EMPLOYMENT TRIBUNALS

Claimant: **Dr David Miller**

Respondent: **University of Bristol**

Heard at: Bristol Employment Tribunal

On: Pre-reading: 5 and 6 October 2023. Evidence: 16, 17, 20, 23, 24 and 25 October and 6 November 2023. Submissions: 1 December 2023. Deliberations in chambers: 31 January 2024.

Before: **Regional Employment Judge Pirani**
Ms J Kaye
Mr H Launder

Appearances: **Mr Z. Sammour,**
For the Claimant: **counsel Mr C. Milsom,**
For the Respondent: **counsel**

RESERVED JUDGMENT

The unanimous judgment of the tribunal is:

1. The claimant's anti-Zionist beliefs qualified as a philosophical belief and as a protected characteristic pursuant to section 10 Equality Act 2010 at the material times.

2. The claimant succeeds in claims of direct discrimination because of his philosophical belief contrary to section 13 Equality Act 2010 in relation to:

a. The respondent's decision to dismiss him on 1 October 2021
b. The respondent's rejection of his appeal against dismissal on 23 February 2022

3. The claimant succeeds in his claim for unfair dismissal pursuant to section 98 Employment Rights Act 1996.

4. The claimant succeeds in his claim for wrongful dismissal (failure to pay notice).

5. The claim for indirect discrimination is dismissed on withdrawal.

6. The tribunal does not have jurisdiction to consider the claim for harassment relating to the claimant's philosophical belief concerning the respondent's recommendation on 12 June 2020 that a complaint be investigated pursuant to its misconduct procedure. That claim is out of time and the tribunal determines it is not just and equitable to extend time pursuant to section 123 Equality Act 2010.

7. All other claims for harassment and direct discrimination fail and are dismissed.

8. In relation to the unfair dismissal claim, the basic and compensatory awards are reduced by 50% in accordance with sections 122(2) and 123(6) respectively of the Employment Rights Act 1996. This is because the claimant's dismissal was caused or contributed to by his own actions and it is just and equitable to reduce the said awards by 50%.

9. There is a 30% chance that, had the claimant still been employed, the respondent would have dismissed him fairly two months after comments the claimant made on social media in August 2023.

REASONS

Contents

The claims and introduction

1. The claimant was employed by the respondent from 1 September 2018 to 1 October 2021 as Professor of Political Sociology. He contends that since at least March 2019 he was subject to an organised campaign by groups and individuals opposed to his anti-Zionist views, which was aimed at securing his dismissal. Further, he alleges that that the respondent failed to investigate or support him in respect of this campaign and instead subjected him to discriminatory and unfair misconduct proceedings which culminated eventually in his summary dismissal. The discrimination is said to arise because the claimant says his anti-Zionist beliefs qualify as a protected philosophical belief pursuant to sections 4 and 10 Equality Act 2010.

2. The respondent denies the allegations and contends that the claimant was fairly dismissed because of gross misconduct in relation to statements and comments he made in February 2021. It also denies that the claimant's beliefs, as defined by him, qualify for protection under the Equality Act.

3. By a claim form, dated 25 February 2022, the claimant brought the following complaints:

(1) direct belief discrimination contrary to ss.13 and 39 Equality Act 2010 ('EqA 2010')
(2) indirect discrimination because of belief contrary to ss.19 and 39 EqA 2010
(3) harassment related to belief contrary to ss.26 and 40 EqA 2010;
(4) unfair dismissal contrary to s.98 Employment Rights Act 1996 ('ERA 1996'), and
(5) wrongful dismissal

4. On the first day of the substantive hearing the claim for indirect discrimination was withdrawn.

The Issues

5. The issues were originally set out and agreed at a case management preliminary hearing before Employment Judge Danvers on 10 November 2022. Judge Danvers ordered that the claimant provide further information relating to the identity of the alleged decision-makers in respect of the acts / omissions relied on as amounting to direct discrimination and harassment. The respondent was to provide a summary of the conduct relied on in respect of the proposed reduction to compensation due to the claimant's fault.

6. Those issues, which were confirmed at the commencement of the substantive hearing, are set out in an annex at the end of this judgment. Some of the points were argued slightly differently, as set out in the conclusions section.

Preliminary issues

7. Preliminary issue on 16 October 2023: Just prior to the commencement of evidence on 16 October 2023 an issue arose relating to case management, despite the previous three case management preliminary hearings. At the last of such hearings, on 20 September 2023, issues relating to disclosure were resolved. Prior to that, the representatives were also invited to agree a final list of issues. The Judge was informed that no further clarification of the issues was required. Nonetheless, on 16 October 2023, the respondent sought to adduce further Twitter/X extracts made by the claimant between 10 and 13 October 2023. The respondent also clarified that they also wanted to run a positive case on protected philosophical belief.

8. The claimant objected to both the admission of the further documents and also the running of a positive defence to the claimant's philosophical belief. It was said that the claimant had been ambushed and also that the further disclosure was not relevant to the pleaded case. The respondent, in reply, pointed out that

they had never conceded or admitted the disputed philosophical belief and that it always was in issue.

9. In determining this dispute between the parties, the tribunal referred to the grounds of response. Paragraph 6 of the said grounds says the respondent makes no admissions as the claimant's true beliefs. The response also says the respondent does not accept that the claimant's true beliefs are protected pursuant to Section 10 EqA having regard to each of the Grainger criteria. Neither party sought further clarification of the issues which were set out at the first preliminary hearing on 10 November 2022. The 10 November 2022 Case Management Order sets out the Grainger tests the tribunal has to determine (are the things relied on beliefs, as opposed to opinions or viewpoints et cetera).

10. The tribunal referred both to the overriding objective, as set out in rule 2 of the Employment Tribunal Rules, and also to rule 41 which provides that the tribunal may regulate its own procedure and shall conduct the hearing in the manner it considers fair, having regard to the principles contained in the overriding objective. The issue of philosophical belief was clearly always in issue and not conceded.
However, it would have been preferable to articulate what the respondent said about the claimant's case. Accordingly, we determined that it was in the interests of justice, and in accordance with the overriding objective. to permit the respondent to run its positive case.

11. However, we asked the respondent's counsel to set out its positive case in writing and give a copy to the claimant's counsel. The claimant's counsel was also afforded an opportunity to have further time with his client prior to the commencement of evidence. In the event, the offer of further time was declined.

12. In relation to the documents, we noted that previous comments made by the claimant post dismissal were included in the bundle as being potentially relevant to Polkey/Chagger points. We took the same view in relation to these few further documents. In any event, bearing in mind that the claimant was the author of the said documents, it is difficult to see how he could be prejudiced by their introduction.

13. The respondent's counsel clarified his case in writing as follows as to the Grainger criteria regarding the belief as pleaded and purported to be held by the Claimant:

    (1) The pleaded belief was not held by the Claimant as a belief or touchstone to his life but as an opinion based on facts/research;
    (2) The Respondent does not challenge Grainger limb (b)
    (3) Either the manifestations relied upon have a close and direct nexus to the Claimant's belief or they do not. If they do, the belief as pleaded and

held by the Claimant did not attain the minimum level of cogency or cohesion but instead lapses into unevidenced conspiracy.

(4) The belief – and in particular the Claimant's belief that Zionism as he defines it "ought therefore to be opposed" - is not worthy of respect in a democratic society and is incompatible with human dignity and the rights of others.

14. Further disputed issue on 6 November 2023: On the last day of evidence, 6 November 2023, the respondent made a further application to adduce evidence of three further Tweets/Xs made by the claimant on 2 and 3 November 2023. According to the respondent, the clear implication of these documents was that the claimant believes that violent opposition to Zionism is acceptable. On this basis, it was contended that they were relevant to the issues the tribunal has to determine.

15. The claimant opposed their introduction to evidence. Among other things, the claimant says the respondent had put a gloss on what was actually said. A more sensible interpretation on them would be to say they illustrate that violence may be a likely consequence of Zionism, but the claimant did not suggest that this was in any way acceptable.

16. When deciding whether or not to allow the documents into evidence we took into account that the claimant had already given his evidence sometime ago. He was cross examined extensively on his opposition, or otherwise, to the violent overthrow of Zionism. Although previous tweets were admitted, on the same or similar basis, the claimant was not taken to these tweets during his cross examination. Further, we did not accept that the clear implication of the more recent evidence was that they show that violence is in anyway an acceptable form of opposition to Zionism.

17. Accordingly, we determined that it was not in accordance with the overriding objective to allow the further documents to be adduced as evidence. It was not suggested that the claimant should or could be re-called. In any event, to the extent that they were relevant to the issues the tribunal has to determine, the claimant had already been questioned about the issues extensively.

Evidence and documents

18. We heard from the following witnesses:

(1) the claimant
(2) Professor Banting
(3) Professor Norman
(4) Professor Whittington
(5) Professor Squires

19. We had an agreed bundle of documents which ran to some 5,238 pages. This was then supplemented by other documents admitted for the reasons set out above. Those documents included social media comments made by the claimant post dismissal.

Split hearing

20. It was agreed that we would deal with liability only. However, that was to include issues relating to contribution/Polkey/Chagger as set out in the annex.

Findings of fact

21. We make the following relevant findings of fact. Some of our findings on disputed factual issues are dealt with in our conclusions.

The Claimant

22. The claimant joined the University of Bristol (the University) in September 2018 as Professor of Political Sociology in the School for Policy Studies. By this time, he had had worked as an academic for more than 20 years. An announcement of his appointment on the School for Policy Studies section of the University's website in October 2018 stated:

> He is an investigative researcher interested in concentrations of power in society and how they might be democratised and made accountable. He works on corporate power, lobbying, public relations and propaganda - especially of the British government, think tanks, Islamophobia, the Zionist movement, corporate influences on health and science, conflict of interest and the financing of the conservative movement.
>
> David is a director of Public Interest Investigations a non-profit company of which Spinwatch and Powerbase are projects; a director of the nonprofit Organisation for Propaganda Studies; and a member of the Working Group on Syria, Propaganda and the Media. David will teach on the following units: 'Harms of the Powerful' and 'Introduction to Qualitative Methods' across a number of programmes.

23. Throughout his academic career the claimant focused his research and teaching upon state and corporate propaganda, public relations and lobbying. He has been published extensively on a diverse range of topics. His academic work has been both political and controversial. The claimant has also been a politically active academic. Prior to the incidents and events in this case he was never subject to any disciplinary process by any University. During this period the

claimant also frequently made public statements and expressed his views on a range of issues, a number of which could be viewed as controversial in nature.

24. At the time the claimant commenced his role with the University his views and activities in relation to Zionism were well known.

The Claimant's Relevant Beliefs

25. The claimant believes, and also believed when he was employed by the University, that Zionism, which he defines as an ideology that asserts that a state for Jewish people ought to be established and maintained in the territory that formerly comprised the British Mandate of Palestine, is inherently racist, imperialist, and colonial. He also considers Zionism to be offensive to human dignity on that basis, and he therefore opposes it.

26. His belief system is to some extent informed by his research on Northern Ireland which was the subject of his PhD thesis. It was a fundamental belief of his that the Irish and Algerian, South African, and Palestinian struggles were best explained as settler-colonial conflicts. His anti-Zionism comes from his belief and understanding of settler-colonialism as intrinsic to Zionism. The claimant also describes himself as anti-Loyalist (although not anti-Protestant) regarding Ireland and anti-Afrikaner nationalist (not anti-white) in respect of South Africa.

27. The specific development of his views on Palestine came as a result of his engagement with the Palestine solidarity movement and he has also read extensively on the issue.

28. The claimant explained, in his evidence to the tribunal, that by the late 1990s, his beliefs in relation to Zionism were fully formed:

> "I have at all times since that date believed Zionism to be a settlercolonial and ethno-nationalist movement that seeks to assert Jewish hegemony and political control over the land of historic Palestine".

29. He also believes:

> Zionism to be a form of racism because it necessarily calls for the displacement and disenfranchisement of non-Jews in favour of Jews, and it is therefore ideologically bound to lead to the practices of apartheid, ethnic cleansing, and genocide in pursuit of territorial control and expansion.

30. The claimant goes so far as to say that his anti-Zionism is a fixed belief and is not amenable to change and regards himself as part of a global intellectual community of anti-imperialist anti-Zionists. However, he was clear in his

evidence that his anti-Zionism is not opposition to or antipathy towards Jews or Judaism.

The First Complaints

31. While at the University the claimant taught two undergraduate courses: "Harms of the Powerful" and "Understanding Terrorism'" from 2019. On 18 February 2019 he delivered a lecture on Islamophobia in which he theorised that Islamophobia in the United Kingdom was driven in significant part by five "pillars", one of which was said to be the Zionist movement. None of his lecture materials in 2019 or thereafter were vetted by the University, as this is and was not the general practice in university social science education.

32. On 19 March 2019 the University received a complaint regarding the content of the Islamophobia lecture from the Community Security Trust ("CST"). The complaint stated:

> CST has received complaints from two Jewish undergraduate students at the University of Bristol about a lecture given by David Miller, a Professor of Sociology, on 18 February 2019 in which CST and other UK Jewish organisations were apparently blamed by him for causing Islamophobia. In the view of CST, the complaint raises serious diversity and student welfare issues together with very real concerns about the academic approach of Professor Miller. For what we trust are obvious reasons, the Jewish students wish to remain anonymous.

33. Attached to the complaint was a PowerPoint presentation used in the lecture. Reference was made to slides which were said to identify CST variously as Zionist, pro Israel and part of one pillar of Islamophobia. The letter went on to say that the suggestion that CST in some way encourages, condones or generates Islamophobia or anti-Muslim prejudice is entirely false and a disgraceful slur. The CST letter also stated that the Jewish students who had contacted CST in relation to the February 2019 lecture "were extremely upset by hearing and seeing what they felt to be an antisemitic lecture".

34. On 3 April 2019 the Registrar of the University responded to the CST letter saying that the "University does not have a formal process for responding to complaints from third parties, but I have asked the Head of School to discuss your letter with Professor Miller, through his line manager, and to consider with him whether any changes might be made to his lecture or PowerPoint presentation to clarify the points that you have raised and to correct any information that is out of date, ensuring that the material is suitable for undergraduate teaching." The letter also drew attention to the University's Freedom of Speech policy and the student complaints procedure which it encouraged the students to make use of.

35. In its reply, of 4 April 2019, the CST said it "will … be liaising with the Union of Jewish Students about the University's handling of this matter."

36. On the same day, 4 April 2019, a further complaint was made by Ms Freedman, the then President of the Bristol Jewish Society (the JSoc), and Ms Rose, the then President of the Union of Jewish Students (UJS) and a former student of the University (and former president of the Bristol JSoc). The letter was addressed to the University's Vice Chancellor, Professor Hugh Brady. The 4 April 2019 complaint stated: "we are deeply concerned that a lecturer is able to use his position of influence in a prestigious academic institution in order to spread conspiracy theories and propagate myths for which he has no evidence."

37. The student complaint letter then went on to set out what the authors regarded as examples of antisemitic and problematic language. The letter referred to an event organised by an organisation called Olive in November 2018 and also a presentation to a conference, PalExpo, in July 2017. It was also said that the claimant had described the foundation of Israel as "by definition a racist endeavour, there's no getting away from that." This was alleged to have contravened the International Holocaust Remembrance Alliance ("IHRA") definition of antisemitism. The letter goes on to say, "As Jewish students, we support the right of anti-Israel students and academics to express their political views, as universities are a place for debate and learning. However, the above examples clearly demonstrate that Miller's anti-Israel discourse has fallen into antisemitism."

38. As Professor Squires accepted in cross-examination, the specific examples given in the student complaint were historic and related to comments made by the claimant before he was employed by the University.

39. The authors said they would like to "initiate a disciplinary case against" the claimant.

40. On 9 May 2019, Ms Freedman wrote to the University seeking to expand the scope of her complaint against the claimant. On this occasion, she complained that the claimant had set an essay question which asked students to: "critically discuss the idea that lobbying might be considered a form of corporate harm". Her concern was that "lobbying" could be interpreted as the "Zionist lobby".

Dealing with the Student Complaints

41. By letter of 3 April 2019 the Registrar and University Secretary informed the two authors of the letter of 4 April that it would be dealt with under the Student Complaints Procedure (SCP). The SCP defines a student complaint as "an expression of dissatisfaction by one or more students about action

or lack of action by the University, or about the standard of service provided by or on behalf of the University." A copy of the complaint was given to the claimant on 5 April 2019. Professor Dermott, the Head of School for Policy Studies, shared the University's response to the CST with the claimant at his request on 2 May 2019.

42. The SCP, which complies with the requirements of the Office of the Independent Adjudicator for Higher Education (as required by the Office for Students), involves two formal stages:

(a) the 'local stage' under which a single person makes a decision on the complaint. The person hearing the complaint would communicate the outcome of their consideration to the student, but the outcome would not be published.
(b) if the student is not satisfied with the local stage outcome, they can request that it is reviewed by the Complaints Review Panel ("CRP") (a panel of three people) – this is the 'university stage'. This further stage does not involve a hearing and is a paper-based review. The CRP communicates its outcome to the student, but again the outcome would not be published.

43. Clause 1.6 provides: Complaints must be brought promptly. The University will not accept complaints that are made longer than 90 days after the matters complained about, unless there is good reason for the delay.

44. Professor Paddy Ireland, Dean of the Faculty of Social Sciences and Law, rejected the 4 April 2019 student complaint on 26 June 2019. Professor Ireland characterised the essence of the complaint as being that the claimant "has used 'antisemitic language, tropes and conspiracy theories'; and that he has used 'antisemitic and problematic language'." The June 2019 letter made reference to the legal obligations of universities under section 43 Education Act 1986 "which places a duty on Universities to 'take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for its members'; and under the Human Rights Act 1998, which makes it unlawful for public institutions like Universities to act incompatibly with certain rights, including the right of free expression under article 10 of the European Convention."

45. Professor Ireland stated: "The IHRA definition, with which I am familiar, is one of a number of available definitions of antisemitism. Notwithstanding its adoption by a number of bodies, it does not have force of law, nor has it been adopted by the University of Bristol. Indeed, it is a somewhat controversial definition, with some believing that it is imprecise and can be used to conflate criticism of the policies of the Israeli government and of Zionism with antisemitism. It is not clear that the IHRA definition is compatible with the University's legal obligations under the Education Act and Human Rights Act. For the purposes of dealing with this complaint, therefore, I have used a simpler and, I hope, less controversial definition of antisemitism as hostility towards Jews as Jews."

46. Professor Ireland accepted that Professor Miller was "highly critical of some of the policies and actions of the state of Israel, and of what he calls 'Israeli lobby organisations' and 'the Zionist lobby': "but I cannot find any evidence in the material before me that these views are underlain by hostility to Jews as Jews. Nor can I find any evidence in the material that I have seen that Professor Miller is trying to hold 'the British Jewish collective responsible for the actions of the Israeli state'. His references seem always to be to specific groups rather than to Jews in general."

Parliamentary Complaint

47. On 19 July 2019 John Mann MP, Chair of the All-Party Parliamentary Group against Antisemitism, wrote to the Chancellor of the University cc'ing the Universities Minister, various MPs, the CST and the UJS, to raise "deep and urgent concerns about an unacceptable set of circumstances relating to antisemitism at the University of Bristol" and asking that the Chancellor "call in" the complaints from the students and the CST. Mr Mann also took issue with Professor Ireland's refusal, in his determination of the student complaint, to adopt the IHRA "definition of antisemitism."

48. The University responded to the MP on 29 July 2019 stating, among other things, that the University had "good reasons" for not having a formal process for responding to complaints from third parties.

49. In relation to the IHRA definition the letter to Mr Mann went on:

> Whether or not to adopt the definition is a matter of policy, to be decided under the University's constitution by its supreme governing body, the Board of Trustees, on the recommendation of Senate, its academic governing body. In view of the recent request to universities by the Universities Minister to adopt the Definition, Senate will be debating this question early in the next academic year. The student has therefore been offered the choice to defer consideration of their complaint until this process is complete and has not yet responded to this offer.

Student's appeal/progression of the complaint

50. In the meantime, on 10 July 2019, Ms Freedman appealed the local stage determination of her complaint, complaining, among other things, of Professor Ireland's decision not to use the IHRA definition of antisemitism and stating that his using his "own definition, is a grave failure of this investigation to take antisemitism seriously."

51. The Deputy University Secretary, Ms Paterson, responded on 19 July 2019 advising Ms Freedman, among other things, that "[t]here is no right of appeal as

such, but your complaint will be progressed to the University Stage, when it will be reviewed by a Complaint Review Panel made up of senior academic or professional services staff from outside the Faculty of the member of staff who is the subject of your complaint." Clause 4.1 of the SCP provides: if it has not been possible to resolve the complaint at the local stage or if the student remains dissatisfied with the outcome, he or she may request that the complaint is progressed to the University stage.

52. Ms Paterson also noted that in the email from Ms Freedman of 10 July 2019 concerns were raised about a lecture delivered by the claimant in February 2019. This lecture was not mentioned in the original student complaint to the University, although, as set out above, it was the subject of a separate complaint from the CST. Ms Paterson went on to say that it was not clear on what basis Ms Freedman was raising this issue now as it did not form part of her original complaint and it did not appear that she was a student on the programme or was present at the lecture. She further explained that the University had received no complaints about this lecture from any student who was present at or affected by it and given that the lecture was delivered 5 months ago, a complaint made now would be out of time. Ms Paterson also referred to the SCP explaining that complaints must be made promptly and no later than 90 days after the events giving rise to the complaint.

53. The letter went on to explain that the question whether to adopt the IHRA definition was to be debated by University's senate during the next academic year and afforded the student the option to defer the complaint until that process was complete. Ms Freedman then wrote on 10 September 2019 effectively opting to defer until the IHRA issue had been considered.

54. After the IHRA definition was adopted by the University's Board of Trustees Ms Freedman was written to again on 5 December 2019. Further details of the complaint, or the appeal, were then provided by her on 2 March 2020. In this further email, Ms Freedman said, among other things, that the local stage investigation did not cover a lecture delivered by the claimant in February 2019. It was said that Ms Paterson had wrongly claimed that this was not mentioned in her complaint to the University. Ms Freedman referred to a previous email on 11 June 2019 providing additional information which included asking whether the CST's letter could be included in this complaint.

55. In the meantime, on 8 September 2019, The Sunday Telegraph published a news article entitled "Bristol University accused of failing to heed Jewish students' complaints", and which provided detail of the Initial Student Complaint quoting Seb Sultan, a then student of the University and identified by the Sunday Telegraph as a founder of "Bristol Students Against Antisemitism". The article also quoted Ms Freedman, who was identified as the President of the Bristol Jewish Society and quoted her as saying the University's handling of

the complaint "caused considerable upset and fear for Jewish students at Bristol."

56. The next day, on 9 September 2019, The Jewish Chronicle published a news article entitled "CST calls Bristol University an 'utter disgrace' for response to complaint about lecture." The Jewish Chronicle identified Ms Freedman as "president of the Jewish Society at the University" and stated that "she had complained to [the University] on behalf of students who had attended Professor Miller's lecture". Ms Freedman is quoted in the article as having been "severely disappointed" with the University's response and "their refusal to adopt the IHRA definition of antisemitism to judge this case."

57. The University was aware of this coverage as it provided comment to both the Sunday Telegraph and the Jewish Chronicle. In the Telegraph article the University is quoted via a "spokesman" as saying "no disciplinary action is currently being considered" against the claimant, but added that they have taken steps ensure that his lecture material is "accurate, clear and not open to misinterpretation." The spokesman is further quoted as saying "academic freedom and freedom of expression are at the heart of our mission as an academic institution" and that "we also take very seriously the need to be a place where people feel safe, welcomed and respected, regardless of religion, gender, race, sexual orientation, disability or social background."

58. Ms Freedman emailed the University on 22 May 2020 enquiring when she could expect to hear from the Panel and saying that the Jewish society is under pressure to respond to the news that the Claimant had been suspended from the Labour Party. The University replied on 28 May 2020 saying that the complaint was still at the University stage of the procedure and also that "given that this process is confidential" points about any response from the Jewish Society were not understood.

59. The Complaints Review Panel ("CRP"), comprising Professor Sir Malcolm Evans, Professor Leah Tether and Dr Catherine Hindson, then delivered its review of the Local Outcome on 12 June 2020 (190). Among other things, the panel said it was conscious that although the complaint was originally brought in April 2019 the claimant had, to date, no voice in the process. It also considered that any investigation should consider the issues by reference to the IHRA definition of antisemitism which had been adopted by the University. Although it was said that the procedure was not a mechanism under which complaints from third parties may be brought the panel concluded that the issues surrounding the lecture may or may not be of evidential value and therefore they suggested that as part of the investigation the matter be considered in that context.

60. The panel resolved to refer the complaint to the University's HR department and to recommend that the Initial Student Complaint be investigated under the University's conduct procedure under the Ordinance 28.

61. The clerk to the CRP, Mrs Bridgwater, wrote to Ms Freedman on 12 June 2020 and informed her of how her complaint would progress. As well as informing Ms Freedman about Ordinance 28 she was told that any action (including the investigation of a complaint) taken under Ordinance 28 was confidential and that she was "bound by the obligations of confidentiality in respect of any internal process".

62. Appendix 1 of Ordinance 28 contains the Rules of Conduct for members of staff. It states, "Gross misconduct is a serious breach of contract and includes misconduct which in the University's opinion likely to prejudice the University's business or reputation or irreparably damage the working relationship and trust and confidence between the University and the employee……It is not possible to give a definitive list of all the offences that may constitute gross misconduct and, in any event, each case will be dealt with on its own facts."

63. The Rules set out a number of examples of potential gross misconduct including:

> (xvi) failure to respect the rights of any student or member of staff of the University or any visitor to the University, to freedom of belief and freedom of speech; (xvii) a serious or deliberate breach of the terms and conditions of employment or the University's policies or operating procedures"; and
> (xxiv) any other behaviour considered by the University to be prejudicial to the interests or reputation of the University".

64. The claimant, via his then solicitors, wrote to the University on 1 July 2020 complaining that the recommendation of the CRP was unfair. One of the points raised in the letter related to delay: "The complaint that was accepted in this case was accepted more than ninety days after the incident about which complaint was made. No good reason for accepting the complaint outside of the 90-day period has been provided and we cannot see how there could be such good reason in circumstances where the complainant was clearly aware of the issues well inside the 90-day period."

65. The solicitors also highlighted what they regarded as the extraordinary delay in the progressing to the University Stage of the complaint. The letter says: "The University's own policy on the University Stage provides that objection to the outcome of the Local Stage should be lodged within ten working days and a Complaint Review Panel should be convened within thirty days. No exceptions are provided to these rules and it is clearly intended that complaints will be resolved as expeditiously as possible."

66. It was also alleged that the methodology in dealing with the complaint was fundamentally unfair and oppressive, as well as in breach of both Ordinance 28

and the Acas Code of Practice. In relation to the ex post facto adoption of the IHRA definition, the letter went on to say that "it is an axiomatic tenet of natural justice that rules should not be applied to a person retrospectively, yet that is what has been done expressly and deliberately in this case at the behest of the accuser."

67. It was also alleged that the referral to Ordinance 28 was ultra vires. Reference was made to paragraph 4.5 of the SCP which provides:

> The Review Panel will consider the complaint and may:
>
> a) ask the parties to reconsider any decision not to enter into mediation;
>
> b) refer the matter back to the Local Stage or to another appropriate person with an instruction or recommendation for resolution. If the instruction or recommendation is not carried out, the student may refer the matter back to the Review Panel for reconsideration;
>
> c) dismiss the complaint, giving reasons, and issue a Completion of Procedures letter;
>
> d) recommend that a Committee of the Board of Trustees be appointed to hear the complaint.

68. It was said by the solicitors that:

> "None of these options include referral to a disciplinary investigation under Ordinance 28. We assume the University is likely to say this is covered by option (b) above, but this clearly cannot be the case. A disciplinary investigation cannot "resolve" a complaint: it is an entirely separate process solely between the University a member of its staff, the outcome of which is likely to be confidential".

<u>The First McColgan Report</u>

69. Pursuant to the recommendation of the CRP, the University appointed Ms Aileen McColgan KC, an independent barrister and recognised expert in the field of equalities and employment law, to investigate the initial student complaint.

70. In the interim, on 9 April 2020, the claimant received an email from Professor Dermott concerning an approach from The Times relating to the Organisation for Propaganda Studies (OPS). The OPS had the University's School of Policy Studies address detailed on Companies House. Professor Miler was a director

of OPS and had provided the University's address as a secondary point of contact.

71. Ms McColgan KC carried out her investigation pursuant to Regulation 4 of Ordinance 28 and taking into account the Conduct Procedure (Ordinance 28) – Manager's Guidance. She was required to investigate in respect of each matter raised whether there is "a formal disciplinary case for Professor Miller to answer, or whether the matter should be dealt with under a different procedure."

72. The complaints/concerns that she was asked to investigate were:

i. Matters raised by the Student complaint of 4 April 2019 concerning the claimant and the additional evidence submitted to the Complaint Review Panel on 5 May 2020; ii. The claimant's actions in relation to the use of the ac.uk domain name through JISC for The Organisation for Propaganda Studies (OPS);

iii. The claimant's failure to disclose his outside interests in OPS, Festival of Resistance Ltd, Centre for Public Interest Ltd, Campaign for Chris Williamson Ltd in accordance with the Outside Work Policy in force at the relevant time;

iv. Any potential disparity between the explanation given by the claimant to the University in or around April 2019 in relation to the lecture slides used in his February lectures and his participation in the online discussion of 28 July 2020; and

v. The language used by the claimant in an on-line discussion of 28 July 2020 and whether this blurs the boundaries of acceptable speech bearing in mind the University's adoption of the IHRA definition of antisemitism in November 2019.

73. Those charges included allegations that the Claimant had misconducted himself by publicly making the following statements:

(1) Describing Israel as "by definition a racist endeavour"

(2) That CST were "supporters of Israeli, of the racist policies of the Israeli government and of the racist foundation of the Israeli state founded…on ethnic cleansing and settler colonialism"; and

(3) That "…in order for the Palestinians to win Zionism…must be defeated"

74. Some of these matters did not feature in the original terms of reference but were added by the Dean of the Faculty of Social Sciences and Law, Professor Simon Tormey, on 4 August 2020 following media coverage which drew attention to the claimant's outside interests and an on-line discussion on 28 July 2020.

75. Ms McColgan KC was provided with extensive documentation by the University in the form of four bundles. She also conducted interviews with Professor Dermott (the claimant's Head of School) and Ms Freedman (the student complainant) on 26 and 28 October respectively and with the claimant on 19

November 2020, and provided the agreed notes of those interviews to the claimant. The President of the National Union of Jewish Students (UJS) was present during her interview with Ms Freedman but did not contribute to the discussion.

76. The overall conclusion of the first report delivered on 4 December 2020 was that there was no formal case to answer in connection with any of the matters investigated.

77. Among the specific findings and conclusions were:
    (1) The 4 April 2019 complaint was written with the assistance of the UJS.
    (2) Ms McColgan KC was "struck by the fact that the entire focus of [Ms Freedman's] discussion of the April 2019 complaint was on the February 2019 lecture which she had not attended, which she does not appear to have discussed with any other student who did attend it, and which had not in fact been mentioned in her letter of 4 April."
    (3) Ms Freedman was aware of no more than "whisperings" that there was an antisemitic lecturer in the sociology department and that she had received no complaints in her capacity as President of the UJS, though she was aware of complaints having been raised with the CST.
    (4) Paying careful attention to the relationship between the speech complained of and the claimant's research, Ms McColgan KC concluded that his conduct could not reasonably be categorised as misconduct.
    (5) The matters complained of did not reach the threshold of unlawful treatment within the Equality Act 2010.
    (6) Ms McColgan KC also considered the impact of IHRA definition of antisemitism, as instructed by the University review panel, while noting that it had not been adopted by the University when the April 2019 complaint was made and that Ms Freedman's appeal was considered in 2020 only because the University had (quite wrongly in Ms McColgan KC's view) stayed her appeal until after the definition was adopted. The report states: "For the avoidance of doubt, I would have concluded in any event that the matters complained of did not breach the IHRA "definition" of antisemitism".
    (7) The claimant's expressed views do not express "hatred towards Jews", and the claimant was at pains to distinguish between Zionism and Israel, on the one hand, and Jewish people, on the other.
    (8) While the claimant's reference to the "racist foundation of the Israeli state founded … on ethnic cleansing and settler colonialism" may be characterised as harsh, the legal opinions are united in the view that this characterisation is not sufficient per se to amount to antisemitism. Nor in her view did the expression of this view, amount to or involve any failure of tolerance or mutual respect towards people, particularly towards Bristol students.

(9) Notwithstanding her conclusions that there was no formal case to answer, and no basis for any other action against the claimant it was determined that the matters merited investigation.

78. Ms McColgan KC referred, also, to the view of Sir Stephen Sedley that:

> "criticism (and equally defence) of Israel or of Zionism is not only generally lawful: is affirmatively protected by law"; that the IHRA "definition" "fails the first test of any definition: it is indefinite" that it is "policy" rather than "law" and that "policy is required to operate within the law", including s43 of the Education Act 1986 and Article 10 ECHR; and that the IHRA definition "offers encouragement to pro-Israel militants."

79. Ms McColgan KC also commented that demands placed on the University by the pandemic, including by remote working, made the collation of the voluminous materials a particular challenge and that Professor Miller did not make himself available for interview until some three weeks after she had interviewed others.

80. In the meantime, on 28 August 2020 Mr Bloch, a student of the University and News Editor of the Tab, the University newspaper, tweeted:

> Hey @BristolUni - I think it's time to maybe do something about antisemitic staff?! The fact that David Miller is STILL employed is just disgraceful. #Antisemitism.

81. Then on 20 October 2020 the Tab, published an article entitled "I'm a Jewish UoB student and I'm sick of worrying about Professor David Miller." It states in the third paragraph of the article:

> Since last January he has been brought up in roughly every other JSOC (Jewish society) committee meeting. Why? Because some Jewish students have been feeling intimidated by what he's been teaching for months.

82. The Tab article then quotes the claimant as follows:
   (a) "In response to questions for this article, Miller says: "The 'hurt' and 'discomfort' complained of by students, whether genuine or manufactured by campus-based lobby groups, cannot be used to prevent the teaching of the links between various political ideologies and activities".
   (b) "He added that he believed this article was part of a series of orchestrated attacks to stop him teaching about "the important relationship between Zionism and rising Islamophobia" and amounted to "an encouragement of anti-Muslim racism".
   (c) "Miller called the [Student Complaint] "an example of the significant number of fraudulent antisemitism complaints which have been all too common in

> the febrile atmosphere encouraged by supporters of the Israeli state." He says the complaint was rejected, and added that the UJS, who helped submit the claim, is a "formal member of the Zionist movement".

83. Professor Simon Tormey, the Dean of the Faculty of Social Sciences and Law, notified the claimant, by way of letter dated 17 December 2020, that no further formal action would be taken but also instructed him to maintain confidentiality as to the report and its contents in the absence of prior agreement. The relevant part of the letter stated:

> "This report remains confidential and you should not share it with anyone (other than your legal adviser); nor can it be published. It will not be shared with the complainant, who, as you will be aware from the correspondence included in the bundle of documents considered by the Investigator, was informed from the outset that she would not be informed of the outcome of the investigation."

84. There followed an exchange of correspondence about making some aspects of the report public. The SCP does not provide that the outcome of a student complaint should be published or any public announcement made about the outcome of student complaints. In the meantime, the claimant shared the report with his union representative believing that this was in accordance with the instruction set out in the letter of 17 December 2020.

85. As part of this exchange on 5 January 2021, the claimant wrote to Mrs Bridgwater, Director of Legal Services and Deputy Secretary, about publication of the report. Mrs Bridgwater replied on 6 January 2021 stating that "The University is sympathetic to your request however we would need to agree with you what could be published, what remains confidential and any approach after publication had taken place i.e. how to deal with any further correspondence from third parties after publication." She received no reply from the claimant.

86. Mrs Bridgwater also provided the claimant with a copy of an anonymised version of the report on 5 February 2021 "in strictest confidence". The letter said that the University was "willing to consider the publication of the attached report provided that following its publication you will not make any comment on the report or the matters raised by it." It was also said the University would like to: consider how they would deal with publication in respect of the student who raised the concern. That might involve for example notifying the student prior to any publication that the investigation had found no case to answer. They are mindful however that this would be a matter to discuss with [the claimant].

87. The letter ended by saying: Following publication (which would be accompanied by a statement reaffirming the University's commitment to freedom of speech) the intention would be that no further responses would be given to this type of correspondence.

88. The claimant's then solicitors wrote on 19 February 2021 setting out reasons why it was essential, in their view, for the claimant to be able to refer to the content of the report. Among other things, the letter pointed to the fact that the claimant was increasingly concerned that a failure to publish the report and preventing him from making associated public commentary would continue to see his professionalism and reputation undermined.

89. Mrs Bridgwater responded on 26 February 2021 stating that: "Whilst my email of 5 February explained that the University was willing to consider publication it expressly referenced the University's need to "consider how [they] would deal with publication in respect of the student who raised the concern" so that it could consider, among other things the University's public sector equality duty. The University considers that this was a proportionate response to your client's request balancing its obligations to both him as a member of staff and its students."

90. During this period, on 19 February 2021, the University provided the following statement to Mr Bloch:

> UK law requires that we, like all employers, act in accordance with our internal procedures and the ACAS code of conduct. Any action which we might take as an employer is a private matter. We are under obligations of confidentiality in relation to all of our students and staff, which we will continue to comply with.
>
> We are speaking to JSoc, Bristol SU and UCU about how we can address students' concerns swiftly, ensuring that we also protect the rights of our staff.
>
> We do not endorse the comments made by Professor Miller about our Jewish students. We are proud of our students for their independence and individual contributions to the University and wider society.

91. In the event, on 3 March 2021, the claimant's then solicitors wrote to Ms Bridgwater in the following terms:

> [M]y client's priority right now is to ensure that it is understood publicly that he has been completely exonerated in respect of the previous investigation, particularly in circumstances where he continues to be attacked in the press and social media, and he is unable to properly respond to those attacks. Please therefore confirm as a matter of urgency that the University will now publish the summary report previously provided in order to correct the public record in respect of our client.

> I can confirm that, while he remains an employee, our client will agree not to discuss the previous investigation and the summary report unless and until he reaches further agreement with the University. If asked about the Report or the investigation, he will note that he is bound by confidentiality and cannot therefore discuss it, and refer the questioner to the summary report.

92. This part of the chronology overlaps with what became the second investigation. Mrs Bridgwater then replied by email on 8 March 2021 saying they needed to consider a range of issues before the University considered publication of the first report.

Events of February 2021

93. On 13 February 2021 the claimant spoke at an event entitled "Building the Campaign for Free Speech". The claimant's speech was commented upon shortly thereafter on Twitter by @hurryupharry and Mr Bloch, who referred to the claimant as an "utterly vile antisemite". This was followed by further tweets on 15 February 2021 criticising the claimant's comments from the Bristol Jsoc, Edward Isaacs, then president of the Bristol Jsoc, and the UJS.

94. On 17 February 2021 the Claimant provided comment to the Jewish Chronicle in relation to an article it proposed to publish regarding his comments at the event on 13 February 2021. The next day Jewish Chronicle published an article entitled "Now 'end of Zionism' academic says Bristol JSoc is 'Israel's pawn'."

95. The claimant also emailed Mr Bloch with comments for an article that he proposed to publish in the Bristol Tab. The article was then published on 19 February 2021.

96. Then, on 20 February 2021, the Claimant published an article in the Electronic Intifada entitled "We must resist Israel's war on British universities".

97. The essential statements in issue were:
    i. The attack by the head of Bristol JSoc: "As some of you will know, I've been attacked and complained about by the head of the Bristol JSoc (the Jewish Society) along with the President of the Union of Jewish Students, both of which organisations are of course formally members of the Zionist movement. JSocs are part of the UJS, the UJS is a member of the World Union of Jewish Students, which is a direct member of the World Zionist Organization. And in its constitution, the UJS of course mentions being pro-Israel". (Zoom conference on 13 February 2021).
    ii. The comments in relation to students and particularly the "political pawns" statement: "The 'Jewish student groups' you refer to are political lobby groups overseen by the Union of Jewish Students,

which is constitutionally bound to promoting Israel." "There is a real question of abuse here - of Jewish students on British campuses being used as political pawns by a violent, racist foreign regime engaged in ethnic cleansing." "The UJS' lobbying for Israel is a threat to the safety of Arab and Muslim students as well as of Jewish students and indeed all critics of Israel" (Jewish Chronicle of 18 February 2021 – "Now 'end of Zionism' academic says Bristol JSoc is "Israel's pawn"").

iii. The email to Ben Bloch on 18 February 2021:

> Ben
>
> This is on the record:
>
> Zionism is and always has been a racist, violent, imperialist ideology premised on ethnic cleansing. It is an endemically an antiArab and Islamophobic ideology. It has no place in any society.
>
> Bristol's JSoc, like all JSocs, operates under the auspices of the Union of Jewish Students (UJS), an Israel lobby group. The UJS is constitutionally bound to promoting
>
> Israel and campaigns to silence critics of Zionism or the State of Israel on British campuses. This campaign of censorship renders Arab and Muslim students, as well as anti-Zionist Jewish students, particularly unsafe.
>
> The UJS and Bristol JSoc have consistently attacked me with a campaign of manufactured hysteria for two years, attempting to have me sacked. The campaign reached new heights of absurdity when a Zionist activist pretended to be a student in one of my classes for which she was not registered, expressly for the purpose of political surveillance.
>
> This is an age-old Israel lobby tactic imported from the US, where academics are routinely harassed for teaching about Zionism and its effects. To be clear, this campaign of censorship, which has attacked British universities, political parties and public institutions, is directed by the State of Israel. Any similar attempt by another racist, militaristic foreign regime -- such as Israel's allies in Saudi Arabia or the UAE - to decide what is taught and who is employed in British universities would be laughed out of the room. Israel and its advocates deserve the same treatment."

98. Following the above comments made by the claimant in February 2021, and the reporting of them, the University received a significant volume of correspondence. A large number of third party individuals emailed the Vice-Chancellor and other members of the University senior team to express their concern about the statements. Many demanded that the University take urgent

disciplinary action. A roughly equal number of letters and emails were received in support of the claimant. These were mainly from academics, including many from the US, Canada and India. The University also received communications from individuals with specific connections to the University (such as alumni), MPs, members of the House of Lords and heads of key institutions (such as Chief Rabbi). The issues were also discussed in the House of Commons. JSoc held a rally and the National Union of Students issued a statement in support. The University also received a significant volume of communications from staff and students at the University, articulating a wide range of views, a significant number of which were supportive of the claimant and critical of the University for not defending him more directly; many expressed quite forcibly.

99. Some of the initial reactions distorted what the claimant had said. For example, on 14 February 2021, a tweet was published making the following accusation: "Extremist @BristolUni Professor David Miller [of] advocating genocide of the world's only Jewish country while pushing an age-old conspiracy theory that posits Jewish interference in world affairs." Another, on the same day, accused the Claimant of "calmly sit[ting] there calling for ethnic cleansing or genocide". The Claimant did not call for genocide or ethnic cleansing.

100. We accept the evidence of Professor Squires that the intense criticism of the University's executive during this period was demanding and demoralising given that the University's reputation was under such significant and sustained scrutiny.

101. On 26 February 2021, Professor Banting, a retired Emeritus Professor of the University, was appointed pursuant to Ordinance 28, the University's Conduct Procedure, to investigate the claimant's alleged conduct in respect of the statements and comments that he had made between 13 and 20 February 2021. They covered statements the claimant had made in an online event on 13 February 2021, his various subsequent statements to the media (including those to Jewish News on 16 February, the Jewish Chronicle on 18 February and in his email to Mr Bloch (News Editor, The Bristol Tab) of 18 February (as reported on 20 February), and in his article in the Electronic Intifada dated 20 February entitled "We must resist Israel's war on British Universities" (as referred to in the Electronic Intifada articled dated 23 February and entitled "Israel lobby demands firing of professor who opposes Zionism"). These are referred collectively as the February 2021 statements.

102. The University also appointed Ms McColgan KC again to investigate separately whether or not the language used in the February 2021 statements exceeded the boundaries of acceptable speech.

103. On the same day Professor Tormey wrote to Professor Miller saying: "Given the widespread commentary following your participation in the online event on 13 February and your various subsequent statements to the media, I consider that

it is in both our interests to focus on the relevant issues raised by these in one forum where they can all be properly and impartially considered. To answer your question, no, to date, the University has not received a formal complaint from a student".

104. The claimant had previously written to Professor Tormey on 24 February 2021 saying, among other things, that the Board of Deputies of British Jews had effectively branded him a neo-Nazi and that this kind of inflammatory, dishonest and inaccurate rhetoric was patently unhelpful, offensive and had no factual basis what- soever. He also said that he had been a recipient of a significant number of abusive emails and messages, largely from anonymous individuals.

105. On 16 March 2021 the University made a public statement "regarding Professor David Miller" (which was posted on the University's website). The statement explained that the University had already initiated an investigation into this matter. It went on to say that the investigation was being carried out in accordance with the University's internal process and that process was confidential. Because of this, it was said that it was not appropriate for the University to make any comment on the matter while the investigation was underway. Reference was then made to
the freedom of speech policy and the fact that the University's position was that bullying, harassment and discrimination are never acceptable.

106. Professor Banting was asked to make a recommendation as to whether (i) there was a case to answer; (ii) there was no case to answer; or (iii) the matter should be considered under an alternative procedure in relation to each of the allegations. The ensuing investigation report ran to over 100 pages. He held an initial investigatory meetings with various individuals including some students who claimed to have been adversely affected by the February 2021 statements, as well as some members of academic staff who had written in support of the claimant and some who had been critical of him. He also spoke to various members of the senior management team. Minutes of the meetings were sent to them, and they were asked to amend them (as necessary). The minutes were then included in the report bundle. Professor Banting also received a very large number of documents.

107. During this period on 28 April 2012 the University received a letter before action from a firm of solicitors, who say they were instructed by an unnamed Jewish undergraduate student at the University. The letter refers to some of the February 2021 statements including to the Bristol Tab, accusing Jewish students of being "directed by the State of Israel" to pursue a "campaign of censorship" that endangers Muslim and Arab students. The letter alleged the University was liable to their client for breach of section 26(1) EqA; harassment of Jewish students.

108. Ms McColgan KC completed her report on 28 May 2021, and it was provided to Professor Banting in June 2021.

The Second McColgan Report

109. In her second report, Ms McColgan KC was asked to investigate "whether the statements made by Professor Miller" on the occasions in February 2021 "exceed the boundaries of acceptable speech bearing in mind" "all relevant University policies, Ordinances and Statutes, all relevant law (including, but not limited to, the Equality Act 2010, Human Rights Act 1998 and Education (No 2) Act 1986)" and "bear[ing] in mind the University's adoption of the IHRA definition of antiSemitism in November 2019".

110. She pointed out that the University may be entitled, at least by reason of Article 10(2) ECHR, to impose limitations on prima facie acceptable speech. Further, while the principle of academic freedom is protective of the content of researchrelated material, it will not necessarily protect the manner in which that content is conveyed. Ms McColgan KC later reiterated that she was not seeking to determine whether in all the circumstances the claimant's entitlement to speak as he did outweighed the interests of others, to which effect may be given by University policies and expectations which might otherwise be placed upon the claimant as a senior member of the University.

111. Extensive reference was made in her report to the University's policies including the University's Freedom of Speech Code of Practice 2018-2019, The University's Acceptable Behaviour Policy, and the University's Equality and Diversity Policy. Ms McColgan KC also clarified at para 41 of her report:

> I have not been asked to determine whether Professor Miller's statements breached these or other policies of the University, rather to take these policies into account in determining whether the statements made by or attributed to him exceeded the boundaries of "acceptable speech", which I take to mean speech which is prima facie protected by Article 10(1) ECHR and/ or the principle of academic freedom. In considering the boundaries of such speech I focus particularly on legal considerations, aware as I am that another investigator will address Professor Miller's compliance with University rules and policies.

112. Ms McColgan KC was also asked to take into account IHRA "working definition of antisemitism", which was adopted by the university in late 2019. The "working definition" states that: "Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities."

113. The overall conclusion of the second report, dated 28 May 2021, was there was no formal case to answer against the claimant in connection with any of the statements made by or attributed to him on the basis that these statements exceeded the boundaries of unacceptable speech.

114. She also concluded among other things:
    i. The statement that the claimant had been "attacked and complained about by the head of the Bristol JSoc (the Jewish Society) along with the President of the Union of Jewish Students" is a statement of fact insofar as it refers to the complaint made about him to the University.
    ii. The fact that former head of Bristol JSoc had made a complaint to the University was publicised by her in September 2019 in an article in the Jewish Chronicle, "CST calls Bristol University an 'utter disgrace' for response to complaint about lecture".
    iii. The statement that the Bristol JSoc and the UJS are "formally members of the Zionist movement" in that "JSocs are a part of the UJS, the UJS is a member of the World Union of Jewish Students, which is a direct member of the World Zionist Organization" is a statement of fact which appears to be accurate and about which she did not accept that there is any basis for categorising it as antisemitic.
    iv. The statement that that "the Zionist movement, parts of it, are engaged in deliberately fostering Islamophobia. It's fundamental to Zionism to encourage Islamophobia and anti-Arab racism, too" is on all fours with the view that Israel is a "racist endeavour" in that it is a state established by reference to "religious or ethnic dimensions" (as set out in an article by Wolfson and Brier). Accordingly, it could not in her view be regarded, without more, as antisemitic or, accordingly, as having "exceeded the boundaries of acceptable speech" given the protections to which that speech is entitled by reason of Article 10 and, at least arguably, the claimant's academic freedom.
    v. The statement in relation to "political pawns" was said by Ms McColgan KC in context to mean that "groups such as Bristol JSoc were in Professor Miller's view not "Jewish student groups" but "political lobby groups overseen by the Union of Jewish Students, which is constitutionally bound to promoting Israel", and that Jewish students on British campuses were, by virtue of their membership of JSocs/ UJS, "being used as political pawns by a violent, racist foreign regime engaged in ethnic cleansing"; in other words, in her view the claimant's criticism were not targeted at Jewish student groups as Jewish groups, rather as (demonstrably) Zionistaffiliated organisations".
    vi. Nonetheless, in relation to this statement, she went on to say that "This statement is obviously one which will be offensive to many, including many members of Bristol JSoc and other student organisations affiliated to the UJS".

115. In her final remarks Ms McColgan KC noted:

> "I reiterate the point I have made in the introductory section and throughout my report that I have been concerned to answer the question whether Professor Miller's statements, or any of them, are prima facie unacceptable in the sense that they are antisemitic or amount to or involve discrimination or harassment of a form which threatens to breach the Equality Act 2010. I have concluded that they are not. But employees, even academics, owe obligations to their employers by virtue of their status as employees, and employers are entitled to impose reasonable standards of behaviour on their staff. These standards will include restrictions on expression which is lawful and protected under Article 10(1) ECHR, and on the manner in which information or opinions which would fall within an academic's area of expertise is conveyed. By way of example, Article 10(1) would apply to a statement by a University employee that a senior member of University management is corrupt, incompetent and/or absurd. That member of staff could nevertheless be subject to disciplinary action by reason of the limitations permitted by Article 10(2), provided such action was governed by law (which would include contractual obligations and policy) and proportionate in pursuit of "the protection of the reputation or rights of others, including the University itself." Care would need to be taken where criticism was rooted in academic disagreement but academic freedom would not in my view extend to the protection of personalised or vitriolic abuse, as distinct from a robust expression of professional disagreements".

The Banting Investigation and Report

116. Professor Banting was asked to consider:
    i. Whether or not the claimant may have breached the confidentiality in the investigation process (and ultimate investigation report(s)) that he was involved with last year and as such, whether or not there has been a repeated or serious failure to obey instructions or other serious acts of insubordination in this regard;
    ii. Whether or not the claimant's comments, including those concerning Jewish students and Jewish student groups (inclusive of such groups of the University) could potentially undermine and adversely affect both his and the University's relationships with former, current or future students (Jewish or otherwise) and other third parties and, therefore, potentially constitute a breach of the University Rules of Conduct for Staff in so far as his actions could be deemed as prejudicial to the interests or reputation of the University and/or its ability to comply with its Public Sector Equality

Duty; iii. Whether or not the claimant's comments, including those concerning Jewish students and Jewish student groups (inclusive of such groups of the University) amount to conduct likely to endanger the health or safety of others (including our Jewish students and members of the University's Jewish student groups) and, therefore, potentially constitute a further breach of the University Rules of Conduct for Staff; and

iv. Whether or not the claimant's comments, including those concerning Jewish students and Jewish student groups (inclusive of such groups of the University) constitute a breach of the University's Acceptable Behaviours Policy (which, in part, requires all members to treat colleagues and students with respect at work) and/or the University's Freedom of Speech Code of Practice (which, in part, requires views to be expressed with tolerance and mutual respect).

117. Professor Banting met with the claimant, accompanied by his trade union representative, Nick Varney, on 19 May 2012. During the meeting the claimant was asked to walk Professor Banting through each of the February 2021 statements. The claimant described the discussion as a political meeting which was called by several organisations associated with the Labour Party. The claimant stated that he did not attend the discussion in a professional capacity in his role as Professor at the University, or as an individual, but as a "public intellectual". In the online Zoom discussion, the claimant had stated he had been attacked and complained about by the Head of the JSoc. In the investigation meeting, the claimant confirmed he was referring to the former head of JSoc, and not the then current Head of JSoc.

118. The claimant also expressed the view that many who had spoken against him in the past were bad faith actors who were not interested in the truth or evidence and that if these were the people Professor Banting had spoken to, it was not appropriate to use them as part of an investigation intending to get to the truth.

119. They then met again on 27 May 2021. This was followed up by written questions and responses (together with a 187-page pack including written responses on 3 June). On 3 June, the claimant provided a list of 16 people he thought Professor Banting should speak to. In the event, Professor Banting elected to contact 8 people on that list. Five of those people replied with their written views; one replied and asked for a meeting (but did not respond to attempts to arrange one); and two did not reply. As a result, Professor Banting subsequently contacted two more of the individuals from the claimant's list. One did not reply and the other responded with their written views.

120. Professor Levitas was one of those interviewed. She was previously invited to sign a letter in support of the claimant but did not do so. Among other things, she commented during her interview:

> There's the conspiracy theory aspect. The argument seems to follow for him from the financial connections among and between Jewish organisations. There is a lot of stuff about that out there on the internet, it is not just him. But as a political sociologist, which he claims to be, he should know that members of organisations often know very little about the constitution or policies of organisations of which they are members. How many members of the Labour party know what its policies are? The fact that students are members of JSOC doesn't mean that they are all Zionists, and it certainly does not follow that the students are stooges of the Israeli Government. That seems to me very problematic. I suspect that the main reason students join a Jewish society is social and a guard against isolation. To make such a leap from the financial connections is just wrong and problematic for students, and to assert that in public potentially puts them at risk of left-wing anti-Semitism. It implies they are complicit in the actions of the Israeli Government.

121. Before the meeting Professor Levitas wrote to Professor Banting saying, among other things: The claim that Jewish students are pawns of the Israeli government potentially fosters antagonism towards them on the part of other students, especially those who are pro-Palestinian. Such antagonism is likely to lead to online and perhaps direct abuse. It certainly fosters antisemitism. It is therefore a threat to the mental health and potentially the physical safety of Jewish students.

122. Evidence from Edward Isaacs was also provided of what was said to be general abuse against Jewish students, alumni, and student groups in response to statements in condemnation of the claimant's conduct on and since 13 February. This and others, comprising 42 pieces of evidence, was said to be just some of the abuse that was in the public domain that Jewish students and Jewish students groups received since 13 February as a direct impact of the claimant's comments.

123. In summary, the conclusions of Professor Banting were:

(1) Issue 1: Alleged Breach of Confidentiality: Given the clear instructions the claimant had received from the University; Professor Banting was of the view that there was a case to answer.

(2) Issue 2: Whether or not his comments, including those concerning Jewish students and Jewish student groups (inclusive of such groups of the University) could potentially undermine and adversely affect both his and the University's relationships with former, current or future students (Jewish or otherwise) and other third parties and, therefore, potentially constitute a breach of the University Rules of Conduct for Staff in so far as his actions could be deemed as prejudicial to the

interests or reputation of the University and/or its ability to comply with its Public Sector Equality Duty: Professor Banting was satisfied that it was appropriate for the issues to be considered by the University despite there being no formal complaint. He reached this conclusion on the basis that given the political climate and highly contentious issues at play, it was perhaps understandable why a student might not want to raise a formal complaint for fear of being in the spotlight.

(3) Issue 3: Whether or not his comments, including those concerning Jewish students and Jewish student groups (inclusive of such groups of the University) amount to conduct likely to endanger the health or safety of others (including our Jewish students and members of the University's Jewish student groups) and, therefore, potentially constitute a further breach of the University Rules of Conduct for Staff: While Professor Banting had not seen any direct medical evidence, having considered the other evidence (and in particular multiple individuals commenting on negative impacts to their mental health), he considered that there was at least a case to answer in relation to whether the claimant's statements amounted to conduct likely to endanger the health or safety of others and whether or not this was potentially a breach of the University Rules of Conduct for Staff. However, in relation to the direct allegation that Edward Isaacs alleged that he had received abuse as a direct result of the claimant saying that he had been attacked by the president of Jsoc, Professor Banting noted that "Despite [Mr Isaacs] having a number of opportunities to provide this to me, I noted that the only written evidence is an anonymous unidentified text or email which, in my view, is not necessarily abusive". The evidence provided related to an attempt to join a Facebook group and made no reference to the claimant or the fact that Mr Isaacs was the President of Jsoc.

(4) Issue 4: Whether or not his comments, including those concerning Jewish students and Jewish student groups (inclusive of such groups of the University) constitute a breach of the University's Acceptable Behaviours Policy (which, in part, requires all members to treat colleagues and students with respect at work) and the University's Freedom of Speech Code of Practice (which, in part, requires views to be expressed with tolerance and mutual respect).: Again Professor Banting considered that there was a case to answer.

124. Professor Banting also concluded that even if there had been a campaign in some quarters against the claimant, as was alleged by the claimant, the response and impact of what he said could not, in his view, be wholly explained by a campaign against him. Professor Banting took into account what the claimant said about individuals and organisations when considering whether there was a case to answer. The focus of his investigation was on the impact of what was said rather than the content. Professor Banting also concluded that

even if there had been a campaign against the claimant, the claimant chose to respond in a way which potentially exacerbated the problem.

Disciplinary Hearing

125. On 23 July 2021, Professor Norman, who was at the time Dean of the Faculty of Health Sciences and a member of the University Executive Board, emailed the claimant to confirm that she was appointed as the Appropriate Manager under Ordinance 28 in relation to the concerns and issues surrounding the statements and comments he made in February 2021. On 29 July 2021, having considered the investigation report and other matters relating to amended minutes, Professor Norman decided that there were disciplinary cases to answer and attached an invitation to disciplinary hearing. The invitation set out the relevant statements that were in question, a summary of Ms McColgan KC's findings, a summary of the Banting findings, the allegations against the claimant, and details and arrangements for the hearing. Professor Norman also invited the claimant to provide written responses to the allegations and any documentation that he wished to refer to at the hearing by 24 August 2021.

126. Professor Norman later agreed to move the hearing to 8 September (with an additional day on 10 September) to accommodate the claimant's request to be represented at the hearing by his barrister (Ms Melanie Tether).

127. On 7 September 2021, the day before the disciplinary hearing, Professor Norman sent the claimant's UCU representative a letter dated 13 August 2021 addressed to the
Chancellor, Sir Paul Nurse, from Rt Hon Robert Jenrick MP, Secretary of State for Housing, Communities and Local Government. The letter stated:

> I am pleased to hear that Bristol University has adopted the IHRA definition. Despite this positive act, some young Jewish people in the care of your institution have made it clear that they are still suffering from the scourge of antisemitism.
>
> They have spoken out about feeling unsafe and unwelcome at Bristol University, due to your organisation's persistent failure to address their serious accusations. These failures, if true, would appear to bring shame and discredit to your institution, one of our country's most prominent universities.
>
> With reference to the specific case of Professor Miller, you will know the Government considers his views to be ill-founded and reprehensible, and wholeheartedly rejects them. Government ministers have already noted that we consider that the University of Bristol could do more to make its condemnation of that conduct clear to current and future students, and to set out publicly the disciplinary and other steps it is taking - to

> show its commitment to creating a welcoming environment for Jewish students and acting decisively where serious issues arise.
>
> I am therefore writing to you both directly, as Chancellor and Vice Chancellor, asking you to immediately detail how you intend to address all concerns which have been raised by Jewish students attending your university, including with respect to Professor Miller. Any inaction now risks the most serious damage to the reputation of your university.

128. Profess Squires, the Deputy Vice-Chancellor and Provost, replied on 17 August 2021 in the following terms: As we have previously explained, if we were to take action against any employee in relation to any allegations, we would do so in line
with our obligations as a UK employer and our internal procedures, which involve a full investigation of relevant facts and circumstances. Our internal procedures are publicly available on our website should you wish to refer to them.

129. The reply went on: "I should make it clear that, although the Bristol Union of Jewish students has both sought and been offered support for itself and for its members in the wake of what you have described as the 'specific case of Professor Miler', the University has not received any formal complaint from any student about the events of this year".

130. On 6 September, the claimant's UCU representative sent Professor Norman a 110 page statement prepared by the claimant together with 51 pages of additional documents. In the statement, the claimant repeated the allegation that he had been targeted by a campaign to have him dismissed.

131. The claimant also said the following at paragraph 318 of that statement:

> Though I am pleased that I have now been cleared twice of antiSemitism, I am concerned that my comments do appear to have caused significant concern in the University. While I do maintain that much of this is due to the way in which those that called for me to be sacked engaged with this issue, I don't think that I was properly aware of how comments that might seem reasonable to me in a particular (political/public debate) circumstance might be seen when translated out of that circumstance. I understand that some of my statements have been regarded as offensive. I have not set out to offend people, and would welcome the opportunity to find ways to have quieter conversations with those that might be willing to hear some of the things I have to say and to listen more attentively to their concerns. I have already had conversations with a number of Jewish Muslim and Palestinian colleagues and students as part of that process. I would seek in future to be more aware of the

> contending pressures that the University is under. These issues will not go away, however, and I would also want to think through with colleagues and others about how these issues can be communicated more effectively.

132. Later, on 7 September, Professor Norman was also provided with legal submissions from Ms Tether, the claimant's counsel. The disciplinary hearing then took place on 8 and 10 September 2021. Notes of the hearing were then provided on 20 September. Suggested amendments were received on 27 September. A disciplinary outcome letter was then sent on 1 October 2021.

133. Professor Norman's conclusions were:

i. Breach of Confidentiality: This was that the claimant had disclosed Ms McColgan KC's first report to his UCU representative in breach of clear instructions from the University. She was satisfied that the report was sent to Mr Doogan in breach of an obligation of confidentiality and that this allegation was made out. However, Professor Norman considered that this was an issue of misconduct and not gross misconduct.

ii. Breach of Health and Safety: Professor Norman concluded that there was no clear evidence of a risk (or the extent of any such risk) of an endangerment to any particular individual's health or safety. Accordingly, she concluded that the claimant did not breach the University's Health and Safety policy or the University's Rules of Conduct in this particular regard and, therefore, that this allegation was not made out.

iii. Breach of Rules and Procedures: This allegation was: "Your statements (as set out in full in the Banting report and, in particular, at paragraph 4.3 of his report) breached the University's Rules of Conduct for members of staff and/or the Acceptable Behaviour at Work Policy and/or the Equality and Diversity policy and/or Freedom of Speech Code of Practice". Professor Norman found this allegation was made out.

94. The statements which Professor Norman considered particularly relevant to the specific allegations were:

(a) the statement on 13 February 2021 that the claimant was attacked and complained about by the Head of Bristol JSoc;

(b) the references to Jewish students being used as political pawns when read in the context of his other statements about the Zionist nature of Bristol JSoc, the claimant's calls to end Zionism as an ideology, his references to a campaign of censorship and the claimant's surrounding views of Israel; and (c) the email to Ben Bloch.

134. Professor Norman's conclusion was that the claimant had breached various policies and that he had committed acts of gross misconduct.

135. In the summary conclusions Professor Norman observed:

> As a Faculty Dean and an academic for over 30 years of my working life, I recognise that freedom of speech and academic freedom are extremely important. I agree entirely with the University's various statements on the importance of upholding and protecting these freedoms and in particular, the ability to discuss difficult and sensitive topics and the right to say things which might cause disagreement or offence. It is for these reasons that I have spent considerable time in reviewing all of the evidence (and in particular your and your representatives' submissions and supporting documentation), deliberating and coming to my various conclusions.
>
> 1.4 I am also firmly of the view that with rights comes responsibility. In all of the circumstances, whilst you are fully entitled to your views and beliefs, I do not believe that you have shown sufficient responsibility, diligence and care both in the various statements that you have made and the manner and way in which you have made them.
>
> 1.5 The statements that you made single out students and student societies. You connected a properly constituted University of Bristol student society to activities that any reasonable person would object to – violence, racism, ethnic cleansing, and making other protected groups feel unsafe. Given the relevant background and context, the manner of your public engagement and the way in which your statements were made was in my view, wrong and inappropriate.
>
> 1.6 Your comments on 13 February were made in an online forum where the students themselves were not present and had no opportunity to reply. The forum was, in reality, an echo chamber of those who would likely amplify and disseminate your comments, and a recording of the event was put on social media. The timing of your comments was also particularly unfortunate, coming just after the conclusion of a previous complaint against you which had been widely reported in the media and amidst ongoing discussions with the University about the publication of Aileen McColgan QC's first report. I consider that you should have foreseen that your comments would receive significant attention. Your subsequent comments were (by your own admission), clearly premeditated
>
> 1.7 The tone of your various comments (and in particular the reference to an attack by the Head of Bristol JSoc, the comments in relation to students and particularly the 'political pawns' comment and your email to Ben Bloch (a University student)) was also inappropriate. Instead of looking to engage in constructive dialogue and debate (for example by seeking to be balanced, nuanced and provide evidence to support

particular points of view) it is my view that through your various statements, you were seeking to proselytise and convert others to your cause and/or to provoke a public reaction. The way in which you have expressed your views and the consequences of such expression have brought University students and student societies front and centre into a contentious and highly charged debate and led to an adverse impact on those students and the University.

1.8 I am particularly concerned that you singled out students and student societies for criticism. The relationship between academics and students is much more than a transactional one of education provision. Universities and academics provide not only education, but a safe space for young people to explore different viewpoints. To my mind, singling out students and their societies in the way you did was an abuse of the significant power differential between you and students. You said on several occasions throughout the disciplinary process that students who enter the "game" of political engagement should expect the sort of aggressive discourse that you engaged in. I do not agree. Although, as you acknowledge, it is not possible to know the motivations of the students who responded to your statements, I consider that the President of Bristol JSoc may have felt he had no choice other than to defend himself and the members of the society, rather than this being a "game" he "chose" to play. Additionally, these were students who, even if engaged in political discourse, had very little experience. Universities should be a place where young people can begin to engage safely in such discussions, with people who are similarly matched. Universities are not places where students with opposing views to you should expect to be attacked in a public forum by someone of your level of expertise and years of engagement.

1.9 In your defence, you have, in particular, reiterated your rights to freedom of speech and academic freedom, stated that there is an ongoing campaign against you and criticised the University for not taking more prompt action to publish the findings of Ms McColgan QC's first report in relation to previous complaints against you. I deal with all of these points in detail below. You also identify that some of the "actors" "against you" have also behaved badly. To some extent, I do not disagree, and I have also take note of this in reaching my decision. However, the inappropriate actions of such "actors", to my mind, do not justify your own.

1.10 For the reasons set out above and in significant detail in this letter, I am clear that your actions amounted to gross misconduct. I note that throughout this process you have failed to show any real contrition or remorse for your actions, despite having a number of opportunities to do so. Equally, the best you appear to have offered for modifying your

behaviour and manner of engagement in the future is that you would "debate" the issues. You have not shown any shred of insight into why others might have found your words reprehensible.

1.11 Despite my findings of gross misconduct, I have spent considerable time deliberating as to whether any sanction less than summary dismissal would be appropriate and proportionate in the circumstances, noting your important rights to freedom of speech and academic freedom. However, I have ultimately concluded, for the detailed reasons set out at section 13 of this letter that summary dismissal is the appropriate sanction in this case. It gives me no pleasure at all to reach this outcome, but having fully reflected on your detailed representations in the disciplinary process and the practical viability of your continued employment with the University, I believe it is the correct decision.

Professor Greer

136. We did not hear evidence from Professor Greer, who is relied on by the claimant as a comparator for the purposes of some of his claims. Nor was Professor Greer represented at the tribunal.

137. Professor Greer taught an optional course entitled "Human Rights in Law, Politics and Society" (HRLPS) from 2007 at the University. On 2 November 2020, Aamir Mohamed, in his capacity as President of the University of Bristol Islamic Society (Brisoc) submitted a complaint form dated 30 October 2020 to the University's Student Complaint and Mediation Manager on behalf of four anonymous students about the content and delivery of lecture materials by Professor Greer. The letter was headed "Brisoc Statement on Islamophobia" and signed not only by Brisoc but also, among others, the Bristol BME Network. Mr Mohamed had not attended any lectures by Professor Greer or been enrolled on the HRLPS course. In accordance with the University's "Procedure for Students raising Allegations of Unacceptable Behaviour by a Student or a Member of Staff" the complaint was referred to the University Human Resources Department.

138. Demands set out in the statement included "A statement of apology to all Muslim students, making it clear that his remarks are an opinion, rather than objective truth." The statement referred to the "reported use of discriminatory remarks and Islamophobic rhetoric" and well as the alleged "apathy and the lack of action taken by the university when these concerns were brought to their attention." It goes on to say that "the gross misconduct that has been under way at the University of Bristol for years, without any accountability, is extremely concerning".

139. It seems that the complaint was originally due to be considered pursuant to Ordinance 28. However, according to the complaint report, it was said to be recognised that the complaint raised significant and sensitive issues of importance

both within and beyond the School in which it arose. There was concern that neither the SCP nor Ordinance 28 alone were an appropriate means of moving forward.

140. The scope of the complaint widened between November 2020, when it was first submitted, and February 2021. After details of the original complaint were published online, Mr Mohamed confirmed his agreement to the assessment process and the wider range of matters which he wished to be considered. Also, in February 2021, the University reminded Mr Mohamed that the internal processes involving a member of staff or students "should remain confidential".

141. The parties agreed that the application of the assessment process to an issue originally submitted as a formal student complaint is unprecedented and it should be considered a pilot. The pilot assessment process which was adopted required the appointment of a senior academic from outside the School in which the complaint arose, to act as Assessor. The role of the Assessor was to consider the complaint and determine whether the matter should proceed to an investigation or to some other appropriate alternative resolution. Meetings with both Mr Mohamed and Professor Greer were held on 18 February 2021. It was decided that both parties would have opportunities to provide written submissions. It was understood that whatever the Assessor decided would have the status of a Local Stage decision and as such may still be subject to review under the University Stage of the Student Complaints Procedure.

142. On 21 July 2021 the Greer Complaint was rejected at the Local Stage. Among other things, it was held that the content of Professor Greer's lectures could not be held to be Islamophobic. It was noted that the scope of the complaint widened between November 2020 when it was first admitted February 2021. The complaint comprised 3 elements. First, the content of the lectures themselves. Secondly, the fact that complaints had been made previously and were not progressed. Thirdly, teaching methodology, i.e., the manner in which current students are spoken to within the teaching environment.

143. The matters that formed the third element of the complaint related to the 2018/2019 academic year. At the local stage the assessor explained to the parties that formal complaints raised some 2 years after the event were out of time and could not be accepted unless there was a good reason for the delay. The report went on that it had since been confirmed that no such good reason had been identified and therefore these complaints were not accepted under the procedure. Reference was made to paragraph 1.6 of the SCP. Among other things, it was said that while students' concerns about potential detriment were understandable, it did not prevent them from raising their concerns at the relevant time in March 2019 and it remained the students' responsibility to raise concerns formally if they wished.

144. Brisoc then requested that the complaint be progressed to the University stage on

23 August 2021. Days after, on 25 August 2021, a TikTok video was posted on the Brisoc Instagram page in which the speaker referred to the complaints against Professor Greer and stated that the University had found no misconduct and had "sided with" the Professor.

145. On 11 September 2021 the Mail Online published an article in which the following quotes were attributed to Professor Greer:

> BRISOC's campaign has been vicious and punitive and has put me and my family under intolerable stress. It has been very lifethreatening and frightening.
>
> Militant minorities are increasingly intent on dictating the content and delivery of university education through vinification, intimidation and threats.
>
> Their purpose is to silence lawful and legitimate opinion simply because they disagree with it.

146. In the meantime, in an article to The Conservative Woman published on 13 September 2021, Professor Greer stated in response to what he regarded as the removal of the module on 'Islam, China and the Far East' that:

> [I]n spite of my vindication, there has been no let-up in [Brisoc's] toxic campaign against me. Based entirely on lies, distortion and misrepresentation, it continues to be propelled by breathtaking arrogance, a malicious intention to harm, and a shocking lack of acquaintance with the relevant authoritative literature and informed debates. On the contrary, the vilification, intimidation and harassment have increased. For example, BRISOC's Instagram account shares a recently uploaded TikTok video, which not only breaches confidentiality by leaking the inquiry's verdict, it also retails fresh and even more dangerous lies than before.
>
> At the heart of the controversy lies a fundamental failure, on the part of BRISOC and others, to appreciate the difference between 'Islamophobia' and responsible, measured and evidencebased critical engagement with Islam.
>
> ….
>
> Although BRISOC have failed to destroy my career, my reputation has been severely damaged. They have put my family and me under intolerable stress, potentially exposing me to the risk of violent retribution.
>
> ….

> BRISOC has a compelling case to answer with respect to a number of possible legal wrongs. These include multiple breaches of the confidentiality of the university's investigation; defamation; harassment and intimidation, and conspiracy to induce the breach of not only my employment contract but also the University's legal duty of care to me as my employer, and its legal duty to protect my academic freedom.

147. On 8 October 2021 an outcome letter (University stage) was sent to the then secretary of Brisoc by the clerk to the CRP. In relation to the allegation of Islamophobia the letter said that the panel noted that the response to the Local stage decision was written on the basis that there had been Islamophobia, but a legal opinion which had been obtained by the University was that there had not been and that none of the speech complained of could arguably amount to unlawful discrimination or harassment (irrespective of whether it was covered by the curriculum exemption set out in section 94(2) of the Equality Act 2010). The letter went on to say that the panel found that the University went above and beyond what was required of it by obtaining expert advice to be able to consider the complaint. The Panel noted the concerns in the Local Stage decision over breaches of confidentiality by BRISOC, which appeared to contravene University Regulations and the Student Agreement. Accordingly, the Panel dismissed the complaint and upheld the Local Stage of the decision making process.

148. On the same day the University stated that via a public announcement that: The process of investigating a formal complaint by the University of Bristol Islamic Society (BRISOC) against one of our law academics, Professor Steven Greer, has concluded. After rigorous examination of the facts and considering the views of both parties, we can confirm that the complaint has not been upheld those involved have been informed of the outcome. The statement went on to say that it was disappointing that both parties chose to breach the confidentiality of the process before both stages had been completed. The University also acknowledged that this had had a regrettable impact on Professor Greer in particular, who has been the target of abuse after BRISOC released details of the complaint on social media. The University also said that in response to claims that the human rights module taught by Professor Greer has been cancelled, it can confirm that this was not the case.

149. Following the University's statement Professor Greer then made further comments via Epigram, The University of Bristol's Student newspaper. Professor Greer said: "Following an almost eight-month University inquiry and review, it is a huge relief to have been completely and unreservedly

exonerated with respect to the utterly groundless allegations of Islamophobia made against me by the University of Bristol Islamic Society (BRISOC). This decision, originally reached at the end of July, was unanimously confirmed by a University review panel on 8 October 2021."

150. No disciplinary action was taken against Professor Greer for any public statements he made about Brisoc or the complaints. He was signed off work from 10 September 2021 and no longer works for the University.

The Claimant's Appeal

151. The deadline for submitting an internal appeal against dismissal was 29 October 2021. On 26 October 2021 the Claimant sought an extension of time to appoint fresh counsel. This was granted and the Claimant presented his appeal on 10 November 2021 on seven grounds:

i. Unlawful interference with free speech and academic freedom; It was alleged that Professor Norman failed to give due consideration to free speech and academic freedom. For example, Professor Norman failed to consider the impact of the claimant's Article 10 rights, and the University's legal obligations and policy commitments to protect free speech and academic freedom, when interpreting the various University policies that the claimant was alleged to have breached.

ii. Natural justice failures; It was alleged that it was incumbent upon the University to investigate the coordinated campaign allegation. If that allegation were true, the disciplinary case against the claimant would be substantially weakened. Further, the University would have been compelled to consider the extent to which the claimant could fairly be held responsible for the reaction of third parties, and any consequent damage to the University's relationships and reputation, arising from news reporting of his comments.

iii. Errors of analysis in relation to the impact on and conduct of students; Given the investigative failings above, Professor Norman did not have the evidence before her on which to make a properly informed decision as to the impact of the claimant's statements on students at the University, or on which to consider the appropriateness of the conduct of students said to have been particularly affected.

iv. Inconsistent treatment on the grounds of protected beliefs; It was alleged that by dismissing the claimant, the University has treated him differently than it has treated, or would treat, members of staff holding different philosophical views. Included in this ground was reference to investigation into complaints made by students in BRISOC regarding Professor Greer. In particular, it was noted that it appeared no

disciplinary action had been taken against Professor Greer because of his public criticism of BRISOC students. By contrast, Professor Miller was dismissed because of statements made by him about or to students at the University.

v. The application of a policy which disproportionately impacts on persons sharing the claimant's beliefs; It was said that even if the decision does
not give rise to differential treatment of the claimant because of his beliefs, it was based upon the application of a policy which has disproportionate effect on people sharing those beliefs.

vi. Misconstruction of policies; The Decision proceeds on a misreading of the Acceptable Behaviour at Work Policy, the Equality and Diversity Policy, the Freedom of Speech Code and Professor Miller's contract of employment. The Acceptable Behaviour at Work Policy is, expressly in its title, concerned with behaviour at work, and the remaining policies and procedures similarly, on a proper construction, apply to members of staff only in so far as they are at work or acting in the course of their employment. It was said that none of the statements which were the subject of the disciplinary proceedings were made by the claimant in the course of his employment.

vii. Failure to consider mitigation properly or at all; it was said that there was a failure to give any, or any adequate, consideration to various mitigating factors which militate against the imposition of dismissal as a sanction for the misconduct that was established.

152. An appeal panel comprising Professor Taylor, Professor Whittington and Professor Powell was convened. The appeal hearing took place on 7 December 2021 at which the claimant was accompanied by his UCU representative. By way of a 32-page decision in writing sent on 23 February 2022 each ground was considered and dismissed. The appeal panel asked Mrs Bridgwater to contact Professor Squires in respect of ground 4. Professor Squires then provided a note to the panel which comments about the Greer case. Among other things Professor Squires noted that as far as she was aware no students raised any form of complaint or concern about Professor Greer's comments about students and/or student groups with the University, either formally or informally. She also sought to distinguish the comments from those made by the claimant on grounds, for example, that the comments abut Brisoc "did not cover its wider motives, legitimacy or activities".

153. In addition, the panel reviewed a wide range of further documentation as set out in the outcome letter.

154. The conclusions of the panel can be summarised as follows:

i. Unlawful interference with free speech and academic freedom; They referenced parts of the decision where Professor Norman cites Article 10, freedom of expression and academic freedom. The panel were satisfied that Professor Norman was aware of, and properly took into account, the impact of Article 10 rights, and the University's legal obligations and policy commitments to protect free speech and academic freedom, when interpreting the various University policies that the claimant was alleged to have breached.

ii. Natural justice failures; Professor Banting's position was that it was beyond the scope of his investigation "to seek to establish the motives of
each person and/or organisation and whether their responses are genuine or not. Indeed, this would likely be an impossible task". They also found that Professor Norman considered whether or not Professor Banting had sufficiently covered these issues in conducting his investigation. In addition, they concluded that Professor Norman "considered all the evidence and the extensive representations made by Professor Miller and his representative and, [her] my view, the campaign issue (both in terms of the run up to the comments made by Professor Miller in February 2021 and the subsequent reaction by the 4 students and other parties) was properly investigated and considered as part of both the investigation and disciplinary processes".

iii. Errors of analysis in relation to the impact on and conduct of students; The panel was satisfied that Professor Norman did adequately take into account the content of the criticism from the students in question. Even taking into account their possible motivations, there was a power imbalance between the claimant and the specific students. The panel concluded that the claimant's public comments, as a professor, about students and student groups would have impacted on students' views and perceptions of the University and its staff and how it and they, interact with students.

iv. Inconsistent treatment on the grounds of protected beliefs; As set out above, the panel had asked Professor Squires to provide them with information relating to the treatment of Professor Greer. The panel concluded that Professor Norman did not dismiss the claimant because of his views, but because of the way that his expressed his views and the consequences of their expression. They also concluded that, unlike Professor Greer, the claimant's comments "related to the wider motives, legitimacy or activities of Bristol JSoc (and by implication, its members and/or prospective members)".

v. The application of a policy which disproportionately impacts on persons sharing the claimant's beliefs; Even if there were a policy that has the impact on anti-Zionist academics that the claimant alleged, the University is still able to take action where speech is not protected or falls into Article 10(2).

vi. Misconstruction of policies; Professor Norman did not consider it necessary to reach a definitive finding as to whether or not the claimant was acting in the course of his employment. She considered that whether or not the claimant was technically acting in the course of his employment, there were sufficient factors to conclude that his conduct and its consequences engaged the University's policies and rules and that the University could instigate disciplinary proceedings. The panel also agreed with Professor Norman's view that the claimant was employed at all times under a contract of employment and that the Rules of Conduct for members of staff, the Equality and Diversity policy and the Freedom of Speech Code were applicable.

vii. Failure to consider mitigation properly or at all; The panel went back on this point to Professor Norman for comment. Among other things Professor Norman said: "during the disciplinary process, Professor Miller did not suggest that his statements were made as a result of stress. He made it clear at various points throughout the disciplinary process that his statements were deliberate, considered, made with care and mutual respect, and made professionally". In relation to the further point raised about insufficient weight being given to measures the claimant was prepared to take to moderate his behaviour in the future, Professor Norman stated, among other things:

> Whilst I noted that in his written submission (para 318) sent to me on 6 September 2021, Professor Miller said "I have not set out to offend people and would welcome the opportunity to find ways to have quieter conversations with those who are willing to hear some of the things that I want to say and to listen more attentively to their concerns", when I asked specifically at the disciplinary hearing about what he might do differently Professor Miller said he "could be more discursive and more evidence based" (para 386 of the meeting minutes with my emphasis). When I asked him what he might want to say to individuals who had experienced distress and upset as a result of his statements Professor Miller's response focussed on a willingness to debate (399 of the meeting minutes). I took this into account when considering sanction and do not consider that I misunderstood or mischaracterised his position."

viii. The panel went on to conclude, after reviewing the minutes of meetings with Professor Banting and Professor Norman, the claimant's written responses and also what the claimant said to them on 7 December 2021 that Professor Norman's views about how the claimant might moderate his behaviour in the future were valid. The panel also concluded that: "we have seen very little recognition from [the claimant] that [he] would temper or change [his] comments in the future. We consider it notable that [the claimant] did not demonstrate any real awareness into how [his] actions may have adverse impacts and/or be perceived by others".

Post employment comments

155. The claimant accepted in cross-examination that none of his post-dismissal statements were affected by his freedom from the ties of employment. He went on to say that even if he were still employed by the University, he would still be posting along the lines that he has been.

156. The claimant's social media posts include comments made on Twitter (now X) in August 2023 such as:

> Judeophobia barely exists these days.
>
> The facts: 1. Jews are not discriminated against. 2. They are overrepresented in Europe, North America and Latin America in positions of cultural, economic and political power. 3. They are therefore, in a position to discriminate against actually marginalised groups.

157. In further posts, he sought to justify his position on whether "Jews are discriminated against in British society" in seeking to differentiate between "discrimination" and "hate crime".

158. In his supplementary statement to the tribunal dealing with these and other posts the claimant said:

> X (Twitter) is not a place that always lends itself to the expression of nuanced views, and, clearly, my initial posts dealing with this issue did not contain all of the nuance above. As a consequence, my initial posts on 6 August 2023 were misunderstood by many people, particularly in relation to my statement that "Jews are not discriminated against".

159. He went on to say:

> I set out the distinction I had in mind between hate crime (i.e. individual acts of prejudice or bigotry, which I accept that Jewish

> people in the United Kingdom are and have been victim of), and discrimination (by which I was referring to macro-level discrimination against a group which would be visible in national data, such as in relation to job prospects, average income, school achievement etc).

Outline of applicable law

Philosophical beliefs within the meaning of s.10 EQA 2010

160. Section 4 of the EqA defines the "protected characteristics" for the purpose of that Act as including "religion or belief". Section 10 of the EqA deals with religion or belief. It provides:

> (1) Religion means any religion and a reference to religion includes a reference to a lack of religion.
>
> (2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.
>
> (3) In relation to the protected characteristic of religion or belief— (a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular religion or belief; (b) a reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief.

161. Hence, "belief" includes "philosophical belief".

162. The criteria that any belief must satisfy in order to constitute a philosophical belief were set out by Burton J Grainger Plc v Nicholson [2010] ICR 360 at paragraph 24 in the following terms:

> … I shall endeavour to set out the limitations, or criteria, which are to be implied or introduced by reference to the jurisprudence set out above. (i) The belief must be genuinely held. (ii) It must be a belief and not, as in McClintock v Department of Constitutional Affairs [2008] IRLR 29, an opinion or viewpoint based on the present state of information available. (iii) It must be a belief as to a weighty and substantial aspect of human life and behaviour. (iv) It must attain a certain level of cogency, seriousness, cohesion and importance. (v) It must be worthy of respect in a democratic society, be not incompatible with human

> dignity and not conflict with the fundamental rights of others…"
> (the "Grainger Criteria")

163. In addition, section 10 EqA is required by virtue of section 3 of the Human Rights Act 1998 to be read so as to be consistent with the rights protected by the Convention, and in particular Articles 9 (freedom of conscience) and 10 (freedom of expression). In Forstater v CHG (Europe) [2022] ICR 1, Choudhury P summarised the relevant principles to be derived from the jurisprudence of the European Court of Human Rights so far as concerns the question whether a belief falls within s.10 EqA 2010. The summary was as follows (see at paragraph 55):

> a. Freedom of expression is one of the essential foundations of democratic society…
> b. The paramount guiding principle in assessing any belief is that it is not for the Court to inquire into its validity…
> c. The freedom to hold whatever belief one likes goes handin-hand with the State remaining neutral as between competing beliefs, refraining from expressing any judgment as to whether a particular belief is more acceptable than another, and ensuring that groups opposed to one another tolerate each other....
> d. A belief that has the protection of Article 9 is one that only needs to satisfy very modest threshold requirements. As stated by Lord Nicholls in R (Williamson), those threshold requirements "should not be set at a level which would deprive minority beliefs of the protection they are intended to have under the Convention." In other words, the bar should not be set too high….

Direct discrimination

164. Section13(1) EqA provides that 'A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others'.

165. A complaint of direct discrimination will only succeed where the tribunal finds that the protected characteristic was the reason for the claimant's less favourable treatment. It is for the tribunal to decide as a matter of fact what is less favourable.

166. It is necessary to explore the employer's mental processes (conscious or subconscious) to discover the ground or reason behind the act. In the majority

of cases, the best approach to deciding whether allegedly discriminatory treatment was ‘because of' a protected characteristic is to focus on the reason why, in factual terms, the employer acted as it did. As Lord Nicholls put it Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL the issue essentially boils down to down to a single question: did the complainant, because of a protected characteristic, receive less favourable treatment than others.

167. The EHRC Employment Code makes the point, at para 3.14, that the motive or intention behind the treatment complained of is irrelevant. In other words, it will be no defence for an employer, faced with a claim under S.13(1), to show that it had a ‘good reason' for discriminating.

168. The Court of Appeal in Owen and Briggs v James 1982 ICR 618, CA, held that while the protected characteristic (in that case, race) need not be the only reason for the treatment, it must have been a substantial reason. However, the EAT went one step further in O'Neill v Governors of St Thomas More Roman Catholic Voluntarily Aided Upper School and anor, taking the view that the protected characteristic need not even be the main reason for the treatment, so long as it was an ‘effective cause'. The EHRC Employment Code confirms this, noting that ‘the [protected] characteristic needs to be a cause of the less favourable treatment, but does not need to be the only or even the main cause' - para 3.11.

169. Where the employer behaves unreasonably, that does not mean that there has been discrimination, but it may be evidence supporting that inference if there is nothing else to explain the behaviour — Anya v University of Oxford and anor 2001 ICR 847, CA.

170. Comparators: In order to claim direct discrimination under section 13 EqA, the claimant must have been treated less favourably than a comparator who was in the same, or not materially different, circumstances as the claimant. Whether the comparator is actual or hypothetical, the comparison must help to shed light on the reason for the treatment. Section 23(1) stipulates that there must be ‘no material difference between the circumstances relating to each case’ when determining whether the claimant has been treated less favourably than a comparator. In other words, in order for the comparison to be valid, ‘like must be compared with like’.

171. A comparator must not share the claimant’s protected characteristic.

172. The EHRC Employment Code makes it clear that that the circumstances of the claimant and the comparator need not be identical in every way. Rather, ‘what matters is that the circumstances which are relevant to the [claimant’s treatment] are the same or nearly the same for the [claimant] and the comparator’ — para 3.23.

173. The fact that a different decision maker was involved in the comparator's case does not necessarily amount to a material difference for the purpose of identifying that person as a comparator. However, there may be cases where the difference in decision maker amounts to a material difference.

174. Because of the difficulty in finding an individual who qualifies as a statutory comparator Lord Hoffman in Watt (formerly Carter) and ors v Ahsan 2008 ICR 82, HL said the dispute about whether the relevant circumstances are materially different will often be necessary to resolve because (see at paragraph 37): by treating the putative comparator as an evidential comparator, and having due regard to the alleged differences in circumstances and other evidence, to form a view on how the employer would have treated a hypothetical person who was a true statutory comparator. If the tribunal is able to conclude that the respondent would have treated such a person more favourably on racial grounds, it would be well advised to avoid deciding whether any actual person was a statutory comparator.

175. In other words, the treatment of a person who does not qualify as a statutory comparator (because the circumstances are in some material respect different) may nevertheless be evidence from which a tribunal may infer how a hypothetical statutory comparator would have been treated.

176. In the absence of an actual comparator — i.e. a real person who is in materially the same circumstances as the claimant but who has not suffered the same treatment — the question of less favourable treatment needs to be determined by reference to a hypothetical comparator who resembles the claimant in all material respects.

177. Relationship with harassment: Section 212(1) provides that "detriment" does not, subject to subsection (5), include conduct which amounts to harassment. 212(5) provides that: Where this Act disapplies a prohibition on harassment in relation to a specified protected characteristic, the disapplication does not prevent conduct relating to that characteristic from amounting to a detriment for the purposes of discrimination within section 13 because of that characteristic. In other words, harassment and direct discrimination are mutually exclusive. The Explanatory Notes explain that this is to clarify that where the Act provides explicit harassment protection, it is not possible to bring a claim for direct discrimination by way of detriment on the same facts.

178. Direct discrimination and manifestation of belief: There is a distinction between conduct which is done because of the belief itself and conduct which is done because of a manifestation of the belief to which objection can justifiably be taken. The correct approach to so called "objectionable manifestation" cases (less favourable treatment not because of belief but rather due to how the belief is manifested) has been clarified by the EAT in Higgs v Farmor's School [2023] ICR 1072.

179. In applying the provisions of the EqA, the Tribunal is bound to construe them compatibly with the ECHR so far as possible to do so. In belief-discrimination claims, the relevant rights upon which the Tribunal must focus are the right to freedom of conscience under Article 9 ECHR and the right to freedom of expression under Article 10 ECHR.

180. Manifestation: When considering whether the allegedly discriminatory conduct has limited that right, it is necessary first to consider whether the conduct of the claimant which caused the allegedly discriminatory response was a manifestation of the religion or belief relied upon. That is, the Tribunal must first consider whether Article 9 is engaged at all.

181. As the European Court of Human Rights made clear in Eweida v United Kingdom (2013) 57 EHRR 8 :

> "82. Even where the belief in question attains the required level of cogency and importance, it cannot be said that every act which is in some way inspired, motivated or influenced by it constitutes a 'manifestation' of the belief. Thus, for example, acts or omissions which do not directly express the belief concerned or which are only remotely connected to a precept of faith fall outside the protection of article 9(1) … In order to count as a 'manifestation' within the meaning of article 9 , the act in question must be intimately linked to the religion or belief. An example would be an act of worship or devotion which forms part of the practice of a religion or belief in a generally recognised form. However, the manifestation of religion or belief is not limited to such acts; the existence of a sufficiently close and direct nexus between the act and the underlying belief must be determined on the facts of each case. In particular, there is no requirement on the applicant to establish that he or she acted in fulfilment of a duty mandated by the religion in question …"

182. The assessment must be undertaken in respect of the beliefs held by the claimant, not as to how those beliefs might have been interpreted or understood by the respondent.

183. As was set out by Eady P in Higgs v Farmor's School [2023] ICR 1072 at para 41:

> If the claimant's actions have a sufficiently close and direct nexus to an underlying religion or belief, such that they are properly to be understood as a manifestation of that religion or belief, any limitation would need to be such as is prescribed by law and necessary, in one of the ways identified under article 9(2).

184. Qualification of Article 9/10 rights: The Human Rights Act 1998 sets out the fundamental rights and freedoms. It incorporates the rights set out in the European Convention on Human Rights (ECHR) into domestic British law.

185. Article 9 provides: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching practice and observance.

186. Article 10 provides: Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

187. Recognising a claimant's right to manifest beliefs, even when expressed in terms that may disturb or offend, does not mean, however, that no restriction or limitation could be placed upon that right.

188. The right in article 10(1) to freedom of expression is of fundamental importance. It is, however, also recognised (see Giniewski v France (2006) 45 EHRR 23) that, via article 10(2) , the exercise of that right: “43. … carries with it duties and responsibilities. Amongst them—in the context of religious opinions and beliefs—may legitimately be included an obligation to avoid as far as possible expressions that are gratuitously offensive to others and thus an infringement of their rights, and which therefore do not contribute to any form of public debate capable of furthering progress in human affairs …”.

189. Both the rights to freedom of thought and to freedom of expression and are qualified, with articles 9(2) and 10(2) setting out the circumstances under which the right to religion or belief, or to freedom of expression, can be limited or restricted: (i) it must be prescribed by law; (ii) it must be in pursuit of one of the legitimate aims identified; and (iii) it must be necessary in a democratic society.

190. Prescribed by law: As noted by Eady P in Higgs it is well established that “law” in this sense has an extended meaning, requiring that the impugned measure should have some basis in domestic law and be accessible to the person concerned, who must be able to foresee its consequences, and compatible with the rule of law. Accessibility requires that the measure must be such that “it must be possible to discover, if necessary with the aid of professional advice, what its provisions are … it must be published and comprehensible”; foreseeability means that it must be possible for a person to foresee the consequences of the law for them.

191. In pursuit of one of the legitimate aims identified: These are usually identified as being concerned with the protection of “the rights and freedoms” (article 9(2)) or “reputation and rights” (article 10(2)) of others.

192. Necessary in a democratic society: A proportionality assessment is required. As Lord Bingham of Cornhill emphasised in R v Shayler [2003] 1 AC 247 , "necessary" in this sense: "23. … is not synonymous with 'indispensable', neither has it the flexibility of such expressions as 'admissible', 'ordinary', 'useful', 'reasonable' or 'desirable' … One must consider whether the interference complained of corresponded to a pressing social need, whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authority to justify it are relevant and sufficient …".

193. Lord Reed in Bank Mellat v HM Treasury (No 2) [2014] AC 700 explained that this requires a four-stage analysis: (i) is the objective of the measure sufficiently important to justify the limitation of a protected right; (ii) is the measure rationally connected to the objective; (iii) could a less intrusive measure have been used without unacceptably compromising the achievement of the objective, and (iv) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.

194. Burden of proof: Section 136 EqA provides: If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

195. If a tribunal cannot make a positive finding of fact as to whether discrimination has taken place, it must apply the shifting burden of proof. However, as Mr Justice Elias, then President of the EAT, said in in Laing v Manchester City Council and anor 2006 ICR 1519, EAT: 'if [the tribunal] is satisfied that the reason given by the employer is a genuine one and does not disclose either conscious or unconscious racial discrimination, then that is the end of the matter.

Harassment

196. The relevant provisions of the EqA are in section 26 which provides as follows:

"(1) A person (A) harasses another (B) if— (a) A engages in unwanted conduct related to a relevant protected characteristic, and
(b) the conduct has the purpose or effect of— (i)
violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
…
(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account— (a) the perception of B;
(b) the other circumstances of the case;
(c) whether it is reasonable for the conduct to have that effect."

197. There are three essential elements of a harassment claim under section 26(1): unwanted conduct, that has the prescribed purpose or effect, and which relates to a relevant protected characteristic.

198. The Equality and Human Rights Commission's Code of Practice on Employment (the Code) notes that unwanted conduct can include 'a wide range of behaviour, including spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other physical behaviour' - paragraph 7.7.

199. There must still be some feature or features of the factual matrix identified by the tribunal which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question. In Tees Esk and Wear Valleys NHS Foundation Trust v Aslam and anor 2020 IRLR 495, EAT, the Employment Appeal Tribunal held that the question of whether conduct is 'related to' a protected characteristic is a matter for the appreciation of the tribunal, making a finding of fact drawing on all the evidence before it. The fact that the complainant considers that the conduct related to a particular characteristic is not necessarily determinative, nor is a finding about the motivation of the alleged harasser.

200. The Code also provides at paragraph 7.9 that unwanted conduct 'related to' a protected characteristic has a broad meaning in that the conduct does not have to be because of the protected characteristic.

201. Whether a single act of unwanted conduct is sufficiently serious to found a complaint of harassment is a question of fact and degree.

202. The test relating to "effect" has both subjective and objective elements to it. The subjective part involves the tribunal looking at the effect that the conduct of the alleged harasser (A) has on the complainant (B). The objective part requires the tribunal to ask itself whether it was reasonable for B to claim that A's conduct had that effect.

Unfair dismissal

203. In relation to unfair dismissal, section 98(1) of the Employment Rights Act 1996 (ERA) states that it is for the employer to show the reason for the dismissal and that that reason falls within subsection 2 or is some other substantial reason of a kind so as to justify the dismissal. In relation to the fairness of the dismissal section 98(4) states:

> "where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

(a) depends on whether in the circumstances (including the size of the 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
(b) shall be determined in accordance with equity and the substantial merits of the case"

204. As is well known it is not for the Tribunal to substitute its judgment for that of a reasonable employer in deciding whether or not the employer acted reasonably for the purpose of section 98(4). Rather, the Tribunal should ask itself whether or
not the decision to dismiss fell with the range of reasonable responses of a reasonable employer.

Time limits in discrimination claims

205. Section 123(1) EqA that proceedings under the Act may not be brought after the end of:

(a) the period of 3 months starting with the date of the act to which the complaint relates, or
(b) such other period as the employment tribunal thinks just and equitable.

206. Section 123(3)(a) provides that conduct extending over a period is to be treated as done at the end of the period.

Wrongful dismissal

207. The test for determining if there is a repudiatory breach of contract is not whether an employer reasonably believes there has been such a breach but proof that there has actually been such a breach.

Conclusions

208. We move on to consider our conclusions.

Do the claimant's beliefs qualify as protected philosophical beliefs?

209. As set out in the agreed issues, the belief relied on by the claimant is as follows.

(1) political Zionism (which the claimant defines as an ideology which holds that a state for Jewish people ought to be established and maintained in

the territory that formerly comprised the British Mandate of Palestine) is inherently racist, imperialistic and colonial, and;

(2) political Zionism ought therefore to be opposed

210. Whether an individual has a protected characteristic is to be assessed at the time of the alleged EqA 2010 contravention and not as informed by subsequent events. We also remind ourselves that it is not for the tribunal to inquire into the validity of the belief in question. Accordingly, it is emphatically not our role to express any view as to the merits on either side of the Zionist, or indeed the wider political, debate.

211. As was set out in Forstater any belief that affects a number of aspects of a person's life and how they live it is likely to comprise a diffuse and diverse range of concepts and principles that would defy precise or concise definition. The standard of exactitude cannot mean setting out a detailed treatise of a claimed philosophical belief in every case. A precise definition of those aspects of the belief
that are relevant to the claims in question would suffice. In this regard, it is not incorrect for a tribunal to seek to identify the core elements of a belief in order to determine whether it falls within section 10 of the Equality Act 2010.

212. The Respondent's position is that the Claimant's belief in Anti-Zionism (as set out in the grounds of claim) did not and does not satisfy the requirements of section 10 EqA 2010 at the time of the alleged contraventions because:

i. The belief was an opinion based on research. As set out by Elias P in McClintock v Department of Constitutional Affairs [2008] IRLR 29 it is not enough "to have an opinion based on some real or perceived logic or based on information or lack of information available".

ii. The belief did not serve as a touchstone to his life: the Claimant has provided no basis on which the Employment Tribunal could conclude that the pleaded belief is a touchstone to his life.

iii. The belief is in various respects incoherent: among other things points are taken as to what is meant by "the British mandate of Palestine" and the assertion that Zionism is "inherently" racist.

iv. The claimant's particular belief is incompatible with the rights of others and/or unworthy of respect in a democratic society. It is said that the objective in "opposing Zionism" to destroy the rights of self-determination for Jewish people who would wish to uphold the continuation of a non-racist Israel is irreconcilable with the basic precepts of international law. It is also said that the claimant has, and had at the material times, an indifference, at best, to violent means of "opposing Zionism."

213. As is set out above, the respondent's position changed on the first day of evidence at the substantive hearing from one of non-admission, and putting the claimant to proof in relation to the protected belief (see at paragraph 6 of the grounds of resistance), to specific and detailed denial. In the event, the

Claimant was crossexamined at great length as to what his precise beliefs are and were at the material times. Topics of cross-examination included whether he thought the state of Israel should be "dismantled" and, if so, in what way and whether he supported a "one state solution."

214. We now turn to the Grainger criteria.

215. The belief must be genuinely held: To constitute a belief, there had to be a religious or philosophical viewpoint in which the claimant actually believed. It is not enough "to have an opinion based on some real or perceived logic or based on information or lack of information available": McClintock v Department of Constitutional Affairs.

216. The claimant's beliefs about Zionism, and the basis for those beliefs, are set out comprehensively in his statement. These are things that he has incorporated into his teachings and writings. We conclude that they have played a significant role in his life for many years. We are satisfied that they are genuinely held. It is said by the Respondent that the belief was "not held by the Claimant as a belief or touchstone to his life." However, that is not the test set out in the first part of Grainger. In any event, the beliefs on which he relies did play a significant part in his life.

217. It must be a belief and not an opinion or viewpoint based on the present state of information available: During his evidence the claimant explained that his research into Zionism followed, but helped to reinforce, his beliefs about Zionism. The claimant is and was a committed anti-Zionist and his views on this topic have played a significant a significant role in his life for many years. His views were deeply held and not amenable to change.

218. His familiarity and expertise in the field of political sociology, propaganda and the Zionist movement was evident during his evidence to the tribunal. For example, when the claimant was cross-examined about a number of works by different academics, whose views are in opposition to the claimant, he confirmed not only that he was aware of them but also that he had read their work.

219. The fact that the claimant did not articulate the fact that he held protected beliefs as an anti-Zionist prior to the appeal does not consign them to opinion or viewpoint. He clearly held anti-Zionist beliefs before, not least, because he often expressed them in a variety of different ways.

220. Belief as to a weighty and substantial aspect of human life and behaviour: This is not challenged by the Respondent.

221. It must attain a certain level of cogency, seriousness, cohesion and importance: The respondent argues that the belief is, in various respects, incoherent and lacks cogency. Coherence and cogency are said to be undermined due to

references to the British Mandate, the contradictory nature of what is said to be "inherent racism", relying upon an "opposition" to something which is illdefined, a selective and partial reading of history and the fact that his beliefs are linked to unsubstantiated views about the extent of discrimination suffered by Jewish people.

222. When considering and assessing these arguments, we remind ourselves, as set out by Choudhury P in Forstater, that a belief that has the protection of the Article 9 right to freedom of belief is one that only needs to satisfy "very modest threshold requirements" and that "the bar should not be set too high." As to coherence, Lord Nicholls stated in R (Williamson and ors) v Secretary of State for Education and Employment that, for the purposes of Article 9 ECHR, this means that the belief must be "intelligible and capable of being understood."

223. Zionism means different things to different people and has no universal definition. The claimant explained that when he refers to "Zionism", he is referring to the ideology that holds that a state for Jewish people ought to be established and maintained in the territory that formerly comprised the British Mandate of Palestine. Although Jordan formed part of the British Mandate the claimant went on to explain in his evidence that it is that mainstream Zionist ideology upon which he is focused. His belief has nothing to do with the inherent nature of the state of Israel.

224. His belief that Zionism (as he defines it) is inherently racist, imperialistic and colonial is based on the claimant's analysis that it "necessarily calls for the displacement and disenfranchisement of non-Jews in favour of Jews, and it is therefore ideologically bound to lead to the practices of apartheid, ethnic cleansing and genocide in pursuit of territorial control and expansion". The claimant went on to explain what he regards as the overtly racist and colonial framing within the works of Zionism's founding ideologues. He also references the fact that Amnesty International and Human Rights Watch have found Israel to be "an apartheid state". The Claimant gave examples in his evidence of what he regards as "racist laws" which he claims are a necessary corollary of Zionism and Israel's laws regarding emigration or "return".

225. The Amnesty International report the claimant referred to is entitled "Israel's Apartheid against Palestinians: Cruel System of Domination and Crime against Humanity." According to a quote from the Secretary General, the report "reveals the true extent of Israel's apartheid regime. Whether they live in Gaza, East Jerusalem and the rest of the West Bank, or Israel itself, Palestinians are treated as an inferior racial group and systematically deprived of their rights. We found that Israel's cruel policies of segregation, dispossession and exclusion across all territories under its control clearly amount to apartheid. The international community has an obligation to act."

226. It was further clarified that the Claimant believes that the establishment of a Jewish State in historic Palestine is necessarily racist because historic Palestine

was home to a majority Palestinian population at the time of Israel's creation. The creation of a state for Jews in land containing an indigenous population of nonJews is said by the claimant to necessitate displacement, disenfranchisement and discrimination against that indigenous population.

227. The Claimant explained that he considers it important to target settler colonialism where it is ongoing, and where indigenous peoples are currently being subject to genocide, forced transfer or other crimes.

228. A belief does not lack cogency or coherence merely because it is in opposition to another belief. Although many would vehemently and cogently disagree with the claimant's analysis of politics and history, others have the same or similar beliefs. It is also irrelevant in determining whether a belief qualifies for protection that some of its tenets are considered by the tribunal to be unfounded.

229. Qualification for protection also does not depend on the quality of open mindedness or a willingness to accept rational, but opposing, views. As Choudhury P also highlighted in Forstater at paragraph 87: the requirement that a belief must attain a certain level of cogency or cohesion should not lead a tribunal, using the tools of logic or science, to challenge the basis for a belief.

230. During cross-examination the claimant accepted that it is possible for a non-racist state of Israel to exist. His belief, as articulated, was and is that if Israel were to abandon or reverse all of its racist policies, laws and practices, it would cease not only to be racist but also to be Zionist.

231. We conclude that the claimant's account as to the nature of Zionism is at least coherent and cogent. The claimant is an academic with expertise in Zionism and the Zionist movement. He referred to numerous academic works in his evidence which support his view of the nature of Zionism. Of course, we do not endorse or comment on this analysis in any way, other than to conclude that it is at least tenable and coherent.

232. It must be worthy of respect in a democratic society, be not incompatible with human dignity and not conflict with the fundamental rights of others: The respondent's case is that the belief relied on is incompatible with the rights of others and/or unworthy of respect in a democratic society. In particular, it is said that opposition to Zionism would destroy the rights of self-determination for Jewish people who would wish to uphold the continuation of a non-racist Israel. It is also said that the claimant has, at best, an "indifference" to violent means of "opposing Zionism".

233. We pause to note that the respondent confirmed at the last preliminary hearing that its position was that nothing the claimant said or did was antisemitic or in

contravention of the Equality Act. We also remind ourselves that while those in opposition to the claimant's views could logically and cogently argue that antisemitism is why Zionism exists in the first place, it is not for the tribunal to inquire into the validity of either belief.

234. The last Grainger criterion ("Grainger V") was considered at length by Choudhury P in Forstater. He concluded at paragraph 66:

> It is clear from these judgments that, in assessing whether a person's rights under Article 9 or Article 10 have been infringed, there is a preliminary question as to whether the person qualifies for protection at all, or, to use the ECtHR's terminology, as to whether the person "fall[s] outside the scope of protection of Article 10 of the Convention by virtue of Article 17 ": Lilliendahl at para 39. Where the expression amounts to the "gravest form of hate speech" then the protection would not apply, as Article 17 would operate to deprive the person of the protection that they seek to invoke. However, if the expression does not fall into that first category, then the question is whether the steps taken by the State to restrict such expression are justified within the meaning of Article 10(2) . Thus even comments which are "serious, severely hurtful and prejudicial", or which promote intolerance and detestation of homosexuals would not fall outside the scope of Article 10 altogether. However, that does not mean that the individual making such comments has free rein to make them in any circumstance at all. The individual's freedom to express their views is limited to the extent provided for by Article 10(2) and it will then be for the Court to assess whether any limitation imposed by the State is justified.

235. It was also noted that the architecture of the EqA does not precisely follow the structure of the ECHR, as section 10 EqA focuses on whether a person has the protected characteristic of belief. In relation to this last criterion "only those beliefs whose characteristics are such that they would fall outside the scope of Article 9, ECHR by virtue of Article 17 would fail to satisfy that criterion".

236. In the judgment of the EAT in Forstater (see at paragraph 79):

> …it is important that in applying Grainger V, Tribunals bear in mind that it is only those beliefs that would be an affront to Convention principles in a manner akin to that of pursuing totalitarianism, or advocating Nazism, or espousing violence and hatred in the gravest of forms, that should be capable of being not worthy of respect in a democratic

> society. Beliefs that are offensive, shocking or even disturbing to others, and which fall into the less grave forms of hate speech would not be excluded from the protection. However, the manifestation of such beliefs may, depending on circumstances, justifiably be restricted under Article 9(2) or Article 10(2) as the case may be.

237. It was also recognised in Forstater that "very few beliefs" will fall at this last hurdle (see paragraph 119). The Claimant explained, in his witness statement, that his opposition to Zionism is not opposition to the idea of Jewish self-determination or of a preponderantly Jewish state existing in the world, but rather, as he defines it, to the exclusive realisation of Jewish rights to self-determination within a land that is home to a very substantial non-Jewish population. The claimant also made clear, when cross-examined, and we accept, that he is not and was not supportive or "open to" violence as a means of opposing Zionism.

238. Conclusion on belief: The tribunal is aware that there are very strong opposing beliefs and opinions to those held and expressed by the claimant. However, as has been set out very clearly in the authorities, the paramount guiding principle in assessing any belief is that it is not for the court or tribunal to inquire into its validity. We have also concentrated on the core elements of the belief in issue, which are set out in the claim form and list of issues. For the reasons set out above, we find that the claimant has established that the Grainger criteria have been met and that his belief amounted to a philosophical belief as defined by section 10 EqA.

<u>The University's decision to dismiss the Claimant on 1 October 2021: this is relied upon as an act of direct discrimination, harassment, and as an unfair dismissal claim</u>.

239. We turn to consider the individual allegations of direct discrimination and harassment. We start with the allegations relating to the dismissal and appeal.

240. It was clarified during closing submissions that the claims relating to dismissal, and the claim for direct discrimination in this regard, are pursued as ones of manifestation of philosophical beliefs rather than because of the belief itself. The claimant says that it was his manifestations of his belief in February 2021 that resulted in his dismissal.

241. The first issue for us to determine is whether the claimant was dismissed because he manifested his anti-Zionist beliefs. We must therefore determine whether Article 9 is engaged at all. We remind ourselves that the assessment must be undertaken in respect of the beliefs held by the claimant, not as to how those beliefs might have been interpreted or understood by the respondent. As was set out in Higgs v Farmor's School, we are to determine whether the actions

which caused the dismissal have a sufficiently close and direct nexus to an underlying belief such that they are properly to be understood as a manifestation of that religion or belief.

242. The Claimant clarified his case on the manifestation issue as being that each of the 13 February speech, the Jewish Chronicle Comment and the Bloch Email must be read as a whole, and that when they are they must be taken to manifest his belief. It is also said that his comments in February related to his area of academic expertise and research and were informed by that research and expertise.

243. The respondent's case is that there was a lack of connection between the supposed manifestations and the claimant's protected beliefs. It is said that the evidence of the decision maker, Professor Norman, was to the effect that the problem was not saying Zionism is racism but identifying students and saying they are Zionists and therefore racist. Thus, it is said that the comments which caused the claimant's dismissal cannot properly be regarded as having a close and direct nexus with the pleaded belief. It is also said that the requisite knowledge of the decision maker was lacking in relation to the protected belief.

244. In terms of any requisite knowledge of the belief, we note that the first student complaint was about, among other things, the Claimant's expression of antiZionist beliefs. It is clear that the University knew about those beliefs because it investigated them and they also formed the backdrop to the dismissal. Professor Norman clearly had knowledge of the relevant belief when she made her decision to dismiss the claimant. She knew that the claimant had anti-Zionist views which she took into account.

245. For example, Professor Norman put to the claimant during the disciplinary hearing:

> You say that you believe that Zionism is a racist endeavour. Do you believe that it is legitimate to hold the opposing view/belief? If so, do you accept that such a view/belief is entitled to protection?

246. Professor Norman then went on to ask:

> Do you accept that there are individuals (including academics and staff) who disagree with you and find your views offensive? If so, do you accept that their freedom of belief and expression and, for academics, academic freedom, may be affected because they do not want to be associated with your views?

247. Further, in the outline legal submissions provided by the claimant's counsel, Ms Tether, at the disciplinary hearing, it was submitted that the claimant's right to protection for his non-Zionist beliefs must be taken into account by the University.

248. We move on to consider connection and manifestation. The dismissal letter runs to some 53 pages. The written reasons for dismissal include reference to and focus on the claimant's expression of the view that Zionism is racist and must be ended. The reasons refer to the language used by the claimant and, in particular, referencing a "racist foreign regime" which was said to be "inflammatory and unnecessarily aggressive" in the context of students being mislead. During the disciplinary hearing it was noted that the claimant confirmed his view that "Zionism is a racist ideology". The dismissal letter also concluded that comments about what was said to be a racist regime and the need to eradicate Zionism "did not provide, present or acknowledge any countervailing view".

249. During cross-examination Professor Norman explained that the central issue she had in mind were the statements made by the claimant. The correspondence received and damage to the University were said to be of more limited importance. She concentrated on the same three things as Professor Banting, namely the claimant's comments on 13 February 2021, to the Jewish Chronicle on 17 February 2021 and the email to Mr Ben Bloch on 18 February 2021.

250. Professor Norman explained in evidence that, in her view, even if the statements were true, the manner and medium in which the claimant made the statements was inappropriate. For example, in relation to the Bloch email Professor Norman's evidence was to the effect that the claimant could have expressed his views about Zionism "in a more balanced and temperate way".

251. What were described as "key extracts" from the 13 February statements are set out in the dismissal letter. When Professor Norman was taken to them during cross-examination, she conceded that they each manifested the claimant's beliefs. The extract which references defeating Zionism and referring to Israel as a "settler colonial society" was not acceptable in Professor Norman's view because it "did not respect the beliefs of Zionists". The section which references Jsoc and UJS was said by Professor Norman to be "inextricably linked" to sections which clearly manifested the claimant's beliefs about Zionism.

252. The reference to "pawns" was accepted by Professor Norman as being in the same sentence in which the claimant's beliefs were manifested. Although she explained that, in her view, it was linking students with what was said to be, among other things, a "racist foreign regime" which was problematic, she effectively conceded that had the link been made in a pro-Zionist context, noting that certain student groups were constitutionally bound to promote certain interests, then this would not have been gross misconduct.

253. Similarly, Professor Norman accepted that the first sentence of the Bloch email is a clear expression of the claimant's anti-Zionist beliefs and what followed was "inextricably linked" to those views. Even if what was set out was true, Professor Norman said that, in her view, the email was "vitriolic".

254. The dismissal letter goes on to say that use of language such as "Israel is a violent, racist foreign regime engaged in ethnic cleansing" was "inflammatory and unnecessarily aggressive" when linking it with certain student groups. During her evidence Professor Norman explained that, in her view, the claimant could have made the same point without being so offensive.

255. Of necessity cross-examination on these issues was nuanced, during which Professor Norman was asked about her decision making process not only by taking her to sections of her letter, and the corresponding documents, but also asking her what her decision would have been had sections of the statements been set out in different terms. For example, it was put to her that if the references in the 13 February statement about Zionism being racist and the fact that it needed to be defeated had been removed then what was said would not have been characterised by her as gross misconduct. In response to this she replied: "that did not happen".

256. On careful analysis of the dismissal letter, the witness statement and crossexamination we conclude that what rendered the February 2021 comments misconduct, in Professor Norman's mind, was that the claimant drew connections between the Jsoc and some Jewish students and Zionism and Israel whilst at the same time expressing the belief that Zionism is a racist, colonial and imperialistic ideology which ought to be opposed. In coming to this conclusion, we note that in Professor Norman's view it was acceptable for the University to have taken no action against the claimant when he provided similar comments about students to the Tab newspaper for an article published in October 2020 without making reference to Zionism in the terms set out above.

257. We therefore conclude that the claimant's expression of his anti-Zionist beliefs in the February comments had a material impact on Professor Norman's decision. Although the respondent says evidence from its witnesses is "not relevant" to considering whether there was a close and direct nexus between the belief and the statements made, we agree with the views expressed by Professor Norman on this point. It is clear that manifestations of the claimant's belief were writ large in the February 2021 statements. The decision to dismiss was, in the terms of section 13 EqA, because of manifestations of the claimant's belief.

258. We move on to consider the limitations or restrictions on Article 9 and Article 10 rights and the analysis of the so called "objectionable manifestation" cases as set out by Eady P in Higgs v Farmor's School [2023] ICR 1072.

259. Prescribed by law: The first issue to determine is whether the restriction in this case, namely the dismissal, was prescribed by law. As has been set out, "law" in this sense has an extended meaning, requiring that the impugned measure should have some basis in domestic law and be accessible to the person concerned, who must be able to foresee its consequences, and be compatible with the rule of law.

260. The claimant says the University shifted the goalposts throughout the disciplinary proceedings as to which particular policies he was alleged to have breached and why. In particular, it is said that the University's Free Speech Code of Practice indicates very clearly that speech which is lawful and not inciteful of violence/hatred and does not pose a risk to safety will not be subject to restriction at all, less still would it be used to justify an academic's dismissal. It is also said that the University's inaction in the face of the claimant's comments as reported in the October 2020 Tab Article indicated that the University did not regard public criticism by the claimant of students, including on the basis that they had made false allegations of antisemitism in order to prevent his teaching on Zionism, to be a cause of any concern at all.

261. In response, it is said by the respondent that the claimant was issued with a contract of employment and afforded access to a suite of University policies including Ordinance 28. They also point to the second McColgan report in which it was commented that academic freedom would not in the view of the author extend to the protection of personalised or vitriolic abuse, as distinct from a robust expression of professional disagreements.

262. This issue is to be distinguished from that of proportionality. At the relevant time, Ordinance 28 regulated the University's conduct procedures. It includes the following examples of gross misconduct:
    i. Any act of…bullying or abusive or threatening or offensive behaviour towards people or property;
    ii. Failure to respect the rights of any student or member of staff of the University or any visitor to the University, to freedom of belief and freedom of speech;
    iii. A serious and deliberate breach of the terms and conditions of employment of the University's policies or operating procedures (specifically the Outside Work, Acceptable Behaviour at Work and Equality and Diversity policies);
    iv. Behaviour considered by the University to be prejudicial to the interests or reputation of the University

263. We also note the University's Diversity and Inclusion policy which identifies the objective of creating "an inclusive environment that respects the diversity of our staff and students and enables them to achieve their full potential to contribute fully and to derive maximum benefit and enjoyment from their involvement in the life of the University."

264. In terms of foreseeability, not only was the claimant aware of the University's policies but there is also evidence that he was warned about his statements. Although there is some dispute about what was said, we prefer the contemporaneous note of Professor Squires who, on 19 October 2019, wrote down the following in her note of a meeting with the claimant: "there was a distinction between academic research and dissemination of this research and personal political campaigning. She asked [the claimant] to be mindful of this distinction and to use his professional judgement to ensure that he didn't put either himself or UoB at risk of charges of discriminatory practices, including in his social media posts."

265. Although it could be said that the claimant had done and said similar things in the past, he was already aware that these had been the cause of a previous disciplinary investigation pursuant to Ordinance 28. We are satisfied that it was foreseeable that making adverse direct and pointed comments about the University's students and student societies could lead to the potential operation of Ordinance 28. There was a risk that such comments would be regarded as bullying or abusive even if they were not discriminatory. There was also a substantial risk that this would adversely impact on the interests or reputation of the University.

266. The disciplinary hearing was convened pursuant to Ordinance 28 which is then referred to in the dismissal letter. We conclude that the Respondent's adoption and pursuit of these policies was prescribed by law.

267. In pursuit of legitimate aim(s): This is said, by the University, to include balancing competing Convention rights, namely article 9 and 10 rights of others which enjoy equal status. The respondent also relies on the preservation of reputation of the University.

268. Some eight specific aims are set out by Professor Norman in her dismissal letter as legitimate. Those accepted by the claimant in the written closing submissions are (i) the protection of the University's reputation and interests and (ii) the protection of the rights of others to hold religious beliefs and to associate with the University "undaunted by harassment, intimidation or hostility".

269. When considering this issue, we remind ourselves that Article 9(2) defines the legitimate interests as follows:

> … in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

270. Article 10(2) provides the following in slightly different terms:

> …the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

271. The disputed aims are: The need to secure compliance with the University's policies and rules of conduct; The need to maintain positive relationships with students, academics, non-academic staff and the wider public; The need to eliminate discrimination which has a "material bearing on University life"; The need to "ensure ongoing compliance with the University's PSED" (public sector equality duty); The promotion of student welfare; and, the "fulfilment of the University's duty of care toward students".

272. When assessing legitimacy, we also remind ourselves that the University's position has always been that the claimant did not make antisemitic statements and nor did he breach the Equality Act. This was set out in the grounds of response and also clarified at the final preliminary hearing on 20 September 2023.

273. There is some considerable overlap here. It is said that a public body cannot interfere with free speech or freedom of conscience simply because it has a policy which says that it can in its rules and policies. However, the policies and rules of conduct relied on make reference to the protection of the reputation and rights of others. Similarly, in relation to the second disputed aim, although a public body cannot restrict free speech and freedom of conscience merely in order to satisfy third parties it can take steps to protect its reputation with third parties, which is interlinked and overlapping. The need to eliminate discrimination is not an aim which is open to the University in light of their concession that nothing the claimant said or did was discriminatory. We also note that the second McColgan Report concluded that the claimant's speech was lawful and not discriminatory or harassing. The same can be said in relation to the application of the Public Sector Equality Duty. The promotion of student welfare, in of itself, would not come within Article 9(2) or 10(2) but it does overlap with the rights and freedoms of those students. It is also unclear to what extent the University accepts that it has a duty of care towards students as it is appealing such a finding in another case.

274. We conclude that the two central aims relied on by the respondent are legitimate, namely, the protection of the University's reputation and interests and the protection of the rights of others to hold religious beliefs and to associate with the University "undaunted by harassment, intimidation or hostility". These also overlap with some of the other aims relied on by the University as set out in its letter of 1 October 2021.

275. Necessary in a democratic society: The next issue requires a proportionality assessment. The four-stage analysis set out in Bank Mellat v HM Treasury (No 2) is:

i. is the objective of the measure sufficiently important to justify the limitation of a protected right;
ii. is the measure rationally connected to the objective;
iii. could a less intrusive measure have been used without unacceptably compromising the achievement of the objective, and
iv. whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.

276. In answering those questions, likely considerations in an employment context identified by Eady P in Higgs are:
i. the content of the manifestation; ii. the tone used;
iii. the extent of the manifestation;
iv. the worker's understanding of the likely audience;
v. the extent and nature of the intrusion on the rights of others, and any consequential impact on the employer's ability to run its business;
vi. whether the worker has made clear that the views expressed are personal, or whether they might be seen as representing the views of the employer, and whether that might present a reputational risk;
vii. whether there is a potential power imbalance given the nature of the worker's position or role and that of those whose rights are intruded upon;
viii. the nature of the employer's business, in particular where there is a potential impact on vulnerable service users or clients;
ix. whether the limitation imposed is the least intrusive measure open to the employer.

277. The respondent says the issue of less intrusive means and proportionality were not put to Professor Norman during cross-examination. In fact, Professor Norman was challenged extensively on the proportionality of her decision. In any event, as was pointed out by the claimant, proportionality is a matter for the tribunal. The claimant does not challenge Professor Norman's actual belief in this respect, which is a matter that might be put to her in another context. Instead, the claimant challenges her assessment which, in any event, must be undertaken by the tribunal.

278. The claimant says that, despite the nature of the comments about students and student societies he did not undermine or deny the rights of students or anybody else to disagree with him. It is also said that at no time did the claimant suggest that Jsoc or UJS should be disbanded, or that Zionists should not be free to associate with one another. The internal investigation of the University, according to the claimant, also did not suggest that the comments of the claimant had any

impact whatsoever on the ability of Jsoc to operate, or of Zionist students at the University to express Zionist views.

279. Although there was some distortion by third parties of what the claimant said in February 2021 and also inaccuracy about what was said by others to be its impact, there can be little doubt that the comments themselves caused significant reputational harm to the University. The comments impacted on staff, alumni, prospective students as well as the University's reputation in the wider world. Some alumni withdrew donations and others threatened to do so. It was reported that the "pawns" comment generated significant concern for student wellbeing and safety due to the idea of someone speaking out against a specific group and what that meant for safety (see the interview with the Executive Director Development and Alumni Relations). Evidence at the investigative stage from the Director of Home Recruitment and Conversion indicates that the claimant's statements had given rise to comment from future students and their parents and current student ambassadors. Among other things, concerns were raised about what was said to be a lack of inclusivity at the University. However, we are also careful to note that the Director explained that it had been a record year for applications and she could not say whether there had been a detrimental impact on recruitment. The University also had no data on demographics or religion, so was unable to identify the impact on specific communities.

280. What were described as sweeping allegations against the Jsoc were a cause for concern to academics and students alike. A Professor who had previously been identified as supportive of the claimant said in her interview to Professor Banting:

> There is also a duty of care to staff. The whole matter has caused me personally a considerable amount of unease and distress and if I were still in full-time employment I would feel threatened both by Miller's statements and by the support he receives from some colleagues…If I can feel silenced and isolated in relation to these issues how much more so must that be the case for students?

281. The same Professor said she considered that there was a threat to the mental health and potentially the physical safety of Jewish Students, that the matter had caused her a "considerable amount of unease and distress and if [she] were still in full time employment [she] would feel threatened".

282. Therefore, contrary to the submissions of the claimant, there was evidence at the investigative stage that the Article 9 and 10 rights of students at the University had or might be adversely impacted. Professor Norman also gave considered evidence to the effect that any student in Jsoc or considering joining Jsoc would be intimidated. She went on to say that if you we a non-Zionist in Bristol Jsoc wanting to go for Friday night dinners then you might question being a member.

This evidence was given after having read the investigative interviews conducted by Professor Banting.

283. The Pro Vice Chancellor of Student Experience responsible for the continuing development and leadership of student engagement, inclusion and wellbeing within the University, explained that she had received a number of emails which had been difficult and unpleasant to read and that she had been discussed on social media in a negative manner.

284. In the wider political world, the overwhelming response to the claimant's comments was one of cross-party condemnation. For example, Caroline Lucas MP wrote and expressed concern about the claimant's decision to single out Jewish student organisations and label them as complicit in a campaign "to silence critics of Zionism or the State of Israel on British campuses".

285. We regard it as highly significant that the claimant chose to air his grievances with students and student associations publicly. Although he had political, ideological and philosophical differences with individual students and student groups as well some potential for a justified sense of grievance, due to the fact that two internal reports had effectively cleared him of the anti-Semitism of which he was being accused, it was nonetheless extraordinary and ill-judged to express himself in the way he did.

286. We also note that the claimant's case on, for example, the relationship between UJS and Jsoc, were not ones which "squarely manifested the claimant's Anti-Zionist beliefs". One of the criticisms levelled at the University is that they failed to investigate the truth or otherwise of comments about pawns and student societies or the February comments in totality. It is said also that in order to know whether those claims were justified or not, it would have been necessary, for example, to investigate the activities of the Bristol JSOC and/or UJS, and to investigate the extent to which students within those groups were in fact coordinating their activities with groups or individuals connected with Israel.

287. However, the context of the comments is that they were said in response to what the claimant regarded as an organised attack on him by students and student societies. It could also be said of the claimant that he failed to take into account what the student societies actually did, irrespective of their constitutional positions. There is some evidence of substantive debate within UJS and its attitude to
Zionism and the Palestinian people. In December 2020 it was reported that UJS members voted down a motion describing it as Zionist. Despite this, the then head of UJS said the group "represents a proud Zionist voice". Another motion put forward proposed to recognise the Palestinian Peoples' inalienable and collective right to self-determination. The proposal, which was passed, cited the union's repeated support for a two-state solution to the conflict. It was said that

"all peoples have the right to self-determination. UJS supports this right for the Jewish people, as with the Palestinian people."

288. The comments were also, as Professor Norman set out in her dismissal letter, set against the backdrop of sensitive discussions about the publication of an abridged version of McColgan report. It was not appropriate for the claimant to bring the internal matter so firmly into public debate. Some of the statements made were clearly provocative in nature.

289. Also relevant, in our opinion, was the power imbalance between the claimant, a Professor at the University, and students and student societies. Some of the students being referred to were enrolled at the University for fewer than 6 months. The allegation that lobbying UJS is a threat to the safety of Arab and Muslim students clearly had the potential to link this to the Bristol Jsoc.

290. We conclude that the comments about the students and student groups ought to have been pursued internally. Making them publicly is not compatible with the claimant's obligations as a senior member of University staff. As was set out in one of the investigative interviews with one of the Professors at the University, if, for example, the claimant had evidence that a student society or its affiliates had made Arab or Muslim or anti-Zionist students unsafe, then he should have raised this with the University or the student unions who would have then pursued the issue with JSoc. As the Professor put it "he has made it public as he has been attacked by the students and is fighting back and attacking them in return. The professional thing to do would have been to take this internally and not to write this email that he knew would be published." The Professor went on "if one of the students told him that a student body was making them feel unsafe …, he should have done something about it, not just write about it in a student magazine."

291. Turing to some of the factors set out in Higgs, the belief that Zionism is a racist ideology was clearly manifested in the content of the statements, although it was mixed with other matters which it is accepted were not squarely within that manifestation, namely the references to student societies. The tone, although considered by many to be offensive, was somewhat similar in tone to what the claimant had said and written in the past. We are also mindful that controversial political speech should not be censored merely because it is offensive, upsetting or embarrassing. Nonetheless, as the respondent says the comments "brought students and JSOC front and centre".

292. Also relevant to content, tone and extent of manifestation is the fact that the claimant is an academic, and his dismissal occurred after what could be described as a campaign which included complaints about his teaching and comments made by him which reflected and/or were informed by his academic expertise and research. We are also careful to recognise the "essential" and "foundational nature" of the claimant's Article 9 and 10 rights. Some of the

comments for which he was dismissed relate to matters which are within the scope of his academic research and expertise.

293. Although the 13 February event was described in the dismissal letter as an "echo chamber", in fact at least some of the very first reactions were to distort the speech rather than to echo it. The first public comment was by a blog called "Harry's Place". Harry's Place tweeted on 13 February 2021, it seems while the event was taking place, quoting part of the claimant's speech and stating that it was "Soviet antisemitism, the assertion that there's a global Zionist conspiracy against the left". This tweet was then republished the following morning by someone who accused the claimant of "advocating genocide of the world's only Jewish country while pushing an age-old conspiracy theory that posits Jewish interference in world affairs". Another re-tweet accused the claimant of "calmly sit[ting] there calling for ethnic cleansing or genocide." Therefore, there were some clear distortions of what the claimant had actually said by those not in agreement with him. The description of the event as an echo chamber is not accurate.

294. It is therefore difficult to say much about the claimant's understanding of the likely audience. The claimant had previously publicly referred to student complaints against him as being "fraudulent" when he made comments to the Tab for an article published in October 2020. He had also previously been reported in the Daily Telegraph as saying, among other things, that "parts of the Zionist movement are involved in funding Islamophobia." Neither of these caused anything like the effect of the comments made in February 2021. The claimant had also made comments about Zionism for years without arousing the sort of public reaction that arose after the February Comments.

295. Intrusion into the University's operation was significant, as set out above. It was forced to deal with a considerable backlash, although some of this would have been caused by distortions of what was actually said by the claimant. Similarly, there was a considerable impact on individuals, both students and academics, which in turn impacted on the University's reputation. Although some of the external comments were, inevitably, misinformed, many directly quoted from what the claimant had said. It is, however, also true that many academics were supportive of the claimant such that there were rival open petitions.

296. Although the respondent seeks to say in its closing that "on proper analysis" the comments made by the claimant amount to victimisation this cuts across their stated and repeated position that they do not seek to go behind the second McColgan report and were not arguing that there had been a breach of the Equality Act (for goods and services or employment).

297. In our view, it was clear that the views espoused were personal to the claimant, although the University was clearly implicated by association. This led to reputational risk although how that translated into actual numbers of students

applying to the university was more difficult to decipher. The answer, it seems, is not much.

298. Preservation of reputation is a legitimate aim which rationally corresponded to an intrusion into the claimant's rights under Article 9 and 10. Also highly relevant is the fact that the claimant's protected belief was manifested at the same time, and in connection with, some other objectionable speech. The fact that what was partly in issue involved both political and academic speech are also important considerations in the balancing exercise. Some of the comments for which he was dismissed relate to matters which are within the scope of his academic research and expertise.

299. There was relevant power imbalance between the claimant and the students. A Professor in a university setting occupies a position which comes with the power to influence, inform and persuade. As Professor Norman set out in her dismissal letter:

> The relationship between academics and students is much more than a transactional one of education provision. Universities and academics provide not only education, but a safe space for young people to explore different viewpoints. To my mind, singling out students and their societies in the way you did was an abuse of the significant power differential between you and students.

300. The impact on service users has been considered above. The quote above from Professor Norman also emphasis the nature of the employer's business. The evidence of Professor Levitas is also instructive in this regard. However, also relevant to the nature of the employer is the fact that it is a University, a higher education provider, which is constitutionally and legally committed to the protection of free speech to a higher degree than most other employers.

301. As has been articulated in the case law, the values that underpin the right to freedom of religion and belief and of freedom of expression - pluralism, tolerance and broadmindedness require nuanced decision-making; there is no "one size fits all" approach. However, balancing what we consider to be the relevant factors set out above, in our view, points in the direction of potential qualification of the claimant's Article 9 and 10 rights.

302. We now turn to proportionality and whether a less intrusive measure could have been used without unacceptably compromising the achievement of the legitimate aims of (i) the protection of the University's reputation and interests and (ii) the protection of the rights of others to hold religious beliefs and to associate with the University "undaunted by harassment, intimidation or hostility". As Lord Reed explained in Bank v Mellat a balance has to be struck between the importance of the objectives pursued and the value of the rights intruded upon.

303. Careful analysis of the penalty imposed on the claimant and its consequences is required. By dismissing an academic, the ability of that person to research and teach (and thus to disseminate ideas and views) is very likely to be diminished. Termination of employment (without notice) is not only the severest sanction available to the University but it also may have a wider "chilling" effect on academics more widely.

304. As the ECtHR held in Heinisch v Germany (2014) 58 EHRR 31 at paragraph 91:

> Lastly, the Court notes that the heaviest sanction possible under labour law was imposed on the applicant. This sanction not only had negative repercussions on the applicant's career but it could also have a serious chilling effect on other employees of Vivantes and discourage them from reporting any shortcomings in institutional care. Moreover, in view of the media coverage of the applicant's case, the sanction could have a chilling effect not only on employees of Vivantes but also on other employees in the nursing service sector. This chilling effect works to the detriment of society as a whole and also has to be taken into consideration when assessing the proportionality of, and thus the justification for, the sanctions imposed on the applicant, who, as the Court has held above, was entitled to bring the matter at issue to the public's attention…

305. Although, as we have indicated, there is fault in what the claimant did, we also remind ourselves that even on the respondent's analysis what the claimant said was accepted as lawful, was not antisemitic and did not incite violence and did not pose any threat to any person's health or safety.

306. We also note that Professor Norman regarded the statements as being central to the reason for dismissal rather than the impact on the University's reputation. She also concluded in her letter that she did not "believe it was appropriate for [the claimant] to bring that internal matter so firmly into public debate, particularly by making references to JSoc and the Head of JSoc having attacked and complained about you." This ignored the fact that students, as we have found, had brought the issues and the complaint into the public eye previously.

307. The question seems to be whether a written warning or final written warning could have been used without unacceptably compromising the achievement of the legitimate aims. This was considered in some detail by Professor Normal in her dismissal letter.

308. One of the points she raises is the fact that Ordinance 28 provides that warnings are normally only live for 12 months. This was said to cause concern

as arguably any such warning would need to be live for more than 12 months to avoid a repeat of the issues which led to the situation in hand. However, it is clear that the Ordinance 28 does permit warnings for longer than 12 months and, in any event, the fact that a warning had lapsed would not prevent the University from taking future action against the claimant for similar offences.

309. Another one of the concerns highlighted by Professor Norman was that it would be difficult, if not impossible, to shape a prescriptive requirement that would cover every possible future event. In our judgement, it would have been perfectly possible to set out in clearer terms what the University considered acceptable, particularly when making public comments about students and student societies. The points put to the claimant in cross-examination included the fact that complaints or concerns about students and student societies should have been pursued internally. It would not have been difficult to encapsulate this in a policy or written warning.

310. Moreover, the University had not been clear and consistent in the way in which it treated comments which could be said to both impact on its reputation and on the rights and reputations of students. In our view, this impacts on proportionality and the issue of less intrusive means.

311. The University did not even warn the Claimant for comments he made in the October 2020 Tab Article. The article states that since January the claimant was:

> brought up in roughly every other JSOC (Jewish society) committee meeting. Why? Because some Jewish students have been feeling intimidated by what he's been teaching for months.

312. The claimant is then quoted as saying:
    (1) "In response to questions for this article, Miller says: "The 'hurt' and 'discomfort' complained of by students, whether genuine or manufactured by campus-based lobby groups, cannot be used to prevent the teaching of the links between various political ideologies and activities"".
    (2) "He added that he believed this article was part of a series of orchestrated attacks to stop him teaching about "the important relationship between Zionism and rising Islamophobia" and amounted to "an encouragement of anti-Muslim racism"".
    (3) "Miller called the [Student Complaint] "an example of the significant number of fraudulent antisemitism complaints which have been all too common in the febrile atmosphere encouraged by supporters of the Israeli state." He says the complaint was rejected, and added that the UJS, who helped submit the claim, is a "formal member of the Zionist movement"".

313. Further, no warnings or disciplinary action of any sort were taken nor, it seems, contemplated when Professor Greer made comments in a national newspaper about Brisoc. Although Professor Norman had no knowledge of the comments made by Professor Greer about students and Brisoc, including ones in the Daily Mail on 10 November 2021, just weeks before the dismissal of the claimant, when she was taken to them during her evidence, she said they appeared to be of "magnitudes worse" than those made by the claimant in February 2021. Unlike in a claim for unfair dismissal, we are not restricted to analysing the facts known to and found by Professor Norman.

314. The University, as an academic institution, ought to be prepared to face and to weather criticism and reputational damage which flows from the exercise by its academics of their rights to speak and think freely and lawfully on areas within or connected to their research and expertise. Overall, dismissing the claimant has not materially protected the University's reputation. We conclude that a less intrusive means than dismissal could have been used by the University without unacceptably compromising the achievement of its objectives. Adopting the balancing exercise set out in Bank Mellat, when balancing the severity and chilling effects of dismissal against the importance of the legitimate aims identified by the University, we conclude that it was not necessary to dismiss the claimant. However, for the reasons set out above we also conclude that it would have been proportionate to issue some disciplinary sanction against the claimant short of dismissal.

315. On the Higgs analysis, the University's reason for dismissing him was therefore the claimant's belief, and the dismissal is accordingly directly discriminatory.

316. Because harassment and direct discrimination are mutually exclusive the harassment claim does not succeed.

317. Finding the Claimant guilty of misconduct in relation to comments that he made in February 2021: The allegations against Professor Norman included finding the claimant guilty of misconduct in addition to allegations relating to dismissal. This is pursued as an allegation of direct discrimination only. Again, as was clarified, this claim for direct discrimination is pursued as one of manifestation of philosophical beliefs rather than because of the belief itself. It follows from what we have set out above that this allegation does not succeed. Although, we have concluded that the finding of misconduct was because of a manifestation of his belief, for the reasons we have set out above, the finding that misconduct occurred was proportionate and satisfies the tests and criteria set out in Higgs and Bank Mellat.

318. Unfair dismissal: We also find that the section 13 EqA direct discrimination claim in relation to the dismissal renders the dismissal unfair pursuant to section 98 ERA. The University acted unreasonably in treating the claimant's conduct as a sufficient reason for dismissal. The reason for dismissal was tainted by

discrimination and the dismissal was outside the range of responses open to a reasonable employer. Therefore, the claimant's direct discrimination claim for dismissal is dispositive of his claim for unfair dismissal.

319. Even if we had not found the dismissal to be direct discrimination, we would have found the dismissal to be unfair pursuant to section 98 ERA. As an industrial jury, and taking into account the expertise and experience of the non-legal members on the panel, we consider that dismissal was outside the band of reasonable responses because the actions of the claimant did not amount to gross misconduct and also because inadequate attention was given to the possibility of a sanction short of dismissal.

The University's rejection of the Claimant's appeal against dismissal on 23 February 2022: this is relied upon as an act of direct discrimination and harassment

320. The Claimant was told at the outset of the hearing on 7 December 2021 that the appeal was to be conducted as a review of Professor Norman's decision, and not as a full re-hearing. Professor Whittington, one of the panel of three who heard the appeal, accepted that save in respect of her analysis of the difference of treatment between Professor Greer and the claimant, the appeal panel adopted the analysis of Professor Norman in her dismissal letter without any material alteration. Professor Norman's reasons were endorsed by the appeal panel.

321. The rejection of the claimant's appeal is therefore direct discrimination for the same reasons we have provided in relation to the dismissal. Similarly, the claim for harassment falls away due to the fact that it is mutually excusive to direct discrimination.

Subjecting the Claimant to disciplinary proceedings in relation to the comments made by him in February 2021: harassment

322. The claimant clarified that this allegation is made in relation to the actions and decisions of Professor Banting. The charges Professor Banting was asked to consider required him to form a view as to whether the claimant had breached various of the University's policies and rules by virtue of his speech and the form of the February comments. At the investigative stage Professor Banting concluded that there was credible evidence to show that the comments had undermined relationships with staff, students, prospective students and alumni and damaged the reputation of the University in the eyes of third parties. Professor Banting also concluded that there was a case to answer as regards a contravention of health and safety policy, the Free Speech Code, the Acceptable Behaviour at Work Policy and a potential engagement of the Outside Work Policy

and the Equality and Diversity Policy. In essence, as we have set out in our findings of fact, Professor Banting concluded that there was a case to answer.

323. The claimant advances various allegations of deficiencies against Professor Banting. Among those is an accusation that he unreasonably failed to investigate the alleged campaign against the claimant.

324. In essence, as we have set out in our findings of fact, Professor Banting concluded that there was a disciplinary case to answer in relation to the February 2021 comments. This is the decision which is said by the claimant to be discriminatory. This claim is brought as one of harassment only, i.e. subjected him to disciplinary proceedings after the February comments was harassment related to his protected belief (cf. what is suggested in the claimant's closing submissions at paragraph 18(g) where it is suggested that it is also brought as direct discrimination).

325. Section 26, EqA, the provision relating to harassment, provides that it is not necessary to show that another person was, or would have been, treated more favourably. Instead, it is simply necessary to establish a link between the harassment and a relevant protected characteristic. Nonetheless, less favourable treatment is obviously relevant to whether there is a link with the protected characteristics. The claimant says he was subject to disciplinary proceedings because of the February comments. Professor Greer was not subject to disciplinary proceedings because of his comments to the Daily Mail or Epigram, or his article in the Conservative Woman. It is said by the claimant that his comments were, on any sensible view, less deserving of censure than Professor Greer's. The claimant also argues that the existence of a different decision-maker in the comparator's case need not prevent the comparison being a valid one: Olalekan v Serco Ltd [2019] IRLR 314.

326. It does not seem to be disputed that the conduct was unwanted. The next stage of analysis, as we have said is not one of less favourable treatment. It is simply whether the decision by Professor Banting to progress the matter to a disciplinary hearing was "related to" the claimant's anti-Zionist beliefs. The test is whether there is some feature or features of the factual matrix which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question: Tees Esk and Wear Valleys NHS Foundation Trust v Aslam.

327. The motivation of Professor Banting is not determinative to this issue. In fact, Professor Banting gave uncontested evidence that he was sympathetic to the claimant's beliefs. We find that we was not adversely motivated by the claimant's protected beliefs.

328. Nonetheless, the claimant's anti-Zionist beliefs were writ large throughout the February 2021 comments. The decision to progress the matter to a disciplinary

hearing was, we find, related to those beliefs. As part of his analysis Professor Banting gave consideration to what was said, how and where the claimant said it and how it might be received. In other words, this included consideration of whether manifestation of his beliefs was reasonable. Among other things Professor Banting was persuaded that Mr Bloch had been "genuinely impacted" by the claimant's email to him. In his interview, Mr Bloch told Professor Banting "the email he sent me, when I read the first lines that referred to Zionism as being a racist, violent, imperialist ideology premised on ethnic cleansing, it is an endemically anti-Arab and Islamophobic ideology, it has no place in any society etc. at that point, I sat down." He clearly also took into account what was regarded as the claimant's perceived antisemitism when considering the impact on the University's relationship with its alumni who "contacted the university in relation to alleged antisemitism" which in turn resulted in analysis of potential loss of legacy income in response to coverage. Similarly, in relation to press coverage Professor Banting gleaned from his review that although there were different views about whether his comments were antisemitic or whether they fell within the bounds of free speech and involved academic arguments about Zionism he concluded that it was clear that "the sheer volume of press coverage and negative tone of much of that coverage had put the University into the media spotlight both in the immediate aftermath of the February 2021 statements and for some time thereafter". This led to his conclusion that there were cases to answer in relation to the claimant's statements potentially undermining and adversely affecting both his and the University's relationships with a range of parties.

329. Understandably, the claimant was not cross-examined on his evidence as to the impact of the University's acts and omissions on him, and the effect those decisions had in creating an intimidating, hostile, degrading, humiliating or offensive work environment for him. The effects of the decision were wide ranging and on-going.

330. Whether conduct has the necessary harassing effect is fact specific. In Weeks v Newham College of Further Education [2012] Eq LR 788 Langstaff J explained that an "environment" within the meaning of s.26 is a state of affairs, and it "may be created by an incident, but the effects are of longer duration." Whether or not the impugned conduct creates an environment that is humiliating or degrading will be a question of fact to be determined applying the ordinary meaning of those words.

331. The issue is then whether it is reasonable for the conduct to have that effect, as the test relating to "effect" has both subjective and objective elements to it. The objective part requires the tribunal to ask itself whether it was reasonable for the claimant to claim that the University's/Professor Banting's conduct had that effect.

332. We find that Professor Banting took his difficult role seriously. He interviewed some 21 witnesses, including the claimant twice and afforded him the opportunity to make further extensive written representations, all of which were fully considered. His report was accompanied by a bundle of some 1578 pages. Professor Banting did not accept the evidence of the core students uncritically. He also accepted that there was a group of individuals who were desirous of the claimant's dismissal. In his evidence, Professor Banting explained "it is beyond the remit of my investigation to seek to establish the motives of each person and/or organisation and whether their responses are genuine or not". However, it was also clarified that Professor Banting carried out no investigation into the truth of any of the claims made in the February comments or whether they related to matters of genuine public interest.

333. There was, as we have found, clearly a disciplinary case to answer in respect of the allegations investigated by Professor Banting. This conclusion was conveyed to the claimant via his report together with attachments and appendices dated 16 July 2021. Professor Banting explained in his evidence that even if there was a campaign in some quarters against him, the claimant was in a position to respond to any such campaign as he wished and, given the background and context, in Professor Banting's view, the claimant chose to do so in a way which potentially exacerbated the problem.

334. It was a reasonable process carried out in accordance with the University's policies and procedures. It was not reasonable for the claimant to claim that the conduct of Professor Banting in finding that there was a case to answer and moving the process onto the next stage of the disciplinary process created an intimidating, hostile, degrading, humiliating or offensive work environment for him. It was part of a legitimate process which had been reasonably and diligently conducted by Professor Banting.

335. The claimant also argues that in a claim alleging harassment in response to a manifestation of a protected belief, the proper approach is that set out in Higgs. In other words, it is said that the guidance given by Eady P in that case was set out as equally applicable to both harassment claims and direct discrimination claims. Thus, where impugned conduct is done in response to a manifestation of belief, it will be "related to" the belief if the response is a disproportionate interference with the claimant's Article 9 and 10 rights.

336. As we have set out in our conclusions relating to the dismissal aspect of the claim although we have concluded that less intrusive measures than dismissal were proportionate, some disciplinary action was nonetheless warranted. Therefore, applying the Higgs test this claim for harassment also does not succeed.

Permitting the Student Complaint to proceed to the CRP: harassment

337. We turn now to consider the allegations which pre-date dismissal. It was clarified that the claimant's case in relation to the pre-dismissal discrimination and/or harassment does not rest upon any allegation that the University responded in an unjustifiable manner to a particular manifestation of his belief.

338. The pleaded allegation refers to the University's decision to permit the Student Complaint to proceed to the CRP. The grounds of claim run to some 48 pages. Paragraph 159 deals with harassment and states that the University subjected the claimant to the following unwanted conduct which had the effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for him. Seven allegations of harassment are then set out, the first of which at paragraph 159(a) is: permitting the Initial Student Complaint to proceed to the Complaints Review Panel.

339. It is recorded in the agreed list of issues as permitting the student complaint of 4 April 2019 to proceed to the Complaints Review Panel.

340. The claimant says this allegation encompasses the University's decision to allow the Student Complaint to proceed in the form that it did, which included out-oftime allegations, and in the manner that it did, which followed a stay in the proceedings in order to enable the University to debate the adoption of rules that Ms Freedman insisted be applied in the determination of her complaint.

341. In response, it is said by the Respondent that there is no pleaded complaint as to accepting Ms Freedman's complaint at the local stage notwithstanding the 90-day time limit; delay in investigation; general administration of the complaint; or the deferral of the process pending the IHRA adoption. Further, no complaint is made as to the subsequent investigation or outcome of that complaint.

342. We must therefore determine the extent of the issue in dispute.

343. The importance of pleadings in Employment Tribunals was highlighted by Langstaff P in the case of Chandhok v Tirkey UKEAT/0190/14/KN in which he said at paragraph 16:

> The claim, as set out in the ET1, is not something just to set the ball rolling, as an initial document necessary to comply with time limits but which is otherwise free to be augmented by whatever the parties choose to add or subtract merely upon their say so. Instead, it serves not only a useful but a necessary function. It sets out the essential case. It is that to which a Respondent is required to respond. A Respondent is not required to answer a witness statement, nor a document, but the claims made – meaning, under the Rules of Procedure 2013, the claim as set out in the ET1.

344. It is also clear that the role of an Employment Tribunal is adversarial and accusatorial. Its procedure is not inquisitorial. Thus, it is not for the Tribunal to make a case for a party.

345. Nonetheless, the authorities are clear that if the list or statement of issues has been agreed between the parties it should not be accepted uncritically by an Employment Judge. However, where a statement of issues has been drawn up by a party, especially one who is legally represented, it will generally be expected that those issues fully establish the parameters of the legal and factual issues to be addressed at the hearing.

346. For example, the EAT (Langstaff P) held in the case of Horlorku v Liverpool City Council EAT 0020/15 that where the issues had been "rehearsed and revised" the claimant was not permitted to depart from it. This general rule was later confirmed by the Court of Appeal in Scicluna v Zippy Stitch Ltd and ors 2018 EWCA Civ 1320, CA.

347. In this case, not only were both parties legally represented at all times, but the list of issues was originally agreed on 10 November 2022. The case management order then provided, at paragraph 71, that the parties were to cooperate and agree a final version of those issues incorporating the further matters set out in the case management order. They were then affirmed at the further preliminary hearing on 20 September 2023.

348. The matter is clearly pleaded and no application was made to amend the claim form to alter or extend the allegation as set out. We conclude that the allegation is, as the respondent says, restricted to permitting the Student Complaint to proceed to the CRP. It does not encompass the previous steps in the procedure.

349. As has been set out, the SCP provides that:

> if the student is not satisfied with the local stage outcome, they can request that it is reviewed by the Complaints Review Panel ("CRP") (a panel of three people) – this is the 'university stage'

350. Hence, the SCP involves two formal stages, a local and a University stage. On receipt of the complaint form the procedure provides that the student complaints officer will refer the complaint to an appropriate person for consideration at the local stage.

351. Paragraph 4.1 of the SCP then provides that if it has not been possible to resolve the complaint at the local stage or if the student remains dissatisfied with the outcome, he or she may request that the complaint is progressed to the University Stage. Paragraph 4.2 provides that the student should make the

request in writing to the students complaints officer within 14 days of receipt of the local stage outcome. Then, as set out in paragraph 4.3, "upon receipt of the request, the student complaints officer shall refer the complaint to a complaint review panel."

352. There are therefore various stages of student complaints. The allegation pursued relates to what the CRP recommended. As pleaded, we agree with the University that this particular complaint, which is one of many, is limited to the progression from the local to the university stage.

353. The procedure clearly provides that progression to the CRP or the University stage is automatic. As we have found, Professor Ireland rejected the 4 April 2019 complaint on 26 June 2019. Then, on 10 July 2019, Ms Freedman appealed the local stage determination of her complaint. The University's Deputy University Secretary wrote on 19 July 2019 advising Ms Freedman that although there was no right of appeal the complaint would be progressed to the University Stage, when it would be reviewed by a Complaint Review Panel.

354. This element of the procedure is automatic when the student makes the request in writing to the student complaints officer within 14 days of receipt of the local stage outcome. It was unclear to us whether the letter from Professor Ireland, dated 26 June 2019, was posted or emailed to Ms Freedman or the precise date on which it was received. Nonetheless, it does not seem that any point was taken at any stage about the need to submit a request "within 14 days of receipt of the local stage outcome."

355. The University adopted a "pilot" process when proceeding with the complaint against Professor Greer. That process was not available at the time of the original Jsoc complaint regarding the claimant. In any event, under the pilot scheme, the complaint also progressed to the University level on 23 August 2021.

356. The decision to progress to the CRP was therefore automatic pursuant to the procedure being deployed at the time. It cannot be said to be related to the claimant's philosophical belief. The first stage of establishing a harassment complaint is that the unwanted conduct must be "related" in this case to the claimant's anti-Zionist beliefs. We find that the decision was not so related and therefore this harassment claim must fail.

<u>Recommending on 12 June 2020 that the complaint be investigated under the Respondent's misconduct procedure under Ordinance 28: harassment</u>

357. The complaint against the claimant was made under the SCP but transferred to be concluded under Ordinance 28. The CRP panel appeared to uphold the appeal on the basis that the Local Stage Outcome had not really engaged with Ms Freedman's complaint about conduct. The letter, which set out the decision

of the CRP 12 June 2020, states that "whilst the Local Stage decision considered that language used did not amount to Anti-Semitism the decision did not address the complaint about behaviour." However, on the face of his response Professor Ireland had dealt with the complaints before him.

358. The appeal by Ms Freedman of 10 July 2019 complains that the IHRA definition of antisemitism was not used and also refers back to the lecture which was originally the subject of the CST complaint. In particular, it was said that the language used extended far beyond any legitimate criticism of the policies of the Israeli government. It is difficult to see how language can be differentiated from "behaviour" as is suggested in the letter of 12 June 2020.

359. Instead of dealing with the matter themselves the CRP panel determined that complaint should instead be dealt with under the University's disciplinary procedure. It seems that the stated reason for this change from the SCP to Ordinance 28, set out in the letter of 12 June 2020, was that was that the University had not given the claimant an opportunity to be heard in relation to the Student Complaint, and this could be facilitated under Ordinance 28.

360. The move to Ordinance 28 was significant because under it the claimant stood the risk of being sanctioned, up to and including dismissal. This was not the case when the complaint was being considered pursuant to the SCP.

361. We were told in evidence that there was no known previous precedent of transferring an SCP complaint to Ordinance 28. A decision had been made to apply the IHRA definition to the claimant retrospectively. Again, we were told in evidence by Professor Squires that there was no other occasion to her knowledge that a rule or definition change had been applied retrospectively in disciplinary or other proceedings. In fact, the IHRA definition was not even in existence when some of the comments which were the subject of the complaint were made.

362. Although the respondent has submitted that the All-Party Parliamentary Group (APPG) definition on Islamophobia was applied retrospectively to the BRISOC complaint to just the same degree as the IHRA definition we heard no evidence of that.

363. Further, as the complaint about the lecture was excluded by the CRP panel, except as "evidential value" all the complaints brought by Ms Freedman were out of time according to the SCP. Clause 1.6 of the SCP provides that the University will not accept complaints that are made longer than 90 days after the matters complained about, unless there is good reason for the delay. In its written submissions, the Respondent says:

> Whilst it is accepted that the incidents relied upon were outside the 90-day window envisaged by the policy, it can be presumed that a decision-

> maker within the Respondent concluded that the "risk allegation" remained live and ongoing.

364. We did not hear from the decision makers. Further, the rules concentrate on the reason for the delay and do not provide exceptions beyond that. Although this part of the process occurred prior to the input of the CRP, time limits and jurisdiction were clearly still live issues at the appeal stage. It could have been a legitimate reason to reject the appeal.

365. It is also far from clear how the transfer can be made pursuant to Ordinance 28 in the first place or how the rules provide for what was effectively a stay of the complaint while the decision of whether or not to adopt the IHRA definition was determined. Again, it does not appear that either of these steps had been taken in previous cases.

366. The claimant himself followed up on some of those points when, for example, he asked in an email of 16 June 2020 how the options open to the CRP "allow the complaint to be referred to an Ordnance 28 process".

367. These and other points were then made by the claimant's then solicitors in their letter of 1 July 2020. They suggested that the University had been "oppressive, unfair, inconsistent" with the application of its own policies. Included in those allegations was: "the exercise of powers to refer our client to a disciplinary process under Ordinance 28 outside of the powers of the Complaint Review Panel."

368. There can be no doubt that the respondent was on notice of concerns about the decision making of the CRP. It is therefore surprising, to say the least, that the decision makers were not called to give evidence when it was pleaded as a specific allegation in this case.

369. These issues were never really addressed by the University at the time. Ms McColgan KC commented in her first report that at paragraph 175 that:

> I cannot fail to agree with Professor Miller that the decision to allow NF to stay her appeal pending the adoption by the University of the IHRA "definition" of antisemitism, was unfortunate in the extreme. As to the [allegation that Ordinance 28 was outside the powers of the CRP] , I would note that NF's initial complaint ought to have been referred to HR or NFA'd at the point at which informal resolution failed, rather than being referred to Professor Ireland. Had this occurred the delays about which Professor Miller complains might have been avoided.

370. This claim is brought as one of harassment only. Although comparators are not required in assessing claims of harassment, the surrounding circumstances, including the treatment of other people, can be used when considering section 26 EqA to determine whether there is evidence from which a tribunal could draw an inference that the conduct in question is related to a relevant protected characteristic.

371. Some of the complaints against Professor Greer were rejected because of the application of the limitation provisions of the SCP.

372. The complaint against Professor Greer was originally proposed for consideration under the University's conduct procedure (Ordinance 28) but was subsequently transferred to be considered under the SCP. It was later dealt with pursuant to a pilot process which involved a senior academic from outside the relevant School in which the complaint arose, to act as an Assessor. It was determined that this stage would have the status of the Local Stage decision in the SCP and may then still be subject to review at the University stage. In the event, the complaints were rejected at the local/pilot stage on 21 July 2021. It then progressed to a CRP who met on 22 September 2021. By a letter dated 8 October 2021 the CRP disposed of the appeal themselves after reviewing an array of documentation. Among other things the CRP concluded that "the Local Stage assessment process was thorough, reasonable and fair".

373. The pilot meant there were some differences between the two processes. In particular in the Greer complaint the local pilot stage involved the instruction of "an expert to advise on complex legal questions regarding Islamophobia, freedom of speech and academic freedom." However, the CRP found that the local panel "went above and beyond what was required of it by obtaining expert advice to be able to consider the complaint".

374. The CRP who dealt with the student complaint against the claimant was comprised of Sir Malcolm Evans, Dr Catherine Hindson and Professor Leah Tether. None of them gave evidence to the Tribunal regarding the reasons for determining Ms Freedman's appeal against the Local Stage Outcome in the way that they did. During the re-examination of Professor Squires, it was clarified that Dr Hindson and Professor Tether remain employed by the University.

375. Turning to the allegation of harassment, the respondent says it is wholly unclear how this allegation relates to a protected belief to the necessary degree. It is also said that the respondent had no knowledge that the claimant had a protected belief. They also say that referral of a complaint falls far short of conduct which reaches the high threshold of creating an intimidating, hostile, degrading or offensive environment. In the University's submission it amounted to nothing more than a single decision under internal policies. They also say that that by referring the claimant to Ordinance 28 procedure he was "afforded extensive natural justice rights".

376. The starting point for a harassment claim is whether the conduct was unwanted. It is clear that it was. The recommendation was adverse to the Claimant as, among other things, the move from SCP to Ordinance 28 meant there was a risk of dismissal.

377. The next issue is whether the referral to Ordinance 28 was related to the claimant's anti-Zionist beliefs. The question of whether conduct is "related to" a protected characteristic is a matter for the appreciation of the tribunal, making a finding of fact drawing on all the evidence before it. Motivation by the alleged harasser is not always determinative. The fact that the complainant considers that the conduct related to a particular characteristic is not determinative either. If conduct was on grounds of a particular characteristic (the previous wording) then this would suffice, although conduct that cannot be said to be 'because of' a particular protected characteristic may nonetheless be 'related to' it.

378. The claimant suggests that his anti-Zionist beliefs influenced and impacted on the CRP's decision to make the referral which was adverse to him rather than dealing with the issue themselves. As we have set out, the decision makers, who could shed light on whether their decision was related to the protected characteristic were not called despite the fact that this allegation was clearly aimed at them. We remind ourselves of section 136 EqA which provides that if there are facts from which the court could decide, in the absence of any other explanation, that a person contravened the provision concerned, the court must hold that the contravention occurred.

379. To the extent that knowledge is required it cannot sensibly be contended that the CRP panel did not know of the claimant's anti-Zionist views. They were, in effect, part of the subject matter of the complaint.

380. The SCP rules appear, at the very least, to have been stretched and applied in ways not done before or since and not done in relation to Professor Greer who had his complaint determined at roughly the same time, albeit by different people. The explanations provided for the how the SCP was interpreted in relation to time limits, the stay, the retrospective application of rules and the transfer to Ordinance 28 under the rules are unsatisfactory, illogical or practically non-existent.

381. The first stage in applying section 136 EqA for the purposes of shifting the burden of proof to consider is whether the claimant has established a prima facie case that the decision by the CRP to transfer the complaint to Ordinance 28 was related to his protected beliefs. We remind ourselves that, at this stage of the analysis, we ought not to consider the employer's explanation for the alleged discriminatory treatment. However, we may consider evidence from all sources at what is sometimes referred to as stage one, including evidence adduced by an employer which rebutted or undermined the claimant's case.

382. Although there are differences with the Greer procedure and complaint the comparison is a good one in this instance. The application of the process and rules to Professor Greer provide strong evidence for differential treatment. The facts we have found also lead us to infer that a hypothetical comparator who was subject to a complaint in similar terms but who did not possess the claimant's protected beliefs would have been treated differently. The SCP rules were applied differently on previous and subsequent occasions.

383. We remind ourselves that the cases have indicated "something more" is required than a mere finding of less favourable treatment (in the case of direct discrimination) before the burden of proof shifts onto the employer. In this regard, and for the purposes of considering whether the unwanted conduct was "related to" the claimant's protected beliefs, we note the context in which the decision took place. The retrospective application of the rule related to consideration of whether what the claimant had said and done, which he regarded as an expression of his protected beliefs, were in fact antisemitic. These amount to something more than simply less favourable or unreasonable treatment.

384. At the next stage of the analysis, we are able to consider the respondent's explanations for the treatment. As we have set out above, the explanations surrounding the decision are inadequate for a number of reasons. Specifically, of course, the reasons advanced in relation to the move from SCP to Ordinance 28 fail to deal with the application of the rules and are internally deficient. The respondent failed to call evidence on the point from the decision makers who could rebut the shifting of the burden of proof.

385. We conclude that the decision to the move from SCP to Ordinance 28 was related to the claimant's protected beliefs.

386. The claimant's case is that the CRP recommendation ensured that the Student Complaint, which would then be backed up by the prospect of dismissal, hung over his head for another 6 months (and for more than 18 months from the date the Student Complaint was first made). This, it is said, had the necessary harassing effect.

387. The test is whether it created an intimidating, hostile, degrading, humiliating or offensive environment for the claimant both subjectively and objectively. We note that in Weeks v Newham College of Further Education [2012] Eq LR 788 Langstaff J explained that an "environment" within the meaning of s.26 is a state of affairs, and it "may be created by an incident, but the effects are of longer duration." Whether or not the impugned conduct creates an environment that intimidating, for example, will be a question of fact to be determined applying the ordinary meaning of the word.

388. We are satisfied that the claimant found the decision and its ongoing impact at the very least intimidating. It created an intimidating environment for him which had ongoing effects. On the back of previous procedural irregularities, he now found himself subject to a prolonged procedure which could have resulted in his dismissal. We also find that he was objectively justified in so feeling.

389. We do not consider it necessary to apply the Higgs test to harassment in this instance as, subject to jurisdiction points, the claimant would have succeeded on a direct discrimination claim for this part of the case. The direct discrimination would not be in relation to manifestation but rather because of the protected beliefs themselves.

390. Therefore, even assuming the claimant does not succeed on "purpose" for the purposes of the section 26 claim, we find that, subject to issues relating to jurisdiction which we deal with later, this particular claim for harassment succeeds.

Failure to publish the First McColgan Report and/or the outcome of the student complaint: direct discrimination and/or harassment

391. The claimant points out that the University has never published the outcome of the Student Complaint made against him. This is said to be in direct contrast to the outcome of the complaint against Professor Greer. The outcome of that complaint was published on the same day as the appeal against the complaint was dismissed. It is also said that the University did not require Professor Greer to enter into any undertakings not to comment on the complaint as a condition of it publishing the outcome of that complaint.

392. In response, the respondent says the circumstances relating to Professor Greer were materially different and that the University was not in fact averse to publication and took the initiative to assist the claimant.

393. As was set out above, the Greer complaint was dealt with pursuant to a pilot scheme. Significantly, the pilot scheme provided that complainants are informed of the outcome of the complaint at the conclusion of the process. Rather frustratingly, for all involved, the Ordinance 28 process, by the which complaints against the claimant were dealt with, did not include disclosure of outcomes to the complainants. Therefore, the JSoc complainants were unaware of the outcome of the complaint. No doubt, this will have resulted in frustration for all those involved.

394. As we have set out above, when the claimant sought publication of the McColgan report on 5 January 2021 the University replied the very next day saying that it was "sympathetic" to the request. In the same email, Mrs Bridgwater offered to discuss the matter that week with the claimant and

suggested a Teams meeting. Concerns were raised about what was to remain confidential after publication had taken place. Discussion then ensued about the conditions of publication. The University's position was that once published, no further comment should be made. The claimant did not reply to this email, which was then followed up by a further email on 6 January 2021 reiterating that the respondent wished to assist the claimant and was "sympathetic to [his] request" Again, the claimant did not respond to this further email.

395. Eventually, the claimant did write to Mrs Bridgwater on 4 February 2021 as he had been approached for comment by a journalist. Mrs Bridgwater replied the next day, on 5 February 2021, saying again that the University was "sympathetic" to the request, but that she had received no rely to her 6 January 2021 email.

396. Evidence of the respondent's amenability to publication is their request to Ms McColgan KC that she prepare a suitable report for wider publication which Mrs Bridgwater referred to in her 5 February email to the claimant. The email ended: "when you have had a chance to read through the report, please let us know your thoughts and how you would like to address the matters raised above."

397. Again, there was no response to this further email until the claimant's then solicitors wrote some two weeks later on 19 February 2021. Among other things, the letter indicated that the claimant was adamant that he did not want "his 'right of reply' to be unfairly fettered". Mrs Bridgwater responded on 26 February 2021 again referencing the University's obligations to the students. Events then came to a head because, on the same day, a separate letter was sent to the claimant about the commencement of the second ordinance 28 procedure due to the events of 13 February 2021 and thereafter.

398. For the purposes of the direct discrimination claim, the claimant says he was treated less favourably than Professor Greer because of his protected belief. Section 23(1) EqA stipulates that there must be "no material difference between the circumstances relating to each case" when determining whether the claimant has been treated less favourably than a comparator. In this case there was a material difference. The procedure under which the Greer complaint was dealt with stipulated that the complainants were informed of the outcome, whereas Ordinance 28 did not. Accordingly, there were significant issues at play when considering whether to publish the first McColgan report which did not apply to the comparator.

399. Further, no one requested that the report of the KC deployed to consider the legal aspects of the Greer complaint be published, which was akin to the McColgan report. Hence that report was never published by the University. By the time the outcome of the Greer investigation was made public by the University, on 8 October 2021, both parties were said to have already breached confidentiality. In any event, the University stage of the Greer complaint was

not published. It was just the outcome of the complaint together with a brief explanation of the result.

400. Although the allegation is one of less favourable treatment, it is clear that Professor Greer was far from satisfied with the process that was applied to him. He later published a book about the complaints made against him and how they were dealt with. Among other things, he complains about what he regards as "procedural defects" including what was said to be a failure officially to inform him of the fact or substance of the complaint for 3 ½ months which was said to have "robbed him of an equal opportunity to present his case". He also describes publication of the outcome on 8 October 2021 as "deeply unsatisfactory".

401. Turning to the reason why the report was not published, when the claimant was asked in cross-examination why this treatment could be said to be because of (or related to) his protected belief he simply referenced the fact that he had been attacked by various other bodies because of his belief and manifestations.

402. Professor Squires gave evidence as to the reason why the report was not published. It was Professor Squires who agreed that the University should obtain an anonymised version of the first McColgan Report with publication in mind. She also referenced the considerable data protection and other issues which needed to be considered prior to publication. Professor Squires went on to explain that after the events of February 2021 the first McColgan Report became part of Professor Banting's investigation (and subsequently the disciplinary process) and it was therefore not appropriate to take any further steps to consider whether it should be published until the outcome of Professor Banting's investigation (and any disciplinary process).

403. We conclude the reason why there was no initial publication of the report was due to the complications of the internal procedure and the fact that the complainants had not been made aware of its conclusions or contents. The reason why the report was not published thereafter was due to the failure to progress discussions about publication prior to events which overtook this issue in February 2021. In particular, the claimant failed to respond to two emails about publication. It was sensible for communication of the outcome of the investigation to be deferred pending resolution of how the report would be published. Non-publication was not because of the claimant's protected beliefs. Similarly, non-publication of the report was not related to the claimant's protected beliefs for the purposes of his harassment claim.

<u>Failing to defend the Claimant in in 2019, 2020 and 2021 in the face of public criticism by students: direct discrimination and harassment</u>

404. The claimant says that students at the University publicised the detail of the student complaint, criticised the Claimant as antisemitic and called for his dismissal in each of 2019, 2020 and 2021. The claimant says that he infers from the nature, prominence and extent of the criticism that he faced that the University's Senior Management Team and its director of External Relations were involved in and/or responsible for the decision not to defend him.

405. The director of External Relations does not even appear on the three page cast list. However, it seems that this was Lucy Collins who was also Director of Home Recruitment and Conversion.

406. The claim form does not set out in precise terms what it is said the respondent should have done to "defend" him. The written submissions say the University never once asked those students to respect the confidentiality of the student complaint process; to think about the impact that their public criticism and attacks on the Claimant might have been having on him, or simply to refrain from continuing with their public criticism. In contrast, it is said that University did precisely this as soon as it became aware that students involved in the complaint against Professor Greer had published details of that complaint and made public criticism of him.

407. The claimant refers to an email dated 24 February 2021 from Professor Squires to Mr Mohamed raising concerns as to BRISOC's publication of details of the Greer Complaint. She stated:

> We are aware that the fact of the complaint, its nature and that Professor Greer is the subject of the complaint have been placed in the public domain by you via the University's Islamic Society. As you know, a formal process is underway in relation to your complaint. Completing this process in as timely a way as possible is a priority for the University but one that cannot override our obligation to deliver a comprehensive and balanced approach which is proportionate to the significance, complexity and possible consequences of the issues that have been raised.
>
> As I have previously made clear, the process which is underway is confidential. By placing the complaint in the public domain via the Islamic Society you have breached that confidentiality…
> …
> The University is very mindful of its duty of care to both students and staff and of the need for members of our community to behave reasonably and in good faith. An individual who is the subject of a complaint has the right to expect due process without external interference or

> pressure, including the pressure that may be exerted by reporting in the media and comment in social media. I would also add that any action which undermines due process may also cause considerable harm to those involved. Over the weekend Professor Greer received an email which indicted that unless he responded to the writer to answer the criticisms of him that had been made of him by virtue of the complaint the writer would forward the matter on to his many thousands of social media followers. This places an intolerable strain on one individual and compromises his mental health.

408. Then, on 21 July 2021, the Greer Complaint was rejected at the local stage. The cause of the email from Professor Squires was that on 17 February 2021 BRISOC had published detail of the Greer Complaint on its Twitter account under the thread
"how Bristol University funds Islamophobia in its law school human rights course."

409. Professor Greer writes in his book about these events in the following terms:

> On 15 February 2021, frustrated by the delay in the resolution of its complaint and in flagrant breach of the OIA's guidelines, Brisoc launched a hostile social media campaign against both me and the University which posed a potential risk to my life and physical safety. This rapidly garnered over 7000 likes on various social media platforms. The petitions to have me sacked also quickly acquired over 2000 signatures, rising by the summer of 2022, there were 4100.

410. Professor Greer also expressed concern that the University failed to apply its student Disciplinary Regulations and Procedure in his case. In particular, he says the University should have found out "who orchestrated and led, and who has failed publicly to retract and apologise for, BRISOC's campaign" against him, and "if they were still registered, discipline them without delay."

411. On 7 April 2021 the claimant wrote to Professor Tormey asking the University to make it clear that:

> Attempts to have me sacked and the maelstrom of lies and misinformation that has been spread about me and my comments constitutes a form of harassment and intimidation of me. The University could and should make clear that it will not tolerate harassment and

abuse of either students or its staff; nor attacks on the freedom to undertake evidence-based research and publication.

412. The University did write to Ms Freedman on 28 May 2020 saying the University stage of the SCP was confidential when, in fact, all the procedure says about confidentiality is at clause 6 which provides, among other things that "if information is to be kept confidential, the student should make this clear to the person to whom the complaint is made."

413. Professor Squires pointed out that the University offers support and guidance to all of its staff on managing work-related stress and offers practical advice on meeting the requirements of the University's work-related stress policy.

414. In September 2019 the Telegraph published a piece on the ongoing complaints. Although students provided comments for the article, so too did the claimant who asserted that it was "simply a matter of fact" that "parts of the Zionist movement are involved in funding Islamophobia". The University was quoted in the article saying that no disciplinary action was being considered and reaffirmed its commitment to academic freedom and freedom of expression. It added that the
University had "no evidence to suggest that Jewish students feel unsafe."

415. The allegations in the tribunal contrast with the claimant's views expressed during the disciplinary process. When faced with allegations regarding his own conduct, the claimant maintained in a statement to the disciplinary panel that "one cannot claim to be harassed or to have suffered…adverse impacts simply because a political debate results in offence, hurt or excites strong emotions". He also said that the students, who had claimed to be upset by his comments have taken it upon themselves to "shoulder the corresponding consequences of engagement in public life" by taking part in "clearly political activities".

416. In relation to Jewish Chronicle article of 9 September 2019, Ms Freedman states that she complained about the claimant and that she was disappointed with the University's response to her complaint and refusal to adopt the IHRA definition. This seems to be a criticism of the university and not something suggesting a need to defend the claimant. In any event, the University is again quoted as taking appropriate action to ensure the relevant lecture material was accurate, clear and not open to misinterpretation, confirming that no disciplinary action was currently being considered.

417. The respondent's case is that The University's statements in the articles set out above and elsewhere were intended, in part, to reassure both interested third parties and any students who felt impacted by the situation that the University's support services were available to anyone who felt discriminated against, and that the issue did not therefore need to be pursued publicly via the media.

418. Publication of the complaint against the claimant by Ms Freedman was done, for example, on 18 September 2019 in the Daily Telegraph. The article was raised by the claimant in the email to Philippa Walker on 10 September 2019. However, no complaints were raised about any breach of confidentiality by the claimant or anyone else. In fact, the SCP makes no provision for confidentiality. It is therefore unclear on what basis the University could also have defended the claimant or chastised the complainant for breach of confidentiality.

419. In contrast, the pilot procedure, which was used to deal with the Greer complaint, contained the following at clause 3.1:

> In order to ensure the integrity of the process, all parties involved in the operation of this procedure including those who are the subject of the complaint, those bringing the complaints, any witnesses and those operating the procedure must ensure that they maintain an appropriate level of confidentiality.

420. There are salient differences between what happened to Professor Greer for the purposes of this allegation. Not only were the allegations of breach so serious as to, in Professor Greer's view, pose a potential risk to his life and physical safety but they also took place in an expressly confidential process. Also, at the conclusion of the Greer complaint both parties were expressly criticised by the University in a public statement for breach of confidentiality. These are material differences for the purposes of comparison pursuant to section 13 EqA.

421. Although the claimant had asked the University to "make clear that it will not tolerate harassment and abuse of either students or its staff; nor attacks on the freedom to undertake evidence-based research and publication" they did not do so, other than in the manner set out above, either in relation to the claimant or for Professor Greer. Whether justified or not, Professor Greer was also of the opinion that the University also failed to defend him. He wrote the following in his book about the events surrounding the complaints against him: "During the entire official investigation and thereafter, the University also declined to do anything to stop BRISOC's potentially life-threatening social media campaign which unquestionably constitutes egregious misconduct."

422. We conclude that there was no less favourable treatment of the claimant in comparison to Professor Greer in this regard. The University responded to the comments and behaviour as it saw fit. Even if the burden of proof shifts, we do not find that this was because of the claimant's protected beliefs. They allowed the process to proceed and tended to make limited comments to or about the students. They were intended to reassure interested parties. They may not have been in the best interests of the claimant but that does not make them directly discriminatory.

423. For the purposes of the alternative harassment claim, it is difficult to see how the comments from the University or its inaction in defending the claimant could be said to be "related" to his protected belief despite the wide connotations of that term. In any event, there was no "creation" of an environment by the Respondent nor even a material contribution to it. The comments or absence of them cannot be said on any objective basis to have violated the claimant's dignity.

Making comments to the media adverse to the Claimant: direct discrimination

424. In the written closing submissions, it was clarified that this allegation relates to comments made by the University to the Jewish Chronicle arising out of the February comments. The further information provided on 29 November 2022 also made reference to the Jewish News article of 16 February 2021 and the Tab article of 19 February 2021.

425. On 16 February 2021 the University was asked for comment by Jewish News in the following terms:

> The Union of Jewish Students has said: "Jewish students are exhausted from the last two years of inaction by the University of Bristol, leading to yet another instance where David Miller has been allowed to target Jewish students for their imagined part of his global Zionist conspiracy fantasy."
>
> Can I have a comment on this please? We are running the story this afternoon.
>
> What action, if any, is being taken with respect to Mr Miller? What does the university say to its Jewish students who say they are being "targeted" by this man?

426. The comment from the University Press Office sent on the same day was:

> A University of Bristol spokesperson said: "We are committed to making our University an inclusive place for all students. We have been working closely with Jewish students to understand their specific concerns and worries. A key outcome from these discussions was the adoption, in full, of the International Holocaust Remembrance Alliance (IHRA) working definition of antisemitism.
>
> "We also seek at all times to abide by both our Free Speech Policy and our Public Sector Equality Duties. Specifically, we are steadfast in our commitment to freedom of speech and to the rights of all our students and staff to discuss difficult and sensitive topics.

> "Universities are places of research and learning, where debate and dissent are not only permitted but expected, and where controversial and even offensive ideas may be put forward, listened to and challenged. Intellectual freedom is fundamental to our mission and values.
>
> "We also affirm our equally strong commitment to making our University a place where all feel safe, welcomed and respected, regardless of gender, race, sexual orientation, disability or social background.
>
> "We would urge anyone who feels that they have been discriminated against or subject to hate speech or harassment, to contact our support services so we can offer appropriate help and support.
>
> "We are unable to comment on complaints made about individual members of staff. However, we are aware of comments made this weekend which we know have caused upset. We welcome a discussion with the Jewish Society about this and have contacted them today with an offer to meet."

427. The Jewish News article also quoted an unnamed spokesperson of the University as having committed to meet with the Bristol JSoc to discuss the Claimant's comments at the event, which the spokesperson accepted had "caused upset".

428. The full comment provided by email on 19 February 2021 was as follows:

> We have received a significant number of calls for Professor David Miller to be dismissed.
>
> "UK law requires that we, like all employers, act in accordance with our internal procedures and the ACAS code of conduct. Any action which we might take as an employer is a private matter. We are under obligations of confidentiality in relation to all of our students and staff, which we will continue to comply with. "We are speaking to JSoc, Bristol SU and UCU about how we can address students' concerns swiftly, ensuring that we also protect the rights of our staff.
>
> We do not endorse the comments made by Professor Miller about our Jewish students. We are proud of our students for their independence and individual contributions to the University and wider society."

429. This was written in response to an email from Mr Bloch who wrote in the following terms earlier the same day:

> As you may be aware, the Board of Deputies of British Jews has just published a letter sent to VC Hugh Brady today on David Miller. Should you have not seen it yet, the letter is attached. I was wondering if the university has an updated statement as a result of this rather big development?

430. The statement was then reported in the Jewish Chronical on 19 February 2021. The headline of the article was "University condemns Miller's comments". However, the University's statement was then reproduced in parts throughout the article.

431. Again, the claimant relies on Professor Greer as a comparator. It is said that he was not subject to such treatment. It is said that in subjecting the claimant to such treatment, it treated him differently than it treated Professor Greer, or alternatively than it would have treated a hypothetical comparator, because of his beliefs.

432. The respondent says the statements were an attempt to manage the dysfunction which arose as a consequence of the claimant's comments. Professor Squires explained that the University received a significant number of media enquiries and calls for press statements so much so that many of the members of staff in the Communications Team found the pressure to be difficult to cope with, both in terms of the time involved and the emotional demands placed upon them. We accept that the intense criticism of the University's executive during this period was also demanding and demoralising for the team.

433. What the University actually said was that it did not "endorse" the comments of the claimant "about our Jewish students". That is clearly not the same as condemnation. It is unrealistic for the claimant to have expected the University to endorse adverse comments made by him about "their" students. The comment was provided on 19 February 2021. On 26 February 2021 the Respondent notified the claimant that it was to commence an investigation under Regulation 4 of Ordinance 28 in relation to the same comments. The University has also never sought to endorse comments made by Professor Greer about students.

434. Just the day before, on 18 February 2021, the University responded to a public statement from Brisoc about alleged "Islamophobia on our campus". Allegations in that statement included the reported use of discriminatory remarks and Islamophobic rhetoric by Professor Greer. Concern was also expressed about what was said to be apathy and the lack of action taken by the University when these concerns were brought to their attention.

435. The response from the University included the following:

> "We are working with the University's Islamic society to respond to concerns raised about an individual member of staff. That process is still ongoing and under review and as such we are unable to comment further. We are in regular contact with the society and the member of staff during this time.
>
> We are committed to making our university and inclusive place for all students. As part of our focus on this, we have been working closely with students from minority groups to try and understand their specific concerns and worries….
>
> We would urge anyone who feels that they have been discriminated against or subject of hate speech or harassment, to contact our support services so we can offer appropriate help and support."

436. One of the concerns Professor Greer had about this was that there was no mention of the fact that he denied the charges against him.

437. When Professor Greer made comments subsequently about students in, for example, the Daily Mail article on 11 September 2021, it does not appear that the University was approached for comment. We find that had the University been approached it is likely that similar comments would have been provided.

438. The University later released a statement made at the conclusion of the Greer investigation on 8 October 2021. That statement, which was a general one and not made to any particular news outlet, included recognition of "BRISOC's concerns and the importance of airing different views constructively" but went on to criticise both parties for breaching the confidentiality process.

439. Also relevant, in our view, is the fact that when the claimant made adverse comments about students in the Tab, the University's own newspaper, on 20 October 2020, where he made reference to the student complaint being "fraudulent" no "adverse" comment was made by the University on that occasion. Instead, the University provided a response to questions from the Tab for the article in terms such as it "has an obligation to uphold freedom of expression".

440. There are therefore material differences between the circumstances of Professor Greer and the claimant for the purposes of this allegation. Although the University did not say that it did not endorse the comments Professor Greer made about students in the articles he published after the investigation had concluded they

had not been asked for comment. The evidence was, somewhat surprisingly, that even after the comments were made the University received no comments, concerns or complaints from anyone, including Brisoc. The first time that Professor Squires became aware of the comments was during the claimant's appeal. Had the University been asked for comment it is likely that they would have responded in the same or similar terms. Although no disciplinary action was taken against Professor Greer for the comments he made, the University did not shy away from direct public criticism of Professor Greer even though it dismissed all the allegations made against him.

441. Irrespective of whether the burden of proof shifts, we do not find that the reason why the University said, in response to a request for comments, that it did not endorse what the claimant had said about students was because of the claimant's protected beliefs. It was said, along with other comments, in an attempt to manage the rapidly emerging situation after the comments were made.

Continuing act

442. The Ordinance 28 complaint is potentially out of time. Section 123(3)(a) EqA provides that "conduct extending over a period is to be treated as done at the end of the period." Commissioner of Police of the Metropolis v Hendricks [2003] ICR 530 confirmed that limitation may be extended where there is an ongoing situation or continuing state of affairs. The principles set out in Hendricks were helpfully summarised by Choudhury P in South Western Ambulance Service NHS Foundation Trust v King [2020] IRLR 168 at paragraph 21 as follows:

> Hendricks demonstrates that there are several ways in which conduct might be said to be conduct extending over a period (or, as it is sometimes called, a "continuing act"). One example is where there is a policy, rule or practice in place in accordance with which there are separate acts of discriminatory treatment. Another example given in paragraph 48 of Hendricks is where separate acts of discrimination are linked to one another and are evidence of a continuing discriminatory state of affairs, as opposed to being merely a series of unconnected and isolated acts. In both these examples, the continuing act arises because of the link or connection between otherwise separate acts of discrimination.

443. The Court of Appeal in Aziz v FDA 2010 EWCA Civ 304, CA noted that, in considering whether separate incidents form part of an act extending over a period, 'one relevant but not conclusive factor is whether the same or different individuals were involved in those incidents'.

444. In Hale v Brighton and Sussex University Hospitals NHS Trust EAT 0342/16 the EAT held that by taking the decision to instigate disciplinary procedures, the Trust in that case had created a state of affairs that would continue until the conclusion of the disciplinary process. In other words, this was not a 'one-off' act. The EAT said that if an employee is not permitted to rely on an ongoing state of affairs in situations such as this, then time would begin to run as soon as each step is taken under the procedure. In order to avoid losing the right to claim in respect of an act of discrimination at an earlier stage of a lengthy procedure, an employee would have to lodge a claim after each stage unless he or she could be confident that time would be extended on just and equitable grounds. However, this would impose an unnecessary burden on claimants when they could rely upon the provision covering an act extending over a period.

445. In a case concerning a continuing act of discrimination, an Employment Tribunal will be required to determine when the continuing act came to an end in order to calculate the limitation date.

446. The claim form was received at the tribunal on 25 February 2022. The dates on the ACAS early conciliation certificate are 16 December 2021 until 26 January 2022. The claimant contends that all of the conduct complained of in his claims for discrimination and harassment form part of a continuing act. In considering whether that is correct we confine ourselves to the established acts of discrimination only.

447. This issue arises in relation to our findings relating to the recommendation on 12 June 2020 that the complaint be investigated under the Respondent's misconduct procedure under Ordinance 28. In accordance with Hale v Brighton and Sussex University Hospitals the conclusion of that disciplinary process was 17 December 2020 when the University wrote to the claimant and informed that no further formal action would be taken (when clarifying the issues it was said on behalf of the claimant that time started to run on 12 June 2020).

448. The second disciplinary process, which related to different alleged acts, commenced on 26 February 2021. The members of the CRP panel who made the decision in relation to the first Ordinance 28 process were not involved in the second process. Although not conclusive, as set out in Aziz v FDA, that is a relevant factor. The claimant only succeeded in his dismissal and appeal related claims. We have found the other claims preceding dismissal were unsuccessful. We do not find that there was a continuing discriminatory state of affairs carrying on from 17 December 2020 to that second process. Although there is a factual and chronological link between what happened in relation to the first Ordinance 28 process and the culmination of the second, that cannot sensibly be described as a continuing discriminatory state of affairs. They were two distinct processes with differing outcomes. The decision makers in relation to the initial recommendation were not involved in the second process. No discriminatory policy, rule or practice was in place.

Just and equitable extension for the Ordinance 28 complaint

449. Section 123 EqA provides that the limitation period is 3 months and proceedings may not be brought after the end of "such other period as the employment tribunal thinks just and equitable."

450. Case law has determined that Employment Tribunals have a wide discretion to allow an extension of time under the 'just and equitable' test in section 123. However, as was set out by the Court of Appeal in Robertson v Bexley Community Centre t/a Leisure Link 2003 IRLR 434, CA, when tribunals consider exercising such discretion "there is no presumption that they should do so unless they can justify failure to exercise the discretion. Quite the reverse, a tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time so the exercise of the discretion is the exception rather than the rule."

451. The onus is therefore on the claimant to convince the tribunal that it is just and equitable to extend the time limit although this does not mean that exceptional circumstances are required before the time limit can be extended.

452. Relevant factors may include those set out in section 33 of the Limitation Act 1980: the prejudice which each party would suffer as the result of the decision to be made; the length of and reasons for the delay; the extent to which the cogency of the evidence is likely to be affected by the delay; the extent to which the party sued had co-operated with any requests for information; whether the delay may have adversely affected the validity of the evidence relied upon by the parties; the defendant's conduct after the claimant's cause of action arose; whether the claimant was under a disability when or after his cause of action arose and for how long; the claimant's conduct i.e. acting promptly and reasonably and the steps taken to obtain appropriate advice and expert evidence.

453. The best approach when considering the exercise of the discretion is for the tribunal to assess all the factors in the particular case that it considers to be relevant, including in particular the length of, and the reasons for, the delay: Southwark London Borough Council v Afolabi 2003 ICR 800, CA.

454. There are two types of prejudice that a respondent may suffer if the limitation period is extended: (i) the obvious prejudice of having to meet a claim which would otherwise have been defeated by a limitation defence, and (ii) the forensic prejudice that a respondent may suffer if the limitation period is extended by many months or years, which is caused by such things as fading memories, loss of documents, and losing touch with witnesses: Miller and ors v Ministry of Justice and ors and another case EAT 0003/15

455. We then turn to the issue of whether to extend time, and therefore jurisdiction, for what has been described as the Ordinance 28 complaint. We remind ourselves of the wide discretion set out in section 123 EqA to allow an extension of time under the 'just and equitable' test and of the various factors we may take into account, including those set out in section 33 Limitation Act 1980. Exceptional circumstances are not required to extend time, although there is no presumption that time should be extended.

456. The merits of the CRP/Ordinance 28 claim, which was successful, and the inevitable prejudice to the claimant that would be caused by not allowing the claim to proceed are highly relevant factors in favour of exercising discretion for extending time. Also relevant is the fact that the decision makers were not called to give evidence at the tribunal and no evidence was provided by the respondent as to prejudice (of the type relating to the quality of the evidence and the extent to which it may or have been compromised by the delay).

457. However, the delay in bringing this complaint was considerable. The claim was not issued until well over a year after this aspect of discrimination. The continuing act in relation to the CRP/Ordinance 28 claim ended, as we have found, on 17 December 2020 (not 12 June 2020). This is the date on which the University wrote to the claimant and informed him that no further formal action would be taken after the CRP panel recommended that the complaint be investigated under the respondent's misconduct procedure under Ordinance 28. Early conciliation did not commence until 16 December 2021 and the claim form was then received at the tribunal on 25 February 2022.

458. Although limitation was included in the agreed list of issues at the preliminary hearing on 10 November 202, the claimant's statement, which ran to some 97 pages, did not include information or evidence relating to time limits. Nothing was included about why a claim was not issued earlier in relation to this and the other pre-dismissal allegations.

459. During cross-examination the claimant explained that he did not issue a claim at that time because he was unaware that he was able to do so because he had not been dismissed. However, the claimant was well represented by his former solicitors at the material times. Moreover, the solicitors had written to the University on 1 July 2020 setting out, in detailed terms, what they said was wrong with the handling of the first student complaints. The letter referred to "unlawful aspects of the processes" and said that the claimant preferred to resolve the "situation amicably through discussion rather than litigation". The letter ended by seeking to "reserve" the claimant's "right to seek compensation". Clearly, therefore, the claimant not only had access to solicitors expert in the field as well as to the UCU, but also had considered, with his then solicitors, the benefits or otherwise of litigation. We accept that the claimant may well have no clear recollection why the claim was not issued at the time. However,

we find that a conscious decision was made, with the benefit of expert legal advice, not to bring a claim after the first process ended in December 2020.

460. The issue of just and equitable extension did not make its way into the claimant's extensive and detailed written closing submissions. This is, perhaps, not surprising as the main arguments centred on continuing act. The parties would also not have been aware of which matters would succeed at the date of submissions. Nonetheless, it was clearly set out as an issue to be dealt with at this hearing.

461. Prejudice to the respondent would be in the form of having to meet a claim which would otherwise have been defeated by a limitation defence. Although reference is made to prejudice in the written closing submissions, in the form of impact of
the considerable delay on the quality of evidence, we have limited regard for this as no evidence was provided on the point. Nonetheless, in general terms, we accept the proposition that the further back in time the evidence needs to go, it is generally the case that the quality of evidence suffers as memories fade.

462. Taking all this into account we have decided that it would not be just and equitable to extend time. Although the burden is on the claimant the only explanation provided for delay is not a good one. Both parties would suffer prejudice were we to decide the point against them. However, the claimant has succeeded in other claims and this is a more minor element of his claim and one not involving loss of earnings. The delay is also very considerable.

<u>Contributory fault for unfair dismissal</u>

463. Sections 122(2) and 123(6) ERA impose an absolute duty on employment tribunals to consider the issue of contributory fault in any case where it was possible that there was blameworthy conduct on the part of the employee.

464. They provide as follows:
i. Basic award 122(2): Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the tribunal shall reduce or further reduce that amount accordingly. ii. Compensatory award 123(6): Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.

465. The fact that an employer has failed to establish a potentially fair reason for dismissal within the terms of section 98(1)(b) and (2) ERA does not preclude a finding of contributory conduct.

466. Whether or not the duty pursuant to section 123(6) is triggered will depend on the findings of fact made by the tribunal and, in particular, whether those findings reveal proven conduct attributable to the employee that potentially caused his or her dismissal or contributed in any way to it. However, the wording of section 122(2) makes it clear that, unlike deductions from the compensatory award for contributory fault, it is unnecessary that the employee's conduct should have caused or contributed to the dismissal.

467. Conduct by the employee capable of causing or contributing to dismissal is not limited to actions that amount to breaches of contract or that are illegal in nature. In order for a deduction to be made under section 123(6) ERA, a causal link between the employee's conduct and the dismissal must be shown to exist. When considering the issue of contributory fault, tribunals are also entitled to rely on a
broad view of the employee's conduct, including behaviour which, although not relating to the main reason for dismissal, nonetheless played a material part in the dismissal.

468. The approach is to be adopted when addressing the question of any reduction for contributory fault in relation to the two sections of ERA on an unfair dismissal claims was considered by Langstaff J in Steen v ASP Packaging Ltd [2014] ICR 56, as follows:

> "10. The two sections are subtly different. The latter calls for a finding of causation. Did the action which is mentioned in section 123(6) cause or contribute to the dismissal to any extent? That question does not have to be addressed in dealing with any reduction in respect of the basic award. The only question posed there is whether it is just and equitable to reduce or further reduce the amount of the basic award to any extent. Both sections involve a consideration of what it is just and equitable to do.
>
> 11. The application of those sections to any question of compensation arising from a finding of unfair dismissal requires a tribunal to address the following: (1) it must identify the conduct which is said to give rise to possible contributory fault; (2) having identified that it must ask whether that conduct is blameworthy.
>
> 12. It should be noted in answering this second question that in unfair dismissal cases the focus of a tribunal on questions of liability is on the employer's behaviour, centrally its reasons for dismissal. It does not matter if the employer dismissed an employee for something which the employee did not actually do,

> so long as the employer genuinely thought that he had done so. But the inquiry in respect of contributory fault is a different one. The question is not what the employer did. The focus is on what the employee did. It is not on the employer's assessment of how wrongful that act was; the answer depends on what the employee actually did or failed to do, which is a matter of fact for the employment tribunal to establish and which, once established, it is for the employment tribunal to evaluate. The tribunal is not constrained in the least when doing so by the employer's view of the wrongfulness of the conduct. It is the tribunal's view alone which matters.
>
> 13. (3) The tribunal must ask for the purposes of section 123(6) if the conduct which it has identified and which it considers blameworthy caused or contributed to the dismissal to any extent. If it did not do so to any extent, there can be no reduction on the footing of section 123(6), no matter how blameworthy in other respects the tribunal might think the conduct to have been. If it did cause or contribute to the dismissal to any extent, then the tribunal moves to the next question, (4).
>
> 14. This, question (4), is to what extent the award should be reduced and to what extent it is just and equitable to reduce it. A separate question arises in respect of section 122 where the tribunal has to ask whether it is just and equitable to reduce the amount of the basic award to any extent. It is very likely, but not inevitable, that what a tribunal concludes is a just and equitable basis for the reduction of the compensatory award will also have the same or a similar effect in respect of the basic award, but it does not have to do so."

469. The just and equitable consideration in the context of contributory conduct applies only to the proportion (i.e., the percentage amount) by which the tribunal reduces the award. It does not apply to whether or not to make a reduction in the first place, or entitle the tribunal to take into account matters other than conduct that is causative or contributory to the dismissal: Parker Foundry Ltd v Slack 1992 ICR 302, CA, per Balcombe LJ.

470. In Hollier v Plysu Ltd 1983 IRLR 260, EAT, the EAT suggested that the contribution should be assessed broadly and should generally fall within the following categories: wholly to blame (100 per cent); largely to blame (75 per cent); employer and employee equally to blame (50 per cent); slightly to blame (25 per cent). Although this suggestion provides useful guidance, tribunals retain their discretion.

471. What the claimant said and wrote about students and University student societies contributed to and played a material part in his dismissal. For the reasons set out above, we find that his conduct in this regard was culpable and blameworthy. Irrespective of the truth or otherwise of such comments, any concerns he had ought to have been pursued via the University's internal procedures. The claimant was not in a position of equivalence with the students. There was a significant power differential. The fact that students may have breached confidentiality in relation to internal disciplinary and complaint processes did not give the claimant licence to vent his concerns in the way he did. It is not appropriate for Professors publicly to aim aggressive discourse at students or student groups. Although it may not always be the case, in this instance it clearly had an adverse impact on not only the University's reputation but also on sections of both the student and academic body. It was clearly open to the claimant to articulate his views about Zionism without reference to students and University societies. We have no doubt that the claimant was both frustrated and concerned about the continued allegations of antisemitism being levelled against him. However, other options were open to him including further liaising with the University about publication of the first McColgan report.

472. The next issue to determine is by what proportion it is just and equitable to reduce the compensatory award. We have already concluded that the dismissal was both unfair and discriminatory. In particular, it was not proportionate to dismiss in these circumstances. However, we conclude that a disciplinary warning would have been both fair and proportionate. We also note that although the claimant and his comparator had made similar comments and statements in the past, they did not have the same impact as those made in February 2021. Taking all this into account, we conclude that the correct level of deduction for the compensatory award is 50%. That takes into account both the level of culpability but also the fact that dismissal was disproportionate. We see no reason why the same reduction of 50% should not apply to the basic award also.

Polkey/Chagger

473. A further issue arises as to whether the claimant would have been dismissed fairly and for non-discriminatory reasons in any event. The dismissal was substantively unfair so we need not consider whether Polkey, in the usual sense, applies (whether the claimant would or might have ceased to be employed in any event had fair procedures been followed). However, an issue arises about events after the claimant's dismissal.

474. The respondent points out that the claimant said in evidence that had the University not dismissed him, he would have used his continued employment as a launchpad to leave anyway. Consequently, it is said the claimant's termination of employment would have arisen at the same juncture.

475. It is also said that because the claimant's communications continued unabated with their consequent effects that further disciplinary action would have been required. Importantly, the claimant said in his evidence that none of his postdismissal statements were affected by his freedom from the ties of employment.

476. The respondent submits that ongoing losses must be extinguished by, at the latest, August 2023 because "it is more likely than not that dismissal would have eventuated". They rely on Credit Agricole Corporate and Investment Bank v Wardle [2011] ICR 1290 for this proposition.

477. It is open to the tribunal to consider whether there would have been a nondiscriminatory dismissal at some definable point in the future. If there was a chance that, apart from the discrimination, that the claimant would have been dismissed in any event, that possibility had to be factored into the measure of loss: Abbey National plc and anor v Chagger 2010 ICR 397, CA.

478. The correct legal test was clarified in Shittu v South London and Maudsley NHS Foundation Trust 2022 ICR D1, EAT, in which Mrs Justice Stacey confirmed that a 'loss of a chance' assessed in terms of percentages was the correct approach when assessing both unfair dismissal and discrimination compensation, as opposed to an all or nothing 'balance of probabilities' approach by which, based on the evidence before it, the tribunal determines whether or not an event would have occurred.

479. Stacey J held at para 95:

> There can therefore be an "all or nothing" result, but it will be because the tribunal is 100% satisfied that a future chance would or would not have happened. In practice there are a number of possibilities, three of which were identified in Software 2000 at [54(7)]: (1) there was a less than 100% chance of indefinite continued employment in which case the tribunal must assess the percentage chance and apply that percentage reduction; (2) the tribunal is satisfied on the evidence there was a 100% chance that the employment would have ended anyway by a certain time or at the same time as the dismissal, in which case compensation is limited to that period and the claimant is awarded 100% of whatever that period is (or receives nothing for loss of earnings if it was the same date as the dismissal occurred); (3) employment would have continued indefinitely in which case there is no percentage reduction applied. There is a fourth possibility identified in Zebrowski and O'Donoghue where there was a 100% chance that the employment would have continued for a certain period followed by a lesser percentage chance thereafter. There may be other possible categories. But in each category the exercise is

the same - the assessment from 0 to 100 of the percentage chance of what might have been or what will be.

480. Therefore, in order to limit compensation to a period up to the date when a fair and non-discriminatory dismissal would have occurred, the evidence must establish that the dismissal by the particular employer would inevitably have occurred. In consequence, it is only open to a tribunal to decline to award any compensation for loss of earnings, or to limit compensation to a period (as opposed to making a percentage deduction) where the tribunal is 100 per cent confident that a non-discriminatory dismissal or resignation would have occurred either on the same date as the dismissal or an identified later date or period. Otherwise, the correct approach is for the tribunal to make the assessment on a percentage basis reflecting the degree of chance that non-discriminatory dismissal or resignation would have occurred.

481. In undertaking this task, we also take into account the relevant parts of guidance set out in Software 2000 Ltd v Andrews and ors 2007 ICR 825. Our statutory duty involves making predictions and Employment Tribunals are not permitted to opt out of that duty merely because the task is a difficult one and may involve speculation. We have regard to all relevant material and reliable evidence and not just that adduced by the University.

482. The further statements relied on by the respondent to say that the claimant would, in any event, have been dismissed by August 2023 are those made by the claimant in that same month as set out in our findings of fact. In particular the statements made on twitter that “Jews are not discriminated against”, they are “overrepresented” and that “Judeophobia barely exists these days”.

483. The claimant sought to justify his position on whether “Jews are discriminated against in British society” in seeking to differentiate between “discrimination” and “hate crime”. However, when giving evidence, the claimant agreed that hate crime was clearly a sub-category of forms of discrimination. He also accepted that, even prior to the events of October 2023 in the Middle East, religious crimes against Jewish people were by far the most prevalent in the UK per head of population. Also relevant is the fact that there was evidence of antisemitic abuse aimed at Ms Freedman and others by third parties contained in the investigative bundle which the claimant had seen.

484. In response, the claimant points to a number of factors which, he says, indicate that he would not have been dismissed had these tweets been made whilst he was still employed. When Professor Norman was asked in evidence in chief what she thought would have happened to the claimant had he still been employed by the University when he posted the tweets relied on by the respondent, she replied that she “could not be sure”. Professor Norman added that, in her view

they could be seen as less serious than the February comments because they did not concern students.

485. The claimant also points out that at the 13 February 2021 event he made comments about there not being a "serious" problem about "Judeophobia in this country" which was not subject to analysis by any of the individuals at the University who considered or investigated the February Comments.

486. We deal first with the contention that ongoing losses stop because the claimant said in evidence that he would have used his continued employment as a launchpad to leave the University anyway. This was said to be an alternative to dismissal. In other words, the claimant suggested that instead of being dismissed he could have agreed with the respondent that he would leave in due course. Clearly dismissal put a stop to that, in the sense that it made it very much more difficult for the claimant to obtain alternative employment. At the date of trial, we were told that the claimant was working only on a freelance basis and was yet to secure another academic position. Accordingly, we make no percentage reduction on this basis.

487. However, in our view, the comments made in the August 2023 tweets were of a different order to the February 2021 comments set out above. The claimant does not suggest any sensible or coherent link to his protected beliefs. Instead of saying Judeophobia was "not a serious problem" the claimant tweeted that "Jews are not discriminated against". In his own supplementary witness statement, drafted to deal with these further tweets, he accepted that this was wrong and incorrect. Instead of saying that Jews were "well represented" in positions of cultural, economic and political power he wrote that they are "overrepresented". When put next to comments about the absence of discrimination it is highly likely that overrepresented will be interpreted as having negative connotations and that it is somehow problematic.

488. Ordinance 28 provides that gross misconduct "includes misconduct which in the University's opinion likely to prejudice the University's business or reputation or irreparably damage the working relationship and trust and confidence between the University and the employee". It is likely that had the claimant not been dismissed comments such as these would have led to further concern both within and outside the University.

489. We also factor in that had the claimant not been dismissed then it is likely that he would have received a written warning, thus potentially lowering the bar for the type of conduct which could lead to dismissal.

490. However, the claimant did not receive a warning setting out in terms what was and was not acceptable. Had he been given such a warning he may have thought more carefully about what he tweeted. As we have found, he accepted that parts of what he tweeted were simply wrong. This adds a further layer of speculation as to what would have occurred had the claimant not been dismissed.

491. When the tweets were admitted in evidence the University was also careful to say that it was not alleging that the tweets were antisemitic.

492. Predicting the reaction of the University is also difficult for a number of reasons. Not only was Professor Norman somewhat equivocal in her assessment of the August 2023 tweets when they were put before her but, as we have found, the University has not always acted consistently when it comes to the claimant or his comparator. Considerable time was spent both during the appeal hearing and the tribunal hearing comparing and contrasting the comments the claimant made in February 2021 with those made by Professor Greer about Brisoc and in the Mail Online and in other places after the conclusion of the complaint against him. Not only did Professor Norman, the dismissing officer, and Professor Whitington, who was part of the appeal panel, have contrasting views as to whether those comments, whether true or not, were at the same or similar level to those made by the claimant but Professor Whittington gave evidence that even if she had regarded the comments as the same or worse it would have made no difference to her rejection of the appeal against dismissal.

493. We conclude that there is insufficient evidence for us to conclude with precision, or on the balance of probabilities, that the claimant would have been dismissed. However, there is sufficient evidence for us to conclude that there is a realistic chance that the claimant would have been dismissed by the University after these further actions. Factoring in all the matters set out above and noting that our decision on this matter does involve a considerable degree of speculation, we conclude there is a 30% chance that the claimant would have been fairly dismissed two months after the tweets were made in August 2023. We find that it would have taken the respondent two months to convene a disciplinary hearing. Such a disciplinary hearing would be easier to convene and more straightforward than previous hearings.

Wrongful dismissal (failure to pay notice pay)

494. The issue here is whether respondent dismissed the claimant in breach of contract, specifically in breach of its obligation to provide him with notice. The test for determining if there is a repudiatory breach of contract is not whether an employer reasonably believes there has been such a breach but proof that there has actually been such a breach. Repudiatory conduct is conduct undermining the trust and confidence which is inherent in the particular contract of employment such that the employer should no longer be required to retain the employee in his employment. In determining whether an employee has repudiated the contract of employment, factors such the nature of the employment and the employee's past conduct could be relevant. We also remind ourselves that motivation for wanting to dismiss summarily is not relevant.

495. We conclude that the claimant did not commit repudiatory breach of contract. The relationship between the claimant and the University was not so damaged that trust and confidence was undermined to the extent that the employer should no longer be required to retain the claimant in employment. For the reasons we have already set out, dismissal was disproportionate and was inconsistent with the way in which he and at least one other had been treated.

Annex to Judgment: List of Issues

Limitation

1. In respect of any of the Claimant's claims that relate to acts or failures alleged to have occurred prior to 17 September 2021 (the Claimant having notified ACAS of his proposed claim on 16 December 2021, received an Early Conciliation Certificate on 26 January 2022 and submitted his claim on 25 February 2022).
   (a) did any of those acts or failures form part of a continuing course of conduct that ended on or after that date; or
   (b) if not, would it be just and equitable to extend time?

The Claimant's beliefs

2. Does the Claimant hold the beliefs that (at the relevant times):
   (a) political Zionism (which the Claimant defines as an ideology which holds that a state for Jewish people ought to be established and maintained in the territory that formerly comprised the British Mandate of Palestine) is inherently racist, imperialistic and colonial, and;
   (b) political Zionism ought therefore to be opposed?

3. If he does, are those beliefs philosophical beliefs? In particular:
   (a) are they beliefs, as opposed to opinions or viewpoints;
   (b) do they relate to a weighty and substantial aspect of human life and behaviour;
   (c) do they attain a minimum level of cogency, seriousness, cohesion and importance; and
   (d) are they worthy of respect in a democratic society, and not incompatible with human dignity and not in conflict with the fundamental rights of others?

4. Did the Claimant manifest those beliefs in any or all of the following ways:
   (a) through his comments at an online, public event entitled "Building the Campaign for Free Speech" on 13 February 2021 (para 68(c) in the grounds of claim (GOC));
   (b) through comments provided by him to the Jewish News on 16 February 2021 (para 76(b) GOC);
   (c) through comments provided by him to the Jewish Chronicle on 17 February 2021 (para 84(b) GOC);
   (d) in an email sent to Mr Ben Bloch on 18 February 2021 (para 91(b) GOC); and
   (e) in an article written by him and published on Electronic Intifada on 20 February 2021 (para 101 GOC)?

5. If so, do they constitute reasonable manifestations of the protected belief relied upon?

<u>Direct discrimination</u>

6. Was the Respondent's decision to dismiss the Claimant predicated on a finding that the expression of his beliefs as summarised above are abusive and vitriolic, and thus that the manifestation of those beliefs is inherently objectionable and constitutes misconduct in circumstances where it does not regard any other protected philosophical belief to be inherently objectionable? (para 20(a), 130-131

GOC)

7. If it was, did the Respondent thereby apply a belief-specific criterion to the Claimant? Did that criterion constitute direct discrimination because of the Claimant's protected beliefs?

8. If the answer to the question above is "no", did the Respondent treat the Claimant less favourably than it did or would have treated a person in materially identical circumstances by:

(a) Failing to publish the outcome of a complaint made on 4 April 2019 by a student of the Respondent regarding the Claimant, and the findings of a report produced by Ms Aileen McColgan KC on 4 December 2020 in relation to that complaint, timeously. In the further information provided by the claimant on 29 November 2022 it was said that: The Claimant does not know the identity of the person or persons responsible for this act or omission. However, he infers from the content of Mrs Jane Bridgwater's letter of 5 February 2022 that Ms Bridgewater and Professors Judith Squires and Esther Dermott were involved in and/or responsible for the University's failure to publish the outcome and report timeously. The Claimant infers further from the sensitivity surrounding Ms McColgan KC's report and the prominence and controversy surrounding the initial student complaint that the University's Senior Management Team and its Director of External Relations, Alicia O'Grady, were involved in and/or responsible for that decision.

(b) Failing to defend the Claimant in face of public criticism by students prior to
February 2021. The further information provided by the claimant was: The Claimant does not know the identity of the person or persons responsible for this act or omission. He infers from the nature, prominence and extent of the criticism that he faced that the University's Senior Management Team and its director of External Relations were involved in and/or responsible for the decision not to defend the Claimant.

(c) Failing to defend the Claimant in the face of public criticism by students following the event on 13 February 2021. The further information provided by the claimant was the same as directly above.

(d) Making comments to the media adverse to the Claimant in February 2021. The further information was that the Claimant does not know the identity of the person or persons who provided the comments quoted in the Jewish News article of 16 February 2021; the Jewish Chronicle Article of 18 February 2021 nor the Tab article of 19 February 2022.

(e) Finding the Claimant guilty of misconduct in relation to comments that he made in February 2021: Professor Jane Norman.

(f) Dismissing the Claimant for that alleged misconduct (Professor Jane Norman.), and/or;

(g) Rejecting the Claimant's appeal against his dismissal? Those responsible are said to be an appeal panel comprising Professors Phil Taylor, Kate Whittington and Martin Powell.

9. If so, did the Respondent subject the Claimant to that less favourable treatment because of his protected beliefs?

10. For the purpose of the allegations of direct discrimination:

(a) The Claimant relies upon Professor Steven Greer as an actual comparator. The Respondent contends that Professor Greer is not a valid actual comparator.

(b) Alternatively, the Claimant relies upon a hypothetical comparator.

Harassment

11. Did the University subject the Claimant to the following conduct:

(a) Permitting the student complaint of 4 April 2019 to proceed to the Complaints Review Panel. In the letter of 29 November 2022, the claimant provided the following information: The Claimant does not know the identity of the person or persons responsible for this act or omission. He understands that the decision was communicated to the student complainant by Ms Sue Paterson, and that thereafter Ms Philippa Guereca informed the complainant that her complaint would proceed (on 5 December. The Claimant does not know whether Ms Paterson and/or Ms Guereca made those decisions or merely communicated them.

(b) Recommending on 12 June 2020 that the complaint be investigated under the Respondent's misconduct procedure under Ordinance 28. Those responsible are said to be the Complaints Review Panel comprising of Sir Malcolm Evans, Professor Leah Tether and Dr Catherine Hindson.

(c) Failing to publicise the outcome of the Initial Student Complaint, or the findings of the First McColgan Report, timeously. The additional information provided is the same as the allegation of direct discrimination.

(d) Failing to defend the Claimant in the face of public criticism, and allegations of antisemitism, in 2019, 2020 and 2021. The claimant indicated that he does not know the identity of the person or persons responsible for this act or omission in 2019 and 2020. He also references the same information provided for the allegations of direct discrimination.

(e) Subjecting the Claimant to disciplinary proceedings in relation to the comments made by him in February 2021: Professor George Banting

(f) Dismissing the Claimant: Professor Jane Norman

(g) Rejecting the Claimant's appeal: those responsible are said to be an Appeal Panel (comprised of Professors Phil Taylor, Kate Whittington and Martyn Powell).

12. Was such conduct (or any of it) unwanted?

13. If it was, did such conduct have the effect of creating an intimidating, hostile, degrading or offensive environment for the Claimant?

14. Did that conduct relate to the Claimant's protected beliefs? The Claimant relies upon the following two alternative grounds for the contention that it did:

    (a) first, that the beliefs formed part of the motivation for the relevant decisionmakers in subjecting the Claimant to the conduct (including those who deliberately failed to act in relation to (3) and/or (4) above);

    (b) alternatively, that the Respondent subjected the Claimant to that conduct (or deliberately failed to act) because of complaints concerning the Claimant in 2019 and/or reactions to the Claimant's comments in February 2021 knowing those complaints or comments to have been motivated by antipathy to the Claimant's beliefs. The Respondent denies this but alternatively asserts that this is an insufficient basis for a finding that the treatment was related to belief.

Unfair dismissal

15. Was the reason (or principal reason) for the Claimant's dismissal a potentially fair reason under s.98 EA 1996, namely relating to the Claimant's conduct or, in the alternative, some other substantial reason?

16. In all the circumstances (including the size and administrative resources of the Respondent) did the Respondent act reasonably in treating the Claimant's conduct as a sufficient reason for dismissal? In particular:

    (a) did the Respondent believe that the Claimant was guilty of misconduct by reason of comments made by him in February 2021;

    (b) did the Respondent have reasonable grounds for that belief;

    (c) did the Respondent conduct such investigation into the matter as was reasonable in all the circumstances;

    (d) did the Respondent adopt a fair procedure;

    (e) was the Respondent's decision to dismiss one that was reasonable in all of the circumstances having regard, inter alia, to the matters cited at paragraph
    GOR?

17. As to (5) above, did the Respondent's decision to dismiss the Claimant constitute:

    (a) an unlawful interference with the Claimant's rights under Articles 9 and/or 10 ECHR which cannot be justified in accordance with Articles 9(2) and/or 10(2); and/or

    (b) an unlawful interference with the principle of academic freedom

    and if so what impact, if any, does this have on the application of s98 ERA 1996?

18. For the purposes of paragraph above did the Claimant's comments cited above in February 2021 above express his views on matters within his area of academic expertise and research and/or were those comments informed by his academic research? (paragraphs 68(a)(ii), 76(a), 84(a), 91(b), 101, 157(c)(i)(1) GOC). The Claimant is not contending these matters amounted to 'academic speech'.

Wrongful dismissal

19. Did the Respondent dismiss the Claimant in breach of contract, specifically in breach of its obligation to provide him with notice?

Further information on time limits

20. On 17 October 2023 the claimant provided more information in relation to his case on time limits and, in particular, when it is said that time starts to run, as set out below.

21. Direct discrimination other than appeal: time begins to run on 1 October 2021, the date of the Claimant's dismissal. The Claimant contends that the acts complained of constitute a continuing course of conduct that ended on that date.

22. In the alternative, in the event that the Tribunal finds that the acts complained of did not constitute conduct extending over a period, the Claimant will say:
    a. Time begins to run in relation to failing to publish the outcome of a complaint made on 4 April 2019 on 26 February 2021. This is the date on which the University can be taken to have decided not to publish the First McColgan Report.
    b. Time begins to run in relation to failing to defend the Claimant in face of public criticism by students prior to February 2021 in or around 1 November 2020, this being the date on which the University can be taken to have decided not to defend the Claimant in the case of the criticism he received from students prior to February 2021.
    c. Time begins to run in relation to failing to defend the Claimant in the face of public criticism by students following the event on 13 February 2021 by 26 February 2021, this being the date on which the University can be taken to have decided not to defend the Claimant in the face of public criticism after 13 February 2021.
    d. Time begins to run in relation to making comments to the media adverse to the Claimant in February 2021 on 16 February 2021 in relation to the comment made to the Jewish News, 18 February 2021 in relation to the comment made to the Jewish Chronicle and 19 February 2021 in relation to the comment made to the Tab (the Claimant contends that these acts constitute conduct extending over a period, even if all of the conduct relied on as direct discrimination does not, but if necessary will rely on each comment as a separate adverse comment).

e. Time begins to run in relation to finding the Claimant guilty of misconduct in relation to comments that he made in February 2021 on 1 October 2021.
f. Time begins to run in relation to dismissing the Claimant for that alleged misconduct on 1 October 2021.
g. Time begins to run in relation to the dismissal of the appeal on 23 February 2022.

23. In relation to the claims for harassment, for all the claims other than dismissing the claimant and rejecting the appeal the claimant says that time begins to run on 1 October 2021, the date of the Claimant's dismissal. The Claimant contends that the acts complained of constitute a continuing course of conduct that ended on that date. In the alternative, in the event that the Tribunal finds that the acts complained of did not constitute conduct extending over a period, the Claimant will say the following.

24. In the alternative, in the event that the Tribunal finds that the acts complained of constituting harassment did not constitute conduct extending over a period, the Claimant will say:

a. Time begins to run in relation to permitting the student complaint of 4 April 2021 to proceed to the Complaints Review Panel on 19 July 2019.
b. Time begins to run in relation to recommending on 12 June 2020 that the complaint be investigated under the Respondent's misconduct procedure under Ordinance 28 on 12 June 2020.
c. Time begins to run in relation to failing to publicise the outcome of the Initial Student Complaint, or the findings of the First McColgan Report, timeously on 26 February 2021.
d. It is said that failing to defend the Claimant in the face of public criticism, and allegations of antisemitism, in 2019, 2020 and 2021 refers to the same act in relation to three different years. The claimant's case is that even if all of the acts are not continuing, the Claimant will contend in the alternative that this allegation is an allegation of a continuing course of conduct, which ends on 1 October 2021 with the University's decision to dismiss and its publication of that decision.
e. In relation to subjecting the Claimant to disciplinary proceedings in relation to the comments made by him in February 2021 it is said that time begins 16 July 2021 with Professor Banting's report: that is the decision which renders disciplinary proceedings inevitable.
f. Dismissing the claimant: time begins to run on 1 October 2021.
g. Rejecting the appeal: time begins to run on 23 February 2022.

Remedy

25. If the Claimant has been discriminated against or harassed:

(a) is it just and equitable for the Tribunal to award him compensation in respect of that discrimination/harassment;

(b) if it is, what is the loss caused to the Claimant by the discriminatory act or acts;

(c) should any compensation awarded to the Claimant in respect of that loss be reduced having regard inter alia to:

(i) contributory fault. The Respondent relies upon the following conduct to the extent that the ET regards it as culpable, blameworthy and/or unreasonable: (i) the timing, fact and manner of Claimant's statements set out at above; (ii) the Claimant's representations at each stage during the course of the disciplinary process which were a factor in the Respondent's conclusion that (a) disciplinary proceedings were appropriate; (b) there was no viable alternative to dismissal and (c) the appeal could not succeed or give rise to an alternative outcome

(ii) causation and/or apportionment;

(iii) Polkey/Chagger;

(iv) the duty to mitigate;

(v) the modification of any award by reason of a failure to pursue a grievance pursuant to s207A(3) TULR(C)A 1992?

(d) should the Claimant be compensated in respect of any injury to feelings?

26. If the Claimant has been unfairly dismissed:

(a) Is the Claimant entitled to an order for reinstatement or reengagement?

(b) What loss has the Claimant suffered as a result of his dismissal?

(c) should any compensation awarded to the Claimant in respect of that loss be reduced having regard inter alia to the factors cited above.

Regional Employment Judge Pirani
5 February 2024

JUDGMENT SENT TO THE PARTIES ON

5 February 2024

FOR THE TRIBUNAL OFFICE