



## EMPLOYMENT TRIBUNALS (SCOTLAND)

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**Case Nos: 8000194/2022 & 8000048/2023 Preliminary Hearing per Written  
Submissions in Chambers on 11 September 2023**

**Employment Judge: M A Macleod**

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**John Halley**

**Claimant  
In Person**

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**(1) Roderick William Dunlop KC  
(2) Anthony J Graham KC**

**First Respondent  
Second Respondent  
Represented by  
Mr S Miller  
Solicitor**

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### JUDGMENT OF THE EMPLOYMENT TRIBUNAL

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**The Judgment of the Employment Tribunal is that:**

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- 1. Subject to the Tribunal's finding in relation to issue (a)(iv), the Tribunal has jurisdiction to hear the claimant's claim insofar as based on the first respondent's involvement in the BBC Judicial Review on the basis of time bar, and on the basis that it is capable of amounting to a detriment and therefore victimisation under section 27 of the Equality Act 2010;**
- 2. The first respondent is not a qualifications body within the meaning of section 54(2) of the Equality Act 2010;**
- 3. The claimant having withdrawn his allegations about the first respondent's involvement in the BBC Judicial Review, his claim is dismissed insofar as relating to those allegations;**

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4. The Tribunal has jurisdiction to hear the claim against the second respondent;
5. The second respondent is not a qualifications body within the meaning of section 54(2) of the Equality Act 2010; and
- 5 6. The claimant's application to amend his claim set out in his email of 15 June 2023 is refused, except insofar as relating to the first two sentences, namely: "The claimant's claim proceeds against the respondent in terms of section 48(5)(b) and (e) of the Equality Act 2010. Section 54(2) of the Equality 2010 Act is irrelevant to the
- 10 claimant's case."

### REASONS

- 15 1. The claimant has raised proceedings before the Tribunal against both respondents, which were combined so as to be considered together by an Order of the Tribunal dated 8 June 2023.
2. In the combined proceedings, and hereinafter, Roderick William Dunlop KC shall be referred to as the first respondent, and Anthony J Graham KC shall be referred to as the second respondent.
- 20 3. The respondents have submitted ET3 responses in defence of these claims.
4. Both respondents have raised preliminary issues in these cases, and following correspondence between the parties and the Tribunal, the sitting Employment Judge issued directions on 14 June 2023 as to how the
- 25 preliminary issues would be dealt with.
5. Those directions were as follows:
  - a. **The preliminary issues now to be dealt with are:**
  - b. **In case no: 8000194/2022:**
    - 30 (i) **Is the respondent a 'qualifications body' (cf section 54(2) of the Equality Act 2010)? If not, does the Tribunal have no**

**jurisdiction to adjudicate on whether or not the respondent committed an act of statutory victimisation?**

**c. In case no: 8000048/2023:**

5 (i) **Does the Tribunal have jurisdiction in relation to the claim insofar as it is based upon acts which, taken at face value, may not be capable of amounting to a detriment (and therefore victimisation)?**

10 (ii) **Is the respondent a ‘qualifications body’ (cf section 54(2) of the Equality Act 2010)? If not, does the Tribunal have no jurisdiction to adjudicate on whether or not the respondent committed an act of statutory victimisation?**

15 6. On receipt of these directions, which also set out a timescale within which parties were required to present their written submissions on these points, both parties wrote further to the Tribunal. The Tribunal then wrote again to the parties, and the directions previously issued were then amended. It is useful to set out the terms of that letter with directions, dated 29 June 2023, as follows:

20 **In this case, the Tribunal wrote to parties on a number of occasions in order to seek to make progress in these proceedings, commencing on 12 May 2023. In that letter, the Tribunal proposed that a number of issues should be dealt with by written submissions, and further, on 14 June 2023, in which a timetable was set out for the presentation of those written submissions.**

25 **A number of issues are now outstanding from the correspondence.**

**Firstly, the claimant, having apparently advised that the issues at (a)(i) and (ii) of the letter of 12 May 2023 could be disregarded as the factual assertions were no longer insisted upon, has now**

indicated that that is no longer his position and he wishes those issues to be included in the list of issues for determination.

Secondly, the claimant has asked that the timescale be extended, and has provided a soul and conscience letter from his General Practitioner Dr Glenfield to support that request.

Thirdly, the claimant has sought to extend the list of preliminary issues, and has applied to amend his claim to introduce new assertions of fact, which have been, to some extent, opposed by the respondent.

Employment Judge Macleod is concerned that there are a number of different disputes contained within the correspondence which could take time to resolve, and that that may derail the process of trying to move the proceedings forward.

Accordingly, taking into consideration all that the parties have placed before the Tribunal since the original letters of 12 May and 14 June were issued, Employment Judge Macleod directs as follows:

1. That the preliminary issues in these combined cases may be brought to determination in advance of any other issues, and that it would be consistent with the overriding objective to do so.

2. The issues will be determined by way of written submissions alone, as previously agreed.

3. The issues for determination will be:

a. In case no: 8000194/2022:

i. Does the Tribunal have jurisdiction in relation to the claim insofar as it is based on

**the respondent's involvement in the BBC Judicial Review on the basis of time bar?**

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**ii. Does the Tribunal have jurisdiction in relation to the claim insofar as it is based on the respondent's involvement in the BBC Judicial Review as this is not capable of amounting to a detriment (and therefore victimisation in terms of section 27 of the Equality Act 2010)?**

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**iii. Is the respondent a 'qualifications body' (cf section 54(2) of the Equality Act 2010)? If not, does the Tribunal have no jurisdiction to adjudicate on whether or not the respondent committed an act of statutory victimisation?**

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**iv. Has the claimant effectually withdrawn any of the factual assertions on which any of these preliminary issues at (i) and (ii) are based?**

**b. In case no: 8000048/2023:**

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**i. Does the Tribunal have jurisdiction in relation to the claim insofar as it is based upon acts which, taken at face value, may not be capable of amounting to a detriment (and therefore victimisation)?**

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**ii. Is the respondent a 'qualifications body' (cf section 54(2) of the Equality Act 2010)? If not, does the Tribunal have no jurisdiction to adjudicate on whether or not the respondent committed an act of statutory victimisation?**

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**c. Should the claimant's application to amend his claim, set out in his email of 15 June 2023, be granted?**

- 5                   **4. The claimant’s application to vary the timescale for the presentation of written submissions set out in the Tribunal’s email of 14 June 2023 is granted, and accordingly parties are now directed to present their written submissions on these preliminary issues by no later than 12 noon on 28 July 2023.**

10                   **Parties should be aware that the Employment Judge will be on leave until 24 July 2023 and is solely responsible for the case management of these cases. Accordingly any correspondence from parties will require to await his return in the event that further matters require to be dealt with judicially prior to that date.**

- 15                   7. Parties then presented written submissions on the preliminary points identified above, and a date was fixed for a Hearing in Chambers in order to deal with the matters contained in the Tribunal’s directions.
8. I set out below the submissions for the respondents, the submissions for the claimants, a summary of the relevant law, and the decisions reached, with reasons therefor.

20                   **Submissions for Respondents**

9. For the respondent, Mr Miller addressed the preliminary points in the order set out by the Tribunal.
- 25                   10. Firstly, in relation to case no: 8000194/2022 (which is raised against the first respondent), Mr Miller submitted that the Tribunal does not have jurisdiction to hear the claim insofar as based on the first respondent’s involvement in the BBC judicial review on the basis of time bar.
11. He referred to section 123(1) of the Equality Act 2010, which created a 3 month time limit for bringing such a claim, beginning on the “date of the act to which the complaint relates”. Mr Miller submitted that the acts

5 complained about by the claimant in this regard were that the first respondent accepted instructions to appear on behalf of Lady Smith in the BBC judicial review and advanced certain arguments on her behalf. The first instance decision was advised on 1 April 2021 (**BBC v Chair of the Scottish Child Abuse Inquiry 2021 SLT 499**), and the subsequent decision of the First Division of the Inner House in the appeal against that decision was advised on 23 February 2022 (**BBC v The Rt Hon Lady Smith 2022 SC 184**).

10 12. He argued that the acts complained about were completed, obviously, by the time of the Inner House advising on 23 February 2022 at the very latest, but in reality by much earlier. The hearing before the First Division took place on the summar roll, at which any submissions were made, on 1 February 2022.

15 13. Even if the date of advising were taken to be the start of the limitation period, the proceedings were still raised too late. ACAS Early Conciliation did not commence until 28 November 2022, more than 9 months after the BBC judicial review proceedings were concluded.

14. Mr Miller submitted that this part of the claim should therefore be dismissed.

20 15. He then moved on to issue (a)(ii), and submitted that the Tribunal does not have jurisdiction in relation to the claim insofar as based on the first respondent's involvement in the BBC judicial review as this was not capable of amounting to a detriment, and therefore victimisation under section 27 of the Equality Act 2010.

25 16. Mr Miller observed that the claim is based on the first respondent receiving and acting upon instructions received in a set of judicial proceedings. He submitted that the first respondent is one of His Majesty's Counsel, and has a strict professional obligation to accept instructions to appear in the BBC judicial review. Had he declined  
30 instructions it would have been a "dereliction of the first respondent's duty in holding the public office of advocate", referring to the Faculty of

Advocates – Guide to the Professional Conduct of Advocates (7<sup>th</sup> edition)  
at paragraph 8.4.1.

- 5 17. He went on to argue that the judicial review proceedings did not directly concern the claimant, and he was not a party to them. They were concerned with the lawfulness of decisions in relation to reporting restrictions imposed in the course of the Scottish Child Abuse Inquiry (SCAI), in connection with the claimant's Employment Tribunal claim against Lady Smith. The judicial review was not, he submitted, concerned with the rights and interests of the claimant or the underlying facts and merits of the dispute between him and Lady Smith, but with the ability of the media to report upon the dispute. Any argument advanced in the proceedings and any decision arising from the proceedings could not, he said, have resulted in any finding in fact or order of the court in relation to the claimant.
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- 15 18. Mr Miller referred to the submissions which were recorded by Lord Boyd of Duncansby, the Lord Ordinary, at paragraphs 55 to 68 on pages 514 to 516 of his decision, and maintained that there was nothing in those submissions which could sensibly be said to amount to a detriment in relation to the claimant. There was no observation by the Lord Ordinary to the effect that any submission made by the first respondent before him was unstateable or improper.
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19. The Lord President recorded the submissions of the first respondent in the appellate stage at paragraphs 32 to 34, pages 193 and 194, of the decision by the Inner House. Again, Mr Miller submitted that there was nothing in those submissions which could sensibly be said to amount to a detriment in relation to the claimant, and had the Lord President considered that any submission made by the first respondent was improper or unstateable, he would have said so.
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20. Mr Miller said that the claimant has erroneously sought to conflate Lady Smith, a litigant, with counsel who appeared for her in the judicial review proceedings. Adopting the claimant's approach would mean that any
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advocate accepting instructions to appear on behalf of any litigant, and who makes stateable submissions on their behalf, is at risk of a finding of victimisation. The Tribunal, he said, should be “concerned to avoid the chilling effect which this would have on the proper functioning of the court and tribunal system.”

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21. He invited the Tribunal to dismiss this part of the claim.

22. Mr Miller then moved to issue (a)(iii), and noted that both questions set out therein should be answered in the negative on the basis that the claimant had properly conceded these issues.

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23. With regard to issue (a)(iv), Mr Miller submitted that the claimant had effectively withdrawn the factual assertions on which issues (i) and (ii) were based.

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24. He referred to the claimant’s email of 26 May 2023, at 1432 hours, in which he said that “factual issues [connected with the BBC judicial review complaints] can be disregarded and will not be insisted in as factual contentions by the claimant.” He argued that this was a clear and unambiguous statement, in which he confirmed that he did not want the matters of fact connected with the BBC judicial review to be considered by the Tribunal, and that he would not seek to make anything of them.

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25. That claim was therefore withdrawn as contemplated under Rule 51 of the Employment Tribunals Rules of Procedure 2013, and cannot be revived.

26. Mr Miller then moved to address the issues set out in relation to the claim against the second respondent.

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27. With regard to issue (b)(i), Mr Miller submitted that the Tribunal does not have jurisdiction to deal with the claim against the second respondent as it is based upon acts which, taken at face value, may not be capable of amounting to a detriment, and therefore victimisation.

28. He submitted that the claim relates to the second respondent’s membership of the Faculty of Advocates Fees Committee, which the

second respondent chairs ex officio by virtue of holding elected office as Chairman of Faculty Services Limited. His alleged failure to recuse himself from the committee due to real or apparent bias is said to amount to an act of victimisation.

- 5 29. Mr Miller argued that there were two reasons why this claim could not succeed. Firstly, the claimant has failed to identify a proper basis upon which a claim of bias could ever be made out in relation to the second respondent such as would have necessitated his recusal. By reference to **Helow v The Advocate General 2007 SC 303** at paragraph 24, he
- 10 submitted that the relevant question is whether the fair minded and informed observer, having considered the circumstances at issue, would have concluded that there was a real possibility that the second respondent was biased. This should be taken to be someone who would adopt a balanced approach, neither complacent nor unduly sensitive nor
- 15 suspicious.
30. He submitted that it would take an unduly sensitive and suspicious person to reach the view that there was anything remiss in the second respondent's participation in the fees committee, and accordingly the basis of the claimant's claim dissolves.
- 20 31. Secondly, he argued, there is no direct causative link between the second respondent's continued membership of the fees committee and the detriment complained of. This is a critical requirement under section 27(1), but the claimant has not averred any basis which could support such a causal link.
- 25 32. He expressed the view that the protected acts identified by the claimant were (a) his working at home while engaged on the SCAI; (b) the submission of his fee notes to the SCAI; and (c) the reference of the question of unpaid fees to the Faculty Fees Committee. Mr Miller submitted that there was no link between these protected acts and any
- 30 victimisation against the second respondent. The pleadings do not explain the "curious idea" that the second respondent voted in a particular

way *because* the claimant had done any of these things. In any event, he argued that since the second respondent was only one of a committee of four, his vote carried no greater weight than any of the others'. As a result, the claim should be dismissed.

5 33. Turning then to issue (b)(ii), Mr Miller submitted that since the claimant had properly conceded both questions which were put, both should be answered in the negative.

34. On issue (c), Mr Miller confirmed that the respondents do not oppose the claimant's application to amend his claim, on the basis only that the amendment is confined to the first two sentences of the proposed amendment in the email of 15 June 2023.

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35. He argued that the proposed pleadings are vague and incoherent, and do not articulate or particularise any issue which would be suitable for inquiry, but are simply bald assertions of egregious conduct without detail or substance. There is no means by which the allegations can be tested against the relevant statutory requirements, and in relation to the BBC judicial review, the Tribunal is already aware of a time bar problem.

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36. Further, he submitted that there is no good reason cited as to why the new allegations could only be brought forward at this stage.

20 37. In addition to the submissions on the issues which were specifically laid out for determination by the Tribunal in this exercise, Mr Miller also made an application on behalf of the respondents, to be considered in the event that his submissions on the foregoing points were not, or were not all, accepted, that the corresponding claims should be struck out as having no reasonable prospect of success under Rule 37(1)(a), failing which the claimant should be ordered to pay a deposit as a condition of continuing to advance those allegations, under Rule 39(1), since the claims have little reasonable prospect of success.

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**Submissions for Claimant**

38. The claimant presented written submissions on his own behalf. Again, he addressed the issues in turn.
39. With regard to issue (a)(i), the claimant observed that in paragraph 4 of the paper apart to the ET1, he set out the protected acts which he had done, and that the first respondent had victimised him because of those protected acts. He also averred in paragraph 5 that the first respondent had victimised him in purported exercise of his disciplinary powers at the Dean of Faculty. Accordingly, he alleges that the first respondent victimised him in two capacities, namely as counsel acting for Lady Smith, and as Dean, but acting in Lady Smith's interest and on her behalf.
40. He pointed out that the claims relate to continued victimisation over a lengthy period of time, and that he has not aver that this victimisation has ended at any time. He stated that he complained of "a single continuing act of alleged victimisation" by the first respondent, and indeed that he proposed to complain that the first respondent's victimisation of him continued and was ongoing to date.
41. He submitted that the date upon which he relied as the relevant date was 31 August 2022, but observed that he had made known his wish to amend his claim to acts beyond 31 August 2022.
42. In a case where the claimant complains of a continuing act, he said, the three month period commences when the wrongful act ceases. This cannot be determined without evidence being heard by the Tribunal. This approach has, he said, been accepted by the Tribunal and parties in the separate, but related, claim against Lady Smith herself. He referred to **Somerville v Scottish Ministers [2007] UKHL 44, 2008 SC (HL) 45** and to **O'Connor v Bar Standards Board [2017] UKSC 78 [2017] 1 WLR 4833**.

43. He therefore argued that the answer to this issue was either yes, or at least that this is an issue of fact to be determined following evidence in this case.
44. So far as issue (a)(ii) was concerned, the claimant referred to section 48 of the Equality Act 2010 as providing a prohibition on victimising a member of a stable, imposed on all advocates. There is a corresponding protection for all advocates who are members of a stable, and the prohibition and corresponding protection apply in relation to protected acts.
45. The claimant is a member of a stable, Arnot Manderson, a fact beyond dispute. The claimant has done protected acts, including the raising of proceedings against the first respondent's client.
46. While conducting litigation for Lady Smith, the first respondent was not relieved of the obligation not to act contrary to the prohibition, which applies because the claimant was a member of a stable. It is a "matter of law which generally subsists. It is unqualified in its statutory expression".
47. If following a client's instructions would cause an advocate to subject another advocate to a detriment, he submitted, the instructed advocate is obliged by law to advise the instructing client accordingly and to act in accordance with the prohibition. In the BBC case, he said, this was "self-evidently the position". The first respondent was obliged to inform his client that because of the prohibition in section 48(5)(e) of the 2010 Act, and because the subject of the restriction orders was an advocate, he was unable to advance arguments which amounted to blatantly unlawful victimisation of another advocate.
48. He postulated an alternative analysis of the first respondent's situation in the BBC case, which was that he was aware that the prohibition in section 48(5)(e) applied to him, but decided that it should be disregarded in the interests of his client, thus violating and disregarding the prohibition.

49. He maintained that the subject matter of the cause in question in the BBC case related to the victimisation and discrimination of the claimant, which should have put the first respondent on notice of the prohibition in section 48(5)(e). Advocates are not at liberty to conduct litigation on a client's behalf which causes the advocate to act unlawfully. By acting unlawfully, he said, the first respondent subjected the claimant to a detriment. He went on to cite examples of detriments which were apparent from the terms of the Lord President's Opinion, such as that reference to the claimant's disability in public litigation between two public authorities and for the condition of another public authority (the Court). The unlawful restriction orders which were the subject matter of the judicial review application clearly constituted detriments to the claimant.
50. Advocates are prohibited from victimising one another by subjecting others to "any other detriment". Detriment is not defined in the Equality Act 2010 but, he submitted, the statutory use and meaning of the concept is wide. He complains that by acting in accordance with and in furtherance of instructions which amounted to detriments to the claimant for doing protected acts involved in pursuing his previous Employment Tribunal claim, the first respondent victimised the claimant. He also maintains that the first respondent's duties to him were enhanced since he is Dean of the Faculty of Advocates, and that the first respondent's "self-evident failure to have any proper regard for the claimant's welfare, rights and interests in the BBC Judicial Review", he must be viewed as having acted unlawfully by his failure to ensure that the claimant received the benefits, facilities and services which the Dean of Faculty is bound to ensure that advocates receive.
51. He submitted that the Tribunal has jurisdiction to hear a claim that the first respondent's conduct was clearly capable of amounting to a detriment within the meaning of the 2010 Act, and that in any event, evidence would require to be led before a conclusion could be reached that this was not the case.

52. The claimant referred me to **Darker v Chief Constable of the West Midlands Police [2001] 1 AC 435**, in relation to the concept of public interest immunity in the conduct of litigation on behalf of a client, and noted Lord Hope of Craighead's statement in relation to the furthest extent of that immunity. In particular he drew the Tribunal's attention to the factor which must always be balanced against the public interest in matters relating to the administration of justice, namely that "a wrong ought not to be without a remedy. The immunity is a derogation from a person's right of access to the court which requires to be justified."
53. The legal wrong upon which the claimant founds is the first respondent's alleged failure to adhere to, or comply with, the prohibition in section 48(5)(e) in the conduct of litigation on his client's behalf, a wrong which ought not to be without a remedy. It cannot be justified in these circumstances to allow the derogation to prevent the claimant having the right of access to the Tribunal's specialist jurisdiction.
54. Turning to issue (a)(iii), the claimant maintained that this was an issue raised by the first respondent, and not by the claimant. Accordingly, this is not an issue being pursued by him.
55. So far as issue (a)(iv) is concerned, the claimant asserted that the Tribunal was, at best, unclear as to what was meant by the claimant's email message dated 26 May 2023 when it was stated that "The factual issues identified at paras (a)(i) and (ii) of the Tribunal's letter can be disregarded and will not be insisted in as factual contentions by the claimant." In making this assertion, the claimant referred to the Tribunal's letter to parties on 14 June 2023, in which the claimant was asked to clarify precisely what he meant by this statement.
56. He then responded on 15 June 2023, and referred in his submission to the terms of that clarification, in which he withdrew "the offer" made in his message dated 26 May 2023. He insisted that it is not open to the Tribunal or the first respondent to assert any factual conclusion other than what the claimant has explained in his reasoning.

57. He pointed out that he has been under immense pressure, and been unfit to participate in the proceedings for some months. He considers this to have been brought about, at least in part, by the first respondent's continuing victimisation of the claimant.
- 5 58. He maintained therefore that effectual withdrawal, or deemed withdrawal, are not concepts identified or recognised within the Tribunal's rules. He expressed concern about the "Tribunal's use of the additional gloss on the relevant Tribunal rule by the addition of this unwarranted adverb. Withdrawal of a claim, or part of a claim, must be intentional. A claimant  
10 cannot withdraw a claim, or part of a claim, by accident."
59. The claimant then moved to address his submissions under case no: 8000048/2023 against the second respondent.
60. Under issue (b)(i), he submitted that the question posed by the Tribunal appears to accept that evidence will require to be led in relation to the  
15 issues specified by the claimant in his paper apart to the ET1. Whether the acts complained of by the claimant may or may not be capable of amounting to a detriment requires evidence to be led before the issue can be determined.
61. He submitted that he is under the protection of section 48(5)(b) and (e) of  
20 the 2010 Act, as an advocate, and that the second respondent, as Chairman of Faculty Services Limited and otherwise, is under the statutory prohibition provided for in section 48(5)(b) of the 2010 Act.
62. He argued that it is difficult to envisage a clearer detriment to an advocate that the failure to receive the benefit, facility or service involved in the  
25 Faculty's machinery for ensuring payment of outstanding fees.
63. He maintained that the Tribunal clearly has jurisdiction in relation to the claim as specified in the claimant's ET1 and paper apart. He also asserted that there is no specification provided to the claimant in the question posed by the Tribunal of the matters in respect of which this  
30 assertion is questioned.



64. With regard to issue (b)(ii), again, this is an issue which was raised by the second respondent and not by the claimant, and it is not a matter which he is seeking to raise. It is not a matter of law which is featured in his case.
- 5 65. In relation to issue (c), the application to amend seeks to add averments to the effect that the respondents continue to victimise the claimant.
66. He submitted that it is imperative in cases of alleged victimisation that the respondents are prevented by the Tribunal from further victimising the claimant because of or in connection with the fact that the claimant has brought these proceedings.
- 10 67. The claimant set out the basis upon which he considered that the application to amend should be granted, though it appears that he seeks to provide further specification of the allegations in the proposed amendment, and sets out a process to be followed. He concluded by suggesting that the respondents must desist from further victimisation of the claimant, whether directly or indirectly, conveyed by threats communicated by others.
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### **Discussion and Decision**

68. It is appropriate to address the issues for determination in order, as the parties have, and to make decisions on each in turn.
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#### **a. In case no: 8000194/2022:**

- i. Does the Tribunal have jurisdiction in relation to the claim insofar as it is based on the respondent's involvement in the BBC Judicial Review on the basis of time bar?**
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69. By agreement of the parties, this issue was dealt with, along with the others identified, by way of written submissions alone. No evidence was led or heard by either party.

- 5 70. The respondent's position, put simply, is that the acts complained of, in relation to the first respondent's involvement in the BBC Judicial Review, must have been completed by the date when the first instance Judgment was issued on 1 April 2021, and at least by the date when the appeal decision was issued by the First Division on the Inner House, on 23 February 2022.
- 10 71. The claimant's position, by contrast, is that the averments relating to the first respondent are based not only on his acting as counsel for Lady Smith in the Judicial Review proceedings, but that he also acted as Dean of Faculty, in the interests of Lady Smith and on her behalf. He maintains that the first respondent has been guilty of a single continuing act of alleged victimisation against him. Essentially, this requires to be determined as a matter of evidence.
- 15 72. I note at this point that the claimant stated, at paragraph 1.5 of his submissions, that he has made it known that he wishes to amend to add averments of further victimisation after 31 August 2022 and to date.
73. On this issue, I have reached a number of conclusions.
- 20 74. Firstly, the Tribunal can only determine the issue on the basis of the pleadings as they currently stand. There may be an application to amend before the Tribunal, or a declared intention to seek such an application, by either party, but until such an application is granted, the proposed amendment does not form part of the pleadings.
- 25 75. Secondly, the determination of whether or not a claim is time-barred is normally based on two broad questions: whether the case was presented beyond the statutory time limit, and whether, if it was, the Tribunal should exercise its discretion to extend the time within which such a claim was presented. In the case of the allegations against the first respondent in relation to involvement in the BBC Judicial Review, it is correct to note that the claimant has not merely focused on what he did in the course of  
30 the court proceedings, but also on the actions of the first respondent as Dean of the Faculty of Advocates. However, in that second regard, he

made reference to the first respondent holding the office of Dean of Faculty “during at least part of the proceedings” (paragraph 4, paper apart to ET1). On this basis, it appears to me that the averments relate only to the proceedings, and must have related to a period which ended, at the latest, at the date of advising of the Inner House Judgment. On the basis of paragraph 4, there is no clear ongoing act averred by the claimant.

76. Thirdly, paragraph 5 of the paper apart to the ET1 does make reference to further acts carried out by the first respondent in his capacity as Dean of Faculty. In summary, the claimant avers that the first respondent imposed upon the claimant a disciplinary sanction, “detailed in a Dean’s Direction, dated 31 August 2022.” Within that letter, the claimant goes on to aver, reference is made to a letter to the claimant by the first respondent in which he “imputes a sexist intention and connotation to the claimant’s actions” and “also unjustifiably accused the claimant of breach of an undertaking”. The claimant’s complaint is that the Dean’s Direction amounted to unlawful victimisation of the claimant. Again, there is no averment that there is a continuing series of acts. The allegation made by the claimant relates to a single act.

77. Fourthly, as a result, the acts complained of appear to me to have been the actions of the first respondent in his representation of Lady Smith in the course of proceedings in the BBC Judicial Review, which, at the very latest, came to an end on 23 February 2022; and the Dean’s Direction issued on 31 August 2022.

78. Fifthly, the claimant notified ACAS of his intention to submit a claim to the Tribunal against the first respondent on 28 November 2022. As a result, the claimant’s complaint relating to the Dean’s Direction of 31 August 2022 was submitted to the Tribunal within the statutory time limit. However, on the face of it, the complaint relating to the first respondent’s involvement in the BBC Judicial Review proceedings are well out of time, by some 6 months, unless the claimant can demonstrate, in a manner not clearly foreshadowed by the terms of his pleadings, that this formed part of continuing series of acts amounting to unlawful victimisation.

79. Sixthly, and perhaps more significantly, the Tribunal will require to hear evidence in order to determine whether or not the claim has been presented in such time as it considers just and equitable (section 123 of the Equality Act 2010), so that the claimant may explain the basis upon which he did not present a claim, in this regard, within the statutory deadline.

80. I have considered whether or not this matter should be dealt with on the basis of the written submissions alone, but have concluded that it should not. The reason why these issues are being dealt with on the basis of written submissions is that the claimant has presented medical evidence to the effect that he is unable to attend at a Hearing, and, by extension, give evidence to the Tribunal. It would be contrary to the interests of justice to dismiss this claim on the basis of time bar and in the absence of any explanation from the claimant as to the reason why he presented his claim when he did, since the claimant has demonstrated to the Tribunal that illness would prevent him from doing so. The only reason for seeking to deal with the preliminary issues in this way, with the consent of both parties, is to allow the Tribunal to progress the proceedings and address those issues which could be addressed on paper first.

81. Accordingly, it is my Judgment that it cannot be definitively said that the Tribunal lacks jurisdiction to hear complaints by the claimant against the first respondent in relation to his involvement in the BBC Judicial Review proceedings without hearing evidence from the claimant as to the reason why he presented his claim to the Tribunal outwith the statutory time limit.

82. This conclusion, however, requires to be read in context with the decision made in relation to issue (a)(iv) below.

**ii. Does the Tribunal have jurisdiction in relation to the claim insofar as it is based on the respondent's involvement in the BBC Judicial Review as this is not capable of amounting to a detriment (and therefore victimisation in terms of section 27 of the Equality Act 2010)?**

5 83. The first respondent argues that there is no detriment, and therefore no victimisation, in anything he did in representing Lady Smith as counsel in the BBC Judicial Review. It would have been a dereliction of duty for him to have refused to appear and advance stateable arguments on behalf of his client.

10 84. The claimant's position is that in advancing those arguments, the first respondent acted in breach of section 48(5)(e) of the Equality Act 2010 by victimising him, as a member of a stable. He relies upon the prohibition in that section on subjecting him to any detriment, and submitted that the first respondent was obliged to inform his client that due to that prohibition he was unable to advance arguments which amounted to unlawful victimisation of another advocate.

15 85. It is important, in determining this issue, first to establish what detriment the claimant complains of here. In paragraph 4 of the paper apart to the ET1, the claimant stated:

20 *"The respondent has victimised the claimant by assisting Lady Smith in attempts to avoid compliance with the duties incumbent upon her in terms of the Equality Act 2010. The respondent acted as counsel for Lady Smith in judicial review proceedings brought by the BBC. The respondent advanced arguments on Lady Smith's behalf which were self-evidently unsustainable in law according to the ordinary meaning of the relevant statutory language used. He was paid to do so. By acting in accordance with and in furtherance of instructions which amounted to detriments to the claimant for doing protected acts involved in pursuing his previous Employment Tribunal claim, the respondent victimised the claimant."*

25

30 86. The critical averment here, it seems to me, is that by advancing arguments which were "self-evidently unsustainable", on behalf of Lady Smith, the first respondent acted unlawfully by victimising the claimant. The difficulty in assessing these averments is that it is not clear precisely where the unlawful act arises. It is plain that the claimant considers that Lady Smith acted in breach of the Equality Act 2010 by victimising him,

though he does not specify the specific act other than saying that she was attempting to avoid compliance with duties incumbent upon her under the Equality Act 2010.

- 5  
10
87. The claimant appears to suggest that since Lady Smith victimised him, in an unspecified way (in these proceedings), the first respondent also victimised him by acting as her advocate in the BBC proceedings. He does not specify how the first respondent did so. He associates the actions of the first respondent with those of his client in those proceedings, and seeks to make the first respondent culpable for having acted for her on instructions.
- 15
88. For the first respondent, it is argued that the claimant is seeking to conflate Lady Smith with counsel who appeared for her in the BBC proceedings in which she was a litigant, and that if the claimant's approach were correct, it would mean that any member of Faculty who appeared on behalf of a litigant and makes stateable arguments on their behalf in court proceedings is at risk of a finding of victimisation.
- 20
89. There is no averment that the Court, either at first instance or on appeal, found that the actions of the first respondent were in any way improper, or that the arguments he advanced were unsustainable. The claimant himself describes them as self-evidently unsustainable, but he does not say that the Court found that the first respondent acted improperly.
- 25
90. Reference is made to the Faculty of Advocates – Guide to the Professional Conduct of Advocates (7<sup>th</sup> Ed). I note that at paragraph 5.1.2, the Guide provides that *“Subject to due observance of all rules of law and professional conduct, an Advocate must always act in what he perceives in his professional judgement to be the best interests of his client and must put those interests before his own interests or those of fellow Members of the legal profession.”* Clearly that provision requires an advocate to conduct themselves with due observance to all rules of law and professional conduct, but in doing so to act in the best interests of his
- 30
- client.

91. Reference was made to paragraph 8.4.1 which requires an advocate not to refuse to accept instructions to act for any litigant before Scottish Courts which are accompanied by payment of a reasonable fee or the obligation of a Scottish solicitor to pay such a fee.
- 5 92. The claimant's claim against the first respondent is not that he should not have accepted instructions to act on behalf of Lady Smith in circumstances where she had (allegedly) acted in such a way as to victimise him; but that he should not, himself, have acted in such a way as to amount to victimisation.
- 10 93. In his submissions, the claimant has made reference to certain obligations he believes the first respondent had to explain to his client the limits of his representation. Paragraph 8.4.12 of the Guide provides that  
*"An Advocate may not accept instructions to act in circumstances where, in his professional opinion, the case is unstateable in law or where the*  
15 *case is only stateable if facts known to him are misrepresented to, or concealed from, the Court. If such circumstances arise after he has accepted instructions, he must draw the matter to the client's attention as soon as possible and indicate he is unable to act further."*
- 20 94. Drawing all of these strands together, while there is some lack of clarity in the claimant's case against the first respondent as to the act of victimisation which he has been alleged to have carried out in the BBC proceedings, it is my conclusion that the actions of an advocate in court proceedings cannot be said not to be capable of amounting to a detriment, and therefore victimisation, under section 27 of the Equality Act  
25 2010, or section 48(5)(e). The requirement to act in the best interests of a client is subject to the due observance of all rules of law and professional conduct.
- 30 95. As a result, it is my conclusion under this issue that at this stage, without evidence having been heard, the Tribunal cannot find that it has no jurisdiction to hear the victimisation claim. It cannot be said that the allegations against the first respondent in relation to his actings in the

BBC proceedings were incapable of amounting to a detriment against the claimant.

96. This conclusion, however, requires to be read in context of the decision I have reached in relation to issue (a)(iv) below.

5                    **iii. Is the respondent a ‘qualifications body’ (cf section 54(2) of the Equality Act 2010)? If not, does the Tribunal have no jurisdiction to adjudicate on whether or not the respondent committed an act of statutory victimisation?**

10            97. The claimant has made clear that this assertion does not form part of his claim. Accordingly, this issue does not require to be determined.

**iv. Has the claimant effectually withdrawn any of the factual assertions on which any of these preliminary issues at (i) and (ii) are based?**

15            98. This issue refers to the claimant’s email to the Tribunal on 26 May 2023 at 14:32 hours, in which, in the first respondent’s argument, withdrew any factual assertions relating to the BBC Judicial Review, and that he would not seek to make anything of them. That claim, they submit, has therefore come to an end.

20            99. The claimant took a quite different view, and suggested that the Tribunal’s response indicated that it was, at best, unclear as to what he had meant in that email, and explained that he now wished to withdraw the offer he had made in his earlier message.

25            100. He also suggested that the use of the word “effectual” by the Tribunal was outwith the concepts recognised by the Tribunal’s Rules, and expressed concern as to the “additional gloss” placed by the addition of this unwarranted adverb.

101. This has become an issue of considerable contention between the parties, and it is important to analyse what has been said by the claimant



in order to determine whether or not he has, in effect, withdrawn any part of his claim.

5 102. For the avoidance of doubt, the use of the word “effectual” was intended to mean “binding”, and not “deemed”. The issue is in simple terms and it is plain that both parties understood that the purpose of the issue is to consider whether or not the claimant may be said to have withdrawn any part of his claim. There is no “additional gloss” placed upon the Tribunal Rules of Procedure.

10 103. I require to consider what has been said by the claimant in order to determine this matter.

104. The first communication in this regard is the email of 26 May 2023, in which the claimant stated, at paragraph 5:

15 *“The factual issues identified at paras (a)(i) and (ii) of the Tribunal’s letter can be disregarded and will not be insisted in as factual contentions by the claimant.”*

105. The claimant was referring to the Tribunal’s letter of 12 May 2023, in which a proposed list of preliminary issues had been set out for determination. The issues identified at paragraphs (a)(i) and (ii) are those set out at paragraphs (a)(i) and (ii) above.

20 106. The Tribunal wrote to the parties on 1 June 2023 and confirmed that it was noted that the claimant had identified that the issues set out at (a)(i) and (ii) could be disregarded as he no longer insisted on the factual contentions which formed the basis of such issues.

25 107. The first respondent was asked to comment on this, and did so on 8 June 2023. By this point, the claimant had not sought to alter his position, nor contest the Tribunal’s understanding as set out in its letter of 1 June.

108. The first respondent argued that the claimant’s statement amounted to a withdrawal of these parts of the claim under Rule 51 of the Employment

Tribunals Rules of Procedure 2013, and invited the Tribunal to dismiss these claims under Rule 52.

109. At that point, the Tribunal wrote to the claimant in the following terms, on 14 June 2023:

5            *“The C [Claimant] is asked to clarify precisely what he means by confirming that the issues at (a)(i) and (ii) may be disregarded as the factual assertions are no longer insisted on. Does he mean, as appears to be the case, that he no longer complains about the involvement of the respondent(s) in the BBC Judicial Review or about any detriments he*  
10            *alleged arose from their involvement in the BBC Judicial Review? If so, the C is asked to specify precisely what allegations he is withdrawing. He is asked to confirm the position within 7 days.”*

110. The Tribunal went on to propose a restricted list of issues, removing (a)(i) and (ii).

15            111. In reply, on 15 June 2023, the claimant responded. He said, for the purposes of clarification, that he was *“simply offering a pragmatic means of narrowing the scope for the issues in dispute which required to be determined on written submissions. My offer to do so was made without prejudice to my insistence that the details alleged at paragraph 4 of the*  
20            *Paper Apart to the ET1 are true and correct allegations of fact.”*

112. He observed that he was referring to paragraph 5 of the Tribunal’s letter of 12 May 2023, and said that *“These are matters which I was pragmatically offering, on a without prejudice basis, to simply drop for the purposes of narrowing down the matters which the Tribunal required to*  
25            *determine in this case. Frankly, these are matters which can, and will, in any event, be raised in a conduct complaint relating to the respondent’s professional conduct, with the SLCC in the first instance. This has already been raised with the respondent.*

*However, it appears that the respondent seeks an exculpatory finding in*  
30            *respect of these matters. That is inappropriate. In those circumstances, I*

*will withdraw the offer made in my message dated 26 May 2023 and continue to insist that the issues identified above require to be determined by this Tribunal. That is my position unless and until there is agreement between the parties and with the Tribunal.”*

5 113. On 20 June 2023, the respondent replied and submitted that the claimant was attempting to re-formulate what he had said in his email of 26 June 2023, which amounted to a competent and effective withdrawal of this part of his claim against the first respondent. They argued that he could not now resuscitate that part of his claim, no matter how he may now  
10 choose to describe the statement sent on 26 May 2023.

114. Having reflected carefully on the terms of this correspondence, it is clear that the claimant is seeking to retract the statement he made on 26 May 2023, and to continue to pursue all aspects of his claim as expressed in his ET1.

15 115. As the correspondence developed, the claimant suggested a number of things about his original email.

116. He said that it was an offer to narrow the scope of the issues; that it was pragmatic; that it was without prejudice to his insistence that the details in paragraph 4 of the paper apart to the ET1 were the true and correct  
20 allegations of fact; and that it was done with the intention of narrowing down the issues which the Tribunal required to determine in this case. He also said that the Tribunal was confused about what was meant, and therefore sought clarification, which indicated that it was not clear that he was intending to withdraw any part of the claim.

25 117. From my observation, this was not an offer. It was a statement that the factual issues covered by issue (a)(i) and (ii) could be disregarded, and would not be insisted in as factual contentions by the claimant. There was nothing which required acceptance by any other party or the Tribunal.

30 118. It was, perhaps, pragmatic, but not merely pragmatic. Nothing was said in the original email about the claimant's intentions beyond the words used.

119. It was not without prejudice to his insistence that the allegations in his claim form were true and accurate allegations of fact, for two reasons: at no stage did he use the words “without prejudice”, though in correspondence with the Tribunal it is entirely unclear what effect such words might have, or could be intended to have, since they are generally a signal that correspondence is not to be relied upon before the Tribunal by another party; and secondly, he specifically stated that the factual issues identified would not be insisted in as factual contentions by the claimant.

120. To suggest that it was done to narrow down the issues to be dealt with by the Tribunal further obscures his meaning, in my view. The Tribunal identified issues which arose as a result of the terms of the claim and the response submitted by both parties. It was not for the claimant to narrow down the issues by seeking to remove them from preliminary consideration, and it is unclear how the Tribunal would deal with those issues thereafter if they were not withdrawn. In any event, narrowing down the issues is open to the claimant by withdrawing part of the claim.

121. The claimant relies upon the Tribunal’s request for clarification in its letter of 14 June 2023 as suggesting that the Tribunal, or the Employment Judge, was confused as to the meaning of his email. In fact, the request for clarification was to establish the extent of the withdrawal, not whether or not there was any withdrawal at all. It was noted that it appeared to be the case that he no longer complained about the first respondent’s involvement in the BBC proceedings and the Tribunal simply sought clarification as to the extent of that withdrawal.

122. In short, the claimant’s position was clear and unambiguous in his email of 26 May 2023, but has been unclear and difficult to follow since then. It is apparent that he wishes to recant upon his withdrawal of the allegations relating to the BBC Judicial Review, having seen what the first respondent said in its response. He did not seek to withdraw his statement until the first respondent sought to have that part of the claim dismissed.

123. It is my conclusion that the claimant did effectually, and in a binding manner, withdraw his complaints about the actions of the first respondent in the BBC Judicial Review proceedings, and that as a result, that claim should be dismissed under Rule 52, notwithstanding his subsequent attempts to withdraw his withdrawal.

124. Accordingly, the claimant's claim that the first respondent unlawfully discriminated against him by victimising him in the conduct of the BBC Judicial Review proceedings is dismissed following its withdrawal.

125. As a result, the remaining complaint outstanding against the first respondent is that he unlawfully discriminated against the claimant on 31 August 2022 in issuing the Dean's Direction, by victimising him contrary to section 27 of the Equality Act 2010 on the grounds of disability.

**b. In case no: 8000048/2023:**

**i. Does the Tribunal have jurisdiction in relation to the claim insofar as it is based upon acts which, taken at face value, may not be capable of amounting to a detriment (and therefore victimisation)?**

**ii. Is the respondent a 'qualifications body' (cf section 54(2) of the Equality Act 2010)? If not, does the Tribunal have no jurisdiction to adjudicate on whether or not the respondent committed an act of statutory victimisation?**

126. I take these two issues together, and deal with issue (b)(ii) first. The claimant has made clear in submissions that it is no part of his claim that the second respondent is a qualifications body in terms of section 54(2) of the Equality Act 2010, and accordingly this is not an issue to be determined by the Tribunal.

127. As to issue (b)(i), the allegations made by the claimant against the second respondent are set out in the paper apart to his ET1. His complaint is that the second respondent, both as an advocate and as Chairman of Faculty Services Ltd, subjected him to victimisation on the

grounds that he had done a protected act, namely the submission of materials to the Faculty Fees Committee.

5 128. He submitted that the second respondent victimised him under section 27 of the Equality Act 2010 by failing to recuse himself from the decision making process of the Committee in relation to the claimant's outstanding fees relating to work carried out for the Scottish Child Abuse Inquiry, which amounted to a detriment to the claimant.

10 129. He also alleged that the second respondent chaired the meeting of the Faculty Fees Committee which declined to take action to recover the claimant's outstanding SCAI fees, a decision which was taken because of the claimant's protected acts, and that by deciding not to implement the Faculty's procedures for recovery of his SCAI fees, the second respondent and the other committee members victimised the claimant. The protected act was the claimant's referral of the matter of his  
15 outstanding fees to the Committee.

20 130. The claimant relies upon section 48(5)(b) and (e) of the Equality Act 2010, and asserts that the second respondent is under the statutory prohibition provided for in section 48(5)(e), as Chairman of Faculty Services Ltd and otherwise; and that the second respondent, as  
Chairman of Faculty Services Ltd, must carry out his duties in accordance with section 48(5)(b).

131. The claimant maintains that the failure to receive the benefit, facility or service involved in the Faculty's machinery for ensuring payment of outstanding fees is a clear detriment to him.

25 132. The claimant's submission is therefore that it is clear that the Tribunal has jurisdiction to hear such a claim. He observed in his submission that the manner in which the question was posed by the Tribunal clearly appears to accept that evidence will require to be led in relation to these issues specified by the claimant.

133. The second respondent asserts that there is no possible basis upon which these claims could succeed. They argued that there was nothing in what was asserted by the claimant which would lead the fair minded and informed observer to conclude that the second respondent should not form part of the Committee, nor that there was anything remiss in the second respondent's participation in the Committee's deliberations. In addition, they argue that there is no causal link pled which could lead to the finding that the second respondent subjected the claimant to any victimisation because of having done protected acts.

134. Further, the second respondent argues that he is only one of four on the Committee, and that his vote carried no greater weight than that of the others on the Committee.

135. My conclusion on this point is that the claimant has alleged that there were a number of protected acts which he did, and that as a result of having done so, the second respondent subjected him to detriments which amounted to victimisation under section 27 of the Equality Act 2010.

136. I am conscious that the issue under consideration here is whether or not the Tribunal has jurisdiction to hear this claim, not whether the claim lacks any reasonable prospect of success such as to lead to strike out of the claim. As a result, the issue is one of jurisdiction, not an assessment of the strength of the claimant's case.

137. The second respondent invites the Tribunal to dismiss this claim on the basis that the detriments alleged are not capable of being found to amount to victimisation under section 27 for having carried out protected acts, but does so by reference, for example, to the fact that the second respondent was only one of four on the Committee, and that his vote carried no greater weight than any other member. However, that is not a matter on which I can reach any conclusion without hearing evidence from the relevant witnesses, including any members of the Committee whom the second respondent chooses to call.

138. In addition, the second respondent suggests that there is no possible basis upon which these claims could succeed, but the claimant has asserted, clearly enough, that the second respondent acted in such a way, because of his protected acts, as to subject him to the detriment of the Committee's decision not to pursue his claim for outstanding fees. As a result, I consider that it would be unsafe to dismiss the claimant's claim on the grounds of jurisdiction when it is asserted by the claimant that the second respondent himself was responsible for the outcome of which he complains. It is true that the claimant's own averments appear to acknowledge that the detriment was visited upon him by the second respondent and the other members of the Committee, whereas his claim is only against the second respondent. Nevertheless, I am not persuaded that the Tribunal has no jurisdiction to hear this claim, and I have concluded that it is not in the interests of justice to dismiss this claim against the second respondent.

**c. Should the claimant's application to amend his claim, set out in his email of 15 June 2023, be granted?**

139. The claimant's application to amend his claim against the first respondent, set out in the email of 15 June 2023, seeks to introduce the following to his claim:

*"6. The claimant's claim proceeds against the respondent in terms of section 48(5)(b) and (e) of the Equality Act 2010. Section 54(2) of the 2010 Act is irrelevant to the claimant's case. The respondent has continued to victimise the claimant following the commencement of the present claim. The respondent has acted in collaboration with Lady Smith and others in victimising the claimant. Following untrue and malicious shaping of false mass media reports by Lady Smith, which were obviously intended to suggest to the general public that the claimant was implicated in child sexual abuse, the respondent victimised the claimant by his failure to ensure correction of the false and misleading mass media reports shaped by Lady Smith. The respondent, instead, has acquiesced in the false and misleading media reports despite the position he holds as*



*Dean of Faculty. The respondent has also sought to intimidate, bully and place the claimant under pressure to abandon the present claim against the respondent. The respondent has threatened the claimant with career and financial ruin as well as enduring reputational damage. By making these threats the respondent has continued to victimise the claimant, all to the claimant's detriment through anxiety, worry and pressure in his already extreme circumstances. This has had a profound adverse effect on the claimant's health, finances, career prospects and enjoyment of his family life."*

10 140. The first respondent does not object to the amendment, but only insofar as allowing the introduction of the first two sentences of the proposed amendment. He does object to the remainder of the amendment.

15 141. Having considered carefully the terms of the application to amend, it is my Judgment that the application should be refused, except insofar as relating to the first two sentences.

20 142. The reason for this is that the form of the proposed amendment is very unclear, and lacks clarity and specification. It is clear only that the claimant wishes to make further allegations against the first respondent on the basis of ongoing victimisation following the raising of the current claim.

143. There are no dates attached to any of the allegations, which means it is unclear when it is said the unlawful act or acts occurred.

25 144. There is an allegation that the first respondent acted in collaboration with Lady Smith "and others", who are not named; it is not clear what act the first respondent did which could or did amount to collaboration. Further, it is not clear what allegedly "false and misleading mass media reports shaped by Lady Smith" the first respondent is alleged to have failed to correct, or with which he has acquiesced.

30 145. There are also allegations of conduct by the first respondent directed against the claimant in relation to pressure to abandon the current claim

against him, and threats made to the claimant about career and financial ruin, but there is no specification as to when such acts were carried out, in what circumstances and precisely what the threatening conduct was, or what threats were specifically made.

5 146. It is my judgment that allegations of this serious and wide-ranging nature must give fair notice to the first respondent as to the precise claim which he is facing, and that it would not be in the interests of justice, nor consistent with the overriding objective to allow the amendment to proceed as pled.

10 147. I make clear that I reach this conclusion because, as pled, it is not clear what it is the claimant is offering to prove, nor, as a result, what the first respondent requires to defend.

20 **Employment Judge: M Macleod**  
**Date of Judgment: 04 October 2023**  
**Entered in register: 05 October 2023**  
**and copied to parties**

25 I confirm that this is my Note and Orders in the case of Halley v Roderick William Dunlop KC and another and that I have signed the Note and Orders.