Case Number: 2204367/2012

EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Ms F Grabe **v** **The United Reformed Church**

Heard at: London Central in person and by audio and video link (hybrid)

On: 15, 16, 17, 18, 19, 22, 23, 24, 26, 29, 30 November and 1, 2, 3, 6, 7, 8, 14, 15, 16, 17 December 2021; in chambers 10, 11, 12, 13 and 14 January 2022

Before: Employment Judge A James
Ms H Craik
Mr F Benson

Representation

For the Claimant: In person

For the Respondent: Dr E Morgan QC, counsel

JUDGMENT

(1) The claimant's claims for unfair dismissal (s.98 Employment Rights Act 1996), wrongful dismissal/breach of contract (Employment Tribunals Extension of Jurisdiction Order (England and Wales) Order 1994), direct discrimination because of disability and/or nationality/national origins, and/or philosophical belief, and/or sex, and/or sexual orientation (s.13 Equality Act 2010), discrimination arising from disability (s.15 Equality Act 2010), victimisation (s.27 Equality Act 2010), harassment (s.26 Equality Act 2010) and whistle-blowing (ss.47B and 103A Employment Rights Act 1996) are not upheld and are dismissed.

REASONS

The issues

1 The issues which the tribunal had to determine are set out in Annex A. The claimant's claims arise out of the period spent by her as a Trainee Minister

(Ordinand) of the respondent between September 2009 and June 2012, the termination of that training and subsequent events.

The proceedings

2 There is a lengthy history to these proceedings, both leading up to the hearing, and then at the hearing itself. In order to keep the main part of this judgment to a more manageable length, the detail in relation to that is set out in Annex B.

The claimant's assumed disabilities

3 The List of Issues identifies the following disabilities the claimant is said to have: PTSD, severe reactive depression, chronic severe Insomnia, severe Fibromyalgia, early and sudden onset of Menopause, Gastritis, Ulcers, late-onset Epilepsy, deterioration of visual Acuity, severe Occlusion with breaking of teeth, and borderline diabetes. In this judgment, we determine in due course whether they are disabilities and if so from what dates. However, in considering the adjustments required for this hearing, we have assumed that the claimant had those disabilities during the hearing. The following adjustments were made as a result.

Agreed Reasonable Adjustments

4 Before the hearing concluded on Tuesday 16 November, the following adjustments were considered and, except where indicated to the contrary below, were agreed.

(1) If new documents were introduced, the Claimant was to be given additional time to read and absorb them.

(2) Breaks would be built into the timetable, due in part to the composition of the tribunal having to be changed at the last minute as one of the members was no longer available. This meant that the tribunal would not be sitting on the afternoon of 24 November, nor on 25 November, or 9, 10 and 13 December. Further flexibility was also built into the witness timetable - see below.

(3) During cross examination, the claimant was allowed to make notes of the questions asked of her during cross examination and the document she was referred to, if any. A file with clean sheets of paper were used for this purpose which the tribunal could see had not been written on.

(4) The claimant asked for at least a day to prepare for her own re-examination. It was agreed that the claimant's cross-examination would take place on Monday 22, Tuesday 23, Wednesday 24 (morning only) and the morning of Friday 26 November. It was agreed that the claimant's re-examination would then take place on Monday 29 November, allowing her time over the weekend to prepare that. Considerable guidance was given to the claimant about what re-examination should and should not include.

(5) The claimant was allowed to give further brief evidence in chief, after her own re-examination had been concluded.

(6) The claimant was concerned that when she started cross-examining the witnesses for the respondent, she may 'fall to pieces'. The claimant therefore requested that she be allowed to start cross-examining all witnesses after the lunch break, and then be allowed to continue to cross examine them all the following morning. The claimant was requesting this adjustment not only in relation to those witnesses whose evidence was likely to take a day, but also in relation to those witnesses whose evidence would only take about an hour. The tribunal agreed this adjustment in relation to those witnesses whose evidence was likely to take up to a day, but not in relation to the witnesses whose evidence would take less than that, because it was not practicable to have a number of witnesses returning the following morning, in order for further cross-examination to take place.

(7) The tribunal requested that the draft witness timetable be changed by the respondent's solicitors, to facilitate this, subject to the witnesses' availability. The timetable was changed accordingly. For example the respondent was asked to arrange for Dr Bradbury to commence his evidence on the afternoon of 7 December, so his evidence could continue the next morning. The attendance of Revd Catherine Lewis was rearranged to enable that.

(8) The claimant was told that if she provided her cross examination questions in writing, the tribunal would be willing to ask those on her behalf. This was reiterated throughout the proceedings. On Tuesday 7 December 2021 the claimant was again encouraged to provide her cross examination questions for the remaining witnesses who were timetabled to give evidence during the final week of the hearing, before the hearing started that week. Failing that, the tribunal indicated that if the claimant was unable to conduct her own cross examination, it would be minded to allow the remaining witnesses to be called; any examination in chief to take place; the panel would then ask their own questions of the witness, if any; and re-examination would then take place as usual. In the event, that was not necessary as the claimant remained able to ask the questions of witnesses herself at all times when the hearing took place.

(9) The tribunal explained that the hearing each day would normally commence at 10am and continue until 1pm; then reconvene at 2pm and continue until 4pm to 4.30pm, with breaks mid-morning and mid-afternoon. The claimant did not request any change to this, although the tribunal stressed that at any stage the claimant was entitled to ask for more frequent breaks if required. In the event, adjustments were indeed made to the timetable. For example, on those days when the claimant was starting to tire in the afternoon, or suffering from mini-seizures, the tribunal agreed to finish early and then commence the hearing earlier the next day. On 23 November the hearing concluded at 3.45 pm as the claimant was not able to return to the hearing room. On 2 December the tribunal adjourned at 2.30 pm to enable the claimant to call her GP (the tribunal had been concerned that she obtain advice about her seeing blood when she vomited. The tribunal was subsequently informed by the claimant that her GP had advised her this symptom was because of her ulcers). On 6 December we

adjourned at 2.45 pm, recommencing at 9.30 am on 7 December, and concluding at 2.45 pm at the claimant's request. The hearing then re-commenced at 9.30 am on Wednesday 8 December.

(10) On 30 November 2021 the claimant was not able to attend the tribunal hearing centre for health reasons. The claimant requested that she be given the opportunity to join the hearing via video link or telephone. Attempts were made to enable the claimant to join by video link but those attempts were not successful, presumably because of an inadequate internet connection. The claimant was however able to join the hearing by audio link. Although this led to a delay in the proceedings re-commencing that day, the claimant was able to continue with the cross-examination of Revd Thomas, and the cross-examination of Revd Furley-Smith in the afternoon. The claimant was allowed to continue to join the hearing by audio link for the rest of the hearing. [We note in passing that two of the respondent's witnesses joined via video link with the leave of the tribunal. The members of the tribunal also joined remotely for parts of the remainder of the hearing, particularly as the Covid-Omicron variant became more widespread.]

(11) During the hearing, the claimant became flustered or upset a number of times. On each occasion the tribunal encouraged the claimant to take the time needed to recompose herself, and/or continue writing a note if that is what she felt she needed to do; to take her time in doing so; and let the tribunal know when she was ready to continue.

(12) The tribunal continued to provide guidance to the claimant at the beginning and end of most days as to what the tribunal would be covering the following day and, as and when appropriate, subsequent days/weeks. This included a detailed explanation about the process of re-examination and the purpose of submissions.

(13) The tribunal refrained as much as possible from intervening or interrupting the claimant when, for example, the points being made by her during re-examination were not re-examination points; or when during cross examination of the respondent's witnesses, the claimant started making submissions/introducing her own evidence after the witness had answered the question. When the tribunal did intervene, it was continually stressed that no criticism was intended of the claimant. This adjustment was made for the claimant both as a litigant in person (LiP) as well as a person presenting with mental and physical disabilities.

(14) On numerous occasions the tribunal re-phrased the claimant's question, when either the claimant was struggling to put the question to a witness and/or the witness was struggling to understand the question. This was at all times subject to the claimant being entitled to tell the tribunal if the re-phrased question was not the question she intended to ask.

(15) Dr Morgan QC agreed to provide his written submissions to the claimant by 9am on Friday 10 December. They were also filed with the tribunal that day, on the basis that the tribunal would not open or read them until the evidence had been concluded. The claimant was given until 9am on Thursday 16 December to file her own written

submissions, if any. The claimant did not do so. As a result, the tribunal subsequently agreed that the claimant could file and serve any written submissions she wished to rely on by 4pm on 30 December 2021, with any response to those from the respondent to be filed and served by 4pm on 7 January 2022.

(16) The claimant requested that the respondent's witnesses should be asked to read all of her witness statements. The tribunal did not consider this was necessary and it was not agreed. It was for the respondent's legal team to advise the witnesses appearing for the respondent which sections of the claimant's witness statement it was necessary for them to read, prior to them being called as witnesses.

(17) The claimant suggested that the hearing should be adjourned between the claimant completing her own re-examination on Monday 29 November and Wednesday 1 December, to allow her further time to prepare cross-examination questions. This was not agreed on the basis that there were twenty-one witnesses for the respondent, a number of days for the final hearing were already no longer available because of the unavailability of some of the members of the tribunal, and the loss of a further 1.5 days from the remaining 20.5 days was not practicable. The bulk of the witness evidence had been provided to the claimant in line with the amended orders, several weeks before the hearing commenced. Minor changes were made to those witness statements just before the hearing but most of the evidence remained the same.

The hearing

5 The hearing took place over 20.5 days, within the original trial listing, during which evidence was heard from witnesses and submissions on liability were made. Five extra days were then arranged for the tribunal to deliberate and arrive at this decision. Judgment was reserved.

Witnesses

6 The tribunal heard live evidence from the claimant; and considered the statements of Dr Joanne Stubley, Consultant Psychiatrist and Psychoanalyst; and Ms E Smith, Psychotherapist. We also considered the contents of the statements submitted by the claimant in relation to the time limit issue, although we did not find those relevant to the issues before us.

7 For the respondent, we heard from Revd Sue McCoan, a Minister of the respondent; Revd Susan Durber, Former Principal of Westminster College, Cambridge, between 2009 and 2013; Revd Samantha White, Principal of Westminster College from 2019; Rod Boucher, a member of Clapton Park URC during the relevant period; Revd Catherine Lewis Smith, Principal of Westminster College since September 2020; Revd Elizabeth Welch, a Minister for the respondent; Revd Janet Tollington, a Minister for the respondent and teacher at Westminster College between 2008 and 2012; Revd Anne Lewitt, an ordained Minister for the respondent; Revd Mark Robinson, an ordained Minister for the respondent; Neil McInnes, a member of Clapton Park United Reformed Church (URC) since 1996, an Elder of the Church and Trustee of the Church Funds Charity since September 2009;

Revd Dr John Bradbury, a member of staff at Westminster College during the relevant period; Revd Julian Templeton, Minister of the Pond Square Chapel of the URC, Highgate, 1996-2016; Revd Fiona Thomas, Secretary for Education and Learning for the respondent; Revd John Proctor, a Teacher at Westminster College and Director of Studies; Revd Craig Bowman, a Minister for the respondent and Secretary of the Ministries Committee during the claimant's formational training (the Assessment Board being a sub-committee of the Ministries Committee); Revd Neil Thorogood, Director of Pastoral Studies; Revd Matt Stone, a Minister of the respondent; Revd Melanie Smith, a Minister of the respondent; and Revd Nicola Furley-Smith, a Minister of the respondent and Secretary for Ministries of the United Reformed Church who services the General Assembly Ministries Committee. Statements were submitted from Aniema Aaron, member of Clapton Park URC since 1995; and Mary Fagan, a member of the Clapton Park URC from the late 1990s onwards and were considered although since they were not called as witnesses, little weight was attached to their evidence.

The bundle

8 There was a trial bundle of 5807 pages. Issues with the bundle are referred to in Annex B. Nothing further need be said in this part of the judgment.

Credibility and reliability – general comments

9 Whilst the members of this tribunal do not usually make general comments about the credibility and reliability of witnesses, we consider that in the unusual circumstances of this case, it is appropriate to do so.

10 During cross examination, the claimant failed to answer the questions put to her on numerous occasions. When contemporaneous documents were put to the claimant, the contents of which clearly contradicted the case that she was putting before the tribunal, the claimant refused to concede the point. Numerous examples of that are referred to in the findings of fact below.

11 The claimant's conduct and approach to cross examination can be contrasted with the approach and conduct of the respondent's witnesses who were willing to make concessions when appropriate and whose accounts corresponded to the record set out in contemporaneous documents. Further, the respondent's witnesses readily conceded when they could not remember specific incidents due to the passage of time.

12 It is the respondent's case that the claimant's perception of what happened to her, and/or her recollection and interpretation of events, is at odds with what actually happened. The tribunal was provided with a specific example of that, on 22 November, when the claimant alleged that the Employment Judge had praised the respondent on the first day of the hearing, for the way that the evidence had been put together. That was not the case. The Judge had simply thanked the respondent for providing a further USB stick, together with a laptop, for use by the claimant during the hearing, in order for her to be able to access the bundle electronically. On that being pointed out, the claimant withdrew her remark. Nevertheless, the tribunal considers the incident to corroborate the general point being made by the respondent.

13 On another occasion, the claimant was asked about her allegation, set out in paragraph in 9e of the Amended Particulars of Claim, that she was not allowed to attend a week-long workshop at the beginning of her training. The

Claimant argued that she was not claiming that she was not allowed to attend a week-long workshop which gathers all ordinands and supervisors in Cambridge once a year. The claimant was taken to paragraph 9e which says just that. The claimant then argued that this was not the right document. The claimant subsequently took back that remark. The claimant also asked a number of the comparators why they were giving evidence, even though they had been named by the claimant as comparators in further particulars provided by her.

14 Bearing in mind the above, this is a case where the tribunal considers it appropriate to make a general finding to the effect that we found most of the claimant's evidence not to be credible or reliable. By contrast, we found the evidence of the respondent's witnesses to be both credible and reliable.

15 In most of our fact-finding, the tribunal has been able to makes clear findings of fact on the particular matter in question by reference to the contemporaneous documentation. Where that is not available, for the above reasons, we have generally found for the respondent on the balance of probabilities, on any disputed factual issues.

16 It was a regular lament of the claimant throughout the hearing that those she met during her training did not try and discover 'the real me' because they approached her with preconceptions. It became increasingly clear to the members of the tribunal however, as more evidence was heard and considered, that the claimant was indeed judged on her actual behaviour, not on any preconceptions about her. The way the claimant behaves towards others is not how she believes she behaves. The claimant's response has been to accuse others of 'gaslighting' her. We understand gaslighting to be a form of emotional abuse where the abuser misleads the target of their abuse, creating a false narrative and making them question their own judgments and reality. The sad reality of the situation however is that the claimant's case is founded on a perception and understanding of events that is so often at variance to the perception and understanding of everyone else who we have heard evidence from. We have concluded that it is the claimant's perception and understanding of event that is at variance with what actually happened, not that of the respondent's witnesses.

17 We mean no criticism of the claimant by saying so. On the contrary, it appears to the tribunal to be desperately sad that so much of the last ten years has been spent by her pursuing a claim based on such misconceptions about what actually occurred during her period of training as an Ordinand.

Fact findings

18 References in square brackets below are to the relevant page in the bundle, unless otherwise stated.

<u>The respondent church</u>

19 The respondent (the URC) is a Christian Denominational Church, incorporated under an Act of Parliament. The main constitutional documents of the respondent are the Basis of Union and the Structure. The Basis of Union sets out the core beliefs of the respondent and the nature of its faith and order. The Structure provides details of its governance.

20 The churches within the URC makes decisions through the respondent's councils. The main Councils are the Church Meeting and Elders Meeting of each local church; the Synod (made up of numerous churches within a geographical area); and the General Assembly of the respondent. Each council has its own particular functions within the structure. Each council is a separate body which consists of its members and are unincorporated associations. These councils represent the members of the respondent through their local church; the members of the wider geographical area within which a local church resides, through the Synod (which number thirteen); and finally, through the General Assembly which is the national body and ultimate decision-making council of the respondent.

21 The respondent is a congregational church, a tradition which emphasises the role of the local church. The role of the Church Meeting, in which all members are able to express their thinking and understanding about the church is key to this tradition.

22 Each local church is a separate legal entity. A minister is accountable first to the Elders meeting; second to the church; and thirdly, in terms of anything beyond the competence of the local church, the Synod Moderator (the respondent's equivalent of a bishop). At the level of the local church, the Minister convenes the meeting of the Elders. However, if the Minister disagrees with the Elders' Meeting decisions, he/she has no power to overrule the decision.

23 Those attending a church can express a willingness to be appointed as formal 'members' of the church. The existing members of the church decide whether or not to accept that person as a member. Meetings of members are known as Church Meetings. Church Meetings have overall responsibility for the life of the church. The respondent's General Assembly cannot tell a local church what to do, where the decisions taken are those for the local church. Insofar as the activities of a local church are charitable, they are undertaken through an independent charity.

24 Church meetings are entitled to elect Elders of the local church. A person eligible to be nominated can be put forward as a potential elder, and the elders are then elected (or not) by a decision of the Church Meeting. Elders are 'ordained' by the respondent; although that is a different type of ordination, to ordination as Minister of the Word and Sacraments, with which this case is principally concerned.

A call to Ministry

25 If a member of a local church wishes to discern a potential call to Ministry for the respondent, the local church refers the applicant to the regional Synod. If the Synod agrees, the candidate then attends an Assessment Conference made up of two parts. The first is the Assessment Board. The second is an interview with representatives of the Educational and Learning Committee of the respondent, during which the candidate's qualifications and general knowledge about the respondent church are ascertained and discussed. If the Assessment Board decides that the candidate is an appropriate person for formational training, this is indicated to the candidate; together with a recommendation put forward by the Education and Learning Committee, indicating the anticipated formational training appropriate for that candidate.

26 Whilst undergoing formational training, candidates are known as 'Ordinands'. The formational training is provided by independent educational establishments, known as Resource Centres for Learning (RCLs), which includes Westminster College. The respondent acts in effect as the sponsoring body that outsources the training of Ordinands to the RCLs.

27 The United Reformed Church uses three Resource Centres for Learning (RCLs) for the education and training of student ministers before ordination as a Minister of Word and Sacraments; Westminster College, Northern College and the Scottish Theologian College.

28 Following a preliminary hearing on 14 and 15 September 2017, EJ Segal QC determined that the claimant was, during her period of training as an Ordinand, in effect employed under a contract of apprenticeship; further, that the claimant was 'in employment' for the purposes of s.83(2) Equality Act 2010. The claimant maintains that the contractual terms of her training include matters set out in the Recommendation provided following the Assessment Conference, the 'Training for Ministry' document, the 'Amber Light' Policy and the 'Living Ministry' document. The claimant has sought to include for the first time, reference to other documents in her submissions which she says contain contractual rights. The claimant has not set out which parts of those documents are said to contain the contractual rights relied on. In any event, it has not been necessary to consider those other documents in order to determine the issues before us.

29 The recommendation made following the Assessment Conference is not set in stone. It may develop or change over time, as the training progresses. Any changes are normally made through a process of dialogue between the RCL and the Ordinand. Should proposed changes involve further expenditure for the respondent, the proposal will be reported to the Secretary for Education and Learning of the respondent, for consideration and approval by the Assessment Board.

30 The recommendation in relation to both the practical training and the academic study elements of the Ordinand's training is based on the assessment of what the candidate might need support on during their training and study. This in turn is based on the abilities the candidate is seen to have already, and those they may need to develop in order to be successful in their training and go on to become a Minister at the conclusion of it. Part of the purpose of the training is to provide a greater knowledge of and experience of the URC. The training enables the RCL and the respondent to assess the suitability of the Ordinand for Ministry. The skills and abilities required by a Minister include self-awareness, the ability to listen to others, and communication skills.

31 In common with most employment relationships, whilst the respondent and/or the College would seek to agree any changes/proposed changes to the recommendation with the Ordinand, both the respondent and/or the college had a right to impose their decision on the Ordinand if agreement could not be reached. We were provided with a specific example by Revd McCoan, who did not want to study the further undergraduate degree she was put forward for. She challenged that. Her challenge was rejected. Having completed her studies, Revd McCoan understood why that recommendation had been made and was the right one for her.

32 Statistics provided by the respondent, which were not challenged by the claimant, show a broad range of people applying for and accepted by the respondent for Ministry, in terms of age, nationality, overseas status, marital status and race.

Westminster College

33 Westminster College (the College) is one of three RCLs used by the respondent. It is a separate legal entity to the respondent. The College is an independent educational establishment and a full member of the Cambridge Theological Federation. Through that Federation, it is registered to provide teaching on behalf of a number of universities such as Durham, Cambridge and Anglia Ruskin. It has no power to award academic qualifications itself. Ordinands gain academic qualifications, if at all, through one of the universities the College works with. Further, the training provided by the RCL on behalf of the respondent does not lead to a qualification in itself.

34 Whilst undertaking the academic element of the formational training (if any), the Ordinand usually lives in or near to the College. Depending on the agreed programme of academic study, an academic qualification may well be obtained during or even sometime after the formational training itself. It is for the respondent to decide whether an Ordinand subsequently becomes an ordained Minister following the training provided, not the College.

35 The Principal and teaching staff of Westminster College are appointed by the respondent's General Assembly. Many of the teaching staff are also ordained Ministers of the URC. Once appointed, staff come under the management of the College. Should an allegation of misconduct be made against a member of the teaching staff, that will be addressed in accordance with College procedures, independently of the respondent.

36 The College is responsible for the welfare of its students and Ordinands. This includes health and safety and safeguarding. Pastoral care is however provided by the Ordinand's regional Synod.

37 Teaching staff are members of a body called Senatus. Senatus considers proposals for academic study and any proposed changes or other issues arising during that study. Decisions of Senatus do not carry weight independently but must be carefully considered and discussed by the Board of Studies (or Studies Board), before a decision is taken. Contrary to the assertion of the claimant to the contrary, we find that the Studies Board does not simply rubberstamp decisions of Senatus. We accept as more reliable the evidence of the respondent's witnesses that Senatus reports to and is accountable to the Studies Board, which makes independent decisions based on their careful consideration of the matters before them. The Studies Board also exercises oversight in connection with applications by ordinands to attend placements during their training and/or external courses including the costs associated with them.

The Living Ministry Programme – the LMP

38 The College arranges the Living Ministry Programme (the LMP) which forms the major part of the Ordinand's practical training. The Ordinand usually lives near to their placement and so far as possible, the LMP is arranged in a place which enables the Ordinand to continue to live at their usual residence. Once the location of a placement has been agreed in principle, a Learning

Agreement is entered into between the Ordinand and the Supervising Minister, who is a Minister of the respondent.

39 The arrangement is subject to regular supervision and assessment by both the Supervising Minister and the Director of Pastoral Studies at Westminster, together with the Ordinand. The Supervising Minister should also arrange for congregational companions to provide informal support to the Ordinand. If an LMP has been recommended as part of the training, it must be successfully completed before the Ordinand is able to progress to the next stage of becoming an ordained Minister.

40 If the college comes to the view that the Ordinand should not continue at the College, the College is able to terminate the Ordinand's student registration. In such a situation, the individual is referred back to the sponsoring body - the respondent - for consideration through its Assessment Board. It is for the Assessment Board to determine whether the Ordinand might be better suited to study at a different RCL; or whether they are unsuitable for Ministry, and terminate the Ordinand's training.

41 The RCL sends a progress report to the Assessment Board once a year, to enable the Ordinand's progress to be monitored by the respondent.

42 The respondent pays the course fees for the Ordinand. In addition, it pays them a basic grant, plus (if applicable) a Two Homes Allowance, and/or a Rent Allowance. During her time as an Ordinand, the claimant received all three, when eligible.

43 During the formational training period, the Synod should keep in touch with the Ordinand, providing pastoral support and maintaining a connection with the Synod. It is a matter for each Synod to decide how such support will be provided. With some it is provided on a regular basis, with others it is more sporadic.

The Settlement Process, Leaving Certificate and Ordination

44 If the training progresses well, confirmation of which is provided by the penultimate report received by the Assessment Board, the Ordinand starts the 'settlement process'. This is the process under which the Ordinand is introduced to local churches of the respondent which have vacancies for Ministers. Should the local church and the Ordinand come to the view that they are suited to each other, the local church is able to issue a 'call' to the Ordinand. Before that can happen, the Ordinand has to finish and pass their course. If so, a Leaving Certificate is issued by the College, together with a final year report which is assessed by the Assessment Board.

45 The Assessment Board then discerns whether or not the Ordinand is suitable for Ministry. If so, the Synod decides whether to concur with the call. It is only if the Synod concurs, that the Ordinand is able to accept the call, if any, from the local church. If so, the Ordinand is subsequently ordained and inducted into the local church.

46 Neither commencement on a course of training as an ordinand, nor the issue of a Leaving Certificate, inevitably leads to ordination as a Minister of the URC. Further, a Leaving Certificate may be issued, but no call is subsequently made by a local church. There is a provisionality and conditionality about every element of the Ordinand's training process.

47 This was acknowledged by the claimant. In her application form for training, in answer to the question "*Do you understand that there can be no guarantee that you will be called to serve as a minister of the URC when you have completed your training*?", the claimant answered: "*Yes*".

48 We accept the evidence of Revd Furley Smith of an example where an individual had received a Leaving Certificate, but withdrew their application, before they were dismissed by the Assessment Board. Despite obtaining the Leaving Certificate, the Ordinand would not have been eligible to be ordained.

49 We further accept the evidence of Revd Bowman that on another occasion, a Leaving Certificate was issued for a British male ordinand, but the Assessment Board determined that the LMP had not been sufficiently robust enough and decided that the Ordinand should complete a further placement.

50 We also accept the evidence of Revd Thorogood that he was aware of about four to five Ordinands who, between the period 2005 to 2020, began their training but did not complete it. In one or two cases this was because of legal issues (in one, serious criminal legal matters which resulted in a conviction); in one or two cases, they did not complete their academic training; and in the other one or two cases, issues arose during their placement about their suitability to be a minister, for example because of their lack of ability to work in a collaborative way with other people.

The claimant's early involvement with the respondent

51 The claimant is a German national. She is celibate.

52 The claimant commenced theology studies in 1984, and completed her studies in Heidelberg in 1994. She also studied an MA at the University of Kent between 1994 and 1997.

53 The claimant started attending the respondent church in 2001, at Ponds Square Chapel, Highgate, London.

Application for Ministry

54 In about February 2008, the claimant indicated to her local church that she wanted to explore the potential for ordained Ministry. On 24 February 2008, the Highgate URC Church Council endorsed the claimant as a potential candidate to undergo training. The purpose of the recommendation for training was to enable consideration to be given to the claimant's suitability for Ministry following appropriate training.

55 On her own account, the claimant had substantial ecumenical experience, in addition to her substantial academic experience. For example, her application for Ministry stated:

> *I am not doing a lot at the moment. I am taking on average two Sunday services a month mostly in the URC, but also in Germany and France. The Taize service is a service in London takes place weekly at the Methodist Church King's Cross. I am part of it and create an average 1 in 4 of the services full. Once a month we create a Bible sharing…. From the age of 14-20 I was leading the children's service at our church nearly every Sunday*. [sic]

56 In a reference provided at the time, Revd Julian Templeton, who was at the time the Minister of the Ponds Square Chapel, stated the following, based on his experience of the claimant over the preceding seven years:

> *By her own account, her family life was dysfunctional. This, I believe, has resulted in residual insecurity. This insecurity has been channelled into her relationship with God and with the Church, and in both she has evidently found much security and fulfilment. However, the insecurity surfaces in the need for reassurance and affirmation from others, and in the occasional patronising of others who she perceives as rivals or a threat.*
>
> *Having mentioned these two weaknesses, I don't believe that they constitute a barrier to ordination so long as there is a greater self-awareness on Felicitas' part of the need to improve her communication and to ameliorate the effects of insecurity.*

57 On the claimant's case, this document is central because she argues that it adversely influenced others against her, and in particular, Revd Thorogood. We find that the claimant's central reliance on this document is sadly mis-placed. We accept the evidence of Revd Thorogood that this document had no influence on any of the key decisions taken in relation to the claimant.

The Assessment Conference

58 The claimant was interviewed by the Synod on 8 July 2008. A referral was subsequently made to the Ministries Assessment Board. The claimant was interviewed between 21-23 November 2008 at the National Assessment Conference.

59 During the Assessment Conference, candidates undertook the Myers-Briggs test, a test based on 16 different personality types. The test was conducted by a HR specialist who is also a psychologist. The results of the test were then discussed with the applicants on a one-to-one basis. The applicants were asked to consider whether they considered that the personality type suggested by the test was accurate. The test was not intended to be a formal psychological assessment; nor was it forwarded to or seen by Westminster College staff.

60 Following the Assessment Conference, the Education and Learning Board recommended that the claimant complete a two year programme of training as follows:

> 1. *Completion of the United Reformed Church Introductory Course including the weekend programme of study entitled 'Our Church - a course on the ethos and history of the United Reformed Church for those serving in it'. This is scheduled to take place from the 3rd to the 5th of July 2009 at Westminster College, Cambridge.*
> 2. *2 years of full-time study towards the MA in Pastoral Theology at Westminster College, alongside an internship year and other significant placements.*
>
> *The Panel recognised that Felicitas already has more than the necessary academic requirements for ministry, and was heartened by her obvious passion for learning and desire to go deeper into her chosen subjects. The reason for recommending the MA is therefore less to do with gaining the qualification, and much more about providing Felicitas with a solid*

grounding and reflection on the practices of the United Reformed Church from within a learning community. [649]

61 The MA in Pastoral Theology is run by Anglia Ruskin University, which has a campus in Cambridge.

62 The Assessment Board also recommended the claimant for training for Ministry. [916] Both documents were sent to the claimant on 24 November 2008. The claimant was also sent two booklets – 'Becoming a Minister' [927] and 'Becoming a Minister – Financing Your Training'.

63 The claimant made an application for financial support on 24 November 2008. The claimant subsequently received a grant in the period 2009 to 2012, made up of a basic grant, two homes allowance and rent allowance, as applicable - £11,236.65 in 2009/10; £11,988.32 in 2010/11; and £8,195.90 in 2011/12.

Meeting with Revds Proctor and Bradbury – mid-January 2009

64 In mid-January 2009 the claimant met with Revd John Proctor and Revd Dr John Bradbury to discuss how her training programme would unfold. Following the meeting, it was suggested that the claimant do the internship year first, so that as they got to know her, they could help her to choose the appropriate university work for the following year – assuming further academic study was required at all. Following the meeting, Revd Proctor stated in an email to the claimant:

We have suggested doing the Internship first, because we are not yet sure what would be the best way of using another year of training beside the internship. It may be that, after a few months' internship, you will be keen to get ordained as soon as possible. If so, we can consult the Assembly's Assessment Board, and ask whether they would like us to reduce the period of your training from two years to one, so that you could go into ministry in 2010. But it may equally be that, as the internship progresses, you will want to do some Master's or Doctor's level study from 2010 onwards. If that is so, we shall gladly speak with you about how to achieve and arrange that: taught Master's, or Master's by research, or PhD; full-time, or part-time alongside the early years of ordained ministry, or a combination of these. None of these is a college decision alone. But there are many possibilities and the church will want us to speak with you about these.

65 In putting forward that suggestion, Revd Proctor took into account the claimant's decade in University academic work. There was also a clear indication in the claimant's application papers that she was unusually broadly experienced in church life and unusually deeply educated. The claimant had been involved in a variety of Christian service in wide-ranging places and as far as was apparent, was somebody who could both fit into and contribute well in a wide range of church contexts. Further, Revd Proctor considered that it would have been difficult to work out at the initial stage what was best to go forward with in terms of further learning on the basis of what had already been done. Doing the Living Ministry Placement (LMP) first enabled the College to get to know the claimant better and vice versa, and through dialogue consider the best way forward academically. We accept the evidence of Revd Proctor that he kept the possibility of the claimant doing a PhD or MPhil firmly in mind throughout the claimant's training.

66 The claimant replied on 21 January 2009 to say:

> *I wouldn't mind at all to go ahead with the placement/internship and to take anything else the future could bring from there. I thought already two weeks ago that your idea and the reasoning for it were very good*. [3617]

67 Whilst it was unusual for a candidate to be asked to complete the LMP first, it was not unique. We accept the example given by Revd Proctor that prior to the claimant commencing her training, an ordinand from Germany who had completed their theological degree in Germany, undertook a one-year LMP without any subsequent academic training. Revd Bradbury recalled the same example. Revd Bradbury also recalled another example, which we accept, of an ordinand who already had a theological degree, and just undertook a one-year programme.

68 The claimant told us that she formally objected to doing the LMP first. We reject that evidence which is at odds with the written record of her email of 21 January 2009. It is also at odds with the contents of an email dated 30 January 2009, from Revd Thorogood to Revds Durber, Bradbury and Proctor which states:

> *I have had, this afternoon, a good discussion with Felicitas who now seems more comfortable with the internship*. [999]

Proposal of Clapton Park URC for the LMP

69 Further, we accept the evidence of Revd Proctor that it was not many weeks after this interview that a placement at Clapton Park URC was suggested by Westminster College as a potential placement. Clapton Park URC is close to the claimant's home address in London. The claimant lost no time in going to Clapton Park and beginning to build up relationships and plans for the placement. The claimant attended a Sunday service and introduced herself as a potential LMP student to Revd Welch. This was before Revd Thorogood had had the opportunity to confirm that the College wished to make such an arrangement and the supervision arrangements had been finally agreed with Revd Welch.

70 Yet further, the claimant submitted a proposal for her assessed service (which forms part of the assessment carried out during the LMP) in an email to Revd Thorogood sent on 4 September 2009 [1006]. The suggested date was 17 January 2010. All of the above actions are inconsistent with the claimant objecting to the LMP year being first.

71 The suggestion that the claimant carry out the internship first was not referred back to the Assessment Board by the College because it was not seen as a major change to the programme, merely a decision as to the order in which the two elements of the training would take place. As noted above, the claimant in any event had indicated her agreement to this.

72 Prior to the placement commencing, the claimant was provided with a copy of the Westminster College Handbook and Revd Thorogood discussed that with the claimant early on in the placement. The claimant was provided with a proposed Learning Agreement by Westminster College on 4 September 2009 [1302]. The learning agreement suggested 2 hours supervision every other week.

Student status

73 During her internship, the claimant was a student of Westminster College. The claimant was on the roll of the college from September 2009. Whilst on placement, Ordinands visited Cambridge once a week during term-time to reflect with other Ordinands on their practical church work. The claimant did so.

Supervision on the LMP

74 The claimant's supervisor was Revd Elizabeth Welch, who had been appointed as the Minister at Clapton Park a year earlier. Revd Welch was brought up in apartheid South Africa, in a family who were opposed to the apartheid regime. Revd Welch left South Africa to study at a university elsewhere, because she did not wish to study in a South African university which at that time only allowed people of a white racial background to study.

75 Since Revd Welch worked part-time, it was agreed that supervision sessions with the claimant would take place on a fortnightly basis. The intention was that the claimant work on Sundays, Mondays, Tuesdays and Wednesdays for the main part of her placement, working on average eight hours a day (less on a Sunday). That was a total of 32 hours or less. The intention was that the claimant could spend Thursdays (and if she wanted, Fridays) at Westminster College, with Saturday being her day off.

LMP duties and working hours

76 The claimant's LMP duties included helping out at services (which included involvement in preaching and leading worship on Sunday mornings), and assisting with a number of the more informal services the church held on Sunday evenings and during the week. The claimant also helped with pastoral care, community engagement, attending elders and church meetings, other meetings as agreed, and some administrative tasks.

77 The reality was that the claimant worked longer hours than intended. Revd Welch was not however aware of this and we are satisfied that if she had been aware, she would have intervened. It was not Revd Welch's expectation that the claimant work long hours. To the contrary, Revd Welch was attentive to her own work-life balance well and expected the claimant to do the same.

78 The claimant also complains that she had to cancel all but one of her days' holiday. To the extent that she did so, we find that this was because of time management issues, rather than because Revd Welch or Westminster College forced the claimant to do so or expected her to do so. There is no independent evidence that the claimant had been prevented taking leave or had her days off cancelled. There is evidence to the contrary in emails dated 14 November 2010, in which the claimant had asked Revd Thorogood if she could be excused from attending the intensive workshops in January 2011 [3037]. His response was that: *'the need for holiday outweighs the intensives*'. To the extent that the claimant felt she was not allowed to take holiday, we find that this was due to her misunderstanding what was said to her and/or what was expected of her.

Dissatisfaction with the LMP

79 The claimant was unhappy with various aspects of her placement from an early stage. The claimant had been raising some of those issues in the

weekly meetings on Thursdays with fellow Ordinands at Westminster College. Revd Thorogood asked the claimant to write the matters down, and send them in an email to him, since he felt that too much time in the meetings was being spent on discussing the claimant's issues with her placement. That did not amount to an instruction to the claimant not to discuss the matters with any of the other Ordinands, or other members of staff.

80 In about mid-October 2009, the claimant sent an email to Revd Thorogood about her perceived issues about the LMP at Clapton Park. [1010]. This stated:

> *I don't think that a lot of her critic of me, or her cutting me short or her not wanting who I am is personal. In any of the many meetings and committee group situations too she tries to control their content. In these settings she hardly says anything, but only what she wants to be done is put forward to a vote or gets into the minutes, or is picked up there after. The same control happens in the supervision. The only difference is that here she can also speak. [sic]*

81 Revd Thorogood considered the list of the claimant's concerns and made some suggestions as to how she should raise them with the Revd Welch. It is not unusual for the first few months of an Ordinand's placement to give rise to difficulties. In the usual course of events, such difficulties settled down after that initial bedding in period. Revd Thorogood expected that would be the case here too. He therefore took a relatively hands-off approach at this stage.

82 Revd Welch experienced difficulties with the claimant. For example, at the beginning of supervision sessions the claimant would spend an hour talking. Revd Welch would listen carefully and attentively. That careful and attentive listening was not then reciprocated by the claimant. Revd Welch tried to encourage to the claimant the importance of relationality and dialogue.

'Wrong chair' incident

83 On 25 October 2009 the Claimant had tried to summon the Elders of the Clapton Park church to pray in the vestry. That was not the area in which the Elders would normally sit. The claimant had not discussed this proposed change with Revd Welch prior to her implementing it. Revd Welch was at the time trying to get the service started, and was irritated by the claimant's actions. As a result she snapped at the claimant, outside of the worship area. Revd Welch regretted that afterwards. We reject the claimant's contention that Revd Welch told the claimant it was 'because she was German'. On the basis of Revd Welch's background and history, we consider it inherently improbable that she would have used such a term towards the claimant.

November 2019 Case Study

84 As part of their discussions with other ordinands on Thursdays at the college, Ordinands would prepare case studies. A case study was prepared by the claimant and discussed on 19 November 2009 in the group meeting. Revd McCoan saw case studies as a helpful tool for Ordinands to explore what they needed to learn. This case study and the discussion surrounding it suggested to Revd McCoan that the claimant felt that she was doing a better job than the supervising minister and considered the report highly critical of the Minister. The panel agrees with that assessment of the case study. Revd McCoan was upset by the discussion about it at the College. She felt uncomfortable with

how critical the claimant was about Revd Welch. She told us: '*It was as if she was seeing the world from a different perspective from the rest of us'*. We find this to be a useful example of how the claimant's actions were negatively perceived by others but the claimant did not accept or understand that. It also demonstrates how the claimant has difficulty engaging in dialogue.

85 Revd Thomas describes in her witness statement [#58] the tendency of the claimant to take what people say and misinterpret it/take out of context. She says:

> *A consistent pattern emerged of the claimant's tendency to a. take comments from individual conversations out of context when reporting these in other conversations; b. exaggerate her own achievements and influence prior to entering EM1; c. appeal to external supporters whenever her views on what her EM1 should contain were not accepted after discussion.*

We accept Revd Thomas' evidence to that effect.

Interim LMP Report

86 During the LMP, an interim report is prepared by the supervisor, in conjunction with the trainee. An interim report was prepared by Revd Welch about the claimant's LMP and is dated 16 December 2009. Revd Thorogood also commented. The report contains a number of positive comments about the claimant. It was not wholly negative. The report observed that the claimant and Revd Welch had a different understanding as to their respective roles of trainee and supervisor:

> *I would be happy if we could arrive at a shared understanding of what supervision is about, but it feels like we are a distance away from this.*

87 At point 3, Revd Thorogood noted [2332]:

> *In the course of these discussions it has become clear, and Felicitas has acknowledged, that she has significant personal issues to deal with that this experience of supervision has touched powerfully upon, and we have openly talked about the need for professional therapeutic help and space in which major issues can be explored and, ultimately, need to be dealt with.*

88 On 16 December 2009 a meeting took place between Revd Thorogood, the claimant and Revd Welch. The intention of the meeting was to rebuild trust between Revd Welch and the claimant. At that stage, both the claimant and Revd Welch wanted to make the placement work. During cross examination, the claimant was asked whether she considered that it was only necessary for Revd Welch to change, not her. The claimant confirmed that was her case.

89 In a document provided by Revd Thorogood to the claimant and to Revd Welch following that meeting, titled 'Revising and Improving the Placement' and dated 22 December 2019, Revd Thorogood observed (in a similar vein to the interim report referred to above):

> *There is not a common mind on what supervision should be or how it should function and there is a degree of misunderstanding and mistrust which makes the supervision relationship unproductive, frustrating and fraught*.

90 The document quoted from the guidance on Beginning the Supervision Relationship, in Section 6 of the LMP Handbook. Under the heading 'Educating' he noted the following:

> *Felicitas needs to be able to embrace Elizabeth's experiences of URC ministry and Elizabeth needs to be able to open up the placement experience in the light of what Felicitas brings to the conversation and Elizabeth's understanding of the context and ministry. To some extent Felicitas has transferred to Westminster major reflective time. Westminster is not intended to be the main location for reflection. There needs to be deep and meaningful learning in supervision with Elizabeth so that Elizabeth can refer to this in reporting to Westminster. Currently Elizabeth cannot have the evidence Westminster is looking for.*

91 Under the heading Modelling he noted:

> *We agreed that agreement between Felicitas and Elizabeth is not the essential goal! Instead what we need is the sort of open conversation in which both can be heard and both can bring their gifts, without having to agree on everything. Ministry can look very different to different people. But there needs now to be a positive exchange of views and perspectives.*

<u>Decision to end the Clapton Park LMP</u>

92 The claimant alleges that on 5 January 2010 Revd Thorogood told her, when they were both queuing for coffee at Westminster College, that she was dismissed from her work in Hackney, her training has stopped and termination of her training was threatened. We reject the claimant's evidence to that effect which is inconsistent with the substantial efforts made by Revds Thorogood and Proctor to find an alternative placement for the claimant, as set out below.

93 On 6 January 2010 Revd Welch sent an email to Revd Thorogood referring to the claimant's 'recent ill health'. That was a reference to a flu-type illness. In a follow up email on 7 January 2010 Revd Welch suggested an extra supervision session on the claimant's return from holiday, to give three supervision sessions prior to the proposed assessed service. [1018]

94 At a Senatus meeting on 8 January 2010, the difficulties with the claimant's LMP were discussed [1019]. The record of the discussion states:

> *Felicitas Grabe's working relationship with her intern supervisor had given rise to serious difficulties, and NRT's careful and considered suggestions about how to retrieve the placement had then led into a long, inconclusive correspondence. There was not yet any easy all-round agreement about how to go forward, and NRT raised the possibility of Felicitas moving to a different church. After discussion Senatus agreed to end the present LMP placement at Clapton and to seek a full nine-month placement elsewhere. It would be important for NRT to take a strong role in the drafting of a new Learning Agreement, so that important issues were addressed*

95 Substantial efforts were subsequently made to find another placement for the claimant, as evidenced by an email from Revd Thorogood to Revd Proctor dated 13 January 2010 [1021]. This confirmed that there were about six real possibilities for alternative placements for the claimant. Revd Thorogood noted that he had avoided any placement too close to Clapton Park, to avoid discomfort for the claimant. The email suggested a potential start date of 1

March 2010. Revd Thorogood put a considerable amount of effort into exploring alternative placements. He attached a list setting out the name of the Minister, the location, and the travel time from the claimant's home. [2544]

Issues regarding the claimant's mental health

96 The claimant met with Revd Thorogood on 16 January 2010 [3592]. In an email sent the following day she stated:

> *Creating doubt and insecurity, far beyond there actual subject [sic], are those stories which touch upon the unpleasantness of my childhood but were not witnessed by others. These stories I know as truth, but I do not know if they are true. I know those stories contain history but I do not know if they are mirror images of the history.*

97 The claimant talked about the possible use of hypnotherapy to try and explore these issues. The claimant was aware at this stage of the possibility of a further placement being organised.

98 On 21 January 2010 a letter was sent to Revds Thorogood and Proctor from the claimant which stated:

> *… in the peace of last night, and in between sleeping soundly, it was easy to hand over Clapton Park. It was easy too to let go of any notion that 'I'd have to do' the next internship immediately. …*
>
> *I think we all agree that my future ministry and I would benefit from some additional work with professional psychological support. I am happy to be guided by you as to how long that process should take.*

99 The claimant alleges that on 21 January 2010, at Westminster College, Revd Proctor said to her words to the effect of:

> *Your (personality) problems are too heavy for the URC to deal with, but it is amazing how far you have come considering where you have come from*.

This was denied by Revd Proctor. We accept his denial. On the balance of probabilities, we find that this is another example of the claimant misinterpreting or mishearing what was actually said to her.

Board of Studies Meeting - 28 January 2010

100 A meeting of the Board of Studies took place on 28 January 2010. The Minutes record [1894]:

> *The Board spent a considerable amount of time discussing Felicitas' placement and agreed that for a number of reasons it had not been successful. The Board resolved, on the motion of Senatus, that she should not return to this placement. She will need to undertake another LMP placement in 2010-11 but may need some therapeutic help before then. If she is to take a Cambridge degree, this should follow a successful LMP placement, rather than precede it.*

101 The Board of Studies produced a report on 29 January 2010 for discussion with the claimant which noted:

> *The Board of Studies agreed …*

> *There are bigger issues at stake here than the placement. Felicitas needs to have space and the right input and support to help her engage with some very complex and deep issues that have been influencing some of her responses. It has become clear, and she has acknowledged, that she has significant personal issues to deal with that her recent experience of supervision has touched powerfully upon. She has talked openly with college teachers about the need for professional therapeutic help and for space in which major issues can be explored and, ultimately, be dealt with. This must be the priority, ahead of anything that the college can arrange for Felicitas.*

102 Paragraph 2 states:

> *Felicitas then needs to complete a LMP placement successfully, and we believe this depends on the Clapton Park placement ending now, and an opportunity being given for a fresh start in the autumn*.

103 The report confirmed that a new placement would start in September 2010 and run until June 2011, with a full-time supervisor. The intention was that further academic work could then commence in 2011/12.

104 The final paragraph records:

> *This afternoon's conversation is first for information - to let Felicitas know the above. Felicitas certainly has the right to comment on these points, but we should also try not to return to ground we have covered at length in earlier conversations. The main constructive emphasis in our conversation today might be around paragraph 1 above, and how this important healing work can be carried forward.*

<u>Meeting to discuss the Board of Studies Report</u>

105 A meeting took place between the claimant, Revd Proctor, and Revd Thorogood on 29 January 2010 to discus the report [1022/2335-6]. Revd M Smith (who was at the time a fellow Ordinand and went by the name Ms Frew) attended that meeting with the claimant as an impartial friend. We accept Revd Smith's recollection that (contrary to the claimant's assertion to the contrary) the meeting involved a balanced discussion and expression of views and there was nothing untoward in the way that the meeting was conducted.

106 A note of the meeting was prepared and sent to the claimant and Revd Smith (Ms Frew). The notes record that the claimant was told that her candidacy for Ministry was being affirmed and that it was recognised:

> *that the claimant had rich gifts, and everyone at the college eagerly hoped to see these used in the ordained ministry of the URC. The entire intent of the Board and of the Senatus was positive, to enable Felicitas to enter well into ordained ministry of the URC*.

107 The note also records that the decision does not mention fault. Further, that:

> *Felicitas, in the Board's view, needs to deal with some acknowledged personal issues, before she takes her ministerial training further, either in intensive placement work or in advanced study. Without skilful professional advice, none of us In Westminster (even Felicitas herself) will really know how serious these personal issues are.*

108 Revd M Smith confirmed that the notes were a fair summary of the discussion in an email sent on 1 February 2010, subject to two clarifications [3533]. The email confirmed:

> *Felicitas accepted the decision that professional psychiatric advice would be sought. However, she shared a past experience which made her reluctant to pursue this type of help as she doubted it would be effective.*

At no point did the claimant respond to any of these emails to say that what was written did not reflect the discussion that had taken place about her mental health.

109 The claimant alleges that she was accused of having a personality disorder by Westminster College staff. Those words do not appear in any of the documents we were taken to during the hearing to describe the claimant's mental health issues. The tribunal accepts the evidence of Westminster College staff that whilst inevitably there was speculation and discussion about what could be causing the claimant to encounter the obvious difficulties in developing and maintaining relationships with the teaching staff and other Ordinands, they recognised that they were not qualified to make any formal diagnosis about the claimant's mental health and nor did they attempt to do so.

Appeal against termination of placement

110 Despite agreement having apparently been reached with the claimant about the termination of the Clapton Park LMP and the implementation of a new placement in September 2010, following a period of psychiatric/psychological counselling/support, the claimant lodged an appeal against the termination of the Clapton Park placement on 8 February 2010 [2045]. The appeal was amended on 7 March 2010. The appeal notes [1888]:

> *Please note that I do not suspect malice…..*
>
> *I hope that the appeal panel to the Governors will be very positive and decisive already now concerning point 5 underneath on the last page of my original appeal. This would help me not to have to worry about future decision-making procedures of the college concerning me.*

111 The reference to Point 5 is a reference to a further year being agreed for academic study (from the original 2 years following the 2008 Assessment Conference), which for the claimant would involve study for an MPhil/PhD [see 1896 and 1910]:

> *Such a way forward in 2011/12 would depend on the URC supporting a third year of training, but we think this is likely. Any study beyond that year would not at all be part of basic ordination training, and would require careful and separate negotiation, if the time comes, with the URC or other funding bodies.*

Referral for psychological assessment

112 On 16 February 2010, the claimant emailed Revd Durber, agreeing to a psychological assessment. In her reply, Revd Durber confirmed that she would be happy to arrange that.

113 We accept the evidence of Revd Durber that there was considerable discussion about the nature of the psychological help that may be given to the

claimant. The College wanted the claimant to have the kind of help that would assist her. Revd Durber was anxious that when the claimant spoke to a psychologist, the claimant felt able to open up, to ensure that the kind of help recommended would be what was best for the claimant, not what was best for the College. A report was not therefore requested.

114 The claimant subsequently met with a psychoanalyst Jean Thompson. The College paid the cost of the consultation. The claimant's recollection as to what Ms Thompson told her are set out below. No report was subsequently provided to the College.

Appeal hearing and outcome – 25/26 March 2010

115 The claimant's appeal took place on 25 March 2010. The appeal was upheld [1886]. The decision was communicated to the claimant by Cecil White, the Clerk to the Board of Governors in a letter dated 26 March 2010. The decision was however subject to the following conditions:

> *1 It will be necessary for you to make up the three months lost from your placement, within the context of the College's normal Living Ministry programme before you may proceed to any further study.*
>
> *2 You may return to your placement at Clapton Park, subject to the conditions laid down by the Revd Elizabeth Welch in her letter to Mr Thorogood of 7 February 2010, namely:*
>
> > *a) the programme will not recommence until after Easter;*
> >
> > *b) Ms Welch and you will need to revisit the pattern and content of supervision to see how this would work, and agree a pattern, signed by both of you.*
>
> *In relation to Ms Welch' s other condition concerning the length of the remaining programme, the Panel agreed, for the reason stated in § I , that it should continue until 1 December 2010. Before the placement recommences it will be necessary for Mr Thorogood to receive a document, signed by both of you, accepting all these conditions. …*
>
> *4 Thames North Synod will be requested to ensure that the officer responsible for overseeing the training of ordinands, or another member of the Committee concerned, attends meetings between you, Elizabeth and Mr Thorogood, as an observer.*
>
> *5 If you or Ms Welch do not accept these conditions, or are unable to agree a pattern of supervision, the Panel agreed that you should do a second Living Ministry placement in 2010-11.*

116 In a letter to Revd Durber, dated 27 March 2010, the Chair of the Appeal Panel, Professor David Thompson wrote [2315]:

> *The first thing we want to say is that we entirely support the actions taken by Senatus and the Board of Studies at their meetings in January, and believe that they were entirely justified by the evidence available to them at that time. In the circumstances they acted wisely and well. We also want to pay tribute to the care taken in relation to this case by both Neil and John, which was clearly evident to us at the hearing but seemed not to be appreciated by Felicitas. We were particularly concerned by the way in which Felicitas relentlessly questioned Neil … We believe that Neil acted*

throughout December and January with the best interests of the candidate and the Church in view and that his care for the student and the Church is exonerated by the Panel.

The Panel has accepted the main request of the Appeal, not because the previous decision was poor or wrong, but because, having considered the statements of intent and commitment about the relationship made by Felicitas and what has been reported as the attitude of the Supervisor, it is willing to accede to the wish of both to have another opportunity to make the placement work. To a very significant extent our decision was influenced by new evidence, which only became available to us at the hearing, and was not available to either Senatus or the Board of Studies in January.

Reference to the psychological assessment

117 On the proposed psychological assessment, Professor Thompson said:

I should perhaps mention that at the beginning of the hearing I explained why I had not pursued Felicitas's request for a psychological assessment at this stage. My reason was that I could not see, on the documentation submitted to the Panel, how the possession of a psychological report would assist us in deciding whether or not to continue the placement. However, Felicitas informed us that she had sought a report from someone recommended by Mr Bryant. Although, she said, such reports are not usually written down (contrary to my experience in the University), she proceeded to tell us what the psychologist had said. In brief, this was that she was charismatic and congregations would love her, that those in authority would fear her, that she was not in need of any psychological help, that her reactions to what she had been told were entirely legitimate and understandable, and that, if anything, she should have been more aggressive in her appeal and her criticisms of Neil than she was. This seemed to the Panel useful information for Senatus to have, even if we did not change our view on its relevance or necessity.

118 The claimant disagrees with this summary. However, in a letter to Ms Rominger sent on 15 April 2010, the claimant said the following about the assessment:

I demanded an assessment. [Revd Thorogood] was asked to set one up, but failed to do so. I then persisted to have that assessment and had a couple of meetings with a psychologist of the college's choice before my appeal hearing. I also gave that psychologist all available documentation so that she could make up her mind as independently as possible. Of course I passed. The psychologist stated that I was a very charismatic person whom, both as a facilitator and as a leader any congregation would love to have as their minister, but that some of my Superiors sometimes would perhaps feel threatened. She also stated that I had been trapped between two authorities in a very messy situation. She also thought that I had worked on wounds of the past more than sufficiently. She wished that I would be more aggressive and less innocent, but I hope that I never will be that. [1882]

119 A written report was not produced. The tribunal does not accept that what the claimant says Jean Thompson told her accurately reflects what she was in

fact told. We find it inherently improbable that a therapist would use the words alleged. Nevertheless, this is what the claimant reported to Westminster College.

Appeal panel recommendations

120 In a section headed 'Recommendations of the Appeal Panel to Senatus, the Board of Governors and the student' dated 27 March 2010, the panel reaffirmed, amongst other things:

- *the need for supervisors in the programme to be trained to ensure they understand what the programme is intended to achieve and what their particular role is in it;*
- *that congregational companions should be regular members of the congregation where the student is based, and should receive appropriate training to ensure that they understood their responsibilities.*
- *Changes to the grievance procedure were recommended, including specific reference to how complaints against a supervisor/members of Senatus were to be handled.*

Continuation of Clapton Park LMP

121 The claimant was concerned about the LMP continuing until December 2010 and continued to raise that in meetings with Revds Thorogood and Durber. The claimant was concerned that it interfered with her preference to start an MPhil at Cambridge, starting in the Autumn of 2010. Nevertheless, it was formally accepted, which is evidenced in a memo of a conversation between the claimant, Revd Durber and Revd Proctor on 22 April 2010 and a signed acceptance dated 21 April 2010. [1027] The claimant told us she felt she was being forced to accept the continuation of the LMP at Clapton Park. That may have been her perception. If so however, it did not reflect the reality of the situation. The claimant had appealed against the decision to terminate the placement, presumably because she was, on reflection, unhappy with that decision. The claimant was still given the option by the appeal panel to take up another placement, as evidenced by the appeal decision letter. The claimant declined that option. The claimant signed to accept the conditions, just before the first of the Cambridge Easter term classes were due to start.

122 We accept the evidence of Revd Durber and others that after the decision of the appeal panel to continue with the placement, College staff agreed that due to a breakdown of trust, and because they believed they would be quoted as saying things that they had not said, they would in future only meet with the claimant with another colleague present. A decision was also taken by Senatus that Revd Bradbury and Revd Thorogood would teach the college based part of the LMP jointly.

123 The claimant complains that from April 2010 onwards, she was prevented from attending Bible studies meetings at the College. We accept Revd Proctor's evidence that those meetings took place at a time of the week when students doing the academic element of their training were on campus in Cambridge but LMP students were attending their placement. The claimant was treated no differently to other Ordinands in that regard.

124 A meeting regarding the resumption of the Clapton Park LMP placement took place on 28 April 2010 [2485]. Present were the claimant, Revd Tony Haws from Thames North Synod, Revd Welch and Revd Thorogood. A note of the meeting was agreed on 7 May 2010. The agreed version confirmed amongst other things:

> *We agreed that it will be an essential part of reporting on progress to Westminster that the Interim and Final Reports for submission to the Board of Studies are written by Elizabeth and signed by both Elizabeth and Felicitas without extensive additional commentary being required….*
>
> *We looked at the appeal panel' s findings and the clarification on timescale sent by the Clerk to the Westminster Governors (and to the panel). We agreed that this clearly required that the placement run during the Westminster term rather than over the vacation. Felicitas wondered if Elizabeth wished to contact the Westminster Governors with her to question this requirement. Elizabeth did not wish to. So we agreed the following timetable for the remainder of this placement.*

125 A further meeting took place on 7 May 2010 between Revds Durber and Proctor, David Trafford, a member of Thames North, and the claimant. During the meeting, the claimant asked Senatus to help her in two ways. First, by recommending to the Board of Studies in June that she be approved to go forward to higher study, subject to the completion of a successful LMP. Second, to ask the Board to approve her doing some retreat training at Loyola Hall or St Beuno's (in Wales) in the first half of 2011.

126 The claimant was subsequently asked to put forward a proposal in relation to St Buenos. She did so. This recorded that with a contribution from the claimant towards the fees, the total cost of the course would be £4630, rather than the £6590 which was the full cost of the course.

127 On 27 May 2010 the claimant alleges that she was belittled for bringing strawberries in with chocolates to an LMP meeting. We reject the claimant's evidence about this allegation. We find it is another example of the claimant mis-interpreting whatever was said to her.

128 An Interim Report was put forward by Revd Welch about the LMP on 2 June 2010 [2505]. This was based on the report of December 2009 and maintained the numerous positive comments in that report about the claimant. It also contained shared reflections from two supervision sessions and time spent together in May 2010. The report states [2511]:

> *The last few months have been a struggle for Felicitas, as she faced an uncertain future. She has come back to Clapton Park with new enthusiasm and energy, and is now more attentive to the needs of the church as a community and the needs of individuals within the community. She has quickly settled back into life at CPURC and is making a distinctive contribution to the church.*

129 In a report to the Board of Studies on the claimant's appeal, dated 9 June 2010 it was noted at point 3 [2296]:

> *3 The Panel accepted the main request of the Appeal, not because the previous decision was poor or wrong, but because, having considered the statements of intent and commitment about the relationship made by*

Felicitas and what has been reported as the attitude of the Supervisor, it was willing to accede to the wish of both to have another opportunity to make the placement work.

130 At point 6, the decision to recommend continuation of the placement was described as '*a high risk strategy*'.

131 A meeting took place to consider the interim report on 14 June 2010 [2491]. The record of the meeting, attended by the claimant, Revd Welch, Revd Haws and Revd Thorogood confirmed that the claimant had enjoyed coming back to Clapton Park and felt her return was smooth. The note records:

Felicitas said she loved supervision now and felt that she and Elizabeth were working well together.

132 Revd Welch is recorded as saying:

Elizabeth felt things were going well since the restart of the placement.

133 Point 39 notes:

Tony, in conclusion, saw the placement and this report now offering an opportunity to move forward. He saw the need for Felicitas to be sensitive to critique and felt that it was all to play for. Felicitas could have a major influence on how things developed in the placement and supervision from here on.

Decision on St Buenos' application

134 Revd Proctor wrote to the claimant on 24 June 2010 setting out the reasons for refusing the application to attend the retreat at St Beunos:

You will see that the Board is asking you to be a member of the Westminster community during Lent and Easter Terms 2011, and to take your part in the learning and life of the college. There is material in the Cambridge Theological Federation teaching menu that should offer you some worthwhile learning, and I have suggestions to make about this. Time with your URC peers will help you much more, as preparation for URC ministry, than a period at St Beuno's of comparative detachment from the life of our denomination.

The panel's reasoning, therefore, was: (i) the course you requested is more specialist than one expects of a student at this stage; (ii) some comment from the Living Ministry supervisor suggests that you could gain from putting down deeper and broader roots in the life of the URC, and this can be better done at Westminster than at a Catholic institution; (iii) work on taught Federation modules will give you a chance to refresh and develop your skills in academic writing, and this may give you a stronger platform for applying for graduate work in 2011-12. We did not discuss directly whether you should apply for such work, but we tried to take seriously your wish to do this, and to give you a chance to lay the ground for it.

We do not expect that you will welcome this decision. But I hope you will realise that it has been taken with care, and that the intent is constructive. The college wants to commit itself to the course that will give you the best possible preparation for URC ministry.

135 The claimant alleges that she was forbidden to attend the UK visit of the Bishop of Rome in or about 2010. However, the respondent already had a representative for that visit. The claimant was not forbidden from attending.

International 'placements'

136 The claimant claims that she was prevented from attending the laying of the foundation for an orphanage/school/hospital for a Christian tribe in Bangladesh. The claimant did not tell us who it was who she alleges prevented her from attending, whether any attendance would have been during the LMP placement rather than holiday days, what the cost of her attendance would have been and what she was claiming in terms of the cost the attendance from the church. We have been referred to no documentation in which any formal request to attend was made. In those circumstances, we conclude that the claimant was not prevented from attending. On the balance of probabilities we find that to the extent this was the claimant's perception as to what had occurred, she had misinterpreted or misunderstood any conversation she had had about it.

137 Similarly, the claimant claims that she was ridiculed for asking if she could travel to Haiti during the 2010 earthquake to offer help, following a text for such help from a bishop of a diocese near Port-au-Prince. No details are provided as to who it is said to have ridiculed the claimant. The allegation was not put by the claimant to any of the respondent's witnesses during the cross-examination of them. We have note been referred to any documentation in which any formal request to attend was made. All we were referred to was an email to colleagues at Westminster College making a request for prayer for those affected [3586]. In those circumstances, we conclude that the claimant was not prevented from attending or ridiculed for asking. Further, on the balance of probabilities we find that to the extent this was the claimant's perception as to what occurred, she had misinterpreted or misunderstood any conversation she had about it.

Other miscellaneous allegations

138 The claimant alleges that she was told by Westminster College that her ten years of theological full-time studies in Germany were no foundation for further studies here in the UK. Again, we find that was a misinterpretation/misunderstanding as to what was said. As noted above, the claimant was to be allowed to undertake further academic study once the LMP was completed.

139 The claimant alleges that on 17 and 20 October 2010 she was criticised by Revd Welch for allowing a homeless person to kiss her cheek. The tribunal accepts that an issue was raised, but because Revd Welch was concerned about this as a safeguarding issue.

26 October 2010 meeting

140 A meeting took place on 26 October 2010 between Revd Robert Courtney, Revd Durber, the claimant and Revd Proctor, about the ongoing placement at Clapton Park [2835]. The note of the meeting records:

> *4) JP introduced a conversation about FG's programme. He re-iterated the decision of the Board of Studies (made in June) that FG should not undertake courses at St Beuno's, but instead engage fully in the*

Westminster community and also engage in an academic course based here. JP also reported to FG the decision of the Board made in September that, at this stage, entry to an MPhil programme should not be pursued, but rather that FG should, on completion of the LMP, enrol on the MA in Pastoral Studies.

141 In the same meeting it was also stated:

JP began by saying that FG does not always manage situations well where relationships become difficult. She finds it hard when people do not agree with her or conflict with her. SD added that there are times when FG seems to polarise people; they are either 'with her' or 'against her'. Sometimes FG's tone, manner and approach in, for example, e-mail, is rather unyielding and stern. There remains a concern about how FG would handle relationships with Elders and church members that become difficult, as almost inevitably some relationships do. … SD also said that FG seems to have no sense of self-doubt, and there is no evidence of self-critique. Can she ever admit that she might have been wrong or mis-judged something? FG replied that she had stopped reflecting on her doubts with people at the college. SD said that it is we at the college who need to know that FG is ready for ministry and that these concerns do need to be addressed. FG said that she was willing to engage in more conversation about these concerns and that she was always ready to learn.

142 The claimant was cross-examined about these comments. It was the claimant's evidence that the matters complained about were unfounded, and that the respondent made no real attempt to find out who she really was. We reject that interpretation of the events. We find that the comments made above were indeed well-founded, and a reflection of the claimant's behaviour at that time.

143 Following the meeting, on 29 October 2010 Revd Durber emailed the claimant as follows [3101]:

1) It is clearly the Board's intention that you undertake modules of the MA in Pastoral Theology in the period January to May.

2) There is time yet to discuss what will follow that. It may be right for you to complete the MA, and if this is the way forward, then the Board's willingness to request an extra term's finance for your training will take you up to December 2011.

3) If, however, you want to press the case for the Cambridge MPhil in 2011 -12, there is time for the Board to consider this in January.

4) The Board will consider in January whether to forward your name to the Moderators, for you will by then have completed your LMP and you may be within a year of the end of your programme.

<u>Change in tutor – November 2010</u>

144 A further meeting took place on 4 November 2010 between the claimant, and Revds Durber and Proctor [2827]. The claimant argues that she was 'frog-marched' into the office by them. We reject that description as unreliable. The claimant was offered email communication as an alternative to the meeting but agreed to meet to discuss the issue of a new tutor, without a

representative present, on the basis that there would be a follow-up email after the meeting. The meeting was held at short notice, for the reason explained in the note of the meeting. This records:

> *… JP and SD had previously told FG that they would tell her about the Senatus response to her request that she might have a new tutor, as soon as they could. This moment had come. The meeting had necessarily been arranged at very short notice. FG had been offered the option of email communication instead of meeting, and had agreed to meet as long as this would also be followed up by email.*
>
> *JP explained that Senatus has considered FG's request and decided to recommend that FG should be transferred to Janet Tollington for the purposes of tutorial care and support. Furthermore, this new tutorial relationship could now be conducted one-to-one (as tutorial relationships normally are) so that this new arrangement could be a new beginning in two ways. ….*
>
> *FG made some statements in which she suggested that JP had lacked good judgement on academic issues. She said that JP had failed to suggest opportunities to her, for international placements for example, which other students had received from their tutors.*

145 It was rare for Westminster College to receive a request to change tutors. Nevertheless, it was considered and agreed in the claimant's case. It was hoped that this would provide a fresh start. It did not.

146 On 9 November 2010, Revd Welch emailed Revd Thorogood as follows:

> *Can I say, confidentially, that I'm feeling a little anxious about the final report for Felicitas - especially with regard to knowing how much weight will be given to it in assessing Felicitas' ongoing training/suitability for ministry. I still have some outstanding points of concern, but I wouldn't like to be the one, who in raising concerns, led her to not proceeding for ministry. She has much to offer, but it also feels like there are some points which need continued attention.*

147 The claimant alleges that on 21 November 2010 she was criticised for being 'gregarious' by Mr Boucher, Revd Welch and Revd Bradbury. Again, we do not consider that allegation to be reliable. We accept as more reliable the evidence of Revd Welch that it was normal for members of the congregation to socialise after meetings and services and there is no reason why the claimant would be criticised for being outgoing. If anything was said, we consider that on the balance of probabilities, it was misinterpreted by the claimant.

The claimant's qualifications and experience as a preacher in Germany

148 The claimant was not an ordained minister in Germany. She was a 'Predakantin' between 2005 and 2011, after which such status expired. As a Predakantin, the claimant could take services, present her own sermons, marry people, conduct christenings and lead Holy Communion. The claimant's Predakantin status did not however entitle her to apply for a certificate of eligibility to the respondent's own roll of Ministers. Further, that status did not entitle the claimant to act as a Minister of the Word and Sacrament of the URC. Had that status given the claimant such an

entitlement, it would not have been necessary for the claimant to apply for training as an Ordinand in the first place. Further, the claimant's Predakantin status did not allow her to administer the Eucharist, without special dispensation from the respondent.

Alleged remark by Mr Boucher

149 The claimant alleges that on 21 November 2010 Rod Boucher told her at her assessed service *"that a nice girl like you should not need to bother with big things like ministry".* During cross examination Mr Boucher told us that the claimant heard what she heard, but as is often the case, what the claimant heard is not what was said. We accept his evidence and that assertion. We also take note of and accept his assertion that he supported the next Ordinand who attended Clapton Park who was also female.

The assessed service – 22 November 2010

150 The claimant's assessed service took place on 22 November 2010. Following the service, Revd Bradbury produced a report, based on the claimant's assessed service and conversations with members of the congregation, the congregational companions and the claimant following worship. We accept as reliable and credible the evidence of Revd Bradbury that the companions /members of the congregation he spoke to after the assessed service were thoughtful and considered in their comments about the claimant and that there was general consensus about the concerns they raised. The report notes, in relation to comments from the congregational companions:

> *It was felt that her reactions to comments about her worship that had just been made were typical - she only generally receives criticism by defending her actions and explaining herself, and it was felt there was very little general engagement with any issues they might raise with her. A number of the companions said that they had stopped making any constructive critical comments because they were not received well and they felt it did not get them anywhere.*

151 The report continued:

> *There was also grave concern expressed over the fact that Felicitas had asked for all the comment forms from Companions and members of the congregation to be collected so they could come to the college as well as the supervising minister's report. Felicitas has stated to members of the congregation that 'Elizabeth is going to write me a bad report', and thus she would need the responses themselves to forward to the college, not being happy to rely on Elizabeth's summaries thereof. Companions had asked Elizabeth about this, who was not aware of having said anything of the like to Felicitas.*

The report expressed concern that the claimant was not a team player.

152 We find that the report of Revd Bradbury accurately reflected what was reported to him and his own honest assessment of the claimant. We accept Revd Bradbury's evidence that this was the first time such serious concerns had been reflected back to him following an assessed service. On the overwhelming majority of visits, the members of the congregation had come to love and cherish their Ordinand; and in Revd Bradbury's experience they were more likely to be non-critical, than critical.

153 The claimant alleges that in December 2010, a comment was made to her by Revd Welch about the United Preaching Robe the claimant wore for services, along the lines of: '*It must be a German thing'*. We reject the claimant's evidence, preferring the evidence of Revd Welch on this matter, for the general reasons previously given. Revd Welch's evidence which we accept is that whilst it:

> *is not unusual in the United Reformed tradition for ministers to wear a preaching robe, it is not normal for a student to do so. I would have mentioned this custom and practice to Ms Grabe as one of the areas of difference between the URC and her previous work in German churches, but not as a criticism (it was immaterial whether she continued in the practice).*

154 Revd Welch is also alleged by the claimant to have made a comment to the claimant to the effect of: '*In this country we do it differently'*. Again, we prefer the evidence or Revd Welch that, in the light of her background, far from being biased against people of German nationality, her view of the German church and people is that they have a rich theology, background and understanding, from which Revd Welch has learned and benefited. There are numerous examples in paragraphs 50 to 59 of the witness statement of Revd Welch's links with German churches, congregations and ministers, which we do not repeat here but which we accept. Finally, we accept Revd Welch's assertion that it was the claimant who introduced the word German into the conversation, not her.

Email regarding the taking of sick leave

155 The claimant alleges that she was told by Revd Tollington in December 2010 that it would be 'taken in her favour' if she did not speak with her doctors and seek sick leave [2965]. On 12 December 2010 the claimant wrote to Revd Tollington to ask:

> *Would you be so kind to give once more the reasons for your decision that I shouldn't go to a GP and have sick leave*.

156 Revd Tollington replied as follows on 14 December 2010 [2964]:

> *Let me set the record straight at the outset: I did NOT decide that you should not go to a GP and have sick leave, nor did I say that you should 'cooperate in order to make the College's timetable possible'. …*
>
> *During our conversation on 30th November you told me that Julian Templeton had told you that you should go sick. In light of the fact that you had told me (twice) that you were OK, only tired, I said that it probably wasn't a good idea to go sick unless you were truly sick. I said that if you had something like chickenpox then of course you would have to go sick; but otherwise it was probably sensible to attend the planned meetings (the schedules of which you had agreed) if you were able to.*

We note that is yet another example of the claimant mis-interpreting /misunderstanding what was actually said to her.

Final report into the Clapton Park LMP

157 The final report on the claimant's Clapton Park LMP is dated 15 December 2010 [D1388]. In the report, the conclusion of Revd Welch was that the claimant:

.. had made some progress towards ministry at this stage of this placement, but [there is] cause for concern in certain aspects.

158 One of the remaining causes of concern was the claimant's ability to see matters from another's perspective and her misinterpretation of what others were saying. Paragraph 9 notes:

Felicitas has been a supportive colleague, sharing different concerns about the church and the people of this community. She feels more at ease when she is able to present her thinking on an area of work, than In engaging in dialogue between different perspectives. One of the supervisions which she found more difficult revolved around me trying to present an alternative perspective to the one which Felicitas held. (This focussed on an apparently small issue - the date for her farewell service, but raised issues of self awareness and URC polity in terms of the view that she took of what the Elders and the church meeting has said.) She does not find it easy to receive or reflect on comments that are at variance with her way of thinking.

159 The claimant's view of herself during the placement is set out in her self-evaluation in which it is stated [2438/2445].

All way through my placement I had created very good and in depth relationships with different individual users of our church building….. I am very grateful for what Elizabeth has written in her reports. Perhaps her thoughts are mirrored in that quite a lot of members, staff, ministers and ordinands say and write "I tick all the boxes", that I am a minister already.

160 On 1 December 2010 the claimant had emailed her tutor Revd Tollington to say [2996]:

With regards to the MA the College wants me to do, I do understand what you said about not starting with an independent learning module. As that is so, may I then confirm that I would like to do both 'Worship' and 'Feminist Theology'. The 'Core Course' will always be available should you want me to continue with the MA thereafter.

161 On 10 January 2011 Revd Tollington emailed the claimant about the MA. Her email stated:

Just to let you know that I have spoken with Alison about this matter today (my first day back after the vacation and the OT Society meetings in Durham last week). The documentation that I had sent to her at the end of term had been held up by the internal mail service but she has it now. I have also clarified with her Zoe's agreement that you can do the worship module. Details about the modules, and the timetable for their delivery can be found on the Federation website. If you want to know anything else please ask me as your Tutor, or John Bradbury as Acting DOS for Anglia awards.

162 We note that this indicates that the claimant appeared to accept that studying some modules on the MA was a sensible way forward. If she thought differently, that was not said by her at the time.

163 On 14 January 2011, a final report was prepared for the Board of Studies by Revd Thorogood, based on Revd Bradbury's report of the assessed service, and the supervisor's report which had been discussed on site on 15

December 2010. Revd Thorogood's conclusion, on the basis of the report and his meetings with Revd Welch and the claimant was that:

> *Whilst it is clear that Felicitas has many gifts it is the case that the supervision process and relationship has not been fruitful, with both Elizabeth and Felicitas by the end continuing to hold significantly different perspectives upon the supervisions. The concerns about self-awareness, engagement with others and responding to opinions with which Felicitas disagrees remain.*

164 The Board of Studies met on 20 January 2011. The Board considered the Final Placement Report and the Revd Bradbury report. The former paper concluded that the claimant's LMP had not been satisfactorily completed. Issues regarding the placement were summarised as follows:

> *- A lack of self-awareness.*
>
> *- An inability to perceive accurately the needs of other people.*
>
> *- An inability to form appropriate working relationships with other people and to acknowledge appropriate boundaries.*
>
> *- An inability to respond appropriately to constructive criticism.*
>
> The report was accepted by the Board.

165 The Board accepted that the decision on 20 January 2011 was made before the claimant had been given the opportunity to comment and decided on 22 January 2011 to call a Serious Concern Review Meeting. The Board took the view that the relationship with the claimant had broken down. The amended decision of 22 January 2011 records:

> *A Serious Concern Review Meeting will be called by the Convenor of the Board of Studies, as outlined in the Westminster College Policy Document: 'When there are concerns about a student's progress towards ministry'.*
>
> *Until such time as the Serious Concern Review Meeting takes place, the Student will be suspended from Westminster College, and will not embark on the MA studies as planned. [2025]*

166 The decision was sent to the claimant by letter on 22 January 2011. The claimant was informed of her right to appeal [2679].

167 On 24 January 2011 there was a meeting with the claimant at Church House to discuss the Board of Studies decision. Revd Durber, and Revd Kristin Ofstad, convenor of the Board of Studies were present, together with Revd Templeton, who accompanied the claimant. The claimant alleges that Revd Templeton was 'chosen' as her companion. We find that Revd Templeton was not chosen as the claimant's companion. He was there because it was agreed between him and the claimant that he would act as her companion at that meeting. The claimant was not under any obligation to agree that Revd Templeton accompany her.

Alleged referral to Sexual Therapist

168 The claimant alleges that on 3 February 2011 the respondent tried to refer her to a Psychosexual therapist Barry Gower. This issue was not explored by the claimant in any detail during the hearing in cross examination with the respondent's witnesses. None of the relevant documents were put to the

respondent's witnesses. The claimant provided a list of references in the bundle in relation to this allegation on 7 January 2022.

169 We note from an email exchange in the bundle on page 4666 that the claimant applied for counselling support through The Churches Ministerial Counselling Service (CMCS) in about February 2011. The CMCS offers counselling services to a number of denominations, including the respondent. It is independent. It appears that the claimant was referred by the CMCS to Barry Gower a Sexual and Relationship Therapist.

170 In an email dated 7 February 2011, the claimant asked Enid Gear to refer her to someone else. It appears from documents in the bundle that Enid Gear is a Regional Liaison Officer for CMCS, not the respondent. In her email, the claimant asked to be referred to someone other than Barry Gower because according to her email, he "*specialised in therapies with regards to sexual relationships*". As noted above, he is in fact a Sexual and Relationship Therapist.

171 Enid Gear replied on 11 February 2011. She stated:

> *Sorry to be so long in coming back to you but I needed to discuss this with a consultant. He has now spoken to me and says that you need to make another appointment with Barry before considering seeing anyone else. If it really doesn't work with Barry we can then think about another referral.*

172 It is apparent that the therapeutic relationship did not work out because the claimant started therapeutic work with Ms E Smith on 1 June 2011 and the respondent continued to pay for counselling sessions with Ms Smith into 2012.

Questioning of the use of Amber Light

173 In February 2011, Revd Templeton wrote to the College on the claimant's behalf, questioning why Amber Light had not been used. The Amber Light policy is to be used when there are substantial and significant concerns about a student's suitability or readiness for ministry.

174 His letter included the following:

> *I must emphasise that in my conversations with Felicitas she has expressed her eagerness to engage directly with the substantive concerns raised by the Board of Studies. To date, she believes that her attempts to engage directly with criticisms made by her Placement Supervisor and College Staff have not been adequately facilitated. It seems to me that the almost complete breakdown of trust on both sides of these relationships has been both cause and effect of this failure to achieve the necessary engagement and communication.*

175 On 7 February 2011 Revd Kristin Ofstad replied, setting out the options facing the claimant at this stage. She explained why Stage 2 of the Amber light procedure had been proposed [2026]. The Amber Light policy was approved by the Governors on 26 November 2010 and by the Board of Studies on 20 January 2011. Revd Ofstad explained that stage I is a discussion stage. The College considered that the many discussions that had already taken place had satisfied that stage. In any event, the breakdown of the relationship between the claimant and Senatus rendered the discussion stage impractical

and inappropriate. In conversations with Revd Templeton around that time, the claimant accepted that she had lost trust in Westminster College staff.

Breakdown of relationship with Westminster College

176 Revd Durber wrote to Revd Craig Bowman, secretary to the Ministries Committee, regarding the relationship breakdown with the claimant, on 10 February 2011 [2302]. The letter noted:

> *It is the case, as things stand at the moment, that the teaching staff here would find it hard to commend Felicitas to a university department, given the deterioration in her relationships with us here.*

177 The claimant presented a MED3 to Westminster College and commenced sickness absence on 10 February 2011. The certificate recorded the reason for absence as epigastric pain. No decision was made by the claimant at that stage as to how she wanted to proceed in terms of an appeal. A further MED3 was provided dated 21 February 2011, referring to abdominal pain.

178 Westminster College withdrew the claimant's student status on 24 February 2011. Revd Tollington ceased to be the claimant's tutor on that date and had no further involvement with her. Nor did she have any involvement in the Assessment Board's subsequent decision to cease the claimant's training for Ministry.

Further MED3s and OH referrals

179 A further fitness for work certificate (MED3) was provided by the claimant dated 21 March 2011 referring to 'abdominal pain, awaiting treatment'. That was acknowledged by Revd Ofstad by letter on 24 March 2011 [1866].

180 The respondent referred the claimant for an occupational health (OH) assessment in July 2011. The report dated 21 July 2011 [965/2125] stated the following and suggested a referral for a further assessment in mid-September 2011:

> *Felicitas described symptoms of gastritis, insomnia and nausea since January 2010. She explained these symptoms developed due to the situation that has evolved within her training. She told me that there are no personal or home issues.*
>
> *Her GP has certified her off sick until mid September and her specialists support this. It is my opinion that she is clinically not well enough to attend or prepare for appeal, review or assessment meetings at this current time.*

181 Ms Smith wrote 'to whom it may concern' letters about the claimant to the respondent on 20 July 2011 and 26 January 2012 [961-2]. Neither letter contains any recommendations regarding the claimant. Rather, the letters provided an update about the positive impact that the therapeutic work was thought to be having for the claimant.

182 A further OH assessment took place on 29 September 2011 [2127]. The report dated 29 September 2011 recommended:

> *Felicitas has requested representatives at the hearings and I think this would be beneficial for her to reduce her stress levels.*

183 A further report dated 11 November contained a similar recommendation [2029]. In an email of 15 November 2011 to the claimant, Revd Thomas stated that her understanding:

> *is that the word "representative" is also being used in a generic sense, and the presence of such a person is included in the processes already outlined by the College.*
>
> The claimant responded the same day to say:
>
> *I am glad to hear that policies with regards to representation seem to have changed since last year. I am sure it won't harm the procedures to be allowed someone who is permitted to speak with you and for you during hearings.*

184 The respondent provided confirmation to Ms Smith on 23 November 2011 that it would fund up to 12 additional counselling sessions, as recommended in the OH report [1815]. We accept Ms Smith's evidence that the last of the twelve sessions, paid for by the respondent, took place in January 2012.

Appeal against Board of Studies decision/Referral to Assessment Board

185 On 1 December 2011 the claimant notified the Board of Studies that she had decided to appeal the decision of the Board of Studies to hold a Serious Concern Meeting under stage 2 of the Amber Light policy [E1812]. Steps were taken to organise a hearing of that appeal.

186 On 22 December 2011, Revd Bowman became aware that an annual report for the claimant had not been received from Westminster College. He made enquiries and was advised that a report had not been submitted. He was informed that the difficulties between the claimant and Westminster College had developed to the extent that the College considered it was unable to continue to provide training to the claimant. Revd Bowman subsequently liaised with the Convener of the Assessment Board on 13 January 2012, who determined that an Assessment Board meeting should be convened in order to determine whether the relationship between the claimant and Westminster College had broken down [1934]. The claimant was informed of that decision on 26 January 2012 [1936].

187 The date proposed for the meeting was 20 February 2012. The process to be followed was briefly explained and the claimant was informed of her right:

> '*to have a friend attend this meeting with you but the panel will be in conversation with you'*.

188 In an email to Revd Bowman dated 2 February 2012, the claimant stated:

> *If your letter and the meeting with the Assessment Board Panel thus mean that another RCL will be chosen where my training towards the ordained ministry of Word and Sacrament in the URC finally will start for me - Yes, please! And if you decide I shall go back to Cambridge - Yes please, either way it is ok. You will have read in the reports you have requested and received from Interhealth last September that ever since the summer I am very willing and fit to proceed with the hearings I was told to decide about. Moreover, even during the last year, I never stopped training and full-filling the duties of ministry I was offered.*

Some bits in me wish you would have allowed my appeal to be heard first. I am confident that you would have seen then that there is nothing which should stop you to train me for the Ministry.

189 The claimant also explained that she had not been able to change the prearranged commitments she had for 20 February. The hearing was therefore rearranged to 28 February. Attached to the email were documents from Westminster College to the Assessment Board, in relation to the proposed hearing. These included a letter from Revd Durber to Revd Bowman dated 10 February 2011 (but which was actually prepared and sent in 2012) [2032].

190 On 3 February 2012, the claimant was informed by Revd Bowman that as a result of the Assessment Board deciding to hold its own meeting, the College's internal procedures had been put on hold, pending the Assessment Board meeting [1945].

191 Further documents were sent to the claimant by Revd Bowman on 17 February 2012. The claimant told Revd Bowman in a reply sent on the same day that a number of the documents were new. She asked for more time to provide her response. The claimant was asked by Revd Bowman to try and send her contribution as soon as possible after the deadline, so the proposed hearing on 28 February 2012 could still go ahead. The documents were sent by the claimant on 21 February 2012 and Revd Bowman acknowledged receipt of them [1966]. The final instalment of the claimant's submission was sent on 23 February 2012. Revd Bowman was not aware of that until 27 February 2012 as it had been copied to the Ministries PA who had opened the email. It therefore appeared in Revd Bowman's inbox as having been read. No issue was taken by the Assessment Board about the late receipt of the claimant's submission and supporting documents.

<u>The Assessment Board meeting – 28 February 2012</u>

192 The Assessment Board met as planned on 28 February 2012. There are no formal minutes of the meeting itself. Revd Bowman took some brief notes as an aide-memoire, as clerk to the Ministries Committee. The panel heard first from the representatives of the College, without the claimant present; and then from the claimant, who attended with her companion Tony Haws, without any of the College representatives present. The Board then met without either side present, to reach their decision.

193 The decision of the Board is recorded in a report dated 3 March 2012 which was prepared by Revd Bowman in the presence of the Panel and checked and proofread by them [718]. The tribunal finds that the report accurately reflects the decision and the reasons for it. The report records:

The board continues to appreciate the many gifts with which Felicitas is blessed and which can be used in the work of God's kingdom. She is a charismatic person with a deep spirituality. Alongside her strong musical gifts she has skill in leading worship that is well thought through, structured and insightful. She has also demonstrated her ability to engage a diverse group of people in conversation, especially those on the margins of the church.

Nevertheless the board is convinced that it would not be right to continue with her training. Westminster College has detailed a situation where the

key relationships have broken down dramatically. The mutual trust and the understanding essential for good tutor-student relationships are absent and it seems impossible that these can be re-established. Felicitas agreed with this assessment. In our discussions with Felicitas we encountered nothing that would lead us to have confidence that the same thing would not happen again in this or an alternative training institution. We saw in Felicitas a very limited sense that she may have contributed to this breakdown, rather a continued highlighting of the shortcomings of others.

194 The decision was sent on 6 March 2012 to the claimant and re-sent on 12 March. [1991] The email from Revd Bowman stated:

The decision of the Assessment Board is a discernment decision and is therefore not appealable. However if you believe the process has not been followed properly then there can be grounds for appeal. As the Assessment Board is a sub-committee of the Ministries Committee any appeal about process must be made to that committee following the procedure which I will include in the body of this email.

As I heard from a third party that you had difficulty reading the original report the decision of the board was given to you again on 6th March 2012, and it is to that date that the 21 day period for appeal would apply.

Appeal against Assessment Board decision

195 On 12 March 2012 Revd Templeton emailed the claimant setting out why he considered that the claimant ought not to appeal the Assessment Board's decision to cease her formal preparation for Ministry. The claimant claimed before us that Revd Templeton did so because he feared that supporting her would interfere with his own career. The email suggests no such fear and Revd Templeton denied it. The tribunal finds that the email contained his honest opinion and that the suggestion that he was worried about his career is fanciful. [3766] Amongst other points, the email states:

5. You are excessively litigious and pedantic about trying to influence any report by someone else about you that portrays you and your work in a less-than-flattering light. You take thousands of words in order to tell things your way; but in doing so you both try the patience of others and alienate them.

196 The claimant appealed the Assessment Board decision on 2 April 2012 [1785]. Receipt was acknowledged by Revd Bowman on 3 April 2012 who passed the documents onto Richard Mortimer, secretary to the appeal panel, to process. Revd Bowman had no further involvement with the appeal decision or process.

197 A letter was sent by the respondent to the claimant regarding the payment of grant pending the appeal on 18 May 2012 [1777]. The claimant was informed that payment of the grant was to cease from the end of the academic year, in mid-June 2012. The payments made to the claimant were exceptional and were more than had been paid before or since to an ordinand on sick leave [FTWS69, page B:580].

198 The appeal hearing took place on 1 June 2012. This comprised of Revd Kevin Watson, the chair of the appeal, Revd Yolande Burns and Judith Johnson. Richard Mortimer acted as the clerk to the appeal.

199 The appeal was rejected. The claimant was notified of the decision on 8 June 2012. An email was sent to Westminster College about the appeal decision on 19 June 2012 via Revd Durber. [1766] As well as confirming that the appeal was not upheld, the record of the decision states:

> *The Panel added a rider, requesting Thames North Synod to provide pastoral care and appropriate support to help Felicitas discern where next with her life and how her Christian service might be lived out.*

200 Following the notification, Revd Prasad made efforts to arrange a meeting with the claimant [1760].

201 Revd Thomas wrote to the claimant on 20 July 2012 regarding outstanding payments due to her (which totalled £443.31 for the accommodation allowance) [E1756].

Alleged victimisation – May 2013

202 On 29 April 2013, the claimant wrote to one of the Ponds Square Chapel Elders, John Thompson, alleging that Revd Templeton had approached Mr Thompson and spoken against her. In a reply dated 1 May 2013 Mr Thompson stated:

> *To be fair to Julian, what he said was that because of the dispute the elders felt that the invitation to you to preach on 3 November should be withdrawn. He did not speak against you but explained how the dispute had arisen.*

203 On 8 May 2013, Revd Templeton wrote to the claimant communicating the decision of the Elders Meeting of the Pond Square Chapel, Highgate, that the serving Elders had agreed that it would not be appropriate for the claimant to lead worship, whilst the claimant was in the process of pursuing legal proceedings against the respondent. That could be seen as support for the claimant. The letter concluded:

> *I wish to make it clear that this decision affects only your leadership of worship at our church whilst you are pursuing legal proceedings against the United Reformed Church; the decision is not intended to change any other aspect of your relationship with Highgate United Reformed Church.*

204 We accept the evidence of Revd Templeton, given during the hearing, that as the letter suggests, the decision was intended to last only whilst the claimant was pursuing legal proceedings. The assumption was that once the proceedings had been concluded, there was no reason why the claimant could not be invited. At that stage, no-one could have envisaged that the proceedings would still be ongoing nearly nine years' later.

205 We accept the evidence of Revd Templeton that he did not attempt to influence any other party outside the local church. The Elders and Church meetings of each local United Reformed Church has the competence to make its own decisions in those matters. There was no evidence, other than a bare assertion by the claimant, of any other attempts, whether by Revd Templeton or any others.

206 We accept the evidence of Revd Durber that she did not approach Revd Andrew Prasad, and Revd Fiona Thomas or anyone else at Thames North Synod, in an attempt to persuade them not to support the claimant.

207 In the Autumn of 2021 an advert appeared for the role of Minister for the Pond Square chapel in Highgate. The claimant applied for that role. Strictly speaking, there is no need to make any findings of fact in relation to the application because it is not an issue before us, and any facts in relation to it are not going to assist as in relation to the conclusions we have to draw about the matters that are before us. However, for the sake of completeness, we find that the claimant's application was not taken forward because she did not meet some of the essential skills required for the role. These included her not being a trained and ordained minister; and not being a person with strong interpersonal skills, willing to listen to others.

Alleged 'sabotaging' of application for role of Chaplain, Whittington Trust

208 At some stage after her traineeship ended, the claimant applied to be a Hospital Chaplain at the Whittington Health NHS Trust. Revd Templeton was not approached for a reference for that role. No evidence was put before the tribunal as to how Mr Prasad 'sabotaged' the claimant's application. The decision as to who to appoint to a vacancy for Chaplain rests solely with the NHS Trust, not the respondent.

Comparators

209 The claimant relies on a number of named comparators. Our findings of fact in relation to each of them are as follows.

Reverend Matt Stone

210 Revd Matt Stone attended Westminster College as an Ordinand between September 2006 and July 2010. He was brought up within the United reformed Church and was very therefore very well versed in the practices and constitution of the respondent church.

211 Revd Stone studied an undergraduate degree in geography. He started his Ordinand training immediately after. During his ordinand training, he studied the Cambridge Tripos, which he completed in two years, followed by the MA in Pastoral Theology.

212 During the academic period of his training, Revd Stone resided at Westminster College. By the end of the second year a flat became available. When it came to considering a placement, he asked for a placement somewhere close enough to Cambridge City to allow him to continue living in the College. His LMP was arranged in Hitchin, 30 minutes drive from Cambridge. Revd Stone commuted there each day.

213 In the Autumn of 2008, before the claimant started her formational training, Revd Stone travelled to the Columbia seminary in Colombia USA. In 2009, during the summer holiday, he went on a URC trip to Israel. That was available to everybody but subject to a financial contribution. In September 2009 he spent three weeks in India before he started his LMP, with the Council for World Mission. Between 4 and 28 June 2010 he attended the Global Institute of Theology and World Communion of Reformed Churches. He spent a period of four weeks in Grand Rapids and Chicago. He attended Atlanta on an exchange programme.

214 Revd Stone's LMP was in the Eastern Synod. He saw the Synod training officer for a pastoral visit once a year. In each October, the Synod moderator would also visit the Ordinands from the Synod and would usually go for a

meal with them and discuss how they were progressing. The Thames North Synod had a less structured approach to visiting its Ordinands.

Revd Melanie Smith (Frew)

215 Revd Melanie Smith underwent her Living Ministry Programme between 2011 and 2012, having attended Westminster College for formational training for a period of four years starting in 2008. Her learning recommendation from the Assessment Conference was a three year Cambridge Bachelor in Theology (BTh), followed by a one-year LMP at a local church in Cheshunt. During the LMP she lived close to the local church to which she was attached.

216 During her first year of formational training, Revd Smith separated from her husband. The claimant alleges that Revd Smith failed to comply with 'relationship restrictions'. The claimant provided no details as to how any alleged relationship restrictions were breached. Revd Smith is not aware of any such restrictions and no reliable evidence was presented to the tribunal during the hearing that the respondent imposes any such restrictions. We are satisfied there were none. We are further satisfied that there was nothing untoward about the behaviour of Revd Smith at that time.

217 Revd Smith recalls that there were other single Ordinands during the time that she was an Ordinand. Being single was not out of the ordinary.

218 Revd Smith attended an international placement with the Evangelical Lutheran Church in America for three weeks in South Dakota, USA, during her LMP.

Revd Anne Lewitt

219 Revd Lewitt started her formational training in 2009, commencing with the three-year BTh, with her LMP taking place at the end of the training, in 2012/13.

220 Revd Lewitt was, like the claimant, from Thames North Synod. Revd Lewitt and other colleagues from Thames North noticed that other students from other Synods were visited more often by representatives of their Synod than her and her Thames North colleagues. Revd Lewitt went to speak to Thames North Synod staff and as a result, pastoral visits did start.

221 Revd Lewitt spent three weeks in New Zealand at the Presbyterian church of a friend who was a minister in New Zealand during one of the summers of her training period. The NZ church Minister happened to be on sabbatical at Westminster College, and there was a three-way conversation between Revd Lewitt, the Minister, and a member of staff. Revd Lewitt's attendance at the pastor's church in New Zealand was considered to be of benefit to her and the respondent. Hence it was approved. Her air-fare was paid. Revd Lewitt was provided by a member of the church with free accommodation during her stay and she was picked up from and returned to the airport. She paid all other expenses associated with the trip.

Revd Catherine Lewis-Smith

222 Revd Lewis-Smith attended Westminster College for formational training between 2009 and 2015. She spent three years in academic study, initially on a BTh at Cambridge. She did not find the course stimulating and following a conversation with her tutor Revd Proctor, it was agreed that she study the Cambridge Tripos, this being a BA in Theology and Religious Studies. Her

LMP took place between 2011 and 2012. During that time she applied to do a PhD in Biblical studies which was undertaken between 2012 and 2015 through Lucy Cavendish College. As this extended her training, she was asked to seek scholarships to mitigate some of the costs of the additional study and succeeded in doing so.

223 During her LMP year, Revd Lewis-Smith received what she felt was constructive criticism. She recalls one area where feedback was received about her not sitting on the front row during worship but at the front of the church.

224 Revd Lewis-Smith had previously suffered from chronic fatigue syndrome (CFS). In 2009 she suffered from a number of infections and was concerned that she might relapse back into chronic fatigue. She discussed that with the college and adjustments were made, such as some supervision on essays taking place during the Easter vacation to spread out her workload. Lucy Cavendish College arranged exam accommodation for her. When necessary, Revd Lewis-Smith could go and lie down in one of the rooms within the College. Following discussion, she was also allowed to miss worship on one of the days, to avoid a long walk to the lecture room from the chapel.

225 Revd Lewis-Smith found the claimant's behaviour challenging. For example, during a car journey, the claimant made comments about Revd Lewis-Smith's weight and body shape. The conversation left Revd Lewis-Smith feeling very uncomfortable. The claimant was completely oblivious to the impact of what she said.

226 Revd Lewis-Smith also recalls an incident involving a fellow ordinand, who was struggling with the study of Hebrew. The claimant told the student how easy learning Hebrew was, without any apparent awareness of the potential adverse impact of her remarks on the student, who was genuinely struggling with her learning.

Revd Mark Robinson

227 Revd Robinson's Ordinand training took place between 2007 and 2011. He had studied a BA in Media Studies as an undergraduate and had an MSc in Marketing. He studied the Bachelor in Theology degree during the first three years and undertook his LMP in the final year of his training.

228 During the placement, Revd Robinson worked about 40 hours per week. He was based at a joint pastorate, Emmanuel URC and Cherry Hinton URC, in Cambridge. The supervising minister led most of the services at Emmanuel URC during the LMP and Revd Robinson led most of the Sunday services at Cherry Hinton. Occasionally they would alternate between the two. He also undertook pastoral duties.

229 Revd Robinson recalls the claimant suggesting during one of the Thursday meetings in College that the congregation at Clapton Park liked her more than the supervising minister, Revd Welch. Revd Robinson was concerned at such a suggestion. Due to such behaviour, Revd Robinson subsequently maintained a distance from the claimant.

230 Revd Robinson had one international placement. A minister of a church in New Zealand did a sabbatical at Westminster College. Revd Robinson was

invited to attend his church in New Zealand and he took up the invitation, that having been approved by the College.

Chairing of meetings

231 The claimant has made a general allegation that Ms Welch, Mr Thorogood, Ms Thomas and Mr Bowman, prevented her from chairing meetings in 2010, 2011 and 2012 without providing any specific details about which meetings or when. We find the claimant was not prevented by them from chairing meetings, and that this is yet a further example of the claimant misinterpreting/misunderstanding what was said to her, if anything.

The companions

232 Mary Fagan was one of the claimant's congregational companions. Ms Fagan recalls that role as being informal. Ms Fagan was at the time a busy secondary English teacher and only around regularly on Sunday mornings. Mr Boucher was a companion for a brief period of a few weeks towards the end of the claimant's training.

The Disability issue

233 The List of Issues refers to the following disabilities: PTSD, severe reactive depression, chronic severe Insomnia, severe Fibromyalgia, early and sudden onset of Menopause, Gastritis, Ulcers, late-onset Epilepsy deterioration of visual Acuity, severe Occlusion with breaking of teeth, and borderline diabetes. The claimant was asked by the tribunal to provide further details about the effect of those alleged disabilities on her and her response is included in the following.

234 Complex PTSD – there was no formal diagnosis of PTSD until after the claimant's training had been terminated.

235 The tribunal accepts that from January 2010 the claimant suffered from insomnia. The claimant told us that when the appeal was put on hold in January 2012, this caused a further trauma. The claimant says her symptoms included stomach problems, brain fogging, and not eating enough.

236 Severe reactive depression – the claimant alleges this started from the first week or so of her being at Clapton Park. She told us that the alleged events left her feeling rather low. Her symptoms fairly quickly became severe. The claimant alleges that from 26 November 2009 she started crying a lot, and in January 2010 she 'could not stop crying'. Revd Proctor did not recall this. Revd Welch accepted that the claimant was often tearful but she would then gather herself, recover and continue. Revd Welch tried to be attentive to the claimant's distress and address it. The claimant would also smile a lot of the time and seemed full of energy and was keen to get on with the work. On those occasions when the claimant became tearful during supervision, she would quickly recover and be able to function again, as she did during the hearing on a number of occasions.

237 Severe Fibromyalgia – this gives rise to physical pain – the symptoms were noted by Dr Trefzer in 2010, although the condition was not formally diagnosed until early 2011. The more the claimant failed to sleep, the worse the condition became, all over her body. According to the claimant, if any part of her body is touched, it 'screams with pain'.

238 Early and sudden onset of menopause - this began during 2011. No details were provided of the physical effects of that on the claimant.

239 Gastritis and Ulcers – the claimant told us she started to suffer nausea on 4 January 2010, and stopped eating properly. She was informally diagnosed in the summer of 2010. A formal diagnosis occurred in 2011, following a gastroscopy. The symptoms became particularly acute from January 2011, and are the reason set out on the fit notes for absence. It was noted by Interhealth in their OH reports as being the reason for absence.

240 Late-onset epilepsy – the claimant was diagnosed as having frontal lobe epilepsy in January 2018. In 2010 the claimant says that she started fainting. The claimant says this happened nearly every Thursday when at Westminster College and at Clapton Park several times. The only incident of fainting any of the other witnesses could recall, was one incident in Revd Durber's study. We accept Revd Durber's evidence that during this incident, Revd Durber expressed concern towards the claimant, who brushed aside the offers of help and insisted she was okay.

241 Deterioration of visual Acuity – the claimant told us that by about February 2010 she could not read properly and had to start 'blowing up' documents in order to be able to read them.

242 Severe Occlusion with breaking of teeth – the claimant told us this resulted in her jaw hinges not moving smoothly and clicking a lot. Often her jaw does not open and her teeth are stuck together. She also tends to grind her teeth. She told us she now has four teeth missing in her upper jaw and one has been extracted from her lower jaw.

243 Borderline diabetes – the claimant alleges that this happened from 5 January 2010 when her intake of white sugar was 7 to 12 teaspoons in each cup of tea. The condition was properly diagnosed in 2011. The symptoms suffered were lack of concentration and spacing out.

Relevant Law

Unfair dismissal

244 The legal issues in an unfair dismissal case are derived from section 98 of the Employment Rights Act 1996. Section 98(1) provides that it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal, and that it is either a reason falling within subsection (2), e.g. conduct, or capability or for some other substantial reason.

245 For the purposes of s 98(1) and (2) ERA 1996, the reason for dismissal can be other than the reason given to the employee by the decision-maker. In *The Royal Mail Group Ltd v Jhuti [2019] UKSC 55*) the Supreme Court held:

> *if a person in the hierarchy of responsibility above the employee determines that she (or he) should be dismissed for a reason but hides it behind an invented reason which the decision-maker adopts, the reason for the dismissal is the hidden reason rather than the invented reason.*

('The Jhuti principle').

246 Section 98(4) provides:

> *… the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case*.

247 The reasonableness of the dismissal must be considered in accordance with s.98(4). Tribunals have been given guidance by the EAT in *British Home Stores v Burchell [1978] IRLR 379; [1980] ICR 303*. There are three stages in a conduct dismissal:

> *(1) did the respondent genuinely believe the claimant was guilty of the alleged misconduct?*
>
> *(2) did they hold that belief on reasonable grounds?*
>
> *(3) did they carry out a proper and adequate investigation?*

248 Whereas the burden of proving the reason for dismissal lies on the respondent, the second and third stages of *Burchell* are neutral as to burden of proof and the onus is not on the respondent (*Boys and Girls Welfare Society v McDonald [1996] IRLR 129, [1997] ICR 693*).

249 In deciding whether it was reasonable for the respondent to dismiss the claimant for that reason, case law has determined that the question is whether the dismissal was within the so-called 'band [or range] of reasonable responses ('the range'). 'The range' does not equate to a perversity test. See *Iceland Frozen Foods Ltd v Jones [1982] IRLR 439, [1983] ICR 17 at 24-25*; *Foley v Post Office [2000] ICR 1283 at 1292D – 1293C*, per Mummery LJ, with whom Nourse and Rix LJJ agreed.) The Employment Tribunal must not simply consider whether they think that the dismissal was fair and thereby substitute their decision as to what was the right course to adopt for that of the employer. Instead, the Tribunal must determine whether the decision of the employer to dismiss the employee fell within the band of reasonable responses which '*a reasonable employer might have adopted'*. An ET must focus its attention on the fairness of the conduct of the employer at the time of the investigation and dismissal (or any internal appeal process (*West Midlands Co-operative Society Ltd v Tipton* [1986] 1 AC 536)) and not on whether in fact the employee has suffered an injustice. (The logical conclusion of which is that a Tribunal might consider that the dismissal was unjust, but was nevertheless 'fair'.

250 The failure to offer an appeal will not necessarily result in a finding of unfair dismissal: *Moore v Pheonix Product Development Ltd [2021] UKEAT 0070/20*. In delivering judgment in that case, Choudhury J observed:

> *Although an appeal will normally be part of a fair procedure, that will not invariably be so, as to take that fixed approach would be to disregard the clear terms of the statute, which dictate that the circumstances are to be taken into account. Here, the relevant circumstances included the fact that the Claimant was a board-level director and employee; that the Respondent was a relatively small organisation with no higher level of management; that the Tribunal had found that the Claimant himself had brought about an "irreparable breakdown" in trust and confidence (para.*

125); that this was considered to be "destructive", destabilising and a "drag-factor" for the company (para. 114); that he was unrepentant about his conduct and attitude (para. 127); and that he had not shown any sign that he was likely to change (para. 128). 44. In my judgment, it was open to the Tribunal to conclude, in these circumstances, that an appeal would have been futile; this was not the kind of organisation where the Claimant's shortcomings and the consequent threat to the Respondent's future could be addressed through some sort of re-training programme, or where different managers might be found to work with him more effectively. In fact, the conclusion of the independent reviewer, Mr Bicket, was that the Claimant would "sabotage any CEO coming into the business" (see para. 39). The fact that the loss of trust and confidence was only manifest in two of the directors at the time of dismissal does not advance Mr Powell's case; it is clear that by the time of the decision to dismiss, four of the directors had come to that view, with only the Claimant dissenting. The loss of trust and confidence amongst his fellow directors was, therefore, complete.

Disability (section 6)

251 *A person has a disability if she has a mental or physical impairment; which is long term (i.e. has lasted 12 months or more or is likely to do so); and has a substantial adverse effect on her ability to carry out normal day to day activities (S.6 and Schedule 1 Equality Act 2010). The term 'normal day to day activities' includes the ability to participate in professional working life.*

Direct discrimination (section 13)

252 Section. 13 (1) Equality Act 2010 provides:

> *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.*

The critical question to ask in every case is what was the reason why the alleged discriminator acted as they did? What, consciously or unconsciously, was their reason? See *Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48*.

253 Claimants must demonstrate that they have been treated less favourably than an actual or hypothetical comparator who was in not materially different circumstances to the claimant, (section 23(1) EqA), save that they are "not a member of the protected class" (*Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337, HL, [110]).

254 In cases of disability discrimination, the "circumstances" must include the disabled person's abilities, (section 23(2)(a) EqA), such that the tribunal must consider how a person with the same abilities as the claimant would have been treated.

Burden of proof (section 136)

255 Under s136, if there are facts from which a tribunal could decide, in the absence of any other explanation, that person A has contravened the provision concerned, the tribunal must hold that the contravention occurred, unless A can show that he or she did not contravene the provision.

256 Guidelines on the burden of proof were set out by the Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258. The tribunal can

consider the respondents' explanation for the alleged discrimination in determining whether the claimant has established a prima facie case so as to shift the burden of proof. (Laing v Manchester City Council and others [2006] IRLR 748; Madarassy v Nomura International plc [2007] IRLR 246, CA.)

257 The Court of Appeal in Madarassy, a case brought under the Sex Discrimination Act 1975, held that the burden of proof does not shift to the employer simply on the claimant establishing a difference in status (eg sex) and a difference in treatment. LJ Mummery stated at paragraph 56:

Those bare facts only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that on the balance of probabilities, the respondent had committed an unlawful act of discrimination.'

258 Further, it is important to recognise the limits of the burden of proof provisions. As Lord Hope stated in Hewage v Grampian Health Board [2012] IRLR 870 at para 32:

> *They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.*

Inherent probabilities

259 Questions about the burden and standard of proof are directed to the resolution of a single question, namely: did the accused conduct themselves in the manner complained of? As noted by the Supreme Court in Re B (Children):

260 The Tribunal will of course be required to formulate its factual findings by reference to the civil standard (i.e. the balance of probabilities). The nature of the standard has been described by Lord Hoffman in the following terms:

> *There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities.*

Discrimination arising from disability (section 15)

261 Section 15 Equality Act 2010 reads:

(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

262 In a disability discrimination claim under section 15, an employment tribunal must make findings in relation to the following:

(1) The contravention of section 39 of the Equality Act relied on – in this case either section 39(2)(c) – dismissal; or (d) - detriment.

(2) The contravention relied on by the employee must amount to unfavourable treatment.

(3) It must be "something arising in consequence of disability"; for example, disability related sickness absence.

(4) The unfavourable treatment must be because of something arising in consequence of disability.

(5) If unfavourable treatment is shown to arise for that reason, the tribunal must consider the issue of justification, that is whether the employer can show the treatment was "a proportionate means of achieving a legitimate aim".

(6) In addition, the employee must show that the employer knew, or could reasonably have been expected to know, that the employee or applicant had the disability relied on. Knowledge that the something arising led to the unfavourable treatment is not however required.

See the decisions of the EAT in *T-Systems Ltd v Lewis UKEAT0042/15* and *Pnaiser v NHS England [2016] IRLR 170 (EAT)*.

Harassment (section 26)

263 Section 26 EqA provides:

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if—

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if—

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b) the conduct has the purpose or effect referred to in subsection (1)(b), and

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

264 A harassment case therefore involves five questions. First, did the conduct took place at all. Second, was the conduct unwanted? Third, was the conduct related to sex? Fourth, did the person responsible for the conduct have the proscribed purpose. Fifth, if not, did the conduct have the proscribed effect, taking into account (a) the perception of B; (b) the other circumstances of the case; and (c) whether it is reasonable for the conduct to have that effect.

Victimisation (section 27)

265 In order to succeed in a victimisation claim, a claimant must demonstrate that she did a protected act. This includes making a complaint of discrimination covered by the Equality Act. A claimant must then show that she was subjected to a detriment because of the protected act(s) (S.27 EQuA).

266 In *Chief Constable of West Yorkshire Police v Khan* ***[2001] IRLR 830***, ***[2001] ICR 1065****, HL, a* police officer complained of victimisation following his chief constable's refusal to provide a reference for him for a new job. The Chief Constable's position was that he was unable to comment as to the officer's suitability for fear of prejudicing his (the Chief Constable's) case in proceedings in which the officer was pursuing a racial discrimination claim against him in the tribunal. In other words, the reference was refused because of pending proceedings. It was argued that this was not victimisation, because the same response would have been given in the case of anyone who had brought proceedings against the Chief Constable. The House of Lords, disagreeing with the approach taken in the courts below, accepted there was no victimisation—on the grounds of how a comparator would have been treated. The proper comparator was another employee of the police service who had requested a reference, not another employee who had brought proceedings under a different type of claim. That approach was helpful to the claimant. But at the end of the day, there was no victimisation because the reference had been refused, not because proceedings had been brought, but because proceedings were pending. The House of Lords indicated that if the same action had been taken when the proceedings had been concluded, that might well have been victimisation—but that was not the situation that applied here.'

Whistleblowing

267 To succeed in her claim of automatically unfair dismissal for making a protected disclosure, the claimant must establish that she made one or more protected disclosures.

268 Under section 43A Employment Rights Act 1996, a protected disclosure for the purposes of section 103A must be a *"qualifying disclosure"* as defined in section 43B:

> *"(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following—*
>
> *(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject*
>
> *(d) that the health and safety of any individual has been, is being or is likely to be endangered…*

269 The claimant must therefore establish each of the following: (i) that she made a disclosure to her employer (or other relevant person); and (ii) that the disclosure was of "*information*"; and (iii) that she believed that the information tended to show a s.43B factor; and (iv) that belief was reasonable. It is not in dispute that the claimant was dismissed. So finally, (v) the claimant must establish that making a protected disclosure was the reason, or if more than one, the principal reason for her dismissal – section 103A.

Time limits

270 The relevant time-limit is at section 123(1) Equality Act 2010. The tribunal has jurisdiction if the claim is presented within three months of the act of which complaint is made. By subsection (3), conduct extending over a period is to be treated as done at the end of the period. If the claim is presented outside the primary limitation period, i.e. the relevant three months, the tribunal may still have jurisdiction if the claim was brought within such other period as the employment tribunal thinks just and equitable.

Conclusions

271 In reaching our conclusions, we have borne in mind the burden of proof provisions in the Equality Act 2010. In all instances however, we have been able to make positive findings on the evidence before us.

272 We have considered each alleged incident of discrimination separately and we have also considered them collectively. The latter exercise only reinforced our initial conclusions about each separate incident.

273 The sub-headings below refer to the allegations set out in the List of Issues.

Unfair dismissal - Issues 1) and 2)

274 We conclude that the termination of the claimant's training amounted to a dismissal of the training relationship by the respondent.

Reason for dismissal

275 We refer to the findings of fact above in relation to the reasons given by the Assessment Board for the termination of the training relationship. In summary, this was because of the breakdown of relationships between the claimant and staff at Westminster College; and the view taken by the Assessment Board that if the claimant was offered training at another RCL, the same problems would arise. The Board was also concerned that the claimant had no insight into her own responsibility for the breakdown of working relationships. For all those reasons, the Assessment Board concluded that the claimant was not an appropriate person for ordination as a Minister for Word and Sacraments and that her training should be terminated. We conclude that all this amounts to 'Some Other Substantial Reason', one of the potentially fair reasons for dismissal.

Fairness of dismissal

276 As to the fairness of the dismissal, we conclude that there was a fair procedure followed. Staff at Westminster College did their best to try and make the relationship work, as did Revd Welch. The claimant was fully aware that her training contract could be terminated and why that was the case.

Prior to the Assessment Board hearing on 28 February 2012, the claimant was sent all of the relevant documentation relating to the concerns of Westminster College staff, and given a reasonable opportunity to provide her response in writing. The timetable for doing so was extended to facilitate that.

277 The claimant then had the opportunity to put forward her case orally at the Assessment Board meeting on 28 February 2012. We conclude that the decision of the Assessment Board that the claimant was not suitable for Ministry due to her inability to develop effective working relationships with staff and fellow board members at Westminster College, and her lack of insight into that state of affairs was a reasonable conclusion for the respondent to come to in all of the circumstances. We conclude therefore that the claimant's dismissal was fair.

278 Whilst under the respondent's procedures, the claimant was able to appeal, she was only able to appeal on procedural grounds, rather than the substantive reason for her dismissal. We note the observations of the then President of the EAT in the *Moore* case, referred to above. We conclude that in the circumstances of this case, the failure of the respondent to provide an appeal in relation to the substantive decision did not render the dismissal unfair, simply on that basis. We remind ourselves that the failure to offer an appeal does not necessarily result in a finding of unfair dismissal. In this case, the claimant did have a right of appeal, although that right was limited as set out above. We take into account the fact that the respondent did not at this stage consider that an Ordinand's training involved an employment relationship. In those circumstances, it is understandable that the procedures available were not as robust as might be expected in the usual employment situation. The respondent might wish to re-visit their procedures in light of what has happened since and EJ Segal QC's judgment on employment status.

279 The tribunal notes, by reference to the matters referred to by Choudhury J in the *Moore* case, as quoted above that the claimant was not in a senior position, but in a very much subordinate position; that the decision to terminate the claimant's training had serious implications for her desire to become an ordained Minister; the claimant did exercise her right to appeal; and the respondent was well able to find individuals to conduct the appeal who had not already been involved in the decision-making process (which indeed they did).

280 On the other hand, the tribunal also notes the many similarities between the claimant's case, and the *Moore* case. These include that the claimant had caused the breakdown in trust between herself and staff at Westminster College; her actions were destructive and destabilising; the lack of trust was illustrated by the fact that members of staff would not meet the claimant without another individual being present; the claimant had little insight into the effect of her actions on others; and there was no indication that she was likely to change. In those circumstances, an appeal in relation to the substance of the decision would have been futile. Substantial efforts had already been made by Westminster College staff and by Revd Welch to help the claimant to succeed in the LMP. The fact that it was not successful was the fault of the claimant, not them.

281 Bearing all of that in mind, the tribunal concludes that the failure to offer the right of appeal in relation to the substance of the decision, did not in these particular circumstances make the dismissal itself unfair. In any event and for the sake of completeness, the tribunal records that even if the dismissal had been found to be unfair on this limited basis, the tribunal would have concluded that the claimant had contributed to her dismissal 100 per cent and would not in those circumstances have awarded any basic or compensatory award.

Wrongful dismissal/breach of contract - Issues 3) to 18)

282 There are a number of sub-elements under this heading. We will deal with each in turn. In each case, for the sake of brevity later on and to help keep this judgment as short as reasonably possible, we set out our conclusions firstly as to whether or not there was a breach of contract; and second, where we have found the alleged treatment actually occurred, our conclusion as to the reason for the treatment alleged.

Ordering the Claimant not to enrol to live nor to receive the usual training as a full-time Ordinand at Westminster College, Cambridge or any other URC Training Centre – Issue 3)

283 There was no order from the respondent, nor from Westminster College staff, not to do any of the above. Rather, they were the reasonable consequence of the claimant being asked to undertake the LMP first. This meant that the claimant usually attended Westminster College on Thursdays, when her fellow Ordinands were present. The suggestion of the College that the claimant undertake the LMP first did not amount to a breach of contract. The recommendations of both the Assessment Conference and Education and Learning Board were just that – recommendations. They were not set in stone. They did not contain any contractual stipulation as to whether the academic training should come before the LMP or vice versa. The claimant did not have a contractual right to academic study first. In any event, the claimant agreed to undertake the LMP first. For all of these reasons there was no breach of contract.

284 Further, we conclude that the reason for Westminster College suggesting that the claimant undertake the LMP first was her extensive academic and spiritual experience. On the basis of the qualification and experience which the claimant was understood to have on the basis of the contents of her written application, it was envisaged that the claimant may be eligible for Ministry within a year, without the need for further academic study at all. Nevertheless, the possibility of further academic study was kept firmly in mind by the College during the LMP. None of this had anything to do with any of the protected characteristics relied on by the claimant.

285 Nor was this a decision of the respondent in any event and it would not have succeeded against the respondent for that reason either. The respondent is a separate organisation to Westminster College. Unless specific conclusions are made to the contrary below, the actions of Westminster College/Westminster College staff cannot be attributed to the respondent.

Requiring the Claimant to enrol at Anglia Ruskin University – Issue 4)

286 The claimant was not required to enrol at Anglia Ruskin University. As a result of the first LMP being unsuccessful, and the claimant's subsequent appeal,

the placement at Clapton Park URC had to continue between April and the end of December 2010. It was the College's understanding that the claimant could not register in January 2011 for an MPhil. That was incorrect - but it was a genuine misunderstanding by College staff at the time. The College also took the view that studying modules on the MA would give the claimant a chance to re-hone her academic skills. The claimant agreed to do so and applied to study on two of the modules.

287 In these circumstances, there was no breach of contract.

288 As for the reason, we accept Revd Proctor's evidence (WS bundle page B:555, para 9b) that the Anglia Ruskin MA in pastoral theology is primarily rooted in a reflective practice methodology. As it was experience of the lived reality of the United Reformed Church and its ministry that the claimant required, this would have been a better fit with helping her progress to ordination than the more purely academic University of Cambridge MPhil or PhD. The latter may be perceived by some to be of a higher status in terms of academic qualifications and institution, but in terms of progress towards ordained ministry, given the claimant's academic background, the Anglia Ruskin MA would have made more sense. Nevertheless, the possibility of the claimant studying an MPhil or PhD was kept firmly in mind. We conclude that these were the reasons why it was suggested that the claimant enrol, which the claimant agreed to do without protest.

289 Ultimately, any further academic study was dependent on the successful completion of the LMP. None of this had anything whatsoever to do with any of the protected characteristics relied on.

290 Further, this was not a decision of the respondent but of Westminster College and it would not have succeeded against the respondent for that reason either.

Preventing the Claimant from applying for or enrolling on international and local placements – Issue 5)

291 Acceptance for training for ministry does not give an ordinand any contractual right to an international placement as part of that training. In those circumstances, no breach of contract can possibly arise.

292 As for the reason why the claimant did not attend any international placement during her period of training, we conclude as follows. First, the respondent reasonably concluded that the claimant already had extensive international experience. She was proficient in 4 languages, and had lived and worked in France, Germany, and the UK. Whilst the claimant makes mention of wanting to attend both Haiti and Bangladesh during 2010, no evidence was presented to us of any formal request having been made. Nor is there any evidence as to whether the proposed attendance was during holiday periods, or when the claimant was due to be working on the LMP. Further, there is no evidence that the claimant was prevented from making an application for an international placement. This allegation therefore fails because the claimant has failed to establish the facts necessary for the claim to have any chance of succeeding.

Preventing the Claimant from doing a PhD – Issue 6)

293 The claimant did not have a contractual right to study a PhD during her training. As noted above, and as reflected in our findings of fact, it was initially envisaged that the claimant may wish to conclude her training after one year, without any further academic study. Whilst that was considered as a possibility, the College staff also kept an open mind in relation to the direction that further academic study might take - see above regarding Issue 4).

294 As for the reason, then as noted above, any further academic study was dependent on the successful completion of the LMP. None of this had anything whatsoever to do with any of the protected characteristics relied on.

295 Further, this was not a decision of the respondent but of Westminster College and it would not have succeeded against the respondent for that reason either.

Preventing the Claimant from attending the annual weeklong workshop with other ordinands – Issue 7)

296 The claimant did not have a contractual right to attend the annual workshop during the first year of her training when she was undertaking the LMP. The claimant was not 'prevented' from attending.

297 As for the reason, had the claimant successfully completed the LMP in the first year and gone on to do further academic study, she would have been invited to attend in September 2010, the first year of academic study. In any event, we conclude that none of this had anything whatsoever to do with any of the protected characteristics relied on.

298 Further, this was not a decision of the respondent but of Westminster College and it would not have succeeded against the respondent for that reason either.

Preventing the Claimant from attending the meetings with Bishops, Synod Moderators and other Church leaders – Issue 8)

299 The claimant did not have a contractual right to attend meetings with Bishops, moderators and other Church leaders. Further, at no stage was she prevented from attending such meetings. No evidence was presented to the tribunal to suggest otherwise, other than a bare assertion to that effect by the claimant which we do not consider to be reliable. In relation to the visit of the Pope in 2010, the respondent had already chosen its delegates.

300 As for the reason, none of this had anything whatsoever to do with any of the protected characteristics relied on.

Preventing the Claimant from preparing and leading services at the Chapel of Westminster College Cambridge – Issue 9)

301 The claimant did not have a contractual right to prepare and lead services at the chapel of Westminster College, Cambridge. In any vent, during the LMP, the claimant usually attended on Thursdays. Only students who attended Westminster College for full-time academic study were invited to prepare and lead services at the chapel. The claimant was in no way disadvantaged by any of this, because she already had substantial experience in preparing and leading services.

302 As for the reason, none of this had anything whatsoever to do with any of the protected characteristics relied on.

303 Yet further, this was not a decision of the respondent but of Westminster College and it would not have succeeded against the respondent for that reason either.

Preventing the Claimant attending Bible studies meetings – Issue 10)

304 See above in relation to issue 9). Bible study meetings took place on Mondays when the claimant was not usually at Westminster College, but at her placement at CPURC. There was no breach of contract in any event since the claimant did not have a contractual right to attend Bible study meetings during her LMP, if at all.

305 As for the reason, none of this had anything whatsoever to do with any of the protected characteristics relied on.

306 Yet further, this was not a decision of the respondent but of Westminster College and it would not have succeeded against the respondent for that reason either.

Requiring the Claimant to work over her contractual 36 hours per week and cancelling all but one of her days off – Issue 11)

307 We refer to our findings of fact above. To the extent that the claimant worked in excess of her contracted hours (which were 32 not 36), that was because she chose to do so, not because she was required to do so. In such circumstances, no breach of contract claim arises. We have found as a fact that the claimant's days off were not cancelled.

308 As for the reason, none of this had anything whatsoever to do with any of the protected characteristics relied on.

Failing to give the Claimant contractual/prescribed Supervision, Feedback, LMP-Companions, Time scales, Pastoral Care, Tutor or Permission to use prescribed Training Tools – Issue 12)

309 We conclude that there was no specific contractual right to any particular level of supervision/feedback. It was dependent on the availability of the supervising Minister concerned. In the claimant's case, it was envisaged that she would receive fortnightly supervision of two hours rather than weekly supervision of one hour which her contemporaries received, because Revd Welch worked part-time. Given the difficulties that subsequently arose in the working relationship, the fortnightly rather than weekly supervision was perhaps unfortunate, but those difficulties could not have been predicted at the time the LMP was organised. Inevitably, there may have been occasions when supervision sessions had to be cancelled or rearranged, due to the unavailability of either party but again that did not amount to a breach of contract.

310 As for the question of congregational companions and pastoral care, again we conclude that the claimant was not contractually entitled to any particular level of pastoral care, or to any particular number of congregational companions. The congregational companions worked on a voluntary basis. They were not available, and nor was it envisaged that they would be available, on a 24/7 basis. There was an issue with the level of pastoral care provided by Thames North Synod, which was noted by a fellow ordinand Revd Lewitt. She raised that in a constructive manner with Thames North Synod, which resulted in improvements for all concerned.

311 The tribunal does not understand the claimant's case in relation to '*Time Scales … Tutor or Permission to use prescribed Training Tools*' and those claims fail because the claimant has not established the necessary facts.

312 Finally, for the sake of completeness, as for the reason, the tribunal is entirely satisfied that none of this had anything whatsoever to do with any of the protected characteristics relied on.

Throughout 2009 repeatedly giving the Claimant incorrect information regarding her programmes, resulting in her not being able to continue her contractual training as an Ordinand. In particular, the Claimant contends the Respondent misled her regards: a. "I was to start with the Final Year of Training first" (Jan 2009); b. "a new and functioning LMP would be created" (Jan 2010), c. "Amber Light would be followed" (Jan 2010), d. "my MPhil/PhD, Placements, Courses, and additional Training would be made possible" (Jan 2009-Sept 2010) – Issues 13) a. - d.

313 We conclude that the claimant was not misled in relation to a. The matter was discussed and it was agreed that the claimant would undertake the LMP first. There was no breach of contract.

314 In relation to b, efforts were made to find a new placement for the claimant, but before that could be implemented, she appealed against the termination of the placement, and those attempts were rightly put on hold. The claimant's appeal against the termination of the Clapton Park LMP was successful and the Clapton Park LMP therefore continued, with the support and agreement of both Revd Welch and the claimant, subject to the conditions which the Board of Governors had stipulated. The claimant agreed to those conditions and the continuation of the placement. There was no breach of contract.

315 As for c, the Amber Light Policy was not in place in January 2010. The claimant could not have any contractual rights arising from a policy that was not in existence at that time.

316 As for d, see our conclusions above. The possibility of study for an MPhil/PhD was kept open. There was no breach of contract.

317 As for the reason, for the sake of completeness, the tribunal is entirely satisfied that none of this had anything whatsoever to do with any of the protected characteristics relied on. It was for the reasons set out above.

Failing adequately to handle or respond to the Claimant's first formal grievance and appeal. Failing adequately to handle or respond to the Claimant's second formal grievance and appeal. In particular, in relation to the grievances and appeals: a. Not following "Amber light"; b. Cancelling the appeal hearing for the grievance and appeal lodged in December 2011; c. Not allowing the Claimant to bring a companion or legal representative of her choice to meetings; d. Not permitting the Claimant to make presentations other than on one occasion; e. Not permitting the Claimant to challenge statements made against her; f. Not allowing minutes to be taken and/or falsifying and/or improperly editing the minutes – Issues 14), 15) and 16) a.-f.

318 As for a., as noted above, the Amber Light Policy was not in place in relation to the first appeal in 2010. It was by the time of the second decision in relation to the LMP, but we conclude that it was reasonable for the respondent to move to a Serious Concern Review meeting at stage 2 of the Policy, given the

history of the placement prior to the decision, and that numerous informal discussions had already taken place. Stage 1 informal meetings would at that stage have been futile. The move to Stage 2 did not therefore amount to a breach of contract.

319 As to b., the appeal hearing in relation to the appeal lodged in December 2011 was put on hold by Westminster College because the Assessment Board decided that it was necessary for them to hold a meeting first. Given that a decision by the Assessment Board to terminate the claimant's training would render superfluous the appeal to Westminster College about the decision to move straight to Stage 2 of Amber Light, the tribunal concludes that it was reasonable, and was not a breach of contract, for the appeal to Westminster College to be put on hold.

320 As to c., the claimant was entitled to bring a companion of her choice to the meetings. She did not have a contractual right to bring a legal representative to any of those meetings.

321 As for d., the claimant was able to fully participate at the first grievance appeal to the Board of Governors. We accept the observations of a number of witnesses, that her questioning of Revd Thorogood was excessive and was upsetting for him – hardly a sign that the claimant was not able to participate fully. As for the Assessment Board hearing, the claimant was entitled to and did set out in writing her response to the Westminster College decision. She was entitled to put her case at the Assessment Board hearing itself. Further, the claimant was entitled to attend the appeal hearing on 1 June 2012 and put her case.

322 As for e., the claimant was entitled to challenge statements made against her. The fact that she did not have the opportunity to cross examine witnesses at the Assessment Board meeting because they attended separately to her, did not amount to a breach of contract. She had no contractual right to cross examine them under the procedures.

323 Finally, regarding f., there was no contractual right of the claimant to minutes of meetings. We wholly reject the claimant's allegation that minutes were falsified or improperly edited. We conclude that the allegation is unfounded. The claimant and her chosen companions were entitled to comment on minutes of certain meetings, and did so. There were no formal minutes of the Assessment Board meeting, but there was a clear record of the decision taken, and the reasons for it.

324 Finally, as for the reason, the tribunal is entirely satisfied that none of this had anything whatsoever to do with any of the protected characteristics relied on.

Failing to follow the recommendations of Interhealth made 2011, the Psychologist made 2008, the Psychoanalyst made 2010, the Psychotherapist made 2011 + 2012 – Issue 17)

325 The claimant's claims in this respect are misconceived. The reference to the 2008 report is to the Myers-Briggs test undertaken by all candidates. That was an opportunity for self-reflection. It did not contain any recommendations. A copy was not provided to the respondent.

326 As for the 2010 assessment with Jean Thompson, there was no written report. We only have the claimant's account of what Jean Thompson said,

which we do not consider to be reliable. In any event, none of what the claimant said Jean Thompson told her, amounted to recommendations. To the contrary, the claimant was saying that she was perfectly well, there were no underlying issues and that it was the actions of College staff that had made her unwell. Finally, as to Ms Smith's reports of 2011 and 2012, they did not contain any recommendations either. They simply confirmed that the psychotherapeutic relationship was positive, and the counselling sessions were helping the claimant. There was no request in 2012 that the respondent continue to pay for them. Even if there had been, there was no contractual right to the counselling sessions being paid for indefinitely.

Through their handling of the Claimant's training contract, grievance and appeals, causing a breakdown in the Claimant's emotional and physical wellbeing – Issue 18

327 To the extent this is a free standing claim for personal injury, it is not within the jurisdiction of the tribunal - see Article 3 of the Employment Tribunals Extension of Jurisdiction Order (England and Wales) Order 1994. Freestanding claims for personal injury must be pursued in the County Court /High Court.

328 To the extent that this is a remedy issue, it is not before the tribunal which is considering liability only at this stage. It is only if any of the claimant's claims had been upheld that this issue would have become relevant.

Wrongful dismissal

329 The claimant had been employed for more than two but less than three years at the date of her dismissal. The training contract did not give any specific right to notice. Under the Employment Rights Act 1996 the claimant is entitled to 2 weeks notice, based on her length of service. The training relationship having been terminated on 28 February 2012, the claimant was entitled to a maximum of two weeks notice pay after notification of that. The claimant was in fact paid until 15th of June 2012, and therefore no further payment is due to her.

336 In the alternative, to the extent that the claimant's employment relationship did not formally end until she was she was notified of the decision of the appeal panel on 8 June 2012, the claimant had already been notified that her grant would cease on 15 June 2012, subject to the outcome of the appeal process. She was not therefore entitled to any more notice.

337 In any event, the reasons for the dismissal are set out above and the tribunal is entirely satisfied that the respondent was entitled to terminate the claimant's training without notice, on the basis that her actions and behaviour amounted to a breach of the implied term of trust and confidence, a repudiatory breach.

<u>Direct disability discrimination - Issues 19) to 24)</u>

Was the Claimant a disabled person in accordance with the Equality Act 2010 ("EA 2010") at all relevant times because of the following condition(s): PTSD, severe reactive depression, chronic severe Insomnia, severe Fibromyalgia, early and sudden onset of Menopause, Gastritis, Ulcers, late-onset Epilepsy, deterioration of visual Acuity, severe Occlusion with breaking of teeth, borderline diabetes? Issue 19)

338 Before examining this issue in more detail, the tribunal reminds itself that the question of disability has to be judged by reference to the claimant's health and symptoms at the relevant time, not on how the claimant presented at the tribunal, or any current evidence we have about the effect of the various conditions upon her.

Physical impairments

339 The tribunal concludes, in relation to the various physical impairments, that the claimant did not have a disability at the relevant time, i.e. between September 2009 and June 2012. There is no evidence that the claimant was suffering from severe fibromyalgia at the time. For example, there was no suggestion by any of the other witnesses the tribunal heard from that the claimant was seen to be suffering from extreme pain, if her body was touched. We have been provided with no evidence in relation to the impact of the early and sudden onset of menopause on the claimant, nor for how long any such symptoms lasted. As for gastritis and ulcers, whilst those matters became serious enough to result in several months' sickness absence in 2011, those matters appear to have resolved in or about October 2012 such that the claimant was fit to proceed with her appeal. Whilst the tribunal accepts that in 2021, the impact of the late-onset epilepsy was substantial, the only evidence from the time of her training was that the claimant fainted on one occasion in Revd Durber's study. Such evidence that there is does not therefore suggest that the effects of any of the physical impairments were substantial at that time.

340 We note that the July 2011 OH report confirmed that the claimant had told OH that she did not have any personal or home issues and was expected to get better within a few months. The report says:

> *She and her Doctors are confident that she will recover fully over the next few months [2213].*

That did not suggest that any of the conditions were long term. Further, we note that the claimant's sickness absence in 2011 was said to be due to physical impairments, namely gastritis and related stomach problems, not mental health issues, which we consider next.

Mental impairments

341 As for the mental impairments, namely complex PTSD, severe reactive depression and/or insomnia, again we note that what evidence is available from the relevant period of time suggests that the impact on the claimant was relatively minor. For example, whilst Revd Welch noted that the claimant was tearful on occasion, we have accepted her evidence that the claimant quickly recovered and was able to continue to participate in the meetings and the LMP.

342 The respondent received reports from Ms E Smith in July 2011 and in January 2012, which confirmed that the therapy sessions were helping the claimant. There was nothing in those reports to suggest that the claimant had a disability at that time, as a result of any mental impairment.

343 The claimant's letter to Revd Bowman dated 2 February 2012 stated:

> *You will have read in the reports you have requested and received from Interhealth last September that ever since the summer I am very willing*

and fit to proceed with the hearings I was told to decide about. Moreover, even during the last year, I never stopped training and full-filling the duties of ministry I was offered. (sic)

344 Again, that did not suggest that the claimant was suffering from any mental impairment that had been or was having a substantial adverse impact on her ability to carry out normal day-to-day activities at that time. Rather, it indicated that the claimant was and had been reasonably fit and well.

345 For all of the above reasons, the Tribunal concludes that the claimant has failed to establish that at any point between September 2009 and June 2012, she had a disability, as a result of any physical or mental impairment, or a combination of them.

Alternatively, did the Respondent at the material time perceive the Claimant to be disabled? - Issue 20)

346 We conclude that the respondent did not perceive the claimant to be disabled, nor did staff at Westminster College. During the claimant's period of training, staff at Westminster College were understandably concerned to understand what it was that was causing the claimant to experience such difficulties in establishing and maintaining effective working relationships. An opportunity was arranged for the claimant to obtain a psychological assessment. The result of that was the claimant telling the Westminster College Board of Governors that there were no unresolved issues from her past and that her own actions were an understandable reaction to what had happened to her.

347 Whilst the ongoing difficulties did lead Westminster College staff to continue to question whether there were in fact some personal issues that needed resolving, and the claimant was considered to have an unusual personality, the staff rightly recognised that they were not qualified to make any formal diagnosis. Nor did they attempt to do so. Revd Proctor for example thought of the claimant as a person with a complex personality who was raising complex issues. That did not however amount to a perception that the claimant had a disability.

Knowledge?

348 Even if the tribunal had found that the claimant had a disability or disabilities during the relevant period, we would have concluded, on the basis of all of the above, that the respondent did not know or could not reasonably have been expected to know that the claimant had a disability.

Alleged discriminatory acts

349 The Claimant relies on the following alleged acts of discrimination, which are dealt with in turn. Whilst, because of our findings on the disability issue, it is not strictly speaking necessary to arrive at conclusions in relation to the following, we do so for the sake of completeness. As will be clear from these conclusions however, even if we had found that the claimant had a disability, her direct disability discrimination claims would not have succeeded.

The matters relied on for unfair dismissal/wrongful dismissal/breach of contract – Issue 21) a.

350 We refer to our conclusions above in relation to those issues. The tribunal has already concluded that where the alleged incidents did actually happen as

alleged, the reason for the treatment had nothing to do with any protected characteristic, including disability. We re-affirm that conclusion.

In July/August 2011 both in writing and on the phone to the Claimant that if she required more sick leave after August/September she would be dismissed from her training contract – Issue 21) b.

351 We refer to our findings of fact on this issue above, which is to the effect that no such statement was made. This claim therefore fails.

Dismissal – Issue 21) c.

352 We refer to our conclusions above in relation to the dismissal. We have concluded that the claimant's dismissal had nothing whatsoever to do with any protected characteristic, including disability. We re-affirm that conclusion.

Where relevant, did each of those acts constitute a detriment? Issue 22)

353 We note that Dr Morgan QC, on behalf of the respondent, accepts that the alleged treatment could conceptually amount to detriments in law. We accept that concession. However, given our conclusions in relation to the other elements of this head of claim, the allegations are not upheld.

Was each act "less favourable treatment" The Claimant relies on the following comparators in respect of the following matters: (Issue 23)) Catherine Lewis-Smith – Circumstances alleged to be similar to the Claimant's in that she had "severe incapacitating chronic Fatigue", but was "allowed all adjustments she asked for, Cambridge Degrees and PhD and ordained 2016" – Issue 23 a.

354 In the light of our conclusions, there is no need to examine these issues in any detail. Revd Lewis Smith is not in our judgment an appropriate comparator. Revd Lewis Smith was ordained because she successfully completed her training. The claimant did not. In relation to reasonable adjustments, we refer to our findings and conclusions that there were no recommendations made by any of the treating psychologists/psychotherapists that the claimant saw before or during her employment with the respondent, save that the claimant be allowed representation at the formal hearings. That was allowed. Further, save for that one instance, neither the claimant nor any of those acting on her behalf, requested any reasonable adjustments. Yet further, we note that the list of issues does not in any event include any claim for reasonable adjustments. Finally, Revd Lewis-Smith was known to have had CFS and the College was aware of and sensitive to that.

Liz Thomson – Circumstances alleged to be similar to the Claimant's because she had "severe incapacitating mental health issues", but was "allowed all adjustments she wanted and ordained around 2013" – Issue 23 b.

355 The same conclusions apply as in relation to Revd Lewis-Smith.

Anne Lewitt – A non-disabled comparator in respect only of (i) the allegation concerning meetings with the Thames North Moderator; and (ii) ordination/dismissal – Issue 23 c.

356 As noted above, Revd Lewitt raised the lack of pastoral visits with Thames North Synod in a constructive manner and as a result, pastoral visits increased. The same comments apply as in relation to Revd Lewis-Smith, in relation to ordination/dismissal.

And/or hypothetical comparators

357 We have already concluded that the reason for the alleged treatment had nothing to do with any protected characteristic. There could therefore no less favourable treatment by reference to hypothetical comparators.

If so, was this because of the Claimant's disability and/or because of perceived disability (i.e. was the treatment materially influenced by the protected characteristic)? Issue 24

358 In light of our firm conclusions above, no conclusion needs to be reached on this particular issue.

Discrimination arising from disability - Issues 25) to 29)

359 The acts of unfavourable treatment relied on are the same as for direct disability discrimination. However, the section 15 claims must necessarily fail, because of our conclusion in relation to the disability issue. There can therefore be no 'something arising from disability' affecting any of the decisions made. Further, this claim would fail on the issue of knowledge.

360 There is strictly speaking no need to consider any of the other issues in relation to this head of claim. The tribunal would simply add that it is arguable that the claimant's inability to establish and maintain effective working relationships with others, and/or her lack of insight into the effect of her actions on others and or her inability to accept criticism could be linked to a mental impairment. Whilst those clearly were factors that led for example to the claimant's dismissal, the decision to terminate the claimant's training was fully justified by reference to, amongst others, the legitimate aim of safeguarding those working for, and participating in the activities of the respondent (see the amended response, para 26L, [A:96]).

Direct nationality/national origins discrimination – Issues 30) to 33)

361 There is no dispute that the claimant is of German nationality and origin.

362 The Claimant relies on the following alleged acts of discrimination.

The matters relied on in relation to unfair dismissal/wrongful dismissal/breach of contract – Issue 30) a.

363 We refer to our conclusions above in relation to those issues. The tribunal has concluded that where the alleged treatment occurred, the reason for the treatment had nothing to do with any protected characteristic, including the claimant's nationality/national origins.

Refusing to allow her to lead Eucharistic or Baptismal Services and refusing to accept her German qualifications – Issue 30) b.

364 In relation to the leading of Eucharist and Baptismal services, the claimant needed special dispensation from the respondent to do so. That was not applied for or given during the claimant's training because the claimant was not required to carry out such services.

365 As for the refusal to accept the claimant's German qualifications, we refer to our findings of fact. The claimant's Predakantin status expired in 2011. In any event, that status did not give the claimant the right to be treated as a person qualified to administer the Word and Sacraments for the respondent. Had that been the case, the claimant would not have needed to apply for training in the first place. The claimant could simply have asked the respondent to recognise the equivalence of that status. She did not do so because it is not equivalent.

Ms Welch criticising the Claimant for allowing a homeless person to kiss her on the cheek – Issue 30) c.

366 We refer to our findings of fact on this issue. Any issues raised by Revd Welch about this matter were due to safeguarding. They had nothing to do with the claimant's nationality/national origins.

Ms Welch shouting at the Claimant for sitting on the wrong chair and saying it was because the Claimant was German – Issue 30 d.

367 We refer to our findings of fact on this issue. Revd Welch accepts that she snapped at the claimant about this issue and regretted doing so. The claimant was not told the incident happened because she was German. The tribunal is satisfied that Revd Welch's reaction had nothing to do with the claimant's nationality or national origins.

Dismissal – Issue 30) e.

368 We refer to our conclusions above in relation to the dismissal. We conclude that the claimant's dismissal had nothing whatsoever to do with any protected characteristic, including nationality/national origins.

Where relevant, did each of those acts constitute a detriment?

369 We note that Dr Morgan QC, on behalf of the respondent, accepts that the alleged treatment could conceptually amount to detriments in law. We accept that concession. However, given our conclusions in relation to the other elements of this head of claim, the allegations are not upheld.

Was each act "less favourable treatment" … The Claimant relies on Catherine Lewis-Smith, Liz Thomson, Matthew Stone, Anne Lewitt and Mark Robinson and/or a hypothetical comparator

370 We refer to our findings of fact relating to these comparators and our conclusions above. There was no less favourable treatment compared to the above individuals. Had they been asked to conduct Eucharistic or baptismal services, special dispensation would also have been required for them.

If so, was this because of the Claimant's national origins/nationality (i.e. was the treatment materially influenced by the protected characteristic)?

371 See our conclusions above. The alleged treatment had nothing whatsoever to do with any protected characteristic, including nationality/national origins.

<u>Direct philosophical belief discrimination – Issues 34 to 37</u>

372 The Claimant's relies on the following beliefs: freedom to live in celibacy and freedom to live a Christian and Protestant Faith. We conclude that both are protected philosophical beliefs. Revd Bradbury accepts that he was informed by students that the claimant was celibate so to that extent the respondent was aware of that.

373 The Claimant relies on the following alleged acts of discrimination.

The matters relied on in relation to unfair dismissal/wrongful dismissal/breach of contract – Issue 34 a.

374 We refer to our conclusions above in relation to those issues. The tribunal has concluded that where the alleged treatment occurred, the reason for the treatment had nothing to do with any protected characteristic. That includes

the claimant's philosophical beliefs. Further, we fail to understand how it could reasonably be argued by the claimant that the respondent Christian organisation would discriminate against her because she wanted to live 'a Christian and Protestant Faith'.

Referral of the Claimant to a Sex Therapist in 2011 – Issue 34 b.

375 We refer to our findings of fact above. The claimant was not referred to a Sex Therapist. She was referred, via an independent organisation, the CMCS, to a Sexual and Relationship therapist. This claim is misconceived too.

376 Further, the claimant's claim in relation to her belief in celibacy appears to be predicated on the suggestion that the respondent somehow disapproved of that and wanted to encourage her to engage in a sexual relationship by referring her to a sex therapist. If that is indeed the claimant's case, the tribunal considers it to be a ludicrous suggestion. Yet further, the referral was the result of actions taken by CMCS independently, not the respondent.

Refusing to allow her to lead Eucharistic or Baptismal Services – Issue 34 c.

377 We refer to and repeat our above conclusions on this issue in relation to the alleged nationality/national origins discrimination.

Ms Welch shouting at the Claimant for sitting on the wrong chair and saying it was because the Claimant was German – Issue 34 d.

378 We refer to and repeat our above conclusions on this issue in relation to the alleged nationality/national origins discrimination.

Dismissal – Issue 34 e.

379 We refer to and repeat our above conclusions on this issue in relation to the alleged nationality/national origins discrimination.

Where relevant, did each of those acts constitute a detriment? – Issue 35)

380 Again, we note that Dr Morgan QC, on behalf of the respondent, accepts that the alleged treatment could conceptually amount to detriments in law. However, given our conclusions in relation to the other elements of this head of claim, the allegations are not upheld.

Was each act "less favourable treatment". The Claimant relies on: - Catherine Lewis-Smith, Liz Thomson and Anne Lewitt – Issue 36

381 We refer to and repeat our conclusions in relation to these comparators above, under the heading of direct disability discrimination.

Matthew Stone – circumstances alleged to be similar because he also required adjustments to the LMP demands as a result of international placements and holidays, but was nonetheless successful in being ordained

382 Revd Stone was given the opportunity to go on international placements, because he made applications to do so. The respondent reasonably concluded that it would be beneficial to both him and the respondent for the placements to go ahead. He was ordained because unlike the claimant, he successfully completed his training. None of this had anything to do with any of the claimant's protected characteristics, including philosophical belief.

Mark Robinson – Alleged more favourable treatment in relation to reduction in work, not having to lead a whole service for the final assessment, and was successful in being ordained

383 We refer to our findings of fact above in relation to Revd Robinson and in relation to the claimant's working hours. The suggestion that he did not lead a whole service for his final assessment was not put to him during cross examination and to the extent necessary, we find that he would have conducted a whole service. Further, Revd Robinson was ordained because he successfully completed his training. None of this had anything to do with any the claimant's protected characteristics, including philosophical belief.

And/or a hypothetical comparator

384 We have already concluded that the reason for the alleged treatment, if it occurred at all, had nothing to do with any protected characteristic. There could therefore no less favourable treatment by reference to hypothetical comparators.

If so, was this because of the Claimant's religion or belief (i.e. was the treatment materially influenced by the protected characteristic) – Issue 37

385 See our conclusions above. The alleged treatment had nothing whatsoever to do with any protected characteristic, including philosophical belief.

Direct sex discrimination – Issues 38 to 41

386 The Claimant is female. The Claimant relies on the following alleged acts of discrimination.

The matters relied on in relation to unfair dismissal/wrongful dismissal/breach of contract – Issue 38 a.

387 We refer to our conclusions above in relation to those issues. The tribunal has concluded that where the alleged treatment occurred, the reason for the treatment had nothing to do with any protected characteristic, including the claimant's sex.

Rod Boucher telling the Claimant at her assessed service "that a nice girl like you should not need to bother with big things like ministry" – Issue 38 b.

388 We refer to our findings of fact. We have found that the alleged words were not said. This claim is dismissed.

Expecting the Claimant to lead more parts of services than male ordinands (para 35.b) (The Claimant identifies the following people as doing this: Ms Welch, Mr Bradbury, Mr Thorogood, Ms Thomas, Mr Bowman, 2010 + 2011 + 2012 Panels.) – Issue 38 c.

389 We refer to the comparator evidence above. It was not the case that the claimant was expected to lead more parts of services than male ordinands. This claim fails.

Not permitting the Claimant to chair meetings (The Claimant identifies the following people as doing this: Ms Welch, Mr Thorogood, Ms Thomas, Mr Bowman, 2010 + 2011 + 2012 Panels) – Issue 38 d.

390 We refer to our findings of fact above. We have found that the respondent did not refuse to allow the claimant to chair meetings and this claim necessarily fails and is dismissed.

Dismissal (including in particular taking into account Mr Boucher's arguments and/or referring to the Claimant as "having problems with authority") – Issue 38 e.

391 We refer to and repeat our above conclusions on the dismissal issue in relation to alleged nationality/national origins discrimination. We note that Mr Boucher did say in his report about the claimant that she was:

> *too forceful at times; a lack of understanding of being under ministerial and college authority; an individualist more than a team player; she has difficulty taking directions from others; has difficulty keeping quiet and listening; too quick with her own solutions which takes little account of the (unknown to her) experience and history of others; I never have a sense that she may be open to being wrong; she needs to lead; is defensive when given a critique [4175].*

392 The tribunal is satisfied that none of these comments were made because of the claimant's sex. Rather, they were the honest and reasonable opinion of Mr Boucher, about the claimant, based on his experience of her. To the extent that they influenced the decision to terminate the claimant's training contract, they cannot assist the claimant. In any event, even if we had concluded that they were based on the claimant's sex, that could not have tainted the respondent's decision (see *CLFIS (UK) Ltd v Reynolds [2015] EWCA Civ 439).*

Where relevant, did each of those acts constitute a detriment – Issue 39

393 See above - yes.

Was each act "less favourable treatment" … The Claimant relies on Matthew Stone, Mark Robinson and/or a hypothetical comparator – Issue 40

394 We refer to our conclusions above in relation to the alleged comparators, in relation to the philosophical belief allegations. For the reasons given, they are not appropriate comparator and there was no less favourable treatment.

If so, was this because of the Claimant's sex (i.e. was the treatment materially influenced by the protected characteristic) – Issue 41

395 See our conclusions above. The alleged treatment had nothing whatsoever to do with any protected characteristic, including sex.

Direct sexual orientation discrimination – Issues 42 to 45

396 It is the claimant's case that she was perceived to be a lesbian. No evidence was put before the tribunal in support of the contention, save for the claimant's bare assertion that it was the case. The allegation was not put to any of the respondent's witnesses. If we understand the claimant's case correctly, she is suggesting that the respondent concluded that if the claimant was celibate, it must be because she was a lesbian (see the amended particulars of claim at #31). There was no evidence put before the tribunal upon which such a tenuous link could be established. We conclude that no such link was made. Further, we conclude that there was no perception that the claimant was a lesbian. It follows that this claim must fail and there is no need to consider any of the other issues in relation to this head of claim.

Victimisation – Issues 46 to 49

397 The clamant relies upon the following protected acts.

a. *Concerns about slurs against the Claimant's race and belief raised to Ms Welch and Mr Thorogood from October 2009 orally and in writing. The Claimant relies on the following specific matters: "1) I raise concerns about Ms Welch's judgemental and discriminatory behaviour expressed in her repeated slurs "In my country/In my Church ..." first used (in front of me) aggressively with the "chair incident" and then quickly becoming her short cut to condemn much of what I do - I raise these concerns with Ms Welch (starting 25/10/2009), Mr Thorogood and Mr Proctor (11/11/2009); 2) As it does not stop I continue to raise these concerns plus that the contractual adjustments for me not being British born and URC bred is all the time explicitly forbidden, i.e. that I needed to be allowed to live and train in URCRCL I raise with Ms Thomas, Mr Bowman, Ms Sardeson (3+4/2/2010), Revd Gould as District/Area Chair (30/3/2010). 3) I raise the concern about Ms Welch's continuing racial discrimination also on 4/1/2011 to Mr Thorogood and via the Board to Ms Thomas and Mr Bowman".*

b. *Concerns about breaches of her contract raised to Mr Proctor, Mr Brad[bury], and Mr Thorogood both orally and in writing from 2009 onwards. The Claimant relies on the following specific occasions: "1) I raise profound concerns that I am supposed to start with the final year and not in URCRCL breaching what the contract, assessment, and need for adjustment had stated (30/1/2009) to Mr Thorogood. 2) I raise profound concerns that the LMP supervisor neither honours nor even plans to honour the contract (28/9/2009) to Mr Thorogood; 3) I raise all of these concerns and additional ones regards all the disabling breaches of and exclusions from my contract to Mr Proctor and Mr Thorogood (29.1.2010)";*

c. *Concerns raised orally and in writing from 2010 onwards with Mr Proctor, Mr Thorogood, Ms Sardeson, Ms Thomas and Mr Prasad about people being misled into thinking the Claimant was disabled with personality disorder issues. The Claimant identifies the following specific occasions: "1) I raise these concerns with and request permission from Mr Thorogood and Mr Proctor (29/1/2010) to be professionally psychologically assessed. 2) I raise these concerns formally with and request the contractually promised and identifiable help and procedures from Mr Bowman (via his PA Mandy Adams), Ms Thomas, Mr Prasad (via his PA Sue Russel), Ms Sardeson (all 3+4/2/2010), and Ms Thomas (19/4/2010). 3) I repeat these concerns with and request the contractually promised proceedings from Ms Thomas and Mr Bowman, directly and via Interhealth (21/7/2011, 29/9/2011)".*

d. *The Claimant's first grievance;*

e. *The Claimant's first appeal;*

f. *The Claimant's second grievance;*

g. *The Claimant's second appeal;*

h. *The Claimant's claim in these proceedings.*

398 In relation to a., b. and c. above, none of those matters were put to the respondent's witnesses by the claimant during cross-examination. Were the tribunal to reach firm conclusions in relation to each of them, further substantial time would inevitably have to be spent finding the necessary facts in relation to the various allegations. Further, in relation to matters d to g, the claimant has not referred us to any particular sections of those documents, with relevant page reference numbers, in which it is alleged that she raised Equality Act claims. As to h., it is not in dispute that the claimant's ET claim amounts to a protected act.

399 The tribunal does not consider that it is proportionate or necessary to reach any conclusions on the protected acts set out at a. to g. above. In relation to the alleged acts of victimisation which pre-date the dismissal, the tribunal has been able to reach firm conclusions as to the reasons for any of the alleged acts which the tribunal found did occur. Our conclusions in relation to those matters have already been well canvassed above. The claimant has not come anywhere near to establishing that any of the matters set out in the alleged protected acts affected the reasons for any of the alleged treatment. They were for the reasons discussed above and just as they had nothing to do with any protected characteristic, nor did they have anything to do with any purported protected disclosure.

400 The Claimant relies on the following alleged acts of victimisation:

The matters relied on as unfair dismissal/wrongful dismissal/breach of contract (in each case as occurring after a protected act) – Issue 47 a.

401 See above. We are entirely satisfied that, just as those matters had nothing whatsoever to do with any of the claimant's protected characteristics, nor were they in any way influenced by those matters alleged to be protected acts.

Dismissal - Issue 47 b.

402 As above.

The claimant relies on three alleged acts of victimisation post-termination as follows. First, Ms Durber, Mr Prasad and Mr Templeton telling pulpit organisers that the Claimant was not available any more (para 38.b.1) and that because she lodged the Employment Tribunal and had lodged Appeals she was not allowed to preach and lead services etc – Issue 47 a.

403 This claim fails for two main reasons. First, the decision was made by the Ponds Square Chapel, which has a separate legal status to the respondent. The claimant has not presented any evidence to prove that the decision of the local church was influenced in any way by the respondent. Revd Templeton was the Minister of the church, which was the claimant's local church. He had acting in a supportive role towards the claimant, during her dispute with the respondent.

404 Second, the decision taken by Ponds Square Chapel not to invite the claimant to preach, whilst her Employment Tribunal claim was ongoing, was taken because the church was anxious not to be seen to be endorsing the claimant, whilst she was in dispute with the wider church. On the authority of the House of Lords decision in ***Khan***, that did not amount to an act of victimisation.

Second, Mr Templeton and Mr Prasad 'sabotaging' the Claimant's engagement as Hospital Chaplain (para 38.b.2);

405 We refer to our findings of fact above. No convincing evidence has been put before the tribunal to suggest that the respondent had anything whatsoever to do with the decision by the Trust not to progress the claimant's application for the role of Hospital Chaplain. This claim therefore fails on the facts and is dismissed.

Third, not providing the Claimant with Pastoral Care following her dismissal (para 38.c).

406 The evidence that the tribunal has been referred to, shows that the respondent did contact the claimant in order to provide pastoral care, following the rejection of her appeal against the termination of the training contract. We have no evidence before the tribunal, other than the claimant's bare assertion, which we find to be inherently unreliable, that no pastoral care was provided following her dismissal. This claim therefore fails on the facts and is dismissed.

Where relevant, did each alleged act constitute a detriment?

407 Again, the tribunal accepts that the alleged acts could conceptually amount to detriments in law. However, given our conclusions in relation to the other elements of this head of claim, the allegations fail.

If so, did the Respondents do the act(s) because the Claimant had done a protected act and/or because the Respondent believed the Claimant had done, or might do, a protected act?

408 See above. Nothing more needs to be said in relation to this issue.

<u>Protected disclosures / whistleblowing – Issues 50 to 53</u>

409 We note in relation to this head of claim that the claimant relies upon the same disclosure of information she alleges she made in relation to be protected acts. Further, that the alleged detrimental treatment that the claimant relies on is the same as for the victimisation claim.

410 The claimant did say during the hearing that she was not aware that she had made any whistleblowing claims. Nevertheless, the tribunal decided to keep it as an issue which we would need to decide in due course, rather than invite the claimant to withdraw the claim, so that they could be dealt with on their merits, insofar as that was possible.

411 Our conclusions in relation to the substance of the claims, as to whether or not there was any connection before the matters which the claimant alleges she said or did, and the alleged treatment, is exactly the same as in relation to the victimisation claim. In other words, there is no connection whatsoever and in the absence of any such causal link, the claims must necessarily fail and be dismissed.

412 In those circumstances, it is not proportionate or necessary to consider whether the claimant made any protected disclosures. In any event, the claimant has failed to provide any evidence or make any submissions in relation to the question as to whether or not she held the requisite subjective belief that the information disclosed tended to show one or more of the matters set out in s 43B(1), nor what those matters are. In those

circumstances, it would not have been open to the tribunal to conclude that any of the alleged disclosures of information amounted to protected disclosures.

Harassment related to disability/perceived disability/nationality/national origins/religious or philosophical belief/sex/(perceived)sexual orientation – Issues 54 to 57

413 The conduct relied on by the claimant is as follows.

The matters relied on for unfair dismissal/wrongful dismissal/breach of contract

414 We refer to our conclusions above as to the reasons for any of the alleged treatment which we found had occurred. We have arrived at firm conclusions that those reasons have nothing whatsoever to do with any of the protected characteristics relied on. We similarly conclude that those matters were in no way related to any of these protected characteristics either.

The matters relied on as acts of discrimination

415 We have no hesitation in arriving at the same conclusion as above.

Prohibiting the Claimant from contact with a list of individuals to whom she was not allowed to speak, specifically:

Mr Thorogood, and later in addition others "in Authority" e.g. Ms Durber, Mr Bowman forbid me to share truthfully with any other Ordinand about anything bad going on in my "Training". When I do e.g. in Nov 11th, 2009, and Nov 4th, 2010, it is used in dismissing me; Misinterpretation and misunderstanding. Did not forbid her - Issue 54 c. i.

416 We refer to our findings of fact above. The claimant was not given any such instruction. This is yet another example of her misunderstanding /misinterpreting what was said to her. This claim fails on the facts and is dismissed.

After Revd Jim Gould raises his own formal concern with e.g. the then Head of the Church and Ms Thomas, on how I am treated, the massive breaches of my contract, the utter unsuitability of Ms Welch and Mr Thorogood I am told by e.g. Mr Thorogood that it will be thought of disfavourably if I continue contact with Revd Gould, starting Spring 2010 – Issue 54 c. ii.

417 Again, the tribunal has no evidence before us in relation to this allegation, save for the claimant's bare assertion to that effect. For the reasons already canvassed at length above, we do not consider the claimant's account to the credible or reliable. In his witness statement at paragraph 285, we note that Revd Thorogood states:

> *I have no memory of saying Felicitas should not contact Revd Gould. If the LMP was restarting at Clapton Park I may well have said that there was no need to continue discussion about an LMP elsewhere.*

418 On the balance of probabilities, we conclude that Rev Thorogood's recollection is more reliable than the claimant's. This claim fails on the facts and is dismissed.

Mr Prasad is told by URCRCL and URC Headquarters (the Respondent has refused to disclose by who exactly, Ms Thomas and Mr Proctor were

mentioned) to tell the German Synod not to employ me anymore, not to meet me and to inform them of the perceived Psychopathological Personality Disorder and problems with authority I am supposed to have. He and one of the panel members/clerks/chairs dismissing me from the URC complies with that demand on at least three occasions in 2015 – Issue 54 c. iii.

419 In its Judgment dated 1 October 2019, in relation to the claimant's claim against the Synod of German-speaking Lutheran, Reformed and United Congregations in Great Britain and another (ET claim number 2200328/2016) the tribunal concluded:

> *71 On 10 September 2015 Mr Kostlin-Buurma held a one-day meeting at his home with representatives of the congregations in his region. Such meetings take place twice-yearly for the purpose of planning future work and activities. Under the Church's rules, it is for the congregations to decide what work they want the Pastor(s) to undertake. Mr Kostlin-Buurma proposed increasing the number of church services offered provided that he was assured of adequate Pastoral Assistant support. The representatives of the congregations disagreed. They considered that increasing the workload would make it difficult to find a successor at the end of Mr Kostlin-Buurma's tenure of the Senior Pastor role. They also determined that he must personally lead church services at least every other month.*
>
> *72 The effect of the parish representatives' decisions was that, unless some separate project or other source of work could be found for her, Miss Grabe's employment under a 50% contract could not be justified. She had been employed on the footing that she would be preparing and officiating at services on a monthly basis but would now only be required in alternate months. The new circumstances argued for the substitution of a 25% contract. …[Ms Grabe was subsequently notified of this proposal]*
>
> *76 By an email sent on 22 September 2015 addressed to "Friends in the Synod Council" and others, Miss Grabe stated, apparently in reliance upon advice received from ACAS, that the Church's proposal to terminate her contract was for various reasons unlawful, as were a number of the terms in the draft (50%) contract. On the latter aspect, she revived earlier points (already mentioned) about her hours and her rate of pay. She then proposed that if, after taking legal advice, the intention was still to reduce her to a 25% contract, it should be on the following terms:*
>
> *(1) The five "worship service months" per annum must be consecutive.*
>
> *(2) At least three of the seven consecutive "service-free months" must be in summer.*
>
> *(3) She must be permitted to celebrate Holy Communion "at least one service month" each year.*
>
> *(4) The Synod must otherwise in all respects comply with UK law.*

(5) The Synod must offer the next three "potential vacancies" for Pastoral Assistant jobs to her before advertising them.

(6) The Synod must "instruct" the URC, the Evangelical Church of Germany or some other denomination to ordain her.

77 Mr Kostlin-Buurma forwarded Miss Grabe's email the same day to the members of the Synod with the observation that her response had made it clear to him that he could not work with her. Accordingly, he proposed that her contract be terminated on 31 October 2015 and that she be released from performing any further with work with effect from 1 October 2015. The Synod members agreed. One, Mrs Cramer, remarked in an email to her colleagues that Miss Grabe's message had set all her alarm bells ringing. Others expressed similar sentiments.

420 The tribunal concluded that the claimant's subsequent dismissal was not discriminatory. All of the claimant's other claims were dismissed. Whilst we take note of the fact that the claimant has appealed against that decision, we accept and adopt its conclusions, unless and until her appeal succeeds. It is clear from the passages quoted above that the claimant's dismissal by the German Lutheran Church had nothing to do with anything said or done by the respondent. It was an independent decision made by them and in particular, Mr Kostlin-Buurma's conclusion that he could no longer work with the claimant and concerns by members of the Synod about the terms proposed by the claimant. None of those reasons relate in any way to any of the protected characteristics relied on by the claimant in this claim. This claim fails and is dismissed.

Utilising defamatory statements against the Claimant, in particular:

Publicly criticising the Claimant (para 43.c) (The Claimant relies particularly on: "a.1) September 2009 – June 2012, The Respondent also was using the hurtful and discriminatory statement "in this country we do it differently", "in my country…", "in my Church ..." whenever they tried a short-cut to put me down. This was done by Ms Welch, Ms Durber, the February 2012 Panel and sanctified by Mr Thorogood, Mr Bradbury, Mr Bowman, Ms Thomas.

421 Bearing in mind our specific findings of fact above and our general conclusion on the lack of reliability and credibility in relation to the claimant's factual assertions, we find that these allegations did not happen as a matter of fact. This allegation therefore fails and is dismissed.

2) 25/10/2009 when I sat down on a different chair to the one Ms Welch would have used to sit on during a service, she shouted at me across the Church before the congregation at my first Sunday Morning Service she was attending, and she then used those racial slurs afterwards as "excuses" on why she had acted as she had and why I had been "wrong" to do as I did.

422 We refer to our conclusions above in relation to the direct discrimination claims in relation to the same facts. Just as we have concluded that this incident was not because of those protected characteristics, we conclude that nor was it related to any of them.

3) 28/2/2012 when I was shouted at and refused greetings and introductions and instead of stopping some of the aggressions like from "Val", these people

defended themselves by stating "in my church/in my country". It is discrimination or in the alternative defamation to pretend that I do not know this country, this church.

423 Bearing in mind our specific findings of fact above and our general conclusion on the lack of reliability and credibility in relation to the claimant's factual assertions, we find that these allegations did not happen as a matter of fact. This allegation therefore fails and is dismissed.

4) January 2010, 21/1/2010, Mr Proctor cuts my way of escape short in a communal hallway and declares to all who are listen: "Your (personality) problems are too heavy for the URC to deal with, but it is amazing how far you have come considering where you have come from.""

424 We have found as a fact that those words were not used by Rev Proctor and this allegation therefore fails and is dismissed.

Criticising the Claimant for being "gregarious" with the congregation before and after services (para 43.i.1) specifically October 2009 – December 2010, 1) 21/11/2010 by Mr Rod Boucher, Ms Welch, Mr Bradbury, and then 2) January 2011, February 2012 used by Mr Thorogood, Mr Proctor, Ms Thomas, Mr Bowman to dismiss me

425 As above.

Ms Welch criticising the Claimant for allowing a homeless person to kiss her on the cheek

426 We refer to our conclusions above in relation to the direct discrimination claims in relation to the same facts. Just as we have concluded that this matter was not because of those protected characteristics, we conclude that nor was it related to any of them. To the extent this was raised at all, it was raised as a safeguarding issue.

Refusal to deal adequately or reasonably with Revd Tony Haws' request in Spring 2012 that the Respondent withdraw defamatory statements about the Claimant from the Respondent's dismissal papers

427 The claimant has not clarified in evidence or submissions what the alleged defamatory statements are. We conclude that the record of the decision of 28 February 2012 was an honest and reasonable record of the reasons why the claimant's training was terminated and there is no reason why they need to be rewritten. They are in no way related to any of the protected characteristics.

Subjecting the Claimant to Occupational and Psychological Health Assessments but not following the health official's recommendations;

428 We refer to our conclusions above in relation to the direct discrimination claims in relation to the same facts. Just as we have concluded that this matter was not because of those protected characteristics, we conclude that nor was it related to any of them. To the extent that this was raised at all, it was raised as a safeguarding issue.

The dismissal

429 We refer to our conclusions above in relation to the direct discrimination claims in relation to the dismissal. Just as we have concluded that the dismissal was not because of those protected characteristics, we conclude that it was not related to any of them either.

If so was that conduct unwanted?

430 The tribunal accepts that conceptually, the alleged treatment could be classed as being unwanted. This does not however assist the claimant, because of our above conclusions.

If so, did it relate to any of the protected characteristics?

431 See above. No conclusion needs to be reached on this issue.

Did the conduct have the purpose or (taking into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

432 Due to our above conclusions, the harassment claims necessary fail, and it is not necessary to consider or arrive at any conclusions in relation to this issue.

Time limits / jurisdiction issues

Were all of the Claimant's complaints presented within the time limit set out in section 123(1)(a) of the EA 2010?

433 Since we have concluded that none of the claimant's claims succeed, it is not necessary, or proportionate or indeed possible, to determine the time limit issue.

Overall Conclusion

434 For all of the above reasons, the claimants claims fail in their entirety and are dismissed. We sincerely hope that this will now allow all of those involved in these proceedings to move on and experience a sense of closure in relation to them.

Employment Judge A James

Employment Judge A James
London Central Region

Dated 8 February 2022

Sent to the parties on:

.....

.....
For the Tribunals Office

ANNEX A - FINAL LIST OF ISSUES

Note – the annotations that were set out by EJ Stout in the document circulated have been retained.

Unfair dismissal

1) What was the principal reason for dismissal and was it a potentially fair one in accordance with sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA 1996")? *The Claimant alleges that the Respondent did not have a potentially fair reason for dismissal and/or that it was because she had made protected disclosures (and therefore that it was automatically unfair under s 103A ERA 1996). She also alleges that the dismissal was an act of discrimination or victimisation under the EA 2010 (see below).*

2) If so, was the dismissal fair or unfair in accordance with ERA 1996 section 98(4), and, in particular, did the Respondent in all respects act within the so-called 'band of reasonable responses'? The Claimant relies in particular on the following allegations:

   a. Failure to undertake reasonable investigation;
   b. [1];
   c. The matters relied on in relation to wrongful dismissal/breach of contract/discrimination below;
   d. Failure to comply with the procedural requirements of the ACAS Code of Practice on Disciplinary and Grievance Procedures. The Claimant contends that the Respondent treated her as if she had committed misconduct without following the Disciplinary Procedure[2];

[1] In the 10 December 2020 Case Management Order this paragraph stated: "Provision of misleading information and/or seeking to discredit the Claimant and/or acting on the basis of incorrect information and/or inaccurate perceptions and beliefs about the Claimant (If this is pursued, the Claimant must provide concise particulars of this allegation, no more than 8 lines.)" The Claimant in her response of 15 February 2019 provided a list of names and dates spanning years and pointed to her Table 2. Table 2 does not contain any such recognisable particulars. It contains only two references to the word "misleading" at paragraph 2.e and 17.c which are not illuminating. There are more references to *"incorrect"*. It is not appropriate for me to pick and choose which of these examples the Claimant wishes to pursue as claims. She has been given an opportunity to do that, but has not done so. The permission to amend to include this was conditional on adequate further particulars being provided. It is not proportionate for any more time to be spent on the question of further amendments to this claim. In any event, see allegation (13) which covers much of this point. This claim is thus not part of the Final List of Issues.

[2] I have not added in the word 'also' because the wording in bold sets out the respect in which the Claimant contends there was non-compliance. Adding in the word 'also' would suggest there were other unparticularised aspects of non-compliance. I am not permitting any unparticularised allegations of non-compliance.

Wrongful dismissal / breach of express / implied terms of contract

3) Ordering the Claimant not to enrol to live nor to receive the usual training as a full-time Ordinand at Westminster College, Cambridge or any other URC Training Centre;

4) Requiring the Claimant to enrol at Anglia Ruskin University;

5) Preventing the Claimant from applying for or enrolling on international and local placements;

6) Preventing the Claimant from doing a PhD (para 9d);

7) Preventing the Claimant from attending the annual weeklong workshop with other ordinands (para 9e);

8) Preventing the Claimant from attending the meetings with Bishops, Synod Moderators and other Church leaders (para 9f);

9) Preventing the Claimant from preparing and leading services at the Chapel of Westminster College Cambridge (para 9.h);

10) Preventing the Claimant attending Bible studies meetings (para 9.i);

11) Requiring the Claimant to work over her contractual 36 hours per week and cancelling all but one of her days off (para 9.m)[3];

12) Failing to give the Claimant contractual/prescribed Supervision, Feedback, LMP-Companions, Time scales, Pastoral Care, Tutor or Permission to use prescribed Training Tools (para 9.n)

13) Throughout 2009 repeatedly giving the Claimant incorrect information regarding her programmes, resulting in her not being able to continue her contractual training as an Ordinand. In particular, the Claimant contends the Respondent misled her regards[4]:

    a. "I was to start with the Final Year of Training first" (Jan 2009),

    b. "a new and functioning LMP would be created" (Jan 2010),

    c. "Amber Light would be followed" (Jan 2010),

    d. "my MPhil/PhD, Placements, Courses, and additional Training would be made possible" (Jan 2009-Sept 2010).

[3] I did not grant permission to include compassionate leave claims. I am not minded to grant permission to make a free-standing claim for breach of the Working Time Regulations 1998. No such claim was included in the application to amend. It introduces a new category of claim altogether, thus increasing yet further these already complex proceedings. Further, it is a claim which is subject to the 'reasonably practicable' time limit on which the Claimant's case is weakest as noted in the 12 December 2020 Case Management Order.

[4] The Claimant provided further examples in her response of 15 February 2021 but the others were not in a form that could be understood or were insufficiently particularised to be responded to. Permission to include those is refused. I have removed the reference to international postgraduate programmes as it seems that does not reflect the Claimant's claim.

14) Failing adequately to handle or respond to the Claimant's first formal grievance and appeal;

15) Failing adequately to handle or respond to the Claimant's second formal grievance and appeal;

16) In particular, in relation to the grievances and appeals:

    a. Not following "Amber light" (para 19.a);

    b. Cancelling the appeal hearing for the grievance and appeal lodged in December 2011 (para 19.b)[5];

    c. Not allowing the Claimant to bring a companion or legal representative of her choice to meetings (para 19.c);

    d. Not permitting the Claimant to make presentations other than on one occasion (para 19.d);

    e. Not permitting the Claimant to challenge statements made against her (para 19.f)

    f. Not allowing minutes to be taken and/or falsifying and/or improperly editing the minutes (para 19.e);

17) Failing to follow the recommendations of Interhealth made 2011 (para 10.d.1), the Psychologist made 2008, the Psychoanalyst made 2010 (para 10.d.2), the Psychotherapist made 2011 + 2012 (para 10.d.2)*;*

18) Through their handling of the Claimant's training contract, grievance and appeals, causing a breakdown in the Claimant's emotional and physical wellbeing.

Direct disability discrimination

19) Was the Claimant a disabled person in accordance with the Equality Act 2010 ("EA 2010") at all relevant times because of the following condition(s): PTSD, severe reactive depression, chronic severe Insomnia, severe Fibromyalgia, early and sudden onset of Menopause, Gastritis, Ulcers, late-onset Epilepsy, deterioration of visual Acuity, severe Occlusion with breaking of teeth, borderline diabetes?

20) Alternatively, did the Respondent at the material time perceive the Claimant to be disabled?

21) The Claimant relies on the following alleged acts of discrimination:

    a. The matters relied on for unfair dismissal/wrongful dismissal/breach of contract (*in respect of which the Claimant names the following individuals as having taken the relevant decisions: Ms Thomas, Mr Bowman, Mr*

[5] I have corrected this issue to match the Bettered ET1, but I have not included all the other matters that the Claimant seeks to include here because they go beyond the scope of the permitted amendment. I do not believe that I have excluded any part of the original claim as the Claimant suggests.

Thorogood, Mr Bradbury, Mr Proctor, Ms Ofstad, Ms Durber, Ms Tollington, Ms Welch, Ms Sardeson, Mr Prasad and Mr Thompson, Chairs, Clerks and Members of the Appeal Panels and Boards; it will be for the Respondent to identify[6] who are in fact the relevant decision-makers in relation to the matters about which complaint is made);

b. In July/August 2011 both in writing and on the phone to the Claimant that if she required more sick leave after August/September she would be dismissed from her training contract;

c. Dismissal.

22) Where relevant, did each of those acts constitute a detriment?

23) Was each act "*less favourable treatment*", i.e. did the Respondent treat the Claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? *The Claimant relies on the following comparators in respect of the following matters:*

a. *Catherine Lewis-Smith* – Circumstances alleged to be similar to the Claimant's in that she had *"severe incapacitating chronic Fatigue"*, but was *"allowed all adjustments she asked for, Cambridge Degrees and PhD and ordained 2016"*;

b. *Liz Thomson* – Circumstances alleged to be similar to the Claimant's because she had *"severe incapacitating mental health issues",* but was *"allowed all adjustments she wanted and ordained around 2013"*;

c. *Anne Lewitt* – A non-disabled comparator in respect only of (i) the allegation concerning meetings with the Thames North Moderator; and (ii) ordination/dismissal;

d. *And/or hypothetical comparators.*

24) If so, was this because of the Claimant's disability and/or because of perceived disability (i.e. was the treatment materially influenced by the protected characteristic)?

Discrimination arising from disability

25) The acts of unfavourable treatment relied on are the same as for direct disability discrimination.

26) Did the Respondent treat the Claimant unfavourably in any of those ways?

[6] In its evidence.

27) If so what was the reason for the treatment? Was that reason something arising in consequence of the Claimant's disability?[7]

28) If so, has the Respondent shown that the unfavourable treatment was a proportionate means of achieving a legitimate aim? The Respondent relies on the matters set out at paragraph 26L of the Amended ET3.

29) Alternatively, has the Respondent shown that it did not know, and could not reasonably have been expected to know, that the Claimant had the disability? (The Respondent relies on the matters at paragraph 26M of the Amended ET3.)

Direct nationality/national origins discrimination

(The Claimant is of German nationality and origin.)

30) The Claimant relies on the following alleged acts of discrimination:

a. The matters relied on in relation to unfair dismissal/wrongful dismissal/breach of contract;

b. Refusing to allow her to lead Eucharistic or Baptismal Services (para 26.b) and refusing to accept her German qualifications (para 26 a+b)[8];

c. Ms Welch criticising the Claimant for allowing a homeless person to kiss her on the cheek (para 26.d.2);

d. Ms Welch shouting at the Claimant for sitting on the wrong chair and saying it was because the Claimant was German (para 26.d.3);

e. Dismissal.

31) Where relevant, did each of those acts constitute a detriment?

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[7] The Claimant was requested to provide particulars of this, but her response of 15 February 2021 clearly misunderstands this point. (What was required was that the Claimant identify what she says was the reason for the Respondent's treatment of her, and how that reason is a reason 'arising from' or connected with her disability.) Given that it will be for the Tribunal to determine the reason for the treatment in relation to each allegation, and the Tribunal will have before it evidence as to the Claimant's medical conditions and their effects, I am content on this occasion not to require further particulars from the Claimant at this stage, but simply to record the legal issue that must be decided. I observe that some of what Ms Grabe has set out here could provide the basis for a reasonable adjustments claim, but I refused permission to amend to include such a claim: see (9) and (10) of the 10 December 2020 CMO.

[8] I have included this addition as it is pleaded as linked to the refusal to allow her to lead services. The other matters that the Claimant seeks to add into this section were not amendments that I allowed.

32) Was each act "*less favourable treatment*", i.e. did the Respondent treat the Claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The Claimant relies on Catherine Lewis-Smith, Liz Thomson, Matthew Stone, Anne Lewitt and Mark Robinson and/or a hypothetical comparator[9].

33) If so, was this because of the Claimant's national origins/nationality (i.e. was the treatment materially influenced by the protected characteristic)?

Direct philosophical belief discrimination

(The Claimant's beliefs: freedom to live in celibacy and freedom to live a Christian and Protestant Faith)

34) The Claimant relies on the following alleged acts of discrimination:

a. The matters relied on in relation to unfair dismissal**/**wrongful dismissal/breach of contract;

b. Referral of the Claimant to a Sex Therapist in 2011 (para 29.a.2);

c. Refusing to allow her to lead Eucharistic or Baptismal Services (para 29.b.2);

d. Ms Welch shouting at the Claimant for sitting on the wrong chair and saying it was because the Claimant was German (para 29.b.3);

e. Dismissal.

35) Where relevant, did each of those acts constitute a detriment?

36) Was each act "*less favourable treatment*", i.e. did the Respondent treat the Claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The Claimant relies on:

a. *Catherine Lewis-Smith* – Circumstances alleged to be similar to the Claimant's in that she had *"severe incapacitating chronic Fatigue"*, but was *"allowed all adjustments she asked for, Cambridge Degrees and PhD and ordained 2016"*;

b. *Liz Thomson* – Circumstances alleged to be similar to the Claimant's because she had *"severe incapacitating mental health issues",* but was *"allowed all adjustments she wanted and ordained around 2013"*;

[9] See the accompanying case management order for reasoning in relation to comparators.

c. *Anne Lewitt* – A non-disabled comparator in respect only of (i) the allegation concerning meetings with the Thames North Moderator; and (ii) ordination/dismissal;

d. *Matthew Stone* – Circumstances alleged to be similar because he also required adjustments to the LMP demands as a result of international placements and holidays, but was nonetheless successful in being ordained;

e. *Mark Robinson* – Alleged more favourable treatment in relation to reduction in work, not having to lead a whole service for the final assessment, and was successful in being ordained;

f. *And/or a hypothetical comparator*[10].

37) If so, was this because of the Claimant's religion or belief (i.e. was the treatment materially influenced by the protected characteristic)?

Direct sex discrimination

(The Claimant is female.)

38) The Claimant relies on the following alleged acts of discrimination:

a. The matters relied on in relation to unfair dismissal**/**wrongful dismissal/breach of contract;

b. Rod Boucher telling the Claimant at her assessed service *"that a nice girl like you should not need to bother with big things like ministry"* (para 35.a);

c. Expecting the Claimant to lead more parts of services than male ordinands (para 35.b) (*The Claimant identifies the following people as doing this: Ms Welch, Mr Bradbury, Mr Thorogood, Ms Thomas, Mr Bowman, 2010 + 2011 + 2012 Panels.*)

d. Not permitting the Claimant to chair meetings (para 35.c) (*The Claimant identifies the following people as doing this: Ms Welch, Mr Thorogood, Ms Thomas, Mr Bowman, 2010 + 2011 + 2012 Panels*);

e. Dismissal (including in particular taking into account Mr Boucher's arguments and/or referring to the Claimant as *"having problems with authority"*) (paras 35.a and d).

39) Where relevant, did each of those acts constitute a detriment?

40) Was each act "*less favourable treatment*", i.e. did the Respondent treat the Claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The

[10] See the accompanying case management order for reasoning in respect of comparators.

Claimant relies on Matthew Stone, Mark Robinson and/or a hypothetical comparator[11].

41) If so, was this because of the Claimant's sex (i.e. was the treatment materially influenced by the protected characteristic)?

Direct sexual orientation discrimination

(Perceived sexual orientation: lesbian)

42) The Claimant relies on the following alleged acts of discrimination:

a. The matters relied on in relation to unfair dismissal**/**wrongful dismissal/breach of contract;

b. Referral of the Claimant to a Sex Therapist in 2011 (para 32.b);

c. Dismissal.

43) Where relevant, did each of those acts constitute a detriment?

44) Was each act "*less favourable treatment*", i.e. did the Respondent treat the Claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The Claimant relies on Melanie Smith (who it is alleged decided to divorce after being accepted for training and did not comply with relationship restrictions but was nonetheless ordained) and/or the comparators relied on for the philosophical belief discrimination claim and/or a hypothetical comparator[12].

45) If so, was this because of the Claimant's perceived sexual orientation (i.e. was the treatment materially influenced by the protected characteristic)?

Victimisation

46) Did the Claimant do a protected act? The Claimant relies upon the following:

a. Concerns about slurs against the Claimant's race and belief raised to Ms Welch and Mr Thorogood from October

[11] The Claimant here in February 2021 sought to identify a very long list of comparators. The Claimant in her 14 July 2021 document suggests that she has only identified a list of five names here, but that is not the case, in the relevant paragraph (previous paragraph xviii) she says she wishes to rely on 'all the male comparators' listed above in addition to the five names given as examples. The 'list above' contains 9 male names. This is too many. I have permitted her to rely on the two male comparators in respect of which sufficient further particulars have been provided. See further reasoning in accompanying case management order.

[12] See accompanying case management order for reasoning in relation to comparators.

2009 orally and in writing. The Claimant relies on the following specific matters: "1) I raise concerns about Ms Welch's judgemental and discriminatory behaviour expressed in her repeated slurs "In my country/In my Church ..." first used (in front of me) aggressively with the "chair incident" and then quickly becoming her short cut to condemn much of what I do - I raise these concerns with Ms Welch (starting 25/10/2009), Mr Thorogood and Mr Proctor (11/11/2009); 2) As it does not stop I continue to raise these concerns plus that the contractual adjustments for me not being British born and URC bred is all the time explicitly forbidden, i.e. that I needed to be allowed to live and train in URCRCL I raise with Ms Thomas, Mr Bowman, Ms Sardeson (3+4/2/2010), Revd Gould as District/Area Chair (30/3/2010). 3) I raise the concern about Ms Welch's continuing racial discrimination also on 4/1/2011 to Mr Thorogood and via the Board to Ms Thomas and Mr Bowman[13]".

b. Concerns about breaches of her contract raised to Mr Proctor, Mr Brad[bury], and Mr Thorogood both orally and in writing from 2009 onwards. The Claimant relies on the following specific occasions: "1) I raise profound concerns that I am supposed to start with the final year and not in URCRCL breaching what the contract, assessment, and need for adjustment had stated (30/1/2009) to Mr Thorogood. 2) I raise profound concerns that the LMP supervisor neither honours nor even plans to honour the contract (28/9/2009) to Mr Thorogood; 3) I raise all of these concerns and additional ones regards all the disabling breaches of and exclusions from my contract to Mr Proctor and Mr Thorogood (29.1.2010)[14]";

c. Concerns raised orally and in writing from 2010 onwards with Mr Proctor, Mr Thorogood, Ms Sardeson, Ms Thomas and Mr Prasad about people being misled into thinking the Claimant was disabled with personality disorder issues. The Claimant identifies the following specific occasions: "1) I raise these concerns with and request permission from Mr Thorogood and Mr Proctor (29/1/2010) to be professionally psychologically assessed. 2) I raise these concerns formally with and request the contractually promised and identifiable help and procedures from Mr Bowman (via his PA Mandy Adams), Ms Thomas, Mr Prasad (via his PA Sue Russel), Ms Sardeson (all 3+4/2/2010), and Ms Thomas (19/4/2010). 3) I repeat these concerns with and request the contractually promised proceedings from Ms

[13] The Claimant was ordered to provide three specific examples. She provided more, but I have allowed all those where specific names and dates were given, but not the others as they breach the order and are insufficiently particularised.

[14] The Claimant tried to add in a number of other people to whom she had raised these complaints, but that went beyond the terms of the permitted amendment and my order.

Thomas and Mr Bowman, directly and via Interhealth (21/7/2011, 29/9/2011)[15]".

d. The Claimant's first grievance;

e. The Claimant's first appeal;

f. The Claimant's second grievance;

g. The Claimant's second appeal;

h. The Claimant's claim in these proceedings.

47) The Claimant relies on the following alleged acts of victimisation:

a. The matters relied on as unfair dismissal/wrongful dismissal/breach of contract (in each case as occurring after a protected act);

b. Dismissal;

c. Post-termination:

i. Ms Durber, Mr Prasad and Mr Templeton telling pulpit organisers that the Claimant was not available any more (para 38.b.1) and that because she lodged the Employment Tribunal and had lodged Appeals she was not allowed to preach and lead services etc;

ii. Mr Templeton and Mr Prasad 'sabotaging' the Claimant's engagement as Hospital Chaplain (para 38.b.2);

iii. Not providing the Claimant with Pastoral Care following her dismissal (para 38.c)[16].

48) Where relevant, did each alleged act constitute a detriment?

49) If so, did the Respondents do the act(s) because the Claimant had done a protected act and/or because the Respondent believed the Claimant had done, or might do, a protected act?

Protected disclosures / whistleblowing

50) Did the Claimant make one or more protected disclosures (ERA 1996 section 43B)? The alleged disclosures are the same as the protected acts for the purposes of the victimisation claim.

51) In relation to each alleged disclosure, was the disclosure a qualifying disclosure, i.e. was it made to a person within ss 43C-H and:

[15] See two preceding footnotes. Same points apply.

[16] I have not granted permission for the other matters that the Claimant sought to add into this issue. The reasons are set out in the December 2020 case management order.

a. Did the Claimant disclose information?

b. Did the Claimant have the requisite subjective belief that the information disclosed tended to show one of the matters in s 43B(1);

c. If so, was that belief reasonable?

52) The alleged treatment the Claimant relies on is the same as for the victimisation claim. Was that treatment a detriment?

53) Was the Claimant subjected to a detriment on the ground that s/he made one or more protected disclosures?

Harassment related to disability/perceived disability/nationality/national origins/religious or philosophical belief/sex/(perceived)sexual orientation

54) Did the Respondent engage in conduct as follows:

a. The matters relied on for unfair dismissal/wrongful dismissal/breach of contract;

b. The matters relied on as acts of discrimination;

c. Prohibiting the Claimant from contact with a list of individuals to whom she was not allowed to speak[17], specifically:

i. Mr Thorogood, and later in addition others "in Authority" e.g. Ms Durber, Mr Bowman forbid me to share truthfully with any other Ordinand about anything bad going on in my "Training". When I do e.g. in Nov 11th, 2009, and Nov 4th, 2010, it is used in dismissing me;

ii. After Revd Jim Gould raises his own formal concern with e.g. the then Head of the Church and Ms Thomas, on how I am treated, the massive breaches of my contract, the utter unsuitability of Ms Welch and Mr Thorogood I am told by e.g. Mr Thorogood that it will be thought of disfavourably if I continue contact with Revd Gould, starting Spring 2010;

iii. Mr Prasad is told by URCRCL and URC Headquarters (the Respondent has refused to disclose by who exactly, Ms Thomas and Mr Proctor were mentioned) to tell the German Synod not to employ me anymore, not to meet me and to inform them of the perceived Psychopathological Personality Disorder and problems with authority I am supposed to have. He and one of the panel members/clerks/chairs

[17] I have permitted the Claimant's three chosen incidents for the reasons given in the footnotes to the List of Issues issued with the 27 May 2021 case management order.

dismissing me from the URC complies with that demand on at least three occasions in 2015;

d. Utilising defamatory statements against the Claimant, in particular:

i. Publicly criticising the Claimant (para 43.c) (*The Claimant relies particularly on: "a.1) September 2009 – June 2012, The Respondent also was using the hurtful and discriminatory statement "in this country we do it differently", "in my country…", "in my Church ..." whenever they tried a short-cut to put me down. This was done by Ms Welch, Ms Durber, the February 2012 Panel and sanctified by Mr Thorogood, Mr Bradbury, Mr Bowman, Ms Thomas. 2) 25/10/2009 when I sat down on a different chair to the one Ms Welch would have used to sit on during a service, she shouted at me across the Church before the congregation at my first Sunday Morning Service she was attending, and she then used those racial slurs afterwards as "excuses" on why she had acted as she had and why I had been "wrong" to do as I did. 3) 28/2/2012 when I was shouted at and refused greetings and introductions and instead of stopping some of the aggressions like from "Val", these people defended themselves by stating "in my church/in my country". It is discrimination or in the alternative defamation to pretend that I do not know this country, this church. 4) January 2010, 21/1/2010, Mr Proctor cuts my way of escape short in a communal hallway and declares to all who are listen: "Your (personality) problems are too heavy for the URC to deal with, but it is amazing how far you have come considering where you have come from."*[18]*"*

ii. Criticising the Claimant for being "gregarious" with the congregation before and after services (para 43.i.1) specifically October 2009 – December 2010, 1) 21/11/2010 by Mr Rod Boucher, Ms Welch, Mr Bradbury, and then 2) January 2011, February 2012 used by Mr Thorogood, Mr Proctor, Ms Thomas, Mr Bowman to dismiss me;

iii. Ms Welch criticising the Claimant for allowing a homeless person to kiss her on the cheek (para 43.i.2);

[18] The Claimant included other examples here in her Further Particulars of 15 February 2021 but the other examples were not in my judgment examples of public criticism and so do not comply with the order. In any event, it would be disproportionate to the importance of this case to permit additional examples.

iv. Refusal to deal adequately or reasonably with Revd Tony Haws' request in Spring 2012 that the Respondent withdraw defamatory statements about the Claimant from the Respondent's dismissal papers (para 44.l)[19];

e. Subjecting the Claimant to Occupational and Psychological Health Assessments but not following the health official's recommendations;

f. The dismissal.

55) If so was that conduct unwanted?

56) If so, did it relate to any of the protected characteristics?

57) Did the conduct have the purpose or (taking into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

Time limits / jurisdiction issues

58) Were all of the Claimant's complaints presented within the time limit set out in section 123(1)(a) of the EA 2010? *(This applies only to the additional claims allowed in by way of amendment in December 2020. The claims in the original claim were determined to be in time by EJ Snelson in 2017.) Note, check EJ Snelson judgment, is this correct? Appears to be in dispute by R – see A:73, 2A.*

59) If not, would it be just and equitable to extend time under s 123(1)(b) EA 2010?

60) Was the Claimant's protected disclosures claim presented within the time limit in ss 48(3)(a)/s 111(2)(a) of the ERA 1996?

61) If not, was it not reasonably practicable for the complaint to be presented within that time limit?

62) If so, was the complaint presented within a reasonable further period within s 48(3)(b)/s 111(2)(b) ERA 1996?

[19] Permission to amend was refused in respect of the other matters that the Claimant has sought to add in here.

ANNEX B – A HISTORY OF THE PROCEEDINGS

1 The claim form was presented on 17 October 2012. The response form was submitted on 21 November 2012.

2 On 1 August 2013 Employment Judge (EJ) Hodgson stayed the case indefinitely because of the claimant's ill health.

3 An application was made by the claimant to lift the stay on 10 May 2015.

4 On 25 February 2016 a preliminary hearing took place before EJ Hodgson. The stay was lifted and it was decided that the hearing would be re-listed, once the claimant had filed medical evidence confirming she was fit to proceed.

5 On 30 August 2016 a further preliminary hearing took place before employment Judge Hodgson. He directed that there be a public preliminary hearing to consider the issue of time limits. Directions were made in relation to the hearing that was arranged to consider that issue. EJ Hodgson also ordered the claimant to disclose all of her medical records.

6 The claimant appealed against the latter order. On 5 December 2016, the claimant's appeal to the Employment Appeal Tribunal (EAT) was rejected by HHJ Peter Clark.

7 The claimant asked that EJ Hodgson recuse himself, following the preliminary hearing on 30 August 2016. On 9 February 2017, EJ Hodgson gave reasons why he did not consider it necessary to recuse himself from further involvement in the case. He pointed out, amongst other things, at paragraph 21, that the claimant did not want to deal with this claim at the same time as her other case (submitted in 2016 against the German Lutheran Church) and therefore the Judge delayed the timetable in this claim so she was not required to deal with both matters at once. Such actions helped the claimant, not hindered her.

8 On 13 March 2017 EJ Snelson decided that it was not reasonably practicable for the claim form to be presented in time and it was just and equitable to extend time in relation to the Equality Act 2010 claims. All of the claims were therefore allowed to proceed. The question of time limits in relation to those matters pre-dating 8 June 2012 was left for decision by this tribunal [#32].

9 On 20 April 2017 a case management preliminary hearing took place before EJ Snelson. A date was set for a preliminary hearing to decide the claimant's employment status. Related directions were made.

10 On 14 and 15 September 2017 a preliminary hearing took place before EJ Segal QC, who determined in a (corrected) reserved judgement dated 24 November 2017, that the claimant was employed by the respondent within the meaning of section 230(1) of the Employment Rights Act 1996; and was in employment with the respondent, within the meaning of section 83(2) of the Equality Act 2010.

11 On 13 December 2018 EJ Snelson ordered that these proceedings be stayed until promulgation of the liability judgment in case number 2200328/2016 (against the German Lutheran Church). Paragraph 3 (#3) records:

Dr Morgan placed on record that his client (a) does not make or currently plan to make any application to strike out based on delay, (b) raises no challenge to the 2016 case being heard first, but (c) cannot rule out the possibility of a strike-out application in the future, in the event of extra delay arising.

12 Between 22 and 31 July 2019 the tribunal heard and determined the claim against the German Lutheran Church, claim 2200328/2016. The claim was dismissed. The decision at paragraph 11 describes the adjustments made as follows:

At the outset we discussed procedural adjustments with Miss Grabe and it was agreed that as a minimum we would take breaks mid-morning and mid-afternoon. We also stressed that she should feel free to request additional breaks at any time. In addition, we offered frequent assistance to clarify legal points or explain matters of procedure.

13 In March 2020 a case management preliminary hearing took place before EJ Stout. Medical evidence was considered - see #(9). At #(10) it is recorded:

b. In the light of the above medical evidence, and discussion at the hearing, it was agreed that the following ground rules or adjustments must be adhered to in these proceedings, at least during the case management stage:

(i) The Claimant must be fully informed in advance of the content of hearings;

(ii) She needs at least two weeks to digest the content of documents to manage re-triggering of her trauma;

(iii) Where she needs to respond to documents, she needs at least one month to allow time for her to obtain free legal advice;

(iv) Preliminary hearings should be on a Thursday to enable the Claimant to take advice from ELIPS.

14 At #(11) and #(12), potential adjustments for the final hearing were considered. The summary records:

(11) We also discussed briefly what adjustments would be required for the final merits hearing, as and when that takes place (which is likely now to be mid 2021). Obviously, the Claimant may continue to require additional time to read and absorb new documents, although I observed that it is sometimes unavoidably the case that something new comes up in the context of a final merits hearing. A reasonable period of time can normally be allowed for dealing with such matters (and the listing will need to be generous to ensure there is sufficient time for breaks for this sort of reason), but it may not be possible (even if it were proportionate) to adjourn for anything like two weeks. It will therefore be very important for directions on this case to be such as to ensure that the parties are very well prepared for the final merits hearing so as to minimise the chance of anything unexpected happening in the course of that hearing.

(12) One specific further possible adjustment for the final merits hearing was raised by the Claimant and that is whether it would be possible to list the hearing over only 4 days in any one week so as to reduce the stress and pressure of the hearing for her. I have since confirmed that listing on

this sort of basis would be possible for the Tribunal. Likewise, the Tribunal could accommodate adjustments such as fixed shorter day lengths (eg 10am-4pm, or 10.30am-4pm) or specific breaks during the day (the usual pattern is 10am-1pm with a mid-morning break and then 2pm-about 4.15pm with a mid-afternoon break). These can be discussed further at what I have called below the second case management hearing.

15 In the light of the ground rules, it was decided that nothing further could be determined at that preliminary hearing. A plan was set out for the further conduct of the case and related directions were made.

16 On 18 June 2020 a further case management preliminary hearing took place before EJ Stout which was to consider, amongst other things, an amendment application dated 7 May 2020. It was not possible at that hearing to determine the amendment application because of insufficient detail. EJ Stout sought to summarise the claims being pursued and gave the claimant guidance as to how to present her claims and to present evidence. A draft schedule was attached, for that purpose. A list of the potential claims that had been identified by EJ Stout in both the original claim and the amended claim were summarised at #(5) and #(6).

17 A timetable was set out, which required the claimant to provide the attached schedule, detailing the heads of claim on which she relied, by 13 August 2020.

18 A further hearing was listed to take place on 17 September 2020. Following representations from the claimant, that was adjourned to 8 October 2020.

19 A further case management preliminary hearing subsequently took place on 7 September 2020. This hearing was listed after repeated applications by the claimant to vary the timetable set in the CMO of 18 June 2020. The claimant was given more time to comply with the orders that had been made. At #(9) it is recorded:

I granted Ms Grabe's application, allowing a little additional time so as to make it as easy as possible for Ms Grabe to comply and to obtain advice from ELIPS (if need be and if they can assist). I emphasised, however, that (barring the unforeseeable and unavoidable) there would be no further extensions and that if the Schedule was not complete by the hearing on 10 December 2020, I would need to determine the amendment application as best I could without that. I warned Ms Grabe that in that event, if I was still unable to understand or identify the legal claims made, it would be unlikely that an amendment would be granted.

20 On 16 November 2020 a letter was sent by the tribunal to the parties regarding the claimant's application to postpone the amendment application hearing. The letter records:

It has been nearly six months since the order was made for completion of the Schedule and, given the difficulties that Ms Grabe is having completing it, I do not consider that it is in either Ms Grabe's interests or the Respondent's to postpone this any further. I am concerned that part of the reason why Ms Grabe is having such difficulties is because she is not confining herself to the task set, which was as previously explained to put the incidents mentioned in her already-pleaded amended claim into the boxes provided by me. The medical evidence from Dr Stubley and Mrs

Smith is supportive of Ms Grabe, and I take this into account and give it weight, but it is not sufficient to persuade me that a postponement of the 10 December 2020 hearing is in the interests of justice or compatible with the over-riding objective (in particular of dealing with cases in ways which are proportionate to the complexity and importance of the issues. And avoiding delay, so far as compatible with proper consideration of the issues). A resolution on this part of the case is required by Christmas so that the parties can move on to the next stage and the matter can be listed for hearing. If the case is not listed soon, the final hearing may not be until 2022, which is an unacceptable delay, and resolution of the amendment application is required before a sensible decision can be taken about listing. The reference by Ms Grabe to other proceedings taking her time was also of concern to me as that ought not to be a reason for failing to comply with my orders which were made before any mention of other proceedings. My own availability means that 10 December is the latest practicable hearing date for this before Christmas.

21 The directions were varied to ensure the claimant still had time to consider the respondent's response before the hearing (despite the claimant saying she did not want that time).

22 The preliminary hearing took place on 10 December 2020, to determine the 7 May 2020 amendment application. At #(9) it is recorded that the schedules produced were 247 pages long, 207 pages longer than the proposed amended claim. The record notes:

Unfortunately, although I had in my Case Management Order of 18 June 2020, and in the headings that I provided on the template Schedules, given considerable guidance as to how those Schedules should be completed, the Schedules do not do what I required them to do. Alleged protected acts or protected disclosures are not identified in any coherent way in Table 1, which contains for the most part lengthy narratives of concerns raised and alleged failures to investigate and detrimental treatment. There are some points that are discernibly protected acts/disclosures, but for the most part Table 1 is utterly unhelpful. Table 2 includes a great deal of background, including lots of things that happened before her apprenticeship/employment even commenced. It also includes a great deal of material that was not in the proposed Amended Claim. There are some coherent and relatively concise acts of discrimination/other unlawful treatment identified, but for the most part (although the Claimant writes very well) the Claimant fails to identify specific acts or incidents that are comprehensible as a basis for a legal claim. Nowhere is there any attempt to identify a PCP for the purpose of the indirect discrimination or failure to make reasonable adjustments claims. Nowhere are there any adjustments identified that should have been made.

23 EJ Stout allowed the claimant's 'bettered ET1' (as it became known) to stand as her account of the background and factual matrix for these proceedings. However, Judge Stout did not consider it appropriate that the claimant should be allowed to pursue everything in that amended claim that constituted a legal claim. The claimant was allowed to put alternative labels on some of the original facts pleaded; to further particularise her original clam; to bring some further specific additional discrimination allegations; and to pursue some

discrete post-termination acts of victimisation. As a result, the original claim was significantly expanded.

24 The issues were identified at #(41). These were later refined, through the process set out below.

25 The ground rules were repeated and a fifth was added as follows:

> *(v) The Claimant's counsellor, Elizabeth Smith, should be copied in on all correspondence to the Claimant, both by the Tribunal and the Respondent.*

26 The dates for the FMH were set and further directions were made including a direction for consecutive exchange of witness statements. There was no request at that stage for the hearing to take place over four, rather than five days a week.

27 A further preliminary hearing took place on 21 May 2021. Orders were made so that the list of issues could be finalised. Order 9 states:

> *The List of Issues will however constitute the complete list of the legal claims in these proceedings and the claim stands as so amended.*

28 At Order 11 it is noted:

> *After discussion, and in the light of the Claimant's medical evidence, it was agreed that the Respondent will remain responsible for production of the Trial Bundle, but the Claimant has permission to create her own bundle of documents comprising only the documents that she refers to in her statement in chronological order.*

29 The ground rules were repeated at 14. Orders were made to allow the claimant the opportunity to apply to add two further respondents.

30 Further decisions were made on the papers on 19 July 2021. These included consideration of a request from the claimant for disclosure, and the claimant's application to add respondents. By that stage the claimant suggested that the tribunal "*should not be considering whether to join additional respondents, but considering whether the Respondent is entitled to 'withdraw accountability'*". It was assumed that the application to add respondents was no longer pursued at that stage. The claimant did not question that at the time. It was noted in the order that if the claimant subsequently made an application for a respondent to be joined, that would need to be listed for hearing and considered on its own merits.

31 The final list of issues was attached to the order. The claimant kept telling this tribunal that the list was disputed by her. This tribunal in turn kept reminding the claimant that in the absence of an appeal against the order, this constituted the list of issues the tribunal would determine.

32 At paragraph 27 it is noted:

> *The Claimant has made various other points in her documents to which I respond as follows. I do not deal with all the points the Claimant has made, however, either because they appear to be merely matters of comment or because it is not necessary to case management of these proceedings:-*

I have endeavoured to comply with the Ground Rules at all times, but it is not always possible for reasons that we discuss at the hearings. It is correct that there was not a full month between 18 June 2021 when the College and URC Clapton Park were to set out their response to the proposal to add them as respondents and the 12 July which was the date set for the Claimant's response. The Record of Hearing should have stated, as is the case, that the shortening of this period was discussed at the hearing and was agreed to by the Claimant because that was the only way to fit in all the necessary directions within the time to which we are working. The other dates have become bunched together because the Claimant requested an extension of time for the order in respect of the List of Issues, which I have largely granted.

33 The claimant continued to raise numerous matters in relation to the directions up to the date of the final hearing. In a further case management note and orders made on 22 October 2021, Judge Stout observed at paragraphs 3 to 5:

3. The Claimant alleges again that the reasonable adjustments previously agreed for case management purposes have not been complied with. For ease of reference I set these out again here:

- *(i) The Claimant must be fully informed in advance of the content of hearings;*
- *(ii) She needs at least two weeks to digest the content of documents to manage re-triggering of her trauma;*
- *(iii) Where she needs to respond to documents, she needs at least one month to allow time for her to obtain free legal advice;*
- *(iv) Preliminary hearings should if possible be on a Thursday to enable the Claimant to take advice from ELIPS;*
- *(v) The Claimant's counsellor, Elizabeth Smith, should be copied in on all correspondence to the Claimant, both by the Tribunal and the Respondent.*

4. As previously noted, it was no part of the agreed adjustments that the Claimant should have one 'clear' month to respond to documents (note the plural). The purpose of allowing the month was to enable her to take free legal advice if possible, not because of the time that she needs to work on any particular document or response. Two weeks was agreed to be the time that the Claimant needed to 'digest' documents.

5. It was also not part of the agreed adjustments that the Claimant needed documents electronically. As also previously noted, the Claimant did not even ask for an order for electronic documents. Those orders were made by me of my own motion in accordance with the Tribunal's standard orders. I also note that in early case management hearings the Claimant gave the impression of struggling with technology and preferring to use paper. Until her recent complaints about the electronic bundles, I was unaware that she had any need for electronic documents. She has not produced any medical evidence covering this issue.

34 Judge Stout further observed at paragraphs 9 and 10:

… It is only two weeks since the Claimant made her last lengthy application. It concerns me that the Claimant is diverting herself from preparation for the final hearing by taking the time to compose lengthy documents of complaint about a variety of issues. She has raised some valid points, eg regarding the Respondent's approach to disclosure of comparator data, and I am in no way seeking to discourage her from raising points of real importance to her case. But she needs to take a proportionate approach, both to assist the Tribunal in furthering the over-riding objective in this case, and to help herself by not diverting her energies from the aspects of trial preparation that are most important.

10. I also add that what is reasonable by way of adjustment must also take into account where appropriate that the Claimant is to an extent causing the difficulty in maintaining the reasonable adjustments previously agreed by making multiple lengthy applications in the weeks leading up to trial, which therefore inevitably need to be dealt with in a more compressed timetable as otherwise the trial date will be lost.

35 At paragraph 13 it was noted that the claimant had been in possession of a hard copy of the bundle since 26 July 2021. And at paragraph 23 it is noted:

The Claimant has now indicated that she does wish to make an application to add further respondents and has asked for more time to do so in order to be able to comply with my Order above. However, for the reasons set out there I do not consider it to be necessary for the fair disposal of these proceedings to make any further adjustments to enable the Claimant to make such an application. While any application that the Claimant does make which complies with the above requirements will be considered on its merits, I would urge the Claimant to consider carefully whether it is the best use of her time to prepare such an application given the factor identified at c. in the Order of 23 August 2021 above.

[Note – c. states: *address why it would be appropriate to add them at this stage, given the delay that there has already been in bringing this case to a hearing, and the proximity of the trial. If the claims would be out of time (see paragraphs 9 and 10 of my Case Management Order of 19 July 2021) Ms Grabe will need to address why they should be permitted out of time.*]

Applications made during the final hearing

36 Numerous applications were made at the final hearing, mainly by the claimant. The tribunal's decisions on those applications are set out below

The claimant's postponement application

37 The claimant's postponement application is contained in emails sent to the president's office on 1, 3 and 10 November 2021, and copied to London Central Employment Tribunal. The postponement application was supported by the claimant's GP Dr Sheehan, Dr S Trefzer, GP and Associated Specialist at the Royal London Hospital for Integrated Medicine, Dr Jo Stubley, Consultant Psychiatrist in Psychotherapy and by Ms E Smith, who since 2011 has been the claimant's psychotherapist. Dr Sheehan supported the application to relist the final hearing, on the basis that:

with a pause in proceedings, she will be in a better position physically and mentally to continue the tribunal process.

38 Dr Trefzer states:

with regards to her fight in a drawn out legal battle it remains my impression that adjustments which had previously been agreed for medical reasons in order to enable just and fair proceedings need to be implemented at all times. Because they have not been implemented Ms Grabe's health has taken its downturn.

He supported a two month pause of proceedings.

39 Ms Smith states:

As a health professional and Miss Grabe's psychotherapist, involved in her care for ten years since the traumatising events which are the subject of this case occurred, I have serious concerns about the impact of the management of this case, how it is damaging Miss Grabe's health further and impairing the likelihood of a fair hearing.

40 Ms Smith goes on to provide examples of failures to follow the ground rules as evidenced in some of EJ Stout's subsequent orders. We note that Ms Smith refers to '*differing perceptions of reality*' between EJ Stout and the claimant. (Compare our observations at #16 and 17 of the main part of this judgment above).

41 Dr Stubley states in a letter dated 8 November 2021:

I also believe that Ms Grabe needs a two month break to recuperate sufficiently to present her case at the final hearing to allow her to return to the Orders and with her considerable capacities and with the appropriate adjustments in place, she could proceed with what is required of her. …

Our medical recommendations in 2021 have attempted to alert the Tribunal that because the needed adjustments were not implemented the following has occurred:

> *Ms Grabe has had no opportunity to comply in a meaningful way with all the tasks and orders she was required to deal with.*
>
> *Ms Grabe's health has worsened to such an extent that conducting the five week final hearing without giving her a chance to recuperate beforehand deprives her of the right to a fair hearing.*
>
> *In spite of her failing health Ms Grabe has worked every day in 2021 and exclusively on all the many tribunal tasks and orders. The fact that her health failed and that she did not manage is in itself proof that the needed adjustments were not implemented.*

42 In the submission prepared for her postponement application, the claimant states:

By not implementing the needed adjustments I was not allowed to participate or fulfil tasks and orders in any meaningful way at the CMD in December 2020 and throughout all of 2021. It was completely ignored that my Health carers and I pointed this out to the Tribunal again and again and reminded the Tribunal of what the few but essential adjustments are and what they mean. If the Tribunal is interested in a fair and just hearing

of my case, the Tribunal will have to give me that time and revisit decisions from which my participation in effect was excluded.

43 As noted above, in her letter in support of the postponement application, Ms Smith took issue with a number of paragraphs in Judge Stout's order of 22 October. For example:

Point 3.(iii) is misleading. The original recognition that Miss Grabe needs time to respond to Orders relates to clinical issues concerning Post Traumatic Stress Disorder(PTSD) including brain fogging, difficulty concentrating and the impact of insomnia, for example, rather than about obtaining legal advice. Judge Hodgson's Order of 7th September 2016 summarises this – '2.38 This extended timetable is an adjustment for the claimant having regard to her current disability.'

44 This tribunal notes that at no time up to that point had the claimant suggested that the ground rules set out in March 2020 as further refined on 12 December 2020, did not accurately reflect what had been agreed as necessary.

45 Further, Ms Smith states in relation to paragraph 23:

Judge Stout's Point 23 states that Miss Grabe is only now applying for further respondents. Miss Grabe made an application in both February and June this year.

46 The tribunal notes that this comment overlooks the fact that the claimant's previous application was not proceeded with, at the claimant's behest, as recorded in the 19 July 2021 order. The claimant neither subsequently asked for a reconsideration of that decision, nor appealed it. It is also worth noting that any application to add further respondents at such a late stage would, if it had succeeded, have necessitated the hearing having to be relisted, to allow the respondent(s) time to defend the claim and submit documents and witness evidence. It would also have been necessary to add further documents to the hearing bundle.

47 On the first day of the hearing, the claimant made oral submissions in support of her postponement application, in addition to the lengthy written submissions which the tribunal had read and considered. The tribunal pointed out to the claimant that if the postponement application was granted, the claim could not realistically be re-listed until August 2022 at the earliest, and that there may be an application from the respondent to strike out the claim because a fair hearing was no longer possible. Dr Morgan QC indicated that such an application would indeed be made. The tribunal simply raised this as a possibility; at no stage was there any indication given by this tribunal as to the likelihood of such an application being granted. That would have been to pre-judge the application, before it had even been made.

48 Dr Morgan QC responded to the claimant's oral submissions. He emphasised the adjustments that the tribunal had made, particularly since Judge Stout started case managing the claim from March 2020 onwards. At about 13.10pm on 15 November, the tribunal asked Dr Morgan QC how much longer his submissions were likely to take. He indicated about 15 minutes, to include representations as to whether or not a fair hearing was possible. Given the time, and the claimant's disabilities, the tribunal decided to adjourn for the usual lunch break until 14:10. (The tribunal notes that in a written

submission received from the claimant on 16 November 2021, the claimant complains that an adjournment should not have take place at that stage; she '*did not want the early break*'.)

49 Following the adjournment, Dr Morgan QC indicated that having considered the matter with his instructing solicitors, the respondent's position was that the postponement application should be dealt with first. Only if the postponement application was granted, would it then be necessary for any strike out application to be considered. Having considered those representations, together with the representations made by the claimant urging us to deal with both applications at the same time, the tribunal concluded that the appropriate way to deal with the matter was to deal with the claimant's postponement application first. If that was granted, the tribunal could then deal with any application to strike out. If the postponement application was not granted, no strike out application would have been made.

50 Any strike out application could then have been provided to the claimant in writing, to allow her time to consider that, prior to her responding. The ground rules suggested it may be appropriate, if practicable, to give the claimant two weeks to respond, before the tribunal reconvened. Since the hearing was listed for the following five weeks, the claimant could have been granted two weeks to prepare her response to any such application, had one been made.

51 The claimant made it clear that she was not happy with the ruling that the postponement application be dealt with first. The claimant argued that she had been 'back-footed' by the decision to rule on the postponement application first, and only go on to consider a strike out application if the postponement application was granted and such an application was made. This tribunal had to make it clear to the claimant, on a number of occasions, why this was the ruling of the tribunal, and that it would not be re-visited. Arguments about this continued until about 16.00 hrs on the first day, at which point the tribunal concluded that it was appropriate to adjourn until the following morning. The claimant was informed that although in the normal course of events, an applicant would not have a right of reply, we were content to allow the claimant a further 15 minutes at the beginning of Day 2 on 16 November, to respond to any of the points made by Dr Morgan QC in his oral response to the postponement application.

52 On the morning of 16 November, the tribunal was presented with a further written submission by the claimant. This included a suggestion that the claimant was being forced to withdraw her postponement application. The tribunal emphasised that firstly, a strike out application would only be made if the postponement application was granted. If it was not granted, the hearing would continue in any event. Further, that if a strike out application was made, following a successful postponement application, it would be considered on its merits, having considered the representations from both parties.

53 The claimant addressed the tribunal orally for 15 minutes. The thrust of the claimant's submissions related to the question as to whether or not the claim should be struck out, even though there was no such application before the tribunal at that point, only the claimant's postponement application.

54 At the conclusion of the claimant's oral submissions, the tribunal informed the claimant that the hearing would be adjourned in order for a decision to be made on the postponement application. The claimant had previously

indicated, as had Ms Smith on her behalf, the importance of a hearing to help her obtain closure; and that the claimant might therefore withdraw her application rather than risk her claim being struck out. Given that suggestion, this tribunal asked the claimant if she intended to withdraw her postponement application, since it would make more sense to so that at this stage, rather than the tribunal adjourning to make a decision, and then reconvening to deliver the decision at 2pm. The tribunal made it clear that there was no pressure on the claimant to withdraw her postponement application; it was her choice as to whether or not do so. The tribunal pointed out that the claimant would be able to withdraw her postponement application at any stage prior to the decision being delivered; but after that point, the postponement application could not be withdrawn.

55 At this point the claimant withdrew her postponement application. The tribunal accepted the withdrawal of the application.

56 Before doing so, the tribunal took into account the written submissions received on the morning of 16 November. In that letter, the claimant complains that she had not been told what applications would be dealt with prior to the hearing. However, the only application the tribunal was dealing with was her application to postpone. The respondent was entitled to and did respond to that application orally at the hearing. The thrust of Dr Morgan QC's oral submission was to set out how the tribunal had made numerous adjustments throughout the claim. Those are detailed in the section above setting out the history of the proceedings. We do not consider the criticisms in relation to the two quoted examples from Ms Smith's letter of the orders made by EJ Stout (or the other examples) are valid, for the reasons given above. Further, whilst ultimately it is for others to judge whether or not this tribunal and or EJ Stout have made appropriate reasonable adjustments, it appears to this tribunal that the adjustments made by EJ Stout were appropriate and reasonable in all of the circumstances of the case, and the requirements of the overriding objective. Numerous deadlines were extended, mainly for the benefit of the claimant. Further, the adjustments appear to this tribunal to have been kept under review by EJ Stout throughout the case management of this claim.

57 The claimant also argues in her letter of 16 November that a break should not have been given when it was and Dr Morgan QC should have been allowed to continue with his submissions. We disagree that was appropriate. Indeed, as noted above, one of the adjustments for the final hearing, which was canvassed as long ago as March 2020, was more frequent breaks. At the time the tribunal adjourned for the lunch break, it was after 1.00 pm.

58 The tribunal also noted the alleged effect of the hearing on 15 November on the claimant's health. Namely, that she had hardly slept and had suffered two seizures, one involving a nosebleed. The tribunal noted however that at the conclusion of the hearing on 16 November, the hearing would be adjourned so the tribunal panel could continue to read into the case for the rest of the week, with the claimant's evidence commencing on Monday 22 November 2021, six days later. The tribunal determined that it was just in all of the circumstances to proceed.

Issues regarding the bundle

59 As noted above, the claimant was provided with a hard copy of the bundle on 26 July 2021. She was entitled, in line with the directions, to provide her own bundle, containing the documents she wished to refer to in her witness statement. The claimant was also provided with an electronic version of the bundle on a USB stick, although she maintains that the USB stick was empty. A further USB stick was given to the claimant by the respondent's solicitors on 16 November and checked in the presence of this tribunal on a laptop belonging to the respondent's solicitors. It was agreed that the documents were present. The respondent agreed to the laptop being available during the hearing for witnesses giving evidence, including the claimant.

60 The claimant expressed her anxiety that she had not been able to include page numbers for the references in her witness statement to the documents in the bundle and nor had she been able to prepare her own bundle, as the directions had allowed. In order to dissipate that anxiety, this tribunal agreed that the claimant could provide the page reference numbers after the conclusion of the hearing. We also suggested to the claimant that she spend the intervening period prior to 22 November preparing further questions for the respondent's witnesses, rather than worry about the page reference numbers for her statement. We also note that the respondent added in the region of 2,000 pages to the bundle at the claimant's request.

The Claimants' witnesses' evidence

61 The claimant included in her own witness evidence, thirteen witness statements from witnesses who had provided the same evidence for the hearing in relation to time limits. Whilst the relevance of those statements was not immediately apparent to this tribunal, the tribunal agreed to consider that evidence. Dr Morgan QC confirmed he had no objection to that approach and that he had no questions for those witnesses. Since none of the witnesses were to be called for cross-examination, the tribunal explained that the weight to be given to their evidence may be reduced accordingly, if indeed it was considered to be relevant at all.

62 Witness statements were also submitted by Ms Smith and Dr Stubley. The tribunal indicated that their evidence appeared to be relevant to the question of remedy, not to the question of liability. Therefore it did not appear necessary for either of those witnesses to be called to give evidence before this tribunal, in relation to liability. Dr Morgan QC indicated that he did not have any questions for those witnesses. The claimant indicated that she may have one or two supplementary questions for them. The claimant was asked on a number of occasions during the hearing to provide those in writing. Dr Morgan QC indicated that to the extent to which the further questions and replies amounted to expert evidence, the respondent would object to that, on the basis that the tribunal had at no stage given any directions in relation to the provision of expert evidence. In the event, the claimant did not provide any supplementary questions and replies to the tribunal. Nor did the claimant make any application for the admission of expert evidence.

Written submission from the claimant, beginning of day 5 – 22 November

63 A written submission was provided by the claimant at the beginning of day 5. The tribunal responded to that written submission as follows.

64 The claimant complained that the witness statements of the respondent had been significantly amended. In fact, a number of the witness statements did contain minimal tracked changes, which had been inserted between 1 October when the witness statements were first provided, and a few weeks later, when slightly amended statements, signed and dated, were provided. Since the changes made were minimal, we allowed that further evidence to be admitted. We suggested to the claimant, on 22 November, that her time would be better spent engaging with the substance of the respondent's statements, rather than undertaking a textual analysis as to what was additional evidence and what was originally there.

65 At paragraph 4.3 of the 22 November letter, the claimant suggested that the Employment Judge had praised the respondent's solicitor as to how the statements had been produced/organised. No such comment was made. It was pointed out that the Judge had simply thanked the respondent's solicitors for providing a laptop for the claimant to use during the hearing, together with a further USB stick. The claimant withdrew her remark when this was pointed out.

66 The Claimant complained in her letter that she had not agreed the List of Issues. The claimant continued to repeat that during the hearing, and in her final submissions. The tribunal reiterated (as it continued to do on other occasions) that the List of Issues of 19 July 2021 was the one this tribunal would work to, including the comparators we would consider.

67 The claimant complained that additional respondents had not been added – see above in that respect, the reference to the order of 19 July 2021. (Also, see below, regarding the claimant's later application to add three respondents during the hearing).

68 The claimant states at point 11 that the respondent's cast list and chronology were not agreed. The tribunal explained that the cast list and chronology would be seen as a guide only, but would not be used as the basis for any of this tribunal's findings of fact. The claimant was told that she could let us know what was not agreed or what she wanted to add in due course. (We note that in the event, the claimant did not do so). Again, we suggested to the claimant that her time might be better spent engaging with the extensive issues and evidence which was before the tribunal, rather than be side-tracked by the cast list and chronology.

69 The claimant again asserted that she had been 'forced' to withdraw her postponement application. The tribunal refuted that assertion. The tribunal had only raised the possibility of a strike out application, which would only have been necessary if we had agreed to postpone the final hearing. Had the claimant not withdrawn her application, we would have made a decision on it. No decision was made on it, since it was withdrawn before we were able to determine it.

Documents regarding comparators – 22 November 2021

70 The respondent applied to admit further documents regarding comparators on 2 November 2021. There were about 80 pages of such documents. The tribunal accepts that those documents had only recently been received from Westminster College, and had then been disclosed by the respondent under the ongoing duty to disclose. The tribunal was concerned however that to

allow those documents to be introduced at this stage would throw the claimant off course, as a litigant in person, with assumed disabilities. Further, we were concerned that had the claimant received those documents, which we were told contained a number of redactions, that would also potentially worry the claimant who would be concerned about what had been redacted, rather than the content of what remained. The claimant objected to the inclusion of those documents (or at least without a lot of extra time to consider them). The tribunal noted that there was already some comparator documentation and witness evidence before the tribunal and that would provide sufficient evidence on which we could make findings of fact in relation to the comparators. On balance therefore, we decided to exclude the further documentation from consideration.

Additional witnesses

71 The respondent applied to call evidence from three further witnesses, Revd Tollington, Rod Boucher and Revd Melanie Smith. The additional statements are relatively short – two are five pages long, the other four pages. The application was opposed by the claimant. Having heard from both parties, the tribunal agreed to allow all three witness statements to be submitted. The tribunal accepted that the statements submitted by Revd Tollington and Revd Melanie Smith had been prepared to deal with matters raised by the claimant in her own witness statement. Revd Tollington's evidence is basically a denial of what the claimant alleges, much of it relating to comments allegedly made by Revd Tollington about the claimant not taking sick leave, a discrete and straight-forward issue.

72 Mr Boucher, is mentioned in the list of issues and the Bettered ET1, but he now lives in Australia and we accept that the respondent has only recently been able to contact him. He is alleged to have made a sexist remark to the claimant (which he denies making) and commented (allegedly adversely) about her gregariousness. We considered that it would be helpful to hear from him, and that his evidence on relevant issues was limited in extent.

Decision regarding witness evidence of Revd Furley-Smith – 30 Nov 2021

73 The claimant argued that the evidence of Revd Furley-Smith was not relevant, since it refers to procedures which were not in place at the time of the matters the claimant complains of. Having heard argument from both parties we determined that it was not immediately obvious that the witness' evidence would not be relevant to the issues before this tribunal or would be of no probative value at all. We agreed to allow the evidence to be heard. The claimant was able to cross examine Revd Furley-Smith. We informed the claimant that we would decide in due course how far the evidence would assist the tribunal to decide the issues before us. The parties were also able to address us as to the relevance of the evidence in their respective submissions (although neither did so).

Letter from the claimant - Friday 3 December 2021

74 On Friday 3 December, the tribunal gave a number of answers to the claimant in relation to questions that she had raised in a letter of that date. One of those questions was whether there was any danger of strike out of her claim; if so, she wanted to withdraw the questions. The claimant was again reassured that all the tribunal had ever done was raise the possibility of an

application for strike out being made if it was necessary to postpone the hearing; and that we were not in any way pre-determining that application, were one to be made. We reminded the claimant that we were not giving any view as to the merits of any prospective application, or the prospects of it succeeding; indeed that would be entirely improper since it is not the job of the tribunal to provide legal advice to either party; and nor would we pre-judge any such application.

Application to add respondents – 6 December 2021

75 On 6 December 20201 an application was made by the claimant to add three additional respondents, namely Westminster College, URC Clapton Park (URCCP) and Revd Welch. The claimant's application was refused.

76 In considering the application the tribunal had in mind the guidance given by Sir John Donaldson in *Cocking v Sandhurst (Stationers) Ltd [1974] ICR 650, NIRC,* in particular, paragraphs 6 and 7. Paragraph 6 of the guidance states:

> *In deciding whether or not to exercise their discretion to allow an amendment which will add or substitute a new party, the tribunal should only do so if they are satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause reasonable doubt as to the identity of the person intending to claim or, as the case may be, to be claimed against.*

77 In the claimant's case, the potential issue with the respondent has been raised in case management hearings, at least from December 2020 onwards. An application was made by the claimant in February 2021 to add Westminster College and URCCP as respondents. The application was considered on the papers in July 2021 by Employment Judge Stout. We refer in particular to paragraphs 3 to 12 of the Case Management Order dated 19 July 2021, especially paragraphs 7 and 12. If the claimant was unhappy with that decision, it should have been appealed, or at least questioned at the time. The claimant is aware of and has exercised her right of appeal to the EAT both in these proceedings, and another. As for the addition of Revd Welch, it was always open to the claimant to raise claims against individual respondents. We also noted that Revd Welch had already given evidence and had been 'released' on Friday, 3 December, before this application was made.

78 Paragraph 7 of the *Cocking* guidance states:

> *In deciding whether or not to exercise their discretion to allow an amendment, the tribunal should in every case have regard to all the circumstances of the case. In particular they should consider any injustice or hardship which may be caused to any of the parties, including those proposed to be added, if the proposed amendment were allowed or, as the case may be, refused.*

79 We considered that the balance of hardship was very much in favour of the respondent in relation to the application. As already stated, Revd Welch had already been called as a witness and been released. Adding her as a respondent at this stage would have potentially required her to be recalled.

80 Further, we accept Dr Morgan QC's submission that whilst it may well be the case that if Westminster College and URCCP were joined as respondents, the identity of the witnesses they would call would not be different, the focus of

their evidence might be different and they would be entitled to and may have sought separate legal representation (as might have Revd Welch). It would also potentially be necessary to allow them to file a response.

81 All of the above would entail the proceedings being postponed, causing further costs for the respondent and meaning that the claim would be hanging over the claimant, the respondent and the remaining witnesses for many more months. On the other hand, in refusing the application, the claimant still has all of her existing claims before the tribunal. The tribunal was able to consider them on their merits and it was open to the claimant to argue that the current respondent is liable for the actions of Westminster College and URCCP pursuant to sections 109 to 110 Equality Act 2010 (see the Case Management Order of 19 July 2021 at paragraph 10).

82 As for the case of *Galilee [2018] ICR 634]* the tribunal was not convinced that time limits are in issue in an application to add respondents, in relation to existing claims (as opposed to new claims). We accept however that in principle, both statutory time limits, and the issue of the timing of the application, are relevant and potentially important factors, but in this case it was not necessary to consider them in detail since the application had already been rejected, regardless of those factors. To the extent that it would have been necessary to consider those factors, they would have further persuaded us that the application should be refused.

Application by the claimant to introduce further documents - 6 Dec 2021

83 The claimant applied to add 25 further pages of documents on 6 December 2021. The respondent did not oppose that application. Some of the documents related to matters occurring in 2021; and some to apprenticeship arrangements. There was also a tracked changes note of a meeting dated 7 May 2010 attended by the claimant and others. That document is already in the bundle, without the hand-written additions, at page 2843. It was suggested to the claimant by the tribunal that she should put questions to the remaining witnesses arising out of those documents, to the extent that the claimant considered that such questions/documents were relevant to the issues before the tribunal. In the event, the claimant did not do so.

84 On 7 December 2021, a further document was submitted by the respondent in response to the claimant's application to the Pond Square Chapel (Highgate) URC in 2021, being the Job Description for the role. The claimant did not object to its inclusion and the panel agreed that the document be admitted.

13 December 2021 – application regarding claimant's witnesses

85 On 17 November 2021 at 13.05, an email was sent to the parties by the tribunal as follows:

> *Having considered the statements of Dr Stubley and Ms Smith, the panel do not consider the content is relevant to the liability hearing. The evidence they contain may well be relevant to remedy, if some or all of the claimant's claims succeed, although consideration will need to be given at that stage about what directions, if any, will be required in relation to expert evidence, to the extent that any of the evidence to be given amounts to expert evidence.*

The claimant can formally rely on the evidence of Ms Smith and Dr Stubley for the liability hearing if she would like to. Their witness evidence will be taken as read but neither the panel nor, as he indicated yesterday, Dr Morgan QC, have any questions for these witnesses. There is therefore no need for them to attend the hearing to formally give evidence. Ms Smith is of course welcome to attend the tribunal hearing at any point, in order to continue to provide support to the claimant (as is Dr Stubley).

If the claimant still wants to ask one or two supplementary questions of those witnesses, the tribunal panel will allow those questions to be put. However, the claimant should note that if the further evidence that is given amounts to expert evidence, rather than evidence as to fact, Dr Morgan QC will object to that evidence being taken into account by the Employment Tribunal, on the basis that no direction in relation to the provision of expert evidence has been given to date. Having listened to any response from the claimant, the tribunal will then determine whether that further evidence will be taken into account.

86 On 29 November 2021, further guidance was given to the claimant to the effect that if further questions were to be asked of Ms Smith and Dr Stubley, those questions should be put in writing and their responses forwarded to the tribunal and to the respondent. The tribunal would then hear from Dr Morgan QC and the panel would consider any objections to the further questions that had been put, and consider whether it was necessary for the witnesses to attend to be cross-examined.

87 On Wednesday 8 December the claimant was asked what supplementary questions the claimant intended to ask those witnesses. The claimant replied that she still did not know. The tribunal reiterated to the claimant that the panel was expecting one or two extra questions only, not a whole swathe of new evidence. The tribunal further reiterated that it remained of the view that their evidence was not relevant to the hearing on liability and had no questions of them.

88 In a letter sent by the claimant on 13 December 2021 to the tribunal and the respondent, regarding the evidence of Dr Stubley and Mrs Smith, the claimant asserts at paragraphs 5.1 and 5.2 of the letter:

5.1) They describe how Psychotherapy and Psychiatry are able to assess the veracity of what happened to a client, i.e. they do not rely on what the client says, but form their own independent and highly trained knowledge of a case.

5.2) They describe who the client is, whether or not e.g. there were "personal issues", "pathological traits" etc.

89 To the extent that the claimant was applying to introduce the evidence of these witnesses to corroborate her factual account of what she alleges happened to her, we explained to the claimant that would amount to expert opinion evidence. For expert evidence to be admitted, strict procedures needed to be followed. Directions needed to be sought and/or made in relation to the provision of expert evidence. Such orders might include the instruction of a single joint expert: and the agreement of a letter of instruction, containing standard guidance to experts about their duty being to the tribunal, not to either party. The tribunal decided that since expert evidence had not

been sought previously, it was far too late to attempt to introduce it at this stage. Neither witness statement had been submitted as expert evidence. The statement of Dr Stubley expressly confirms that her:

> *report is based on the therapeutic work with Ms Grabe over this extended period of time, but it is important to note that this is not a formal assessment for a court report, but rather written voluntarily to support Ms Grabe.*

90 The tribunal further explained to Ms Grabe that it was for the tribunal to make findings of fact. The tribunal does not doubt the benefit the claimant feels she has gained from the therapeutic work she has undertaken with Dr Stubley and Ms Smith. It is however for the tribunal to make findings of fact, on the basis of the extensive evidence, both written, oral and documentary, that has been carefully examined and considered during this lengthy hearing. The fact that both Ms Smith and Dr Stubley found the claimant's allegations credible, having heard her side of the story only, and in light of her symptoms, would take the tribunal no further forward in relation to the fact finding exercise. It is for the tribunal to determine issues of credibility and reliability, not expert witnesses. We agree with Dr Morgan QC's submission that we would be abrogating our fact finding duty and responsibility, by requesting and considering expert evidence on these matters.

91 The claimant also states at point 6) of her letter:

> *6) The Panel has heard the Respondent's witnesses constantly alleging such "personal issues" and pathological traits". It thus has to permit the only two witnesses who are actually qualified to assess this.*

92 We explained to the claimant that the evidence we had heard from the respondent's witnesses, in relation to the claimant's mental health, was in the context of those witnesses' attempts to understand the difficulties the claimant appeared to be experiencing during her training. The findings of fact above reflect that. Reassurance was given to the claimant that we were not treating any of that evidence as expert opinion evidence, on which we would be making any formal diagnoses as to any mental health conditions which the claimant had or did not have during any relevant period.

93 The claimant's letter also makes allegations as to unfairness in relation to the hearing of the respondent's witness evidence compared to her own. That is dealt with above.

<u>Documents – application 14 December 2021</u>

94 On 14 December 2021, the claimant applied to introduce a further set of documents, amounting to over a hundred pages. A number of these were in German, without an official translation. The documents related to three broad areas. The first related to internet searches about the doctrine of celibacy in the Protestant faith. The tribunal refused the claimant permission to introduce those documents at this late stage because they were not relevant to the issues. The respondent accepts that the notion of celibacy is capable of amounting to a philosophical belief, a concession we consider is properly made. Documents are not required to prove that.

95 The second set of documents are internet searches relating to whether 'naked hot yoga' exists, arising out of a conversation recollected by Revd Bradbury

during cross examination. The tribunal assured the claimant that in deciding the issues before us, we would not need to make any determination as to whether a reference was made by her to 'naked hot yoga' or 'hot yoga'. Since the documents were not relevant to the issues before us, we did not allow them to be submitted at this stage.

96 The third set of documents are internet searches relating to remedy. Since we are not dealing with remedy at this stage, those documents were not admitted either. It no doubt took the claimant some time to carry out these internet searches and put together these documents. It is a shame that the claimant was distracted by such matters, when her time would have been better spent honing the questions she wished to ask of the remaining witnesses in cross examination, by reference to the bundle. We are reminded of the above quoted comments of EJ Stout, at paragraphs 9 and 10 of the order of 22 October 2021, about the claimant allowing herself to be diverted from the main task.

Information regarding medical condition – 14 December 2021

97 On the morning of 14 December 2021 the claimant provided what she alleges was a summary of what her GP has reported to her as follows:

> *Incredulity that the tribunal went ahead, alert that braincells killed during seizures are not reversible, awareness that we now have to apply strong antiseizure medication, awareness that the blood in the vomit probably means a stomach ulcer diagnosed in 2011 is back, concerns regards cardiovascular problems etc. I have been able at least to sit up again since earlier today. Writing the short applications which I sent with the documents a few minutes ago helped me thinking and took very little time. Reading is still rather impossible due to the severe motion sickness which is now a fixed feature after the clusters of seizures. Even reading your small email makes the motion sickness unbearable and I had to interrupt writing to throw up.*

98 We asked the claimant again whether she was applying to postpone the hearing, or was content to continue with it. The claimant repeated that she was too scared to apply for a postponement because she was afraid of her claim being struck out. The tribunal was content, on the basis of the way that the cross-examination of Mr Boucher proceeded that morning, that the claimant was able to effectively participate in the morning's hearing. In the afternoon, the claimant sounded unwell, and was having difficulties focussing. The tribunal therefore adjourned the hearing until 9:30am on 15 December when the claimant was again able to participate effectively.

A fair hearing

99 The overriding objective is set out in Rule 2 of the Employment Tribunal Rules of Procedure 2013. It states:

> *The overriding objective of these Rules is to enable Employment Tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable—*
>
> *(a) ensuring that the parties are on an equal footing;*
>
> *(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues;*

(c) avoiding unnecessary formality and seeking flexibility in the proceedings;

(d) avoiding delay, so far as compatible with proper consideration of the issues; and

(e) saving expense

100 Justice must be considered from both parties' perspective. Sometimes, what is required by one party in order to further the over-riding objective conflicts with the requirements of the other party. In such circumstances, tribunals must carry out a balancing exercise, bearing in mind the rights of both parties and what is practicable in the circumstances of the case. The same balancing exercise is required by Article 6 of the European Convention on Human Rights in relation to the right to a fair trial.

101 Given the length of time it has taken for a final hearing to take place, involving events taking place between 2008 and 2013, the tribunal was concerned to ensure that evidence and submissions were completed within the time available insofar as that was consistent with the overriding objective. In order to facilitate that, the tribunal decided to use all of the existing hearing time for evidence and submissions, rather than building in any deliberation (decision-making) time. Five further days for deliberations were then arranged at the earliest convenience of the members of the tribunal panel.

102 It was necessary during the hearing to balance what the claimant wanted in order to enable her to put her case fully, against the need to avoid delay and save expense. It was also necessary to deal with the claim in ways which were proportionate to the issues in the case, consistent with the duty to make reasonable adjustments. Balancing the rights of both parties in this case was a difficult and complex task.

103 As for the question of avoiding delay, the tribunal was conscious not only of the effect on the claimant of any further delay, but also of the effect of the allegations on those accused in the pleadings. The claimant has made serious allegations, which if upheld, could have resulted in disciplinary proceedings against a number of those accused of discriminatory behaviour. The tribunal was concerned to ensure a fair trial within a reasonable period for all of those involved or implicated in the claim.

104 The tribunal is satisfied that the claimant was able to effectively participate on those days and times when the hearing took place. At times the claimant was more articulate than others; but at all times when the tribunal sat, the claimant was able to put questions to witnesses that she wanted to. When it was apparent that the claimant was struggling to do so, the hearing was adjourned.

105 The claimant has asserted that the respondent's witnesses were able to give fuller answers than she was. To the extent that they did so, that was mainly the result of the claimant asking open rather than closed questions. The claimant was mainly asked closed questions during cross examination. The tribunal was satisfied that the respondent's witnesses were doing their best to answer the claimant's questions truthfully and honestly. By contrast, the claimant constantly avoided questions put to her in cross examination so that the same questions had to be put two, three and sometimes four times. When the claimant eventually did attempt to answer the question put, and then try to

give a further lengthy explanation, the tribunal did not always allow that, because of the need to continue with the claimant's cross-examination in the time available. Had the claimant answered the question head-on, when the question was first asked, instead of it having to be repeated on a number of occasions, it would have been possible for a brief explanation to be given on each occasion. On numerous occasions, the claimant was in any event allowed to give the brief explanation she wanted to.

106 Whilst the tribunal notes that in her submissions the claimant maintains a general complaint that the conduct of the hearing has not been fair, no specific examples have been raised in those submissions as to how the claimant was prejudiced because she was not always able to give the full explanation she wanted too, after she had eventually given an answer to the question being asked of her.

107 During the hearing, the claimant did not always have all of the time she would have wanted, to put her case across. Indeed, most of the claimant's cross-examination had to be guillotined, because of the claimant over-running on the time allotted. The tribunal is satisfied however that the claimant was given more than sufficient time to cross examine the respondent's witnesses and that the time allowed was proportionate to the issues in the case. Most of the questions that the claimant asked during cross examination were not relevant to the issues, or took her claim any further forward. Nevertheless, the claimant was still allowed to put a number of such questions, within the timetable allocated to each witness, with a view to trying to ensure that she claimant felt at the end of it that she had been able to put the questions she thought relevant.

108 Further, the claimant was allowed more time for cross examination of the respondent's witnesses than was strictly necessary or would have been allowed if the claimant was professionally represented. The tribunal regularly intervened to explain to the claimant that questions being put were not going to assist the tribunal to decide the issues in her case. Questions were also regularly re-phrased by the tribunal in an attempt to progress the cross examination.

109 As a result of the tribunal hearing finishing early on certain days because the claimant was not well enough to continue her cross examination of the respondent's witnesses, the time available for cross-examination of some of those witnesses was reduced. The tribunal is however satisfied that this did not result in any disadvantage to the claimant on the basis that most of the questions that were asked were not relevant to the issues or advanced the claimant's case. Allowing more time for further irrelevant questioning would not have assisted the tribunal.

110 As well as asking many irrelevant questions during cross-examination, the claimant failed to ask relevant questions in relation to the issues which were before the employment tribunal. On numerous occasions, this tribunal asked questions of the respondent's witnesses, arising from those issues which the claimant had not addressed herself, to ensure we had some live evidence about them. The tribunal also asked questions during the claimant's evidence in chief on the disability issue, since the claimant had failed to provide sufficient evidence about that issue in her own witness statement.

111 When she became upset, the claimant was constantly reassured by the tribunal. Further, the tribunal continually gave guidance to the claimant as to which questions were relevant and which were not relevant. The tribunal regularly encouraged the claimant to focus on the main issues in the case, rather than peripheral matters which were not going to assist the tribunal to determine the issues. The claimant continued to make submissions during her cross examination of the respondent's witnesses. It was patiently explained to the claimant again and again, that this was not appropriate.

112 It was clearly a major challenge for the claimant to present her case. Indeed it would have been for any litigant in person, without the claimant's medical conditions, given the complexity of the issues and length of the hearing. This tribunal is however satisfied that throughout the proceedings, the claimant was able to take part effectively. In considering throughout the proceedings whether the hearing was fair, the tribunal took into account both the interests of the claimant, and the interests of the respondent, including the twenty-one witnesses who were to be called; many of whom, have had serious allegations of discriminatory behaviour looming over them for almost 10 years. Ultimately, it is for others to judge whether this tribunal has achieved the right balance between these competing rights.

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Employment Judge A James

8 February 2022

Sent to the parties on:

10 Feb. 22

For the Tribunal: