rule or policy that requires student members should pass examinations by the end of the transition period, 31 December 2018, or

face losing the benefit of the passes already obtained and also have to take additional exams under the new curriculum, curriculum 2019.

R accepts it applies PCP 1 but does not accept that it applies PCP 2.

Did the PCPs or the interaction of the PCPs apply to the protected group, (i.e. British nationals and those who did not share that characteristic (i.e. non-British nationals, in this case Indian nationals)?

- C's case is that they apply to all.
- R's case is that they would apply to all student members of R.

Did the PCPs or the interaction of the PCPs put or would they put those of British nationality at a particular disadvantage compared to non-British nationals (in this case Indian nationals)?

- C's case is that the PCPs disadvantage British nationals compared to Indian nationals as follows: Indian nationals can be both members of R and the IAI. As members of R they have two opportunities per year to sit examinations. R also recognises IAI examinations and the IAI members have two opportunities to take IAI examinations each year (and in 2018, three opportunities). This means that an Indian national who is also a member of R has four opportunities per year (and in 2018 five opportunities) to take essentially the same examinations. British nationals are unable to join the IAI, they are therefore deprived of the opportunity of having examinations undertaken with the IAI recognised by R and are confined to having only two opportunities to take examinations each year.
- R denies that the PCPs, in combination, put British nationals at the disadvantage contended for by comparison with those who are not British nationals whose circumstances are not materially different.
- R's case is that the relevant claimant group for comparison (the relevant pool to test the PCPs) consists of those affected by the PCPs whose circumstances are not materially different to C's.
- R case is that the comparator group within the pool consists of student members of R who are not British Nationals and whose circumstances are not materially different to C's.

Did the PCPs put or would they put C at that disadvantage?

- C's case is that he is disadvantaged because he cannot joint the IAI and consequently has fewer chances to pass the examinations that Indian nationals and is likely to take longer to qualify as a fellow of R.
- R's case is that it is not its PCPs which place C at the particular disadvantage he contends for, but rather the alleged policy of the IAI of not admitting British nationals to its student membership
- In any event, R denies that IAI has a practice of not admitting British nationals as alleged
- R denies that C is put, or would be put to the disadvantage he contends for

If so, has R shown the application of the PCPs is a proportionate means of achieving a legitimate aim?

R relies on the following aims:

a. ensuring that actuaries who are admitted as Fellows or it are fit to practice and have u to date knowledge relevant to their employment
b. meeting its obligations to satisfy its regulator, the FRC, that the actuaries it admits as fellow have demonstrated attainment of the learning objective in its syllabus in the aggregate
c. ensuring that R's staff workload in the administration of exams is manageable in the interests of staff health and safety
d. efficient and effective administration of exams within the resources available to R for the benefit of those undertaking exams
e. flexibility in the administration of its accreditation system in the interests fairness to student members
f. compliance with domestic statue
g. to promote and regulate the actuarial profession in the UK in a fair manner, in accordance with its obligations under its Royal Charter
h. to enhance relationships with other actuarial associations worldwide
i. to facilitate R's members' practice in other jurisdictions
j. to encourage appropriately qualified individuals to join R

<u>Claim 3 – Indirect Discrimination (nationality) s.19 EA</u>

What is the PCP that C relies on?

(PCP3) The requirement that to be regarded as a fully qualified actuary of R a member has to be appointed as Fellow of R.

- R does not accept this is capable of being a PCP

Does R apply the PCP to C?

- C's case is that it is applied to him as he is member of R who wants to be considered a fully qualified actuary
- R will say the PCP, as articulated at 19, is not applied to C. C is a student member of R. The PCP which R applies to C in his pursuit of fellowship is that in order to become a fellow, C must complete and pass its exam framework, which he may do by passing all of the exams, or by gaining exemptions, and/or credits in lieu of passes in certain exams in recognition of courses or exams undertaken with accredited universities

What is the pool for comparison?

- C's case is that the pool for comparison must be one that tests the particular disadvantage of and therefore must be all persons seeking to become fully qualified actuaries, i.e. fellows of R. It should not be confined to student members of R
- R contents the pool for comparison consists of all those to whom the PCP applies, or would apply, namely all student members of R. It must consist

of those members of R whose circumstances are not materially different. It cannot therefore include persons who are already fully qualified actuaries in other jurisdictions seeking recognition with R of their existing fully qualified status with another actuarial body

Did the PCP: apply to the protected group, (i.e. British nationals and those who did not share that characteristic (i.e. non-British nationals, in this case Swiss nationals)?

- C's case is that it applies to all
- R: the PCP which it applied to C applies to all student members of R

Did the PCP put or would put those of British nationality at a particular disadvantage compared to non-British nationals (for example, Swiss nationals)?

- C's case is that, whilst ostensibly neutral; the requirement that to be regarded as fully qualified actuary of R, it was necessary to be appointed as a fellow of R, disadvantages British members because it was and is much easier for non-British people including, for example, those of Swiss nationality, to become fellows of R. This is because R recognises foreign qualifications, for example Swiss qualifications which was and is an easier route to qualifications as a fellow of R.
- R does not accept group disadvantage

Did the PCP put, or would it put, C at that disadvantage?

- C's case is that he was and remains disadvantaged compared to Swiss nationals because it was and remains practically impossible or extremely difficult for him to take the Swiss route of mutual recognition to become a fellow of R
- R denies that C is put to the disadvantage he contends for. Further, it denies that the route to qualification in other jurisdictions is less rigorous or difficult and that the exams are easier to pass. R avers that attaining qualification as an actuary in the jurisdictions with the benefit of a mutual recognition agreement with it emails demonstrating attainment of a standard which is rigorously bench-marked to its own and is of equivalent level.

If so, has R shown the application of the PCP is proportionate means of achieving a legitimate aim?

R relies on the following legitimate aims:

a. ensuring that actuaries who are admitted as Fellows of it are fit to practice and have up to date knowledge relevant to their employment
b. meeting its obligation to satisfy its regulator, the FRC, that the actuaries it admits as fellows have demonstrated attainment of the learning objectives in its syllabus in the aggregate
c. compliance with EU law including bilateral obligations between EU and other nations, inter alia, Switzerland

d. compliance with the law in relations to EEA member states
e. compliance with domestic statute
f. to promote and regulate the actuarial profession in the UK in circumstances where actuaries qualified in other jurisdictions are not obliged to join R in order to practice in the UK
g. to enhance relationships with other actuarial associations worldwide
h. to encourage appropriately qualified persons to join
i. to facilitate R's members' practice in other jurisdictions

Claim 4: Direct Discrimination s.13 EA

- 's case is that R directly or indirectly instructed, caused, induced and/or aided the IAI not to admit British nationals as students
- R says that the Tribunal does not have jurisdiction to hear this complaint as it is not capable of falling under Section 53(1)(a)(b) or (c) or the Equality Act 2010

Was there any implicit or explicit instructing, causing, inducing, or aiding of the IAI by R not to admit British nationals as members?

- R will say that it has not

What is the comparator?

- C relies on a hypothetical Indian member of R
- R will say the correct comparator is a person who is not of British nationality and whose circumstances are not otherwise materially different

If so, has C, a British national, been treated less favourably by R than the Indian national?

- C relies on the following less favourable treatment. The instructing, causing, inducing, or aiding of the IAI by R had the effect that British students were treated less favourably by R because, R at the same time as requiring IAI not to admit British nationals, permitted Indian nationals to (i) be members or R and sit its exams and (ii) mutually recognised examinations sat by Indian students via the IA and thereby gave Indian nationals four opportunities per year (and five in 2018) to pass examinations.
- R denies the treatment

Time Limits

Has C brought his claims within 3 months of the date of the acts alleged to be discriminatory, taking into account the effect of the time extension for Early Conciliation?
Are any of the acts continuing acts so as to bring them into time?

3. During closing submissions, the Claimant applied to amend the claim and list of issues to include a further PCP in the second claim. The PCP was

formulated as follows, “The Respondent’s exemption policy of exempting exams set by the IAI (Indian Actuarial Institute).” The Respondent did not object to the amendment and said that it was able to deal with this in submissions.

4. The Tribunal allowed the Claimant to amend his claim to include that third PCP in the second claim. It noted that amendments can be made at any stage of the proceedings and that there appeared to be no hardship or injustice to the Respondent in allowing the amendment. No additional oral or documentary evidence was required in relation to the amended claim and the Respondent said, itself, that it was in a position to deal with it in closing submissions.

5. The Tribunal heard evidence from the Claimant and from his witnesses Robert Lynch, Senior Actuary FIA; Douglas Stephenson, FIA; and Petra Protrovia, FCAS (Fellow of the US Casualty Actuarial Society).

6. The Tribunal also heard evidence from Dr Trevor Watkins, former Director of Education at the Respondent; Ben Kemp, General Counsel for the Respondent; and Christopher Bristow, Head of Education Partnerships and Life Long Learning at the Respondent. There was an eleven-volume bundle of documents and a core bundle of documents. Some documents were added to the bundle during the Hearing with the agreement of the parties. Both parties gave opening skeleton arguments to the Tribunal and made closing submissions. The Tribunal reserved its decision.

Further Hearing

7. On 13 February 2019, after the Final Hearing and discussions in Chambers had concluded, but before the Judgment had been promulgated, the Respondent made an application that the Tribunal admit into evidence two additional email exchanges between the Claimant, and another student, and the Indian Actuarial Institute (IAI), from August/September 2017 and October 2017. The first appeared to be the continuation of a relevant email chain between the Claimant and Indian Actuarial Institute which had been examined in evidence at the Final Hearing and which had been relied on by the Claimant. The Respondent contended that this additional email correspondence had been in the Claimant’s possession, but was not disclosed by him and was highly relevant to the Tribunal’s decision.

8. The Tribunal listed a further one day hearing on 3 May 2019, to consider the application and, if the Tribunal admitted that limited additional evidence, to hear evidence on it and make a final judgment.

9. Because of the parties’ the Tribunal members’ limited availability, and the Tribunal administrative mechanisms, it took some time to find one additional day on which all necessary parties could attend.

New Applications to Admit Evidence

10. At the start of the hearing on 3 May 2019, however, it became apparent that the Respondent, on the one hand, and the Claimant on the other, were pursuing

further and new applications to admit evidence which had not been before the Tribunal at the Final Hearing.

11. The Respondent's new application to admit evidence related to new material which the Respondent had obtained from the Indian Actuarial Institute after the Final Hearing was completed and - to be clear - had been created after the Final Hearing was completed. The relevant documents were: An email from the Respondent's CEO to the IAI regarding the Claimant's correspondence with the IAI on 25 January 2019; An email from the Respondent to the IAI on 1 February 2019; An email from the President of the IAI to the Respondent's CEO on 12 February 2019; An email from the Respondent's CEO to the President of the IAI on 14 February 2019 regarding IAI membership; A signed statement from the IAI on 23 April 2019.

12. In the email correspondence, the Respondent's CEO had sought to obtain statements from the IAI about the ability of UK nationals to be members of the IAI and to sit IAI examinations, both currently and in the past. The IAI had provided answers to those questions. The Respondent contended that it had, in good faith, sought answers from the IAI following the Final Hearing and that the answers were relevant to the Tribunal's decision. The Respondent acknowledged that the material was created after the Final Hearing, but contended that the Tribunal would not take much additional time to deal with it.

13. The Claimant opposed the application and said that the correspondence concerned matters which were centrally in dispute at the Final Hearing. He contended that the Respondent could and should have obtained this evidence if it wished to adduce it, well before the Final Hearing; it was inappropriate for the Tribunal to reopen central matters already dealt with in evidence. It would not be in the interests of justice to do so. The Claimant contended that the Respondent had chosen not to obtain and admit the additional evidence earlier and that this should be taken in to account.

14. The Tribunal considered that it did have power to admit relevant evidence under its general case management powers, even after the Final Hearing had been concluded, and that it should apply the overriding objective to its decision. The Tribunal also considered that there was a public interest in finality of litigation and that it should take into account whether there was a satisfactory explanation as to why the evidence had not been made available by the Respondent earlier.

15. It decided that there was no satisfactory explanation from the Respondent about why the evidence from the IAI had not been obtained previously, when it concerned matters which were centrally in dispute at the Final Hearing. The Tribunal considered that, if the Respondent had wanted to rely on such evidence, the Respondent could and should have sought and disclosed it before the Final Hearing.

16. The Tribunal decided that it would not be fair, or just, to admit the evidence after the conclusion of witness evidence at the Final Hearing, when witnesses had already been cross examined. Cross examination might have been conducted differently if the evidence had been made available earlier. The

parties would not be on an equal footing if the Respondent was able to rely on further evidence obtained after it had had the benefit of hearing all the evidence and submissions at the Final Hearing. The Tribunal found that it was not proportionate to the complexity and importance of the issues to have further hearing on them. Five days had already been allocated to the matter, which was proportionate.

17. The Tribunal also considered that admitting the further evidence would necessitate further delay. The Tribunal would not have time to deal with the new evidence, as well as the existing 13 February 2019 application. Neither party wanted the 3 May 2019 hearing to be further adjourned. The Claimant, quite candidly, told the Tribunal that he simply could afford to pay for further legal representation at a further Hearing. It would not save expense for either party to attend further hearings.

18. Taking all matters into account, the relevant factors strongly indicated that this additional new evidence, obtained after the event from the IAI, should not be admitted, even if it was potentially relevant to the issues.

19. The Claimant's application for the Tribunal to admit further evidence was, in fact, an application that the Tribunal take note of further evidence that the Claimant had obtained of internal discussions and meetings at the Actuarial Association of Europe. Those discussions were about the equivalence of various European Actuarial qualifications. The Claimant contended that he could not have disclosed the evidence earlier, because he did not have it earlier. It was only available to members of the Actuarial Association of Europe. As the Claimant is not a Fellow of the Respondent, he is not a member of the AAE and, therefore, he could not access that information. He said he was only recently given the material by a friend, who is a Fellow of the Respondent and therefore a member of the AAE.

20. The Claimant contended that the Respondent, by contrast, must have had access to the relevant material, because it was plain, from the face of the documents themselves, that the Respondent's Executive Officers, including one who gave evidence at the Tribunal, Doctor Trevor Watkins, attended the relevant meetings and were party to the documents produced from them.

21. The Respondent contended, however, that the Claimant should have sought third party disclosure and that the documents were AAE documents and not the Respondent's documents.

22. The Tribunal considered that it was highly likely that the Respondent itself is a member of the AAE, if individual Fellows of the Respondent are members. It was highly likely that the Respondent was given these documents, seeing that the Respondent was represented at the AAE hearings. It was therefore highly likely that the Respondent did have these documents, but did not disclose them in these proceedings. The Claimant acknowledged that, to admit the documents would necessitate further hearing time, but he wanted to avoid further delay and further expense. He simply wanted the Tribunal to look at the documents and to draw inferences from the fact that the Respondent had not disclosed them.

23. The Respondent said that the Tribunal should not admit the documents and that the Tribunal could not make appropriate findings on the documents without hearing further evidence. The Respondent, in common with the Claimant, did not want any further hearings.

24. Taking into account the relevant factors, the Tribunal considered that there was a good reason for the Claimant not having disclosed these documents before. The documents were relevant and, the Tribunal believed, were in the Respondent's possession, but were not disclosed by the Respondent. That might well have indicated that the Tribunal should admit the documents. However, it was apparent from the Claimant's submissions that the new documents were part of a larger body of material. For the Tribunal to take any proper view of that documentation, it would need to hear further evidence from new witnesses and that would necessitate at least another two days of hearing. The new days would probably be some months in the future. There was a public interest in the finality of litigation and both parties agreed that further delay and expense was not desirable. On balance, applying the overriding objective, the Tribunal considered that it should not admit the further evidence, even if it was relevant. The Tribunal also concluded that it would difficult for the Tribunal to draw influences from the non-disclosure, without it hearing evidence about the further documents. The Tribunal genuinely could not know what the documents actually said.

Respondent's 13 February 2019 Application to Admit Further Evidence

25. In its 13 February 2019 application, the Respondent sought to adduce two different email chains: First, an email chain between the Claimant and the IAI in August/September 2017; and second, an email chain between the IAI and an anonymous potential student in October 2017. In both email chains, the IAI said that that the potential applicants could sit its entrance exam, the ACET.

26. The Respondent said that, with regard to the first, the Claimant must have had it in his possession and control, that the document was relevant and disclosable and that the Claimant was at fault for not having disclosed it. There were strong reasons, given the relevance and the circumstances in which it had not been disclosed, to admit it now, even after the end of the Final Hearing. With regard to the second, the Respondent said that this was relevant evidence which had come to light at the same time as the complete Claimant IAI email chain, and was supplied to the Respondent, who had no means of securing it previously. Neither document was created after the Final Hearing, but each was a historical document disclosed to the Respondent by a third party. The Respondent contended that it was in the interest of justice for the Tribunal to admit both email chains because they were of fundamental relevance to claims 1, 2 and 4 in the case.

27. The Claimant opposed the admission of the new evidence. He said that he had not received the last email in the relevant chain dated 27 September 2017 and that it was of questionable provenance. He pointed out that the relevant email chain had only ever been disclosed by the AAE as a PDF document and

therefore could not be interrogated. He noted that, amongst other things, it appeared to omit a part of the email chain and was therefore to be viewed with suspicion. He also said, regarding both email chains, that they traversed the same ground as an email chain between Mr Briscow for the Respondent and the IAI, about which evidence had been given at the Final Hearing. Neither email chain, therefore, took the matter further. With regard to the second email, in particular, the Claimant said that he was not party to it, it was new evidence produced after the Final Hearing, and it should not be admitted.

28. The Tribunal decided that, on the face of the Claimant/IAI email chain, the particular email of 27 September 2017 was part of a relevant correspondence chain and therefore was potentially relevant to issues 1, 2 and 4 in the case. While the Claimant questioned its provenance, the Tribunal decided that the correct course, which should be fair to both parties, would be to admit the relevant evidence, but take the Claimant's submissions about its veracity and reliability into account, when coming to its Judgment in the case. There was time in the Hearing on 3 May 2019 to consider both sets of emails. Admitting both would not result in any further costs or delay. The Respondent was not at fault in failing to disclose the second email earlier. It was provided by a third party, at the same time as the Claimant's apparently complete email chain. The second email went to the same relevant issue. It was appropriate to admit both the documents which were of historical creation, as both were relevant to the same issue.

29. The Tribunal admitted both further email chains and heard evidence and submissions on them.

30. The Claimant then made an application to admit a document, Further Hearing Bundle, pages 200-203, from the Institute of Actuaries of India, which the Claimant said was available on the internet. The Tribunal decided that the document should be admitted. One of the issues in the case was whether there was an absolute bar on membership of the IAI by UK students. The Respondent now relied on emails from the IAI, apparently saying that UK candidates could take an ACET exam and thereby be admitted. The Claimant's case on those emails was that the IAI statement was a sham, or totally disingenuous, and that the IAI did, in fact, operate a nationality bar to UK citizens. He sought to rely on the document at pages 200-203 in support of his contention.

31. The Tribunal decided that, insofar as the Tribunal had accepted that the IAI emails about the ACET exam were relevant to the issue of a nationality bar, the IAI's own public document about the ACET exam and the eligibility of people to sit it was also relevant to whether the IAI's emails were written in good faith.

32. The Tribunal therefore also heard evidence and submissions regarding the document at pages 200 – 203 Further Hearing Bundle.

33. It made its decision having taken into account all the evidence it heard, including the new evidence.

Findings of Fact

34. The Claimant is a British citizen. He graduated in 2000 with a BSc in Mathematics from Kings College London. He is 40 years old and is a student actuary of the Respondent. He joined the Respondent in 2001 and took his first actuarial examination in April 2002.

The Respondent's Examinations and Exemptions

35. The Respondent is a qualifications body. It sets examinations for qualification as a Fellow of the Respondent and also as an Associate member of the Respondent. Until recent changes in the Respondent's curriculum, in order to obtain fellowship of the Respondent it was necessary to sit 15 examinations. These were made up of 9 core technical subjects (CT subjects), 3 core applications (CA subjects), 2 specialist technical subjects (ST subjects) and one specialist application (SA subject), Bundle 4, page 1438.

36. With effect from 31 December 2018, the Respondent introduced a new curriculum known as Curriculum 2019. In order to be exempt from the requirement to take examinations under the new curriculum, it is necessary for existing students to have passed equivalent exams under the old curriculum.

37. However, in order to be exempt from the new CM1 examination, a candidate must previously have passed both the old CT1 and CT5 examinations. Further, in order to be exempt from the new CS2 examination, a candidate must have passed both the old CT4 and CT6 examinations. The Claimant has not passed CT5 or CT4, although he has passed CT1 and CT6. Further, the Claimant has not passed CT8 and, under the new system, this examination has been converted into 2 examinations under the new CM2 examination.

38. The Respondent is the qualifications body for actuaries in the UK. There are other actuarial professions in other countries in the world, including the Casualty Actuarial Society (CAS) and the Society of Actuaries (SOA) - both in the USA - the Institute of Actuaries of India (IAI) and the Australian Actuarial Institute (AAI).

39. Other European countries also have Actuarial Associations which confer qualifications on actuaries in their countries. In particular, the SAV Actuarial Association confers actuarial qualifications in Switzerland. It is a requirement that candidates be resident in Switzerland in order to take the SAV exams, Bundle 9 page 3309.

40. The Respondent has a number of Mutual Recognition Agreements (MRAs) with other actuarial associations around the world. Under these various MRAs, the Respondent grants exemptions to students of those actuarial associations in respect of specific examinations where the Respondent judges particular examinations of the other actuarial associations to be equivalent to particular examinations set by the Respondent.

41. It was not in dispute that the Institute of Actuaries of India (IAI) follows an identical syllabus to the Respondent, uses the same educational materials, and sets examinations that are directly equivalent to the Respondents' examinations and which are structured in the same manner. Clearly, each individual examination is unique, but it was not in dispute that a person who had followed the Respondent's syllabus and teaching materials would be able to sit an equivalent examination set by the Institute of Actuaries of India and that there was a direct correlation between the two sets of examinations.

42. The Respondent has entered into an MRA with the Institute of Actuaries of India (IAI) whereby it recognizes passes in Institute of Actuaries of India (IAI) examinations as direct equivalents of passes in the Respondent's corresponding examinations and grants an automatic exemption from the Respondent's corresponding examination.

43. The Respondent's document, "Exemptions for Students of the Institute of Actuaries of India", dated 28 August 2017 states, "We grant exemptions from some of our exams if you have passed the Institute of Actuaries of India exams". The document set out the exemptions available; these are:

a. for any of IAI CT1 – CT8 awarded after 1 May 2005, the corresponding Respondent's CT exams;
b. for IAI CT9 (June 2013 onwards), the Respondent's CT9;
c. for IAI CA1, CA2 and CA3, the Respondent's corresponding CA exams;
d. for any two IAI St subjects (awarded after 1 May 2005), the Respondent's corresponding ST exams.

Bundle 10, page 2936.

44. The exemptions granted for IAI examinations, therefore, cover all the examinations required to be passed in order to become a Fellow (or Associate) of the Respondent, apart from one Specialist Application (SA) subject.

45. The Tribunal accepted the Claimant's evidence, which was not significantly disputed by the Respondent's witnesses that, while the American actuarial bodies' syllabuses covered the same material as the Respondent's, the American bodies' syllabuses and learning materials, as well as the structure of their exams, differ from the Respondent's. The Respondent's November 2017 Exemption Agreements with other professional bodies are set out at Bundle 9, page 3332. This document sets out that the Respondent has agreements which enable the Respondent's students who have qualifications from the Actuarial Society of South Africa, the Casualty Actuarial Society (USA), the China Association of Actuaries, the Institute of Actuaries of Australia, the Institute of Actuaries of India and the Society of Actuaries (USA), to apply for exemptions from some of the Respondent's examinations. The exemptions available for examinations taken with actuarial institutes other than the IAI are less extensive than the exemptions available for IAI examinations.

46. It was not generally in dispute that the Respondent's examinations are very exacting.

47. The Respondent sets examinations twice a year. The Institute of Actuaries of India (IAI) also sets exams twice a year, but not on the same days. The Respondent has no bar to membership by students from other countries around the world. This means that Indian nationals, who are members of the Institute of Actuaries of India (IAI), can also be members of the Respondent. They can sit 2 examinations per year under the IAI exam timetable and 2 exams per year, if they wish to, under the Respondent's exam timetable. This means that Indian students can sit 4 different examinations each year, all of which would, if successfully passed, be counted directly, or by exemption, towards qualification as a Fellow or Associate of the Respondent. Alternatively, an Indian national, who was a member of both the Institute of Actuaries of India (IAI) and the Respondent, could sit the same examination on 4 occasions in one year, taking 4 chances to pass that exam. The IAI exams take place within a month of each of the Respondent's exams.

48. The Claimant contended that, by contrast, UK nationals were not permitted to be members of the Institute of Actuaries of India (IAI).

UK Nationals and IAI Membership

49. It was not in dispute that members of the Respondent, in general, could also be members of the IAI, but it was in dispute whether UK nationals, who were student members of the Respondent, could also be student members of the IAI.

50. On 30 October 2010, Mr L Khan, who was then President of the IAI, wrote to a Mr Hirani, a student member of the Respondent, in respect of his membership of the IAI. Mr Khan said that he had no alternative but to cancel Mr Hirani's membership of the IAI, because the IAI had conducted its examinations since 2000 under an agreement or arrangement with the UK Actuarial profession which meant that all its examinations except SA level were based on the syllabus and study material of the UK. The IAI was facilitated in doing so by having access to the Respondent's study material at low cost and this arrangement made it necessary for the IAI to ensure that it did not compete with the Respondent and, in specific terms, not to conduct examinations in the UK for UK residents and subjects.

51. It was not in dispute that there is an exam centre in the UK where IAI students can sit IAI exams. Indian IAI student members can therefore sit IAI exams in the UK. Dr Watkins told the Tribunal this in paragraph 22 of his witness statement and Mr Khan, President of the IAI, specifically also referred to IAI conducting examinations in the UK, in his email to Mr Harani on 30 October 2010, bundle 3 page 905.

52. Mr Khan's email was copied to Trevor Watkins, who was, at that time, Director of Education for the Respondent. Dr Watkins had worked for the Respondent since April 2005 and did so until his retirement in December 2015, first as Head of Education and CPD and then as Director of Education.

53. It appears that Mr Hirani was unhappy about the response he had received from the IAI and raised this with Dr Watkins. On 22 July 2013 Dr Watkins wrote

to Mr Khan, saying that, in the year 2000, Mr Khan had made reference during correspondence to an agreement about non-competition for students between the IAI and the Respondent. Dr Watkins asked if Mr Khan had a copy of the agreement, Bundle 11 page 4173. Mr Khan replied, "There was no agreement, it was more of understanding with Liz Goodwin. I am not sure that I mentioned in my email to him about any agreement. In any case I find no reason why IAI should engage with someone who is not IAI member". Dr Watkins did not respond further to Mr Khan for clarification. He forwarded Mr Khan's email to Mr Ben Kemp, General Counsel for the Respondent, amongst others at the Respondent. In forwarding the email, Dr Watkins simply said, "As I thought there is no agreement (Liz was my predecessor)", Bundle 11, page 4173.

54. The Claimant attempted to join the IAI in September 2017. On 13 September 2017, Swetha Jain, a Senior Executive-Examination at the IAI, wrote to the Claimant saying, "Regret to inform you that we will not be able to give you admission in IAI since you are a UK citizen".

55. The Claimant thereafter repeatedly emailed the IAI. On 14 September 2017, he emailed saying, "Please advise me WHERE it says that as a UK citizen I cannot join the IAI? Did you just make this rule up when I have applied?..", Further Hearing Bundle p113. On 15 September 2017 he emailed saying, ".. Please provide me with your reasoning and point me to where I can verify this in accordance with your rules and regulations. ..", Further Hearing Bundle p112. On 19 September 2017, the Claimant emailed further saying, "Ms Rao asked me several times about my nationality during our phone call and now I see why. Please clarify why I am not allowed to join the IAI due to my British citizenship?" Further Bundle page 112. On 26 September 2017, he pressed the IAI for a response, saying inter alia, "Please advise why you have said I cannot join the IAI as a British Citizen.." Further Hearing Bundle page 111.

56. The final email in the chain, which apparently provided the IAI's response to the Claimant's emails said simply, "This is to inform you that as per the Institute of Actuaries of India (Admission as Member) Regulations 2017 a student has to clear ACET to take admission in IAI. Kindly refer the below admission link (a hyperlink was provided to a web address)." Further Hearing Bundle page 111.

57. The Tribunal was also shown an email chain from October 2017 between the IAI and another potential UK student member. The student member had emailed on 11 October 2017 saying, "I am a UK citizen. I am based in the UK. Can I join the IAI? I've heard that UK citizens are not allowed to join."

58. Swetha Jain of the IAI replied on 13 and 14 October 2017 saying, "You can join IAI by clearing the entrance exam ACET.." and ".. the student can take admission in IAI by clearing our entrance exam ACET." Further Hearing Bundle pages 136 – 137.

59. The Tribunal noted that, in the September 2017 email chain with the Claimant, the IAI answered the Claimant's questions about whether and why there was a bar to UK citizens becoming members of the IAI by saying, "… a student has to clear ACET to take admission in IAI."

60. That could be construed as an explanation for the bar on UK citizens, rather than contradicting the existence of a bar.

61. The October 2017 IAI's answer to other applicant's question about whether UK citizens could be IAI members, was more positive, saying that "..the student can take admission in IAI by clearing our entrance exam ACET".

62. The Tribunal also admitted evidence about the ACET exam published by the Institute of Actuaries of India. This was a "Frequently Asked Questions" document. In answer to the question "I live outside India, can I appear for the exam from outside India?" The answer was, "No, currently the exam is being offered only in cities within India, there is however no restriction based on citizenship and/or residence for the exams to be taken from any one of the twenty-four centres, however IAI will reject applications from countries/nationalities "alien" to India and any other nationality/country that IAI make consider it should not conduct its examinations for. The decision of IAI in this regard will be absolute and final". Page 200.

63. From the IAI's information, therefore, students can only sit the ACET exam in India. Even then, the IAI retains the discretion not to allow applicants from any other country or nationality that the IAI may consider "it should not conduct its examinations for".

64. Mr Kemp gave evidence to the Tribunal. He said that "ACTED" is an independent company separate from the Respondent, and that a body called the Institute and Faculty Education Limited, "IFEE", was a wholly owned subsidiary of the Respondent and held a single special share in ACTED, which did not convey voting rights or the right to dividends on IFEE.

65. Dr Watkins also gave evidence. He explained that, in the early 2000s, the IAI had no qualified actuaries, but lots of students, and could not cope with the numbers of students wanting to join and take exams. ACTED provided study materials to IAI members for free, and then for a nominal sum of £5, to help the IAI. There was a "quid pro quo" for this, which was that study materials would not be provided to UK students; ACTED was worried that people would be able to buy materials in India and then sell them cheaply to UK students. This was an arrangement between ACTED and the IAI, because ACTED were concerned about low cost material getting into the UK market. ACTED was the body which published study materials in the UK and therefore relied on UK students buying its material for its survival.

66. Dr Watkins told the Tribunal, however, that there was no knowledge, or complicity, in the Respondent about the IAI not accepting UK students. He agreed that he did not say to Mr Khan that the understanding which Mr Khan referred to with Liz Goodwin needed to be stopped.

67. The Respondent's witnesses told the Tribunal that they were not aware, until this court case, that the Claimant had been refused membership of the IAI on the basis of his nationality. Nevertheless, the Tribunal found that it was also

clear from their evidence that, even when they had established that the Claimant had been refused student membership of the IAI because of his nationality, having seen the Claimant's disclosure documents in the case, the Respondent had not taken any steps to tell the IAI that they should change their policy not to admit UK nationals. Nor had the Respondent taken any steps to change the Mutual Recognition Agreement which existed between the IAI and the Respondent.

68. Mr Bristow told the Tribunal that, having learned of the Claimant's case and having given a witness statement in relation to it, he emailed the Executive Director of the IAI on the matter on 19 December 2018. He asked the IAI Executive Director whether he knew of any reason, whether formally articulated in writing or informally agreed during liaison meetings, why a Respondent student would not be able to join the IAI. He said that, as the IAI knew, the Respondent allowed IAI students the opportunity to join the Respondent as student members and take their examinations. On 20 December 2018 the Executive Director replied, saying that Regulation 9 of the relevant IAI Regulations set out the requirements for membership and that all students who met the criteria were eligible for student membership of the IAI. The Executive Director also said, once a student of the Respondent had been admitted as a student member of the IAI, he or she would be able to sit the IAI examinations, Bundle 11, page 4303a.

69. The IAI membership application form was also provided to the Tribunal. The Tribunal inserted this at Bundle 11 pages 4333 and 4334. There was nothing on the form that indicated that there was a bar to admission on the basis of UK nationality.

70. Mr Bristow was cross examined about his email exchange with the Executive Director of the IAI. It was put to him that the issue in the case was not whether student members of the Respondent could join the IAI, but whether UK citizens, in particular, were stopped from joining. Mr Bristow said that he may not have used the correct language to ask his question, but his question was not deliberately contrived.

71. The Tribunal found that Dr Watkins was aware, on 30 October 2010, that the IAI had cancelled the membership of a student member of the Respondent> He was aware that the IAI had said that, pursuant to an agreement with ACTED, the IAI did not compete with the UK actuarial profession and did not conduct examinations in the UK for UK residents and subjects. According, Dr Watkins was aware that the IAI had cancelled a UK student's membership on the basis that it did not allow UK residents and/or subjects to sit its examinations in the UK.

72. When Dr Watkins emailed the President of the IAI in July 2013 seeking clarification about this, he was told that there was no agreement in this regard with the Respondent but "it was more of an understanding with Liz Goodwin" who was Dr Watkins predecessor in his job. The IAI therefore confirmed to Dr Watkins that there was an understanding between Miss Goodwin, Senior Officer of the Respondent, Education Department, and the IAI, that the IAI would not admit UK residents and citizens and would not allow UK residents and/or citizens to sit examinations through the IAI in the UK.

73. On the evidence to the Tribunal, the reason for the "understanding" appeared to be the provision of study materials by ACTED to the IAI.

74. The Respondent contended that the Tribunal should draw influences from the Claimant's failure to disclose the complete email August/September 2017 chain, including the IAI's 27 September 2017 email. The Respondent contended that the Claimant knew well that there was no nationality bar and that he could have sat the ACET exam whatever nationality he held.

75. The Tribunal needed to construe the correspondence between the parties. If the Claimant had suppressed the response from the Indian Actuarial Institute, then that might well be relevant to the Tribunal's interpretation of what the Indian Actuarial Institute had said.

76. However, it was plain to the Tribunal that, having been pressed strongly by the Claimant for an explanation about why he could not join as a UK citizen, the IAI never said, in plain terms, that he could join as a UK citizen. It never retracted its 13 September 2017 statement that he could not.

77. The Tribunal concluded that, if the IAI genuinely did not have a bar to UK citizens joining it, it would have been very easy for the IAI to say this, either in answer to the Claimant, or in answer to the later applicant, or indeed in answer to Mr Briscow when he raised similar questions in December 2018.

78. Furthermore, the very considerable practicable difficulties to a UK citizen taking the ACET exam - obtaining an Indian visa, travelling to India to take the exam - provided some support for the contention that the IAI's statement that students could gain admission to the IAI through taking the ACET exam was, in fact, intentionally disingenuous.

79. Taking all the evidence together, the Tribunal concluded that the statement by the IAI that students in general (including UK students) could gain admission by taking the ACET exam was disingenuous. If the IAI did not have a citizenship bar on UK students, then the IAI would have said so, in answer to direct questions, on several different occasions. It did not. The Tribunal did not accept the truth of the IAI statement that students could gain admission to the IAI through taking the ACET exam insofar as that statement was said to apply to UK citizens.

80. On the evidence, the Tribunal found that the IAI does have a policy of not allowing UK nationals to join it and that this policy was also applied to the Claimant when he tried to join in 2017. The last email to him on 27 September 2017 was properly to be understood as explaining why he had not been permitted to join the IAI because of his nationality.

81. By contrast, as set out above, it was not in dispute that Indian student members of the IAI could sit IAI exams in the UK and also be student members of the Respondent and sit the Respondent's exams.

Changes to the Respondent's Curriculum

82. Mr Bristow told the Tribunal that the Respondent's core curriculum is based on the curriculum of the International Actuarial Association, "IAA". He said that there was a robust process in place to ensure continuity between each of the Respondent exam sittings, involving a team of exam setters preparing exam questions, which are scrutinised by an education actuary, before being tested on two different groups of volunteers who are qualified actuaries. Throughout the process, feedback is obtained to inform any changes which are then made to the exam questions. Only then is the exam paper signed off by the chief examiner and the education actuary. He said that, because of this process and because marking is done individually by individual examiners, it would not be possible for the Respondent to offer more than two exam sittings a year. The Respondent did not have the resources available to it to support more than two exam sittings a year.

83. Mr Bristow also told the Tribunal that the Respondent reviewed its curriculum in 2015. He said that a careful review was essential in order to ensure that the Respondent adhered to the International Actuarial Association, "IAA" syllabus and offered an internationally recognised qualification to its students. He told the Tribunal that the Respondent's curriculum had last been reviewed in 2004 and, therefore, there was a fundamental need for the new review to take place. The Tribunal was also told that there had been a Morris review of the actuarial profession in March 2005, page 594 bundle 2. The background to the Morris report was an inquiry into Equitable Life, which had highlighted concerns with the actuarial profession.

84. Mr Bristow told the Tribunal that, during the Respondent's 2015 review, as well as considering the IAA syllabus, the Respondent considered feedback from a wide range of stakeholders including employers, former students, universities, other actuarial associations and the Finance Reporting Council. All this feedback helped inform the development of the Respondent's new Curriculum 2019 syllabus. Mr Bristow told the Tribunal that the content of the core curriculum subjects had been refreshed and brought up to date and that changes to advanced subjects have been made to reflect the increasing international student base of the Respondent. Mr Bristow told the Tribunal that the new curriculum, Curriculum 2019, was first released in 2016 to all the Respondent's members, including students.

85. On 10 October 2016 the Claimant received an email from Karen Brocklesby of the Respondent, saying that changes to the Respondent's curriculum would implemented in 2019. The Claimant was directed to the Respondent's website for information about how the current system would transfer to curriculum 2019, Bundle 6, page 2212. The Claimant understood, having read the information, that he would need to pass additional exams under the old system before 2019, when the system would change.

86. Samuel Herringman, Stakeholder Relationship Manager, wrote to the Claimant on 12 January 2017, confirming the effect of curriculum 2019 on the Claimant. He recorded that the Claimant had passed CT 1, but not CT 5 and that,

in order to be able to obtain CM1, in the new system, the Claimant would need to gain a pass in CT5 by 31 December 2018. Further, the Claimant had passed CT6, but not CT4 and, in order to obtain CS2 in the new system, the Claimant would need to gain a pass in CT4 by 31 December 2018. Mr Herringman drew the Claimant's attention to 4 examination sessions which would take place in 2017 and 2018 before the change in the curriculum, Bundle 6 page 2412. This meant that, if the Claimant did not obtain passes in CT5 and CT4, he would have to pass the whole of the new CM1 and CS2 in the new system.

87. From the Claimant's exam records, the Claimant sat the CT4 exam twice in 2017, in April and September, but, unfortunately for him, he failed both times. He did not sit any exams in 2018. The Claimant explained to the Tribunal that he was largely taken up with this litigation during 2018.

Mutual Recognition – EU Qualifications

88. The Respondent is a party to a multilateral European MRA, bundle 9 page 3332. In an EU context, mutual recognition is underpinned by the *Recognition of Professional Qualifications Directive 2005/36/EC*.

89. Mr Kemp told the Tribunal the multilateral MRA in Europe was concluded under the auspices of the Actuarial Association of Europe (AAE). He told the Tribunal that the AAE is an umbrella body of associations. Its members comprise European actuarial associations. The AAE MRA is applicable to all AAE member associations as a condition of membership. Mr Kemp said, therefore, that the Respondent does not exercise control over the terms of the AAE MRA, which is a matter for the AAE, acting in accordance with the EU law. However, as a member of the AAE, the Respondent is obliged to comply with the terms of the AAE MRA. Mr Kemp said that both the AAE and the International Actuarial Association (IAA) prescribe core syllabuses designed to ensure a level of core consistency in the international standards required for a qualification for an actuary.

90. Mr Kemp told the Tribunal that the Respondent is an active member of both the AAE and IAA and subscribes to the requirements of both bodies. It supports the work of their committees and provides volunteers to serve on their governing bodies.

91. Mr Kemp also told the Tribunal that the UK government consulted with the Respondent about the incorporation of the most recent iteration of the relevant EC Directive into UK law. The Directive was incorporated into UK law by the European Union (Recognition of Professional Qualifications) Regulations 2015.

92. Mr Kemp told the Tribunal that the Respondent applies a rigorous internal governance process to the approval or amendment to MRAs in accordance with its published Manual, bundle 7 page 2774. Before an MRA is entered into, the Respondent consults with its Regulation Board and Life Long Learning Board (previously known as it Education Board). Mr Kemp said that the Life Long

Learning Board, supported by the Education Executive team, assesses the appropriateness of entering into and maintaining an MRA from the perspective of qualification equivalence. These Respondent groups also consider the extent and appropriateness of any professional or educational requirements to be imposed on members entering via the MRA route; for example, a requirement of relevant recent work experience.

93. However, these requirements are substantially delineated by the AAE in relation to the AAE multilateral MRA; the Respondent has limited ability to impose additional requirements on members joining the Respondent via the European group MRA.

94. Mr Bristow also told the Tribunal that the Respondent undertakes a mapping exercise when there are changes to its curriculum, so that, for example with the introduction of curriculum 2019, the Respondent is undertaking a complete review of all its MRA partners' curricula, to ensure that there is broad equivalence.

95. The Respondents' witnesses told the Tribunal, and the Tribunal accepted, that Mutual Recognition Agreements entitle overseas actuaries only to be "FIA*", which is different to full Fellowship. It does not entitle those people to the benefit of Mutual Recognition Agreements with other prestigious actuarial organisations in the US, for example. So the MRA route does not give access to the full qualification which the Claimant relied on, FIA* does not give access to fellowship of the US, Canadian or Australian actuarial institutes.

96. The Respondent had disclosed to the Claimant a syllabus audit that it had undertaken, comparing its syllabus with the AAE syllabus, bundle 11 page 4311. The Claimant also produced the AAE core syllabus, which is available on its website, page 4322. In the Respondent's audit, the Respondent compared the AAE syllabus with the Respondent's exams required to qualify, first, as an Associate of the Respondent and, second, as a Fellow of the Respondent. The audit showed that the Respondent's exams required for admission as an Associate and as a Fellow <u>both</u> complied with all the requirements of the AAE syllabus.

97. The only difference between the matching of the Associate and Fellowship requirements to the AAE syllabus was that qualifying as an Associate of the Respondent requires specialisation in only one area, whereas Fellowship qualification requires specialisation in 3 areas, bundle 11 page 4316.

98. The core syllabus of the AAE says, "Specialisation. Included in this stage are subjects and items which are needed for an actuary in order to be a specialist within a certain country or certain area of actuarial work and risk management. Each actuary is expected to have studied to the appropriate level <u>in a least one specialism</u>." Bundle 11 page 4323 (Emphasis supplied).

99. The AAE syllabus states, with regard to mutual recognition, "Within the AAE there is a mutual recognition agreement for fully qualified actuaries and the

purpose of this syllabus is to develop as far as the Actuarial Applications stage harmonisation of syllabuses throughout member countries", page 4325.

100. The Respondent cautioned the Tribunal with regard to findings of fact based on these documents. It said that the Tribunal did not have enough evidence before it to make findings regarding the standards of actuarial examinations in Europe.

101. It was not in dispute that the AAE syllabus sets out the requirements for someone to be regarded as a fully qualified actuary. The Tribunal found, from the documents before it, that both the Associate and Fellowship qualifications for the Respondent fulfill the requirements in the AAE syllabus. Furthermore, the Tribunal found that, insofar as the Fellowship qualification requires more exams to be passed, and a higher degree of specialisation to be shown, than the Associate qualification, the Fellowship qualification requirements go beyond the minimum requirements set out in the AAE core syllabus in order to be regarded as a fully qualified actuary.

102. The Claimant drew the Tribunal's attention to the Swiss Actuarial Association, "SAV", syllabus 2013, Bundle 3, page 1097. The SAV syllabus states, "This Syllabus is identical with the CORE SYLLABUS FOR ACTUARIAL TRAINING IN EUROPE, issued by the Groupe Consultatif Actuariel Europeen and underpins the mutual recognition agreement between the SAV and the Groupe Consultatif. The curriculum set out in the SAV syllabus does, indeed, exactly mirror the AAE curriculum and includes the statement on specialisation that candidates are required to study at least one of the application areas in greater depth to gain the full qualification for their association, bundle 3 page 1101.

103. The Claimant and his witnesses told the Tribunal that, within the global actuarial profession, there is a well recognised hierarchy of qualifications and that actuaries who are qualified in certain jurisdictions are recognised as having undergone more rigorous examinations and being qualified to a higher standard. The Claimant said that the most respected and most difficult to attain qualification is to be a Fellow of the Respondent, or of the USA Casualty Actuarial Society (CAS) or of the USA Society of Actuaries (SOS) or the Indian Actuarial Institute or the Australian Actuarial Institute. He said that these qualifications represent the "gold standard". The Claimant contended that it is much easier to become a fully qualified actuary in Europe and, in particular, in Switzerland, than it is to become a Fellow of the Respondent or of the Indian Actuarial Institute.

104. The Claimant drew the Tribunal's attention to the statements of the Respondent's CEO, made in a consultation webinar, Bundle 11 page 4049. This webinar was held on 11 December 2017 and was attended Derek Cribb, Respondent CEO; Clifford Friend, Respondent's Director of Engagement and Learning; Marjorie Ngwenya, Respondent's President; and Charles Cowling, the Respondent's Chair of Qualification Framework Task and Finish Group. The Consultation was regarding the Respondent's proposed changes to its Associate Membership. In the Consultation, Mr Cribb, CEO, said that the position of the IAA (International Actuarial Association) syllabus was quite a "low bar". He said,

"Most of the major actuarial associations have taken a position in terms of their syllabi at a level higher than that … different institutions are at different points above that original IAA syllabus. We assert, through the evidence that we hold, that we are at a higher level than many other actuarial associations". Bundle 11 page 4063.

105. While the Respondent grants exemptions for the Indian Actuarial Association examinations and partial exemptions for the Casualty Actuarial Society exams and those of the Institute of Actuaries of Australia, bundle 11 page 4037, the Respondent does not grant exemptions for examinations passed by European Actuaries at all.

106. The Claimant also drew the Tribunal's attention to the pay scale for the Claimant's employer, Zurich Insurance. It was not in dispute that Zurich Insurance is a global insurance company. The Tribunal was told that it employs over 600 actuaries. The pay scale, bundle 9 page 3591, shows that Zurich Insurance applies pay rises to its actuaries after they pass various exams. The qualifications are allocated "units" and the "units" then translate into pay rises in 1000s of Swiss Francs. A person who has gained fellowship of the Respondent qualifies for a pay rise of 30 units and an employee who is qualified in North America as an actuary is entitled to a pay rise of 36 units. However, an actuary who has qualified through Swiss examination is entitled to a pay rise only of 22 units, as does an actuary qualified by German examination.

107. From that document, it appeared that a large global insurance company, employing a very large number of actuaries, considers that actuaries qualified through the Respondent or North American exams have a greater level of expertise and are therefore entitled to greater pay than those qualified through Swiss and German actuarial examinations.

108. The Claimant and his witnesses gave evidence that they were required to study for many more hours, over many more years, than their Swiss colleagues appeared to study, in order to gain equivalent Swiss examinations. However, each of the Claimant's witnesses - and the Claimant himself - conceded that they were not aware of the details of the Swiss actuarial examination system, or of the Swiss university system in which actuarial qualifications might be gained.

109. The Respondent contended that the Swiss qualifications were typically gained by a University route. The Respondent drew the Tribunal's attention to a number of UK degree courses at UK Universities which entitle their students to claim exemptions for some of the Respondent's examinations. For example, the Respondent student handbook 2004/2005 said that exemptions could be granted from certain portions of the Respondent's examinations to graduates who had obtained a sufficiently high standard in appropriate papers of certain University degree examinations and to holders of certain actuarial or statistical qualifications, bundle 2 page 463. At Appendix 7 of that handbook, bundle 2 page 508, the handbook said regarding the core technical exams, "In suitable cases, holders of post graduate qualifications in Actuarial Science from the following universities may qualify for exemption from the … Core Technical stage subjects". It included a list of University qualifications in actuarial studies,

including 9 actuarial qualifications from London City University, as well as certain qualifications from 10 other Universities in the UK, page 508-514.

110. The Claimant told the Tribunal that he was paid less than his colleagues who had qualified in Switzerland because he had not passed the Respondent's exams, whereas his colleagues who had qualified in Switzerland were seen as qualified actuaries and were paid more.

111. The qualifications required to become an Associate, compared to those required for Fellowship, of the Respondent were set out at Bundle 4, page 1438. They showed that, to become an Associate, candidates must have completed: all the CT examinations, CT1 through to CT9; either CA1, CA2 and CA3, or CA1 and a work based project; and one-year minimum work based skills; and the Respondent's Professional Skills Course. By contrast, for Fellowship CA1, CA2 and CA3 are all required, along with two ST subjects and one SA subject, as well as three years minimum work based skills and the Respondent's Professional Skills Course.

112. The Claimant has been sitting the Respondent's exams for 15 years. He has not passed the exams required to become an Associate member of the Respondent.

Relevant Law

113. By *s53(1) EqA 2010*,

53 Qualifications Bodies
(1) A qualifications body (A) must not discriminate against a person (B) –
(a) in the arrangements A makes for deciding upon whom to confer a relevant qualification on B;

(b) as to the terms on which it is prepared to confer a relevant qualification on B;

(c) by not conferring a relevant qualification on B.

….

(3) A relevant qualification is an authorisation, qualification, recognition, registration, enrolment, approval or certification which is needed for or facilitates engagement in, a particular trade or profession."

114. In approaching the evidence in a discrimination case, in making its findings regarding treatment and the reason for it, the ET should observe the guidance given by the Court of Appeal in *Igen v Wong* [2005] ICR 931 at para 76 and Annex to the judgement.

115. The shifting burden of proof applies to claims under the *Equality Act 2010, s136 EqA 2010.*

Direct Discrimination

116. Direct discrimination is defined in *s13(1) EqA 2010:*

"(1) 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."

117. Race is a protected characteristic. By *s9 EqA 2010*, race includes colour; nationality; ethnic or national origins.

118. In case of direct discrimination, on the comparison made between the employee and others, "there must be no material difference relating to each case," *s23 Eq A 2010.*

119. The test for causation in direct discrimination cases is a narrow one. In *Chief Constable of West Yorkshire Police v Khan* [2001] IRLR 830, Lord Nicholls said that the ET must determine why the alleged discriminator acted as he did. What, consciously or unconsciously, was his reason? Para [29]. Lord Scott said that the real reason, the core reason, for the treatment must be identified. Para [77]. See also *Chief Constable of Greater Manchester Police v Bailey* [2017] EWCA Civ 425 paragraph [12].

120. If the Tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it had a significant influence, per Lord Nicholls in *Nagarajan v London Regional Transport* [1999] IRLR 572, 576. "Significant" means more than trivial, *Igen v Wong, Villalba v Merrill Lynch & Co Inc* [2006] IRLR 437, EAT.

121. In *James v Eastleigh BC* [1990] 2AC 751, HL, the House of Lords held that Eastleigh BC had discriminated against the plaintiff "on the ground of" his sex within the meaning of s.1(1)(a) Sex Discrimination Act 1975 by charging him admission to their swimming pool because he had not reached the state pension age, notwithstanding that women of the same age were not charged admission, in circumstances in which the reason for the Council's policy was not a desire to discriminate against men and the condition which had to be satisfied did not refer expressly to sex. The House of Lords held that the Court of Appeal had erred in construing s.1(1) (a) as meaning that there is not less favourable treatment "on the ground" of sex unless either the overt condition imposed, or any covert reason, relates directly to the sex of the plaintiff. The House of Lords decided that the simple question to be considered under s.1(1) (a) was: "would the complainant have received the same treatment from the defendant but for his or her sex?" This test embraces both the case where the treatment derives from the application of a gender-based criterion and the case where it derives from the selection of the complainant because of his or her sex. Adopting that test in the present case, the question became "would the plaintiff, a man of 61, have received the same treatment as his wife but for his sex?" The House of Lords said that an affirmative answer was inescapable.

122. In *Amnesty International v Ahmed* [2209] ICR 554, at paragraphs 31 – 36, Underhill P said that the basic question in a direct discrimination case is what is,

or what are, the “ground”, or “grounds”, complained of, which was the same as asking what was the “reason” that the act complained of was done. In that regard, there is no difficulty reconciling the different approaches in *James v Eastleigh* and *Nagarajan*, since there were two different sorts of direct discrimination. In some cases, such as *James*, the ground, or the reason, for the treatment complained of is inherent in the act itself. If an owner of premises puts up a sign saying “no blacks admitted”, race is, necessarily, the ground on which (or the reason why) a black person is excluded. In cases of this kind, what was going on inside the head of the alleged discriminator – whether described as his intention, his motive, his reason or his purpose – will be irrelevant. The “ground” of his action being inherent in the act itself, no further inquiry is needed. An employer who has treated a claimant less favourably on the grounds of his or her sex or race cannot escape liability because he had a benign motive. In other cases, such as *Nagarajan*, the act complained of is not in itself discriminatory but is rendered so by a discriminatory motivation, ie by the “mental processes” (whether conscious or unconscious) which led the alleged discriminator to do the act. Even in such a case, however, it is important to bear in mind that the subject of the inquiry is the ground of, or reason for, the alleged discriminator's action, not his motive: just as much as in the kind of case considered in *James v Eastleigh*, a benign motive is irrelevant.

123. However, in *Taiwo v Olaigbe & another* [2014] ICR 571 at paragraph 49, Underhill LJ explained that discrimination on a particular ground will only be treated as discrimination on that ground if the ground and the protected characteristic exactly correspond. Thus, in *James v Eastleigh BC* direct discrimination was found because there was an exact correspondence between gender and pensionable age. By contrast, a direct discrimination claim failed in *R(Elias) v Secretary of State for Defence* [2006] I WLR 3213 because there was no exact correspondence between nationality and place of birth.

Indirect Discrimination

124. Indirect discrimination is defined in *s19 Equality Act 2010*.
“(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—
(a) A applies, or would apply, it to persons with whom B does not share the characteristic,
(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
(c) it puts, or would put, B at that disadvantage, and
(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

125. *James v Eastleigh Borough Council* [1990] IRLR 288, [1990] ICR 554 the House of Lords decided that that, if the provision being applied is based on the characteristic, it will be a matter of direct discrimination.

126. A disadvantage caused by the interaction between two PCPs is unlawful, *MoD v DeBique* [2010] IRLR 471, EAT.

127. In making a comparison of the disadvantage caused to the persons who share the protected characteristic, compared to those who do not, the pool must be one which tests the particular discrimination complained of, *Grundy v British Airways plc* [2008] IRLR 74, CA. The Tribunal is entitled to select, in respect of different pools from the range of pools available to it, the pool which it considers will realistically and effectively test the particular allegation before it, *MoD v DeBique* [2010] IRLR 471, EAT.

128. In justifying indirect discrimination, the principle of proportionality requires an objective balance to be struck between the discriminatory effect of the measure and the needs of the undertaking. The more serious the disparate adverse impact, the more cogent must be the justification for it*: Hardys & Hansons plc v Lax* [2005] IRLR 726 per Pill LJ at paragraphs [19]–[34], Thomas LJ at [54]–[55] and Gage LJ at [60].

129. A PCP will not be proportionate unless it is necessary for the achievement of the objective and this will not usually be the case if there are less disadvantageous means available, *Homer v The Chief Constable of West Yorkshire Police* [2012] ICR 601. There is a 3 stage test for determining proportionality: 1. Is the objective sufficiently important to justify limiting a fundamental right? 2. Is the measure rationally connected to the objective? 3. Are the means chosen no more than is reasonably necessary to accomplish the objective?

Discussion and Decision

Claim One – Direct Discrimination (Nationality), an alternative to Claim Two

Race Based Criterion

130. Claim One: Has the Claimant, a British national, been treated less favourably by the Respondent than an Indian national because of the Claimant's nationality in respect of the number of opportunities to pass examinations to qualify as a Fellow of the Respondent?

131. The Claimant relies on a hypothetical Indian student member of the Respondent. He contends that that hypothetical Indian student is in materially same circumstances as the Claimant. The Respondent says the correct comparator is a hypothetical non- British student of the Respondent, who is in materially same circumstances as the Claimant, amongst other things, not being a student member of the IAI.

132. The Claimant contended that he was entitled to identify his comparator. The Tribunal accepted that the Claimant was entitled to choose his comparator. The Tribunal also considered that an Indian national student member of the Respondent was in the same material circumstances as the Claimant, who is also a student member of the Respondent.

133. The Claimant contended that he was treated less favourably than the Indian member because the Indian member had the opportunity to join the Indian Actuarial Institute and sit exams which were recognised by the Respondent through exemptions, whereas a UK national did not.

134. The Tribunal has found that the Indian Actuarial Institute examinations are treated by the Respondent as being directly equivalent to the Respondent examinations and that a pass in an IAI exam is treated as the equivalent of a pass in the Respondent's corresponding exam, by virtue of the automatic exemption given. Because the Respondent recognises the equivalent pass of the Indian Actuarial Institute examinations, anyone who sits both the Indian Actuarial Institute's and the Respondent's examinations has 4 opportunities to pass a relevant qualifying exam in one year.

135. In order for the Claimant to succeed in a *James v Eastleigh BC* – type claim of direct discrimination, the reason for the treatment and the protected characteristic must exactly correspond. Alternatively, if the criterion applied by the decision maker is the protected characteristic itself, or a proxy for the protected characteristic, then the reason for the treatment is the protected characteristic and the discrimination is direct discrimination, rather than indirect discrimination.

136. In the current case, by recognizing exams passed by Indian Actuarial Institute members, which are sat on 2 extra occasions each year, the Respondent provides additional opportunities to pass exams to members of the Indian Actuarial Institute. However, membership of the Indian Actuarial Institute was not available to UK nationals. UK nationals can never sit those exams. There is an exact correspondence between the protected characteristic (non-UK nationality) and reason for the treatment (student membership of the Indian Actuarial Institute.)

137. The Respondent contended that the Claimant's claim was not properly against it, but against the IAI, and that it was not the Respondent who treated the Claimant less favourably. However, the Tribunal has found that the Respondent automatically gives exemptions for the IAI exams. Indian Actuarial Institute exams are treated as direct equivalents and passing an exam effectively means passing the Respondent's exam. The Tribunal finds that the Respondent adopts the Indian exam results, effectively, as its own exam results. It thus provides 2 additional opportunities to pass its own examinations to Indian Actuarial Institute members. Whether or not the Respondent intends to discriminate, it recognizes the IAI exams, from which the Claimant is excluded because of his nationality.

138. In the list of issues, the Respondent contended that the Respondent had a discretion to exempt the IAI exams and treat them as equivalent to the Respondent exams. However, on the evidence, the Tribunal found the Respondent automatically treated IAI CT exam passes as exemptions from the equivalent CT Respondent exams.

139. The Respondent also contended that *s.53 Equality Act 2010* applies only to the ultimate qualification - Fellowship of the Institute - and not to individual exams passed for the purposes of the Fellowship. *S.52(1)(a) EqA* provides that a qualifications body (A) must not discriminate against a person (B) in the arrangements A makes for deciding upon whom to confer a relevant qualification. By *s.54 EqA 2010*, a relevant qualification is an authorization, qualification, recognition, registration, enrollment, approval or a certification which is needed for, or facilitates engagement in, a particular trade or profession.

140. The Tribunal considered that arrangements which a qualifications body makes for deciding upon whom to confer a qualification include the exams which the body sets and recognizes as a requirement for achieving the qualification. The Respondent requires that exams are passed in order for it to confer a qualification on an individual. The Tribunal decided that the manner in which the examinations are administered must be part of the arrangements that are made by the Respondent for deciding upon whom to confer a qualification. Furthermore, the manner in which the individual exams are administered must come within *s.53 Equality Act 2010*. It would render *s.53* of little effect if it applied only to a final qualification and not to the individual requirements an employee had to fulfill in order to obtain that final qualification. The final qualification – Fellowship – is available only after students have passed each of the constituent examinations, so each examination is part of the arrangements made for deciding upon whom to confer the qualification.

141. The Tribunal therefore found that the Respondent treated the Claimant less favourably than Indian nationals when it gave exemptions for exams set by the IAI because the Claimant, who was a UK national and was barred from joining the IAI because of his nationality, was unable to sit those exams and gain those exemptions. He only had two opportunities to sit relevant exams in one year, when Indian nationals potentially had 4 opportunities.

Claim 2: Indirect discrimination (nationality)

142. The Claimant relied on three PCPs:

i. The rule or policy of the Respondent of offering two sittings of its exams per annum
ii. The rule or policy that requires student members should pass examinations by the end of the transition period 31 December 2018 or face losing the benefit of the exam passes already obtained and also have to take additional exams under the new curriculum, curriculum 2019; and
iii. The Respondent's exemption policy of exempting exams set by the IAI.

143. The Respondent accepted that it applied PCP (1), but did not accept that it applied PCP (2). The Tribunal found that the Respondent did apply a policy which required student members to pass examinations by 31 December 2018; that is, specifically, CT5 as well as CT1 and CT4 as well as CT6, in order to be treated as having passed CM1 and CS2 under curriculum 2019. While the Respondent contended that the Claimant did not lose the benefit of the exam

exemptions he had already obtained, it was clear that he would have to pass an exam under curriculum 2019 which covered the material which had already been covered in the Claimant's exam passes at CT1 and CT6.

144. The Respondent contended that the third PCP could not be a PCP because it did not apply to both the protected group and those who did not share the protected group; the protected group being UK nationals and those that did not share it at being Indian nationals. The Tribunal found that the policy of applying exemptions to exams set by the IAI applied to all students of the Respondent who sought to become qualified, either as associate, or Fellow, members of the Respondent. Applying examination exemptions were part of the rules it made for determining upon whom to confer qualifications, bundle 6 page 2163; "you must obtain exam passes with the IFOA by 31 December 2018 or have been granted exemptions by 1 February 2018".

145. A disadvantage caused by the interaction between two PCPs is unlawful *MOD v DeBique* 2010 IRLR 471 and *Essop and others v Home Office (UK Border Agency); Naem v Secretary of State for Justice* 2017 UKSC27 26.

146. The Tribunal found that the rule or policy of the Respondent of only offering two sittings of its exam per annum and the PCP of exempting exams set by the IAI, did put the Claimant and UK nationals at a disadvantage because they only had the opportunity to sit the two sittings of the Respondent's exams per annum, whereas non- UK nationals and, in particular, Indian nationals, had the opportunity to sit two additional exams per annum, which would be treated by the Respondent as qualifications.

147. The Respondent contended that there was no particular disadvantage to UK nationals, or to the Claimant, because a "scatter gun" approach to exams was not beneficial. Mr Bristow told the Tribunal that, in his view as an educationalist, it would be better for a student to sit the two exams provided by the Respondent a year, and, if they failed the first exam, to wait for the examiner's report and use it to inform a more successful attempt at the second exam.

148. The Indian Institute exams take place within a month of each of the Respondent's exams. The Claimant contended that it would be easier and beneficial for a candidate to revise for a particular exam, for example CT4, and then have two attempts within a short period of time to pass that exam, rather than waiting for another six months for a further opportunity when it would be more difficult to retain the knowledge gained from preparation for the first exam.

149. The Tribunal found that, as a matter of logic, having two opportunities to pass an exam which tests the same knowledge is of benefit and does give the candidate an additional chance to pass the relevant exam. It also reduces the chance of external factors detrimentally affecting a candidate's performance. If a candidate is ill on one day, or has other factors affecting their performance, they have a chance, a month later, to sit an exam testing the same knowledge, when those external factors might not be present.

150. Further, the individual exams are different; they will not examine all areas of the syllabus in exactly the same detail. A candidate might perform better on a particular exam which tests particular areas of a syllabus in greater detail, than in a different exam, which concentrates on other parts of the syllabus.

151. The Tribunal found that the disadvantage was exacerbated by application of PCP (2), in that the Claimant had a short two-year period in which to pass all the outstanding exams. The Claimant only had four opportunities within that two-year period to pass both CT3 and CT4, whereas an Indian national student member of the Respondent, who could also be an IAI member, had 8 opportunities to pass those outstanding exams.

152. So, the Tribunal found that the PCPs did put the Claimant at a disadvantage compared to Indian nationals, in that he had fewer opportunities to pass the Respondent's exams before he lost the benefit of his CT1 and CT6 exams. There was a group disadvantage to UK nationals as well as an individual disadvantage to the Claimant, who had tried to join the IAI in 2017, and whose membership was rejected on the grounds of nationality.

153. Therefore, the burden of proof shifted to the Respondent to show that the application of the PCPs was a proportionate means of achieving a legitimate aim. The Tribunal accepted that all the legitimate aims set out by the Respondent were, indeed, legitimate aims. However, it found that the PCPs were not a proportionate means of achieving those aims.

154. The Tribunal found that after 2010, when the Respondent became aware of the Indian Institute's practice of excluding UK citizens from membership and/or an understanding which had been reached between the Respondent and the IAI that it would exclude UK citizens from its membership, the Respondent did not do anything to encourage the IAI to reverse that policy. Further, it continued to recognise the IAI examinations and give exemptions for them. It did this when it knew or ought to have known that UK nationals could not qualify through that route, although Indian nationals could additionally qualify through the Respondent's exam route. Applying a PCP which is in itself discriminatory cannot be a proportionate means of achieving legitimate aim.

155. In any event, allowing Indian students to be advantaged and UK students to be disadvantaged was neither proportionate, nor necessary. Put simply, the Respondent could have taken steps to ensure that there was no discrimination practiced by the IAI if it was going to continue to recognise its qualifications. It could also have taken other measures, for example, ensuring that exams were taken on the same day under the Indian Institute and the Respondent Institute, so that Indian students did not get double the opportunities that UK students did. The Respondent did not explore whether this might be possible.

<u>Claim 3 – Indirect Discrimination - Nationality</u>

156. The Claimant relied on the following PCP: The requirement that to be regarded as a fully qualified actuary of the Respondent, a member has to be appointed as a Fellow of the Respondent.

157. The Respondent did not accept that this was capable of being a PCP. The Respondent said that it was empty of meaningful content and was circular. The Tribunal considered that the PCP was capable of being a PCP, but was not, in fact, applied by the Respondent. The Tribunal accepted the Respondent's evidence that it recognises two levels of qualification: Associate membership and Fellowship and that different levels of qualification are required to achieve these two different memberships.

158. The Claimant's case to the Tribunal was that it was easier to attain Fellowship of the Respondent by becoming a fully qualified actuary in another European country, for example, Switzerland and then being granted Fellowship of the Respondent by mutual recognition, than it was to pass the Respondent exams in order to become a Fellow. That argument appeared to rely on different PCPs than the PCP which the Claimant contended for.

159. The Tribunal accepted the Respondent's argument that the PCP, as framed by the Claimant, is circular, in that it says that, in order to achieve the highest level of qualification with the Respondent, one has to achieve the highest level of qualification. The Respondent contended that the formulation of the PCP by the Claimant in this way was an attempt to avoid the fact that there are two separate routes to fellowship of the Respondent which are mutually exclusive, one of which was applied to the Claimant, and one of which was not. On the one hand, there was a practice entailed in the Mutual Recognition Agreement route to Fellowship of the Respondent, which applied to those actuaries fully qualified with an overseas actuarial body with whom the Respondent has a Mutual Recognition Agreement. Those persons need to prove their overseas existing qualification and pass an aptitude test with the Respondent, or complete a year of work experience in the UK under the mentorship of a Fellow of the Respondent and be approved by the mentor at the end of the year. On the other hand, there is the Respondent's exam system route, through which a candidate must pass all 15 exams and/or gain exam exemptions, and complete the requisite work experience.

160. The Respondent contended that the MRA PCP did not apply to the Claimant, because the Claimant had not achieved a primary full actuarial qualification with any actuarial body, although it would be open to him to pursue such, including with the Swiss association. The Tribunal accepted this contention.

161. In any event, the Tribunal accepted the Respondent's evidence that its Mutual Recognition Agreements entitle overseas actuaries only to be "FIA*", which was somewhat different to full Fellowship. It does not entitle those people to the benefit of Mutual Recognition Agreements with other prestigious actuarial organisations in the US, for example. So the MRA route does not give access to the full qualification which the Claimant relied on, FIA* does not give access to fellowship of the US, Canadian or Australian actuarial institutes.

162. On the evidence that the Tribunal has heard, the Respondent's Associate qualification satisfies the minimum standard set out in the AAE syllabus.

However, the Claimant does not himself have Associate status. Even if there was a PCP which put Associate members of the Respondent at a particular disadvantage, compared to actuaries qualified in other EU jurisdictions, it would not put the Claimant at that disadvantage because he does not have that qualification.

163. Furthermore, the Tribunal accepted the Respondent's argument that the Tribunal had no evidence about the Swiss examination system. It may well be that the Swiss actuarial qualifications are achieved primarily through University courses and that this would explain why the Claimant and his witnesses did not see their European equivalents working hard while employed by Zurich, because they had already done the relevant examinations at University. The Tribunal simply did not have adequate evidence about other European countries' examination processes to decide whether they were less exacting than the Respondent's examinations for Associate or Fellowship qualification. This claim failed.

Claim 4 - Direct Discrimination

164. The Claimant contends that the Respondent directly or indirectly instructed caused, induced and/or aided the Indian institute not to admit British nationals as students.

165. The Respondent contended the Tribunal did not have jurisdiction to hear this complaint as it was not capable of falling under *s.53(1)(a), (b) or (c) Equality Act 2010*.

166. The Tribunal has found that there was an understanding between the Indian Institute and Liz Goodwin, Dr Watkins' predecessor at the Respondent, that the Indian Institute would not admit UK nationals. The Tribunal decided that having an "understanding" with another person/body did come within the meaning of "instructed, caused, induced and/or aided" another to do something which contravenes Part 5 Equality Act 2010.

167. Furthermore, the Tribunal found that the complaint was one which was capable of coming within *s.53(1)(a), (b) or (c) EqA 2010,* because it related to the arrangements which the Respondent made for deciding upon whom to confer a relevant qualification. The arrangements it made included the recognition and/or exemption of Indian exams for the purposes of gaining the Respondent's qualifications.

168. Under *s.111 & 112 Equality Act 2010* the Tribunal concluded that the Respondent did instruct, or cause, or induce, or aid the Indian Institute to discriminate against the Claimant in the arrangements that the Respondent made for deciding upon whom to confer a relevant qualification.

169. The Tribunal found that the relevant instruction or inducement or help of the third party was a continuing act because, albeit that Liz Goodwin had originally issued the instruction, Dr Watkins knew about it at the time, and in 2013. At no

time did the Respondent do anything to stop that instruction or understanding continuing. The act continues until the present day.

170. Claim 4 succeeds.

171. A Remedy Hearing is set down for 17 June 2019.

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Employment Judge Brown

Dated: 13 May 2019

Judgment and Reasons sent to the parties on:

20 May 2019

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For the Tribunal Office