Claim No: 008LR98

IN THE BRISTOL COUNTY COURT

B E T W E E N:

RAQUEL ROSARIO SANCHEZ

Claimant

and

UNIVERSITY OF BRISTOL

Defendant

CLAIMANT'S WRITTEN CLOSING SUBMISSIONS
14.2.22

Introduction

1. These are the closing submissions of the Claimant, Ms Rosario Sanchez. This written submission accompanies and augments the Claimant's oral submissions made on 14 February 2022 and the agreed legal summary regarding the Equality Act 2010.

2. "**DB**" plus a number refers to pages in the Documents Bundle. "**CB**" refers to pages in the Core Bundle. "**SB**" refers to pages in the Supplementary Bundle. The SB comprises a final portion of the Defendant's disclosure, provided to the Claimant – remarkably – in the middle of the Trial.

Structure of these submissions

3. These submissions set out first, a precis of the evidence and submissions in respect of this, second, the application of the facts to the law and relevant caselaw, and third, submissions on quantum.

Summary of the Claim

4. The Claimant has brought claims in negligence, breach of contract and sex discrimination.

5. As stated in the Claimant's opening Skeleton Argument, this is a case where a young woman's fundamental psychological integrity has been damaged by the harmful actions of a prominent education institution. This claim has brought into the sunlight what the University of Bristol has sought to keep firmly in the shade.

6. The Claimant, a female PhD student, from the Dominican Republic, seeks vindication for the Defendant's enduring failures. She seeks recognition of the Defendant's failures to protect her as a female, international student, and women's rights activist. She seeks recognition of the Defendant's failure to recognise that she was harmed by the actions of its staff and students who sought to silence her. She seeks recognition that the Defendant has reneged on its promise *"to ensure any harassment or abuse directed towards you will cease as far as possible so that you are able to continue working undisturbed on your PhD in the School."*[1] She seeks recognition that she did nothing wrong; she sought simply to speak out in valiant defence of women's sex-based rights.

7. It is put best by the Claimant, who she stated back in September 2019;

> *"I want to start over so that I can live the life that I set out to live when I came to the UK in November 2017.1want to work with Emma and the rest of the women at the Centre for Gender and Violence Research. I want to be among the young women of Women Talk Back!, encouraging the next generation of feminist leaders. I want to be in Bristol writing, campaigning and organising events relating to the issues that I care about, and which are a part of my field. I want to do everything that my PhD in Social Policy states that I am expected to do, including engaging publicly on social policy issues relating to my academic work. But I don't know how I can do any of that if my own institution says that "bullying, harassment and unacceptable behaviour" against me is allowed to develop unchecked, that its consequences are not taken I want to start over so that I can live the life that I set out to live when I came to the UK in November 2017. I want to work with Emma and the rest of the women at the Centre for Gender and Violence Research. I want to be among the young women of Women Talk Back!, encouraging the next generation of feminist leaders. I want to be in Bristol writing, campaigning and organising events relating to the issues that I care about, and which are a part of my field. I want to do everything that my PhD in Social Policy states that I am expected to do, including engaging publicly on social policy issues relating to my academic work. But I don't know how I can do any of that if my own institution says that "bullying, harassment and unacceptable behaviour" against me is allowed to develop unchecked, that its consequences are not taken seriously and therefore, that this behaviour is to be encouraged."*[2]

Summary and submissions on the evidence

The Claimant's evidence

8. The Claimant has produced a detailed and compelling witness statement.[3] In this statement she sets out the facts and evidence upon which she relies to demonstrate the Defendant's unlawful conduct.

9. The Claimant's witness statement is a harrowing and troubling read, documenting the harm done to her, as a woman, and to women like her.

10. The Claimant told this Court that she is an international student, from the Dominican Republic. Due to issues with her visa, she started her PhD at the University of Bristol late, causing her to

[1] DB - 130
[2] DB - 214
[3] CB - 156

be isolated from the outset.[4] The Claimant is only able to stay in the UK on a student visa. If her studies are suspended or terminated, she must leave the country.[5]

11. The Claimant's position as an international student is vulnerable, both in terms of her immigration status, and in navigating the bewildering and byzantine world of English university policies, practices, and procedures.

12. The Claimant's case, consistently and from the outset, has been that the Defendant failed to protect her from bullying and harassment.

13. The Defendant seems to accept that the conduct of University of Bristol student, AA, constituted bullying and harassment. The Defendant also appears to accept that the social media attacks and vilification she faced, including the use of targeted, misogynist, and violent language – such as the slur "*terf*"- were also bullying and harassment. [6]

14. The Claimant's witness statement details, at length, however, the University's own involvement in fuelling and presiding over that bullying and harassment.[7]

15. It is clear from the evidence that the University's own employees were even engaged from the outset. The Claimant submits that the Defendant would not have become so embroiled had it not considered itself responsible and entitled to become involved. Yet the Defendant continues to argue it does not have a duty of care towards the Claimant.

16. The Defendant's intervention is revealed in its correspondence from early 2018, when this all began. The Defendant immediately involved its public relations team in responding to the now infamous February 2018 WPUK event.[8] The University's staff, including the Defendant's Head of Media and Deputy Head of Communications, and the Equality Diversity and Inclusion Officer responded to the WPUK event negatively.[9] The Defendant's employees repeatedly copied in the student President of the LGBT+ Society into conversations about the event. This included correspondence with the Head of School for Policy Studies, the Policy Studies School Manager, the Head of Communications and Director of External Relations and the Head of Media and PR,

[4] Claimant witness statement, §20
[5] Claimant witness statement, §17
[6] DB – 311, §16, DB - 315, §29(c)
[7] Claimant witness statement, §25
[8] Claimant witness statement, §30
[9] Claimant witness statement, §29

and the University marketing team.[10]

17. The email correspondence demonstrates that the President, who had been copied into much of the Defendant's internal correspondence, was working in tandem with trans activist students to cancel and condemn the WPUK event the Claimant was chairing.

18. Worse still, a male staff member at the Centre for Gender Violence Research edited and propagated the Open Letter.[11] He sent an email with the Open Letter to all members of the Centre for Gender and Violence Research; the Claimant's first introduction to her new colleagues. That Open Letter named and vilified the Claimant. It falsely denigrated her as a racist and a homophobe.

19. The Claimant gave evidence on 8 and 9 February 2022. The Claimant's oral evidence highlighted that:

    19.1 She had not been made aware of the reasons for AA being singled out for investigation. She was not made aware of the reasons AA's case was then terminated 18 months later.

    19.2 At times, the Claimant expressed she was grateful for the University's support. She acknowledged this during cross-examination. Nonetheless, the times she thanked the Defendant covered a period without any independent legal advice, and in the context of a new and bewildering University process. In oral evidence she explained that her gratitude principally related to the University finally getting on with it.

    19.3 The two years of counselling she was provided with was repetitive; she would repeat the same story of being unwell, her studies and her health being affected "*again and again*". But "*the source of the problem was not being addressed.*"

    19.4 The pressure of what was happening to her caused her to mentally "*unravel*" by May 2019. She was so desperate for help, she spoke to the media, including the Sunday Times and the BBC's Today Programme.

    19.5 She carried on participating in her writing and events because she did not want to become "*catatonic*".

    19.6 She was pressured into accepting a suspension of her PhD, which jeopardised her immigration status. To date, there has been no explanation of why an extension was not

[10] Claimant witness statement, §32
[11] Claimant witness statement, §35

offered instead at this time, based on written procedures in place that had been previously activated, without concern.

20. Dr Williamson also gave honest and compelling oral evidence on 8 February 2022.

21. Her witness statement contains detailed concerns about the University's approach, causing her to feel *"ashamed of the University*".[12] She sets out her view that the University were not "*dealing with it as they should have done*". In oral evidence she added that normally a suspension is a good idea but that it is less likely to be used where it has a disproportionate impact on students, such as with their finances. She explained that the "*reason*" for the suspension was punitive.

22. Dr Williamson resigned from the University earlier this year.

The Defendant's evidence

23. Mr Feeney, on behalf of the Defendant, accepted in cross-examination that:

23.1 It was the University's responsibility to ensure that any harassment or bullying directed towards the Claimant would cease as far as possible.[13]

23.2 It was the University's responsibility to protect those who want to meet and speak freely about matters of concern to them.

23.3 Policies and practices exist, that are created, enforced, and maintained by the University, to meet this aim. This includes the Acceptable Behaviour Policy, which covers bullying and harassment and discriminatory conduct.

23.4 The WPUK event was about reform to the Gender Recognition Act 2004, and its interaction with the Equality Act 2010. Those who attended this event, and similar events are feminists and predominantly female. Those on the receiving end of trans-activism are women. The conduct and language used towards the Claimant, that expressed violence against women, arose from her being female. Campaigners for "*sex-based*" rights are predominantly women. [14]

23.5 That Bristol University students were seeking to shut down events run by feminists

[12] CB – 139, para 46
[13] Oral evidence, 10 February 2022
[14] Claimant's witness statement §8, and witness statements (unchallenged by the Defendant who did not cross-examine these witnesses) of Naomi Cunningham – CB – 144, Judith Green – CB – 147, Dr Nicola Williams CB – 152. The Defendant has produced no evidence to counter their evidence. The Claimant was not questioned either on the overwhelming evidence of a disproportionate impact on women.

sharing the Claimant's views. This included a motion to "*prevent future Trans-Exclusionary Radical Feminist – TERF – Groups from holding events at the university*". This motion was voted upon favourably by students and was in place for several months before being removed by the University Council.

23.6 There was evidence of a sustained hostile environment at the University. The footage of the masked protestors at the Jam Jar in April 2018 was hostile. He accepted that this would make the Claimant feel unpleasant. Mr Feeney described it as "*yobbish behaviour*".

23.7 AA was a transactivist. They sought to justify their conduct by referring to defending trans rights and freedom of speech relating to speaking about trans rights. This included AA's barrister raising their Article 10 rights at length in disciplinary proceedings against AA.

23.8 The Claimant brought a complaint on 1 February 2018. This complaint ticked all the boxes for investigation - against students, staff and other. The relationship between the complaints and disciplinary procedures was confusing (and the Defendant later recommended reviewing and clarifying the interaction between the two, in recognition of this)[15]. Mr Feeney accepted that Claimant did not understand it.

23.9 The Claimant's complaint was not actioned immediately. The initial advice to Legal Services was to take no action when the Claimant's complaint was first received [DB-194]. The University decided to use the Claimant's complaint instead as a "*learning opportunity",* rather than to properly address the Claimant's immediate and worrying concerns [DB-118]. It would have been clear that the Claimant was unhappy with the way the complaint was being dealt with by the University, from the outset [DB-117].

23.10 Instead, the Defendant still put out a public statement in February 2018. This statement referred to the pejorative Open Letter, which named and shamed the Claimant. That public statement accepts that the Open Letter caused others to "*fear that their own right to meet and speak freely about matters of concern to them is not protected by the University*".[16]

23.11 The Claimant was not warned until the morning of the first hearing (15 June 2018) that she would be questioned by a barrister instructed by AA. Mr Feeney accepted an obvious difference in style in such questioning between a regular student union representative or a friend, and a qualified public law barrister. The Claimant was not told of the representative's qualifications before the hearing. This was even though the Claimant had

[15] DB- 1268
[16] DB - 12

already expressed reluctance and concern about giving evidence *in front of* a bully, AA.

23.12 The Claimant could have, in fact, attended that hearing by video and that this would have been more sensitive. Mr Feeney also accepted that it would have been difficult for the Claimant to be questioned right in front of AA, by a barrister. No special measures were put in place. The Claimant was cross-examined about her personal views.

23.13 AA's barrister made representations in respect of Article 10 (the right to freedom of expression) in the context of AA's trans activism. Advocating for trans rights was used as a defence to AA's conduct.

23.14 The protest outside the disciplinary proceedings could appear intimidating and worrying to those attending (also accepted by Ms Trescothick Martin).

23.15 Mr Feeney agreed he had met with the Director of Sari, Prof Canagarajah, the Chair of the Equality, Diversity and Inclusion Steering group sometime after the hearing on 15 June 2018.[17] He recalled issues raised about continuing proceedings against AA and that this was raised on the basis of perceived discrimination, transgender issues and freedom of speech.[18] The Claimant submits this is further evidence of the pressure to drop the proceedings against AA because they were a transactivist.

23.16 That no explanation is given – by anyone – for the delay between June 2018 and October 2018 for the Committee's decision to proceed with 4 out of 6 of the allegations against AA. This was 8 months since the misconduct first arose. No emails exist which explain this delay in getting a decision out in October 2018.

23.17 A pamphlet "*Why we fight the Terf war*" was distributed outside the disciplinary hearing in June 2018, that was sent to him by the Claimant on 23 October 2018. He accepted that the pamphlet normalised violence against women. No student was ever sanctioned for the pamphlet or its violent content.

23.18 The parties involved in disciplinary proceedings were required, at this time, regardless of what the Regulations said, to keep those proceedings confidential, and that if a person failed to keep those proceedings confidential that this would lead to a sanction. AA must have repeatedly told others of the hearing dates. There were known planned protests that caused the hearings to be disrupted. AA was not warned about or sanctioned, ever, for doing so and nor was any other student.

[17] As also set out in the agreed Chronology [CB-6]
[18] As set out in the Particulars of Claim, [§64]

23.19 There were ongoing attacks on and abuse of the Claimant after the termination, including from an organisation called Sister Not Cister, that had been releasing the date of AA's disciplinary hearing[19]. Further attacks on the Claimant were brought to the University's attention, as advised by Dr Williamson[20] and Ms Hester.[21] The Claimant continued to try and host women's events at the University and, in one case, a masked student had to be removed from an event. Mr Feeney accepted that this was evidence of ongoing harm to her and her wellbeing long after the initial January 2018 Open Letter.

23.20 The Claimant was not advised by the University to get her own independent legal advice. This was acknowledged as a problem in hindsight by the University, who said "*in retrospect we should probably have advised Raquel to take up the case outside the university*".[22]

23.21 There were no reasons given to the Claimant that explained why the proceedings against AA had been terminated. Dr Williamson had also stated that "*it came as a surprise to hear in July 2019, 17 months after the initial complaint that the university was terminating the complaint. No reasons have been given and there is no transparency as to who made the decision, on what basis and how it fits with the university's own complaints policies and procedures*".[23] Mr Feeney accepted that the Claimant was not told about any relevant regulations at the time.

23.22 Nothing resulted from the disciplinary proceedings against AA. There was no sanction, no remedy, no apology, no warning, and no caution given. AA felt vindicated and posted publicly a topless photo, after the proceedings were dropped which speaks for itself: "*The face (& nipples) of someone deciding what new hobbies to pursue, now that the University of Bristol have dropped their transphobic joke of a disciplinary case. So many options....[angel emojis]. Eat your hearts out WPUK [middle finger emojis].*"[24]

23.23 The University offered the Claimant £5,000 as a result of the distress and inconvenience caused to the Claimant, arising from the University's processes. "*I find that the prolonged uncertainty caused by this delay has caused you inconvenience and distress over a considerable period of time and that both the uncertainty and its effect on your working environment has had an impact on your PhD studies*". Mr Feeney accepted this was a sum that matched the maximum award from the Office for the Independent Adjudicator, and that this reflected the serious nature of what had happened to the Claimant. The Claimant submits that the University

[19] DB - 902
[20] DB - 30
[21] DB - 221
[22] DB - 221
[23] DB - 29
[24] DB - 220

considered that sum was offered *"to put [the Claimant] in the position she would have been before these events occurred*". [25]

23.24 If the issue arose again, the University would take the same decisions again.

23.25 There is no specific policy for the protection of feminists or female students at the University[26], but that there are several policies in respect of trans students[27], and a Trans Pledge.

24. Laura Trescothick Martin, who gave evidence on behalf of the Defendant, accepted when questioned that:

24.1 She had contacted the University's Director of External Relations on 6 June 2018 about arrangements for the 15 June 2018 hearing (the first attempt to discipline AA). This date was selected despite full knowledge that AA had published the date and time of the hearing online and had asked activists to demonstrate outside the hearing venue.[28] This was in full knowledge that this date was a busy university open day.

24.2 She was asked immediately to change this as a matter of urgency. The Director of External Relations said that the protests would risk the University's reputation. The University's security team also immediately tell her to postpone the event, as it is the "*busiest day of the year for security*". They say to her "*I can see no logic in holding this hearing on a day we are meant to be showcasing the university."* They highlight their concern about "*negative*" PR. They say to her "*I cannot believe we arranged such a meeting on an open day without any prior consultation or thought to possible consequences".* They strongly advised her to postpone.[29]

24.3 The hearing did go ahead and there were protestors – 20 or so.[30] She accepted that those protesters were intimidating to the Claimant. Those protestors caused further delay in the proceedings being rearranged. No warning or sanction is given to anyone about securing the confidentiality of the hearing date/time. [31]

24.4 She agreed that the Claimant being cross-examined by a barrister in front of AA would

[25] DB – 683. Details of the £5,000 settlement offer is at DB - 687
[26] This is despite established caselaw on such beliefs being capable of legal protection under the Equality Act 2010 - Forstater v Center for Global Development Europe [2021] UK EAT 0105_20_1006, as raised as a concern by the Claimant in her Witness Statement, CB-210, §172.
[27] DB - 1072
[28] SB - 1426
[29] SB - 1411
[30] Ms Trescothick Martin's witness statement, paragraph 5, CB-120
[31] SB - 1454

be intimidating.

24.5 The second hearing is set for 19 February 2019, over a year since the incidents in January 2018. [32] They decided not to instruct Counsel for it.[33] Once again the security team tells her that "*the key dates of our university should have been checked before this was organised as it puts additional unnecessary strain on both ourselves and the police. I highlighted this when the last hearing was organised on an open day*".[34] This resulted in the date being lost and April then having to be considered.

24.6 Members of the disciplinary committee considered the time taken to be "*unreasonable*".[35] AA's representatives chased her for a date, concerned that the dates in Counsel's diary could be lost.[36]

24.7 Throughout this whole time the Claimant had made the negative impact of the delay clear.

24.8 Nobody provided Ms Trescothick Martin with any context before trying to organise these contested hearings. There had been no coordination from anyone. Ms Trescothick Martin gave concerning oral evidence that the presence of any protestors was a "*surprise*".

24.9 Despite the Claimant raising her safety repeatedly throughout 2018 and 2019, a risk assessment is not carried out and written advice is not given to her about keeping herself safe (as set out in the list from the police) until September 2019. [37] The risk assessment summary in September 2019 suggests the risk to the Claimant at this stage is low, but not non-existent.

25. Jane Bridgwater, who gave evidence on behalf of the Defendant, accepted when questioned that:

25.1 The University's rules and regulations form the contractual basis between student and the University.[38]

25.2 That nobody from the disciplinary committee had been called by the Defendant to give evidence. This is despite it being the Claimant's case that the way in which it handled the Claimant's complaint (through the disciplinary proceedings), including the termination

[32] SB - 1454
[33] SB - 1443
[34] SB - 1445
[35] SB - 1456
[36] SB - 1461
[37] Brief risk assessment summary at – DB 416. This is not a risk assessment itself, but a summary letter.
[38] Particulars of Claim, 13

decision was itself discriminatory and a breach of duty. [39]

25.3 That there is no explanation whatsoever for the delay between June 2018 and October 2018.[40]

25.4 When the Claimant is written to on 13 March 2019, Regulation 9 (where disciplinary proceedings can be terminated on mental health grounds) is not mentioned.[41]

25.5 A different letter was sent internally from the Deputy Vice Chancellor and Provost to the Chair of the Disciplinary Committee on 8 March 2019. This letter also does not mention Regulation 9. She writes: "*to terminate this disciplinary process before it reaches its conclusion … would leave a lack of resolution that is damaging both to the complainant and the person accused*". She adds, "*to abandon this case would suggest that the University did not take its legal and moral responsibilities to prevent bullying and harassment seriously".* [42]

25.6 AA's lawyers provide to the University evidence with respect to AA's mental health, and further evidence in support of their position that AA had a right to treat the Claimant as they did – first, the Equality and Human Right Commissions' guidance on Freedom of Speech (as AA was relying on their own right to freedom of speech and expression in justifying their conduct in respect of the Claimant), and second, a statement that condemned WPUK as a hate organisation.[43]

25.7 In May 2019, during the hearing, AA's Counsel predominantly argues that the University should determine the issues of law raised – that being those which relate to AA's rights as a transactivist, in the context of AA's freedom of speech / expression rights. She says "*I am not submitting that [AA] could not make an application for extension at a later date. I am asking the Committee to determine the submissions on law and facts and only if not minded to proceed on those then consider termination under 9.2.*"[44]

25.8 The Decision of the Disciplinary Committee on 27 June 2019, however, on the face of it, focusses <u>entirely</u> on Section 9 of the Regulations, in respect of AA's mental health. The Decision, on the face of it, does not engage with any the Article 10-related issues.

25.9 The Deputy Vice Chancellor and Provost wrote to the Chair in Gender, Violence and International Policy, of the Centre for Gender and Violence Research, on 3 July 2019 in

[39] Particulars of Claim, 80 - 81, and 108, Schedule A, 2. Schedule B 1, 4.
[40] There being a gap in her witness statement at 9, [CB-95].
[41] DB - 350
[42] DB - 347
[43] DB - 352
[44] DB - 423

relation to the disciplinary proceedings against AA.

25.10 The Claimant submits that nowhere in this email does the Deputy Vice Chancellor refer to the reasons for the termination of the proceedings being because of anything confidential, and specifically does not say anything regarding Regulation 9 as the reason. She could have simply said nothing. Instead, she equated AA's conduct with the Claimant's: "*It is extremely important that those supporting Raquel and the University ensure that any action taken is proportionate to the alleged incidents and protects the freedom of speech of all members of the University. In this case the University's role is to maintain free speech, which includes both Raquel's right to express her views and the other student's right to protest about those views. The University does not and cannot support one student's view over another's provided that their views are lawful and lawfully expressed."*[45]

25.11 The Claimant submits that this is evidence of an undercurrent where AA's rights to freedom of speech and activism, raised by their representatives, is the reason for or part of the real reason for the termination of the proceedings (relevant to the discrimination claim).

25.12 Ms Bridgewater met with the Claimant in August 2019, and apologised to the Claimant about the confusing process. She accepted that she was a lawyer who has regular experience of these matters, but that it was clear to her that it was confusing to the Claimant, a student. In particular, the view that the disciplinary proceedings would fully resolve her complaint.

25.13 The Claimant continued to feel unsafe in August 2019 – saying "*I cannot stress enough my safety*".[46] Ms Bridgwater said in oral evidence that at the time AA was the source of this.

25.14 Ms Bridgwater had no reason to dispute or disbelieve the Claimant's evidence that she asked for a risk assessment "*seven times*" – by phone and by email.

25.15 Ms Bridgewater's email on 6 September 2019 queries (however) the need for the Claimant to access a risk assessment. The email stated "*I am unclear why these need to take place prior to the consideration of your complaint at the Local Stage."*[47] Ms Bridgwater gave hazy oral evidence about her perspective on this now, suggesting that she was not sure whether what she meant was that the Claimant wanted the complaint to in fact stop before a risk assessment was carried out. This is not plausible given how repeatedly the Claimant asked

[45] DB - 224
[46] DB - 444
[47] DB - 447

for her complaint to be progressed.

25.16 No formal risk assessment exists, only a summary letter[48] and a table (disclosed by the Defendant last minute) containing a very brief overview of police awareness of the WPUK event and similar events.[49] Ms Bridgwater had not read the police reports (despite the issue of safety having repeatedly been raised). She did not point to a risk assessment in the bundle; one does not exist.

25.17 The Claimant did not dismiss mediation, as stated in her witness statement.[50] Mediation is an entirely voluntary process; the Claimant cannot be criticised.

26. Jutta Weldes, who gave evidence on behalf of the Defendant, gave evidence that:

26.1 She was purportedly responsible for oversight over student progress. This included dealing with requests for extension. Despite this, she denied any awareness of the Open Letter and targeting of the Claimant, and of the Claimant being named and vilified in the Open Letter in 2018. She further denied any knowledge that the Claimant was being bullied.

26.2 But she was, in fact, notified in August 2018 that the Claimant sought an extension to her studies based on the supporting evidence of Dr Williamson.[51] Dr Williamson's letter, that had to be attached in order for an extension to be permitted, would have been read by Ms Weldes, as she confirmed, as she signed that request. She claimed, however, to forget about it a year later; this cannot be credible. As the Claimant said in oral evidence "*it is her job to know about these things*". That detailed letter included the fact that the Claimant had been "*targeted by trans-activists*", that disciplinary proceedings against one of those activists were ongoing, that the Claimant had had to attend and be cross-examined at a hearing, and that this had caused her stress resulting in difficulties in her studies. A four-month extension was sought to *"take into account the disruption caused by the length of the complaints process and the distress the issue as a whole has caused."*

26.3 Ms Weldes did not make any further enquiries of this letter from Dr Williamson, or look into the background of the matter, despite her oversight role.

26.4 This extension request was duly permitted, seemingly without controversy. This was despite an apparently unwritten rule that extensions are only normally permitted towards

[48] DB - 460
[49] SB - 1396
[50] CB - 101
[51] SB – 1483

the end of a PhD. The written rule says that extensions are permitted "*where circumstances necessitate*".[52]

26.5 This is important, as Ms Weldes gave oral evidence that "*you don't get extra time just because you are angry at the University*". This was despite the context of bullying and harassment against the Claimant that Ms Weldes had been made fully aware of in 2018 and to date. This statement from Ms Weldes is exceptionally unfair. The evidence of Ms Weldes is also indicative of the dismissive attitude the University had towards the Claimant. It unjustly stereotypes the Claimant as an "*angry woman*" without any legitimate concerns.

26.6 Ms Weldes met with the Claimant again in 2019 and presented three different options, and three options only, to the Claimant about her future at the University.[53] The first was a suspension of her PhD, and the second and third options involved leaving the university. Ms Weldes however, confusingly, agreed that the second option was "*bonkers*" in oral evidence and "*irrational*" in her witness statement. Yet it still crystalised into one of the three valid options placed in front of the Claimant at the time.

26.7 Despite an email formalising these three options following the meeting, Ms Weldes did not then seek to clarify her position on the options. These three limited options gave the Claimant the clear impression that she had no choice but to suspend her studies.

26.8 The Claimant was not offered an extension, despite having been given one before in the same circumstances.

26.9 These three options were also given to the Claimant, despite the context of Ms Weldes not "*being allowed to give Visa advice*"[54]. This was despite the implications these options would have for the Claimant's right to stay in the country (that the Claimant says she was not made aware of). There is no evidence in the bundle of any detailed immigration advice provided to the Claimant at this time (such as from the University Visa Office).

26.10 Ms Weldes also recalled at the meeting that the Claimant was "*absolutely clear a suspension was a detriment to her*[55]" given her circumstances. She accepted in oral evidence that a suspension would have a different impact to an extension. Yet in an email she said to the Claimant she should commence her suspension "*now*", "*regardless of whether UK visa rules allow her to suspend again later*".[56] As explained by the Claimant, these dynamics would have

[52] SB - 1486
[53] Set out in this same format at paragraph 11 of her witness statement, CB - 126
[54] Oral evidence
[55] Oral evidence
[56] DB - 456

meant that her complaint (which at that point was still live) could be discontinued without the need for the Defendant to reach a conclusion about it. The Claimant submits that a suspension carried no benefits for her (it only opened a whole lot of problems) while an extension of studies was a more suitable option to accommodate their delay.

A Negligence

27. To succeed on her claim in negligence, the Claimant needs to show that:

27.1 The University owed her a duty of care.

27.2 The University breached that duty of care towards her (by falling below the reasonable standards to be expected).

27.3 That that breach caused the Claimant any loss or damage, and whether that loss and damage is recoverable in law (foreseeability of loss arising from breach of duty)

The entitlement to bring a claim in negligence

28. The Claimant is entitled, in law, to bring a claim in negligence for the actions and failures of the Defendant (Winstanley v Sleeman & Anor [2013] EWHC B43 (QB)).

29. If a University fails to take proper care for a student, by falling short of the processes involved in doing so, that it is foreseeable that a Claimant will suffer some loss or injury as a result (Winstanley [71]) Liability can arise in contract and in tort simultaneously (Winstanley [72]).

30. The Claimant is not prevented from bringing a civil claim, even if the Office of the Independent Adjudicator was a further option.

Duty of care

31. The University denies that it owed the Claimant a duty of care. The Claimant submits there was a duty of care in her case.

32. This is demonstrated as follows:

32.1 The University is not just a place to learn and attend lectures. If that were the case, the University would not bother with any policies which concern student discipline and regulate student behaviour. The Defendant has a range of policies and procedures in

place which purport to deal specifically with the misconduct of its students.

32.2 The Defendant devised specific policies and procedures in respect of dealing with the misconduct of its students, the discipline of its students, and the management of complaints, to which all students were expected to comply [DB – 1142]. This included rules and regulations regarding student behaviour [DB – 1145, 1151] and staff behaviour [DB - 1151], alongside the Student Complaints Procedure [DB – 1134]. All students are subject to these University's internal procedures [DB – 1152], including the Acceptable Behaviour Policy and the Student Disciplinary Regulations. To quote the Defendant, "*the Regulations provide protection for both students (including [AA] and Ms Rosario Sanchez) and members of staff. Every student of the University signs up to these Regulations and standards of behaviour when they register at the University*" [DB – 310, para 15].

32.3 The Defendant's public statement in February 2018 is evidence that the Defendant accepts it has a duty to protect its students where they fear meeting and speaking freely about matters of concern to them.

32.4 Mr Feeney's answers in cross examination are further evidence of the existence of an obvious duty of care.

32.5 The Defendant's employees participated in the Open Letter and its propagation, through the course of their work. The Claimant raises issues liability in respect of staff conduct that it could only have become aware of as a result of the Defendant's late disclosure.

33. It is fair, just and reasonable that the law should impose the duty in the circumstances of this case. Where a duty of care has not been recognised before, the Courts are guided by analogous situations where a duty of care has been accepted or rejected as a guide. The Court must also consider the extent to which the relationship between parties was a proximate one and whether it is fair, just and reasonable to impose a duty.[57]

34. It is submitted that as with any other professional duty, the duty of care towards students in a university to be judged in accordance with the test laid down in Bolam v Friern Hospital Management Committee [1957] 1 WLR 582: i.e., whether a responsible body of professional opinion would have taken that course: "*A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art. … Putting it the other way round, a doctor is not negligent, if he is acting in accordance with such a practice, merely because there is*

[57] Robinson v Chief Constable of West Yorkshire [2018] AC 736 [27, 29]

a body of opinion that takes a contrary view." (page 122 per McNair, J.).

35. To assist the Court with the question of duty of care, guidance can be drawn from analogous caselaw in education.

36. The scope of a school's duty of care towards its pupils has been summed up by reference to the "Bolam Test" by Auld LJ in Gower v London Borough of Bromley [1999] ELR 356, at 359:

"(1) A headteacher and teachers have a duty to take such care of pupils in their charge as a careful parent would have in like circumstances, including a duty to take positive steps to protect their well-being. . .

(2) A headteacher and teachers have a duty to exercise the reasonable skills of their calling in teaching and otherwise responding to the educational needs of their pupils . . . .

(4) The duty is to exercise the skill and care of a reasonable headteacher and/or teachers, applying the Bolam test, namely, whether the teaching and other provision for a pupil's educational needs accords with that which might have been acceptable at the time by reasonable members of the teaching profession. . . "

37. Bradford-Smart v West Sussex County Council [2002] EWCA Civ 7 concerned a civil claim that a school failed to protect a pupil from bullying and harassment. In this case, a key question was whether the bullying did in fact happen. The Court also grappled with whether there was a duty of care – the court cautioned against taking a restrictive approach.

38. The Court of Appeal in Bradford-Smart affirmed the use of the Bolam principle in cases concerning bullying and harassment in education [35]. It affirms that "*a school may on occasions be in breach of duty for failing to take such steps as are within its power to combat harmful behaviour of one pupil towards another even when they are outside school*" [36]. It also affirmed that bullying can foreseeably lead to injury and loss [31]. It highlights that there may be circumstances, such as a failure to take disciplinary action, in which a failure to exercise its powers would be a breach of the school's duty of care to another pupils [34]. It also found "*Where an incident between pupils outside school carries over into school, a reasonable head teacher should investigate if it had a deleterious effect upon the pupil.*" [36]

39. In Cody and Ors v Remus White and Melissa Remus [2021] ELR 621, the High Court held that the duty that a head teacher and proprietor of a school had was one to exercise reasonable care and skill in the delivery of education. In this case, £20,000 was awarded in general damages for the injury and loss of educational attainment as a result of negligent mismanagement of the school.

40. Collins (Ryan) v Trustees of the Time being of Abbey Christian Brothers Grammar School [2014] NICty 4 is also instructive (in a landscape of limited education-related duty of care caselaw). This is an Irish case about bullying by a pupil against another. It assists in determining the duty of care in analogous circumstances. This also affirms the appropriate use of the Bolam test [25]. In this case the Judge found that effective action to prevent bullying should reasonably have been taken sooner.

41. Webster -v- The Ridgeway Foundation School [2010] ELR 694 establishes that a school has a duty to take reasonable care to ensure that a pupil is reasonably safe during school hours and for a reasonable period after the end of the school day whilst still on the school's premises [121].

42. The Court can also be guided by Phelps v Hillingdon Borough Council [2001] 2 AC 619 per Lord Nicholls of Birkenhead:

> *"The recognition of the duty of care does not of itself impose unreasonably high standards. The courts have long recognised that there is no negligence if a doctor "exercises the ordinary skill of an ordinary competent man exercising that particular art."*
>
> *The difficulties of the tasks involved and of the circumstances under which people have to work in this area must also be borne fully in mind. The professionalism, dedication and standards of those engaged in the provision of educational services are such that cases of liability for negligence will be exceptional.*
>
> *But though claims should not be encouraged once the Courts should not find negligence too readily, the fact that some claims may be without foundation or exaggerated does not mean that valid claims should necessarily be excluded." [667]*

43. In this case:

43.1 The Defendant assumed a duty of care for the safety and wellbeing of the Claimant by involving itself in the February 2018 Meeting[58] and, due to how it was handled by the Defendant, its aftermath.

43.2 This included Defendant staff member, Nathan Eisenstadt, editing and propagating the Open Letter[59] condemning the February 2018 event that the Claimant was chairing. The Open Letter singled out the Claimant for abuse. That Open Letter, which was widely circulated by Defendant staff[60], invited the Defendant to act, and when it did so the

[58] Claimant Witness Statement §14
[59] Claimant Witness Statement, §21, §35
[60] Claimant Witness Statement, §41

Defendant assumed responsibility and a duty of care for the students involved. The Defendant previously accepted that the Open Letter was serious and a potential risk of harm to the Claimant[61], as well as having a "*chilling effect on freedom of speech at the University*".[62] The Defendant considered that the Open Letter "*plainly does constitute bullying and harassment*". [63]

43.3 The Defendant's internal communications about the event before and after it took place further demonstrate how the Defendant assumed a duty of care (discussed at length in the Claimant's witness statement e.g., at § 59-62). This included repeatedly copying in staff and students into correspondence when they had spoken publicly against the February 2018 event. The Claimant sets out how employees of the Defendant colluded with or were in fact those who publicly condemned the February 2018 feminist event that the Claimant was chairing.

43.4 The Defendant also assumed a duty of care by issuing a public statement in respect of the situation.

43.5 The Defendant assumed a duty of care for the Claimant by telling her, initially, that rather than dealing with her concerns under the Student Complaints Procedure, the Chair of the Defendant's EDI Group would use the "*recent experience as an opportunity to reaffirm the University's commitment to freedom of speech.*"[64]

43.6 The Defendant later further assumed a duty of care by accepting the Claimant's complaint.

43.7 The Defendant further assumed a duty of care by seeking to then regulate the conduct of the students involved by initiating disciplinary proceedings. It did so against two students AA and FG, though the Claimant had identified other students/ student organisations. In respect of AA, the Defendant subjected them[65] to disciplinary proceedings for *"targeting a fellow student for vilification and condemnation"*. At the time, the Defendant agreed that the AA's actions caused "*anxiety and fear to Ms Rosario Sanchez, damage to the reputation to the University and attempts to interfere with its functions*". [66] The Defendant later sought to nullify that anxiety and fear, and continues to do so.

[61] DB – 311, §16
[62] DB – 312 §21
[63] DB 315, §29(c)
[64] Claimant Witness Statement, §73-74
[65] AA uses they/them pronouns.
[66] DB – 316 §33

43.8 The Defendant further assumed a duty of care to the Claimant in how it held and ran these disciplinary hearings. By allowing AA to repeatedly publicise the date and time of those events, without sanction, the Defendant caused the hearings to be thwarted and delayed, and to be attended to by students who were directing explicit abusive and derogatory language to the Claimant which caused her further harm and distress.[67]

43.9 The Defendant further assumed a duty of care to the Claimant by asking the Claimant to be questioned as a witness in the disciplinary proceedings against AA. This was done in person and in front of AA, without special measures in place, and without the Claimant having any legal representation. The Defendant later accepted that giving evidence via video link may well have been more sensitive/appropriate.[68]

43.10 The Defendant further assumed a duty of care by, in seeking to process the Claimant's complaint, failing to take into account documentation that she had provided directly to them. This included evidence of ongoing threats/ harm (social media posts, pamphlets), her psychological records, demonstrating the harm caused to her by the students' misconduct. The Defendant in November 2019 sought to nullify the harm that the Claimant had been raising by wrongly stating that she had "*not provided any evidence of direct bullying and intimidation or of any specific threat to your own personal safety."* This was despite ample evidence to the contrary. [69]

Breach of duty

44. The Defendant breached its duty of care towards the Claimant, by falling below the reasonable standards to be expected, satisfying the test established in Bolam v Friern Hospital Management Committee [1957] 1 WLR 582.

45. The Claimant relies on her own witness statement and the witness statement bravely provided by Dr Emma Williamson, the former head of the Centre for Gender and Violence Research. She provides independent evidence that the University has not acted in a manner that is up to the reasonable standards to be expected of a University between 2018-2020.

46. The Claimant also relies on the email from the now Head of the Centre for Gender and Violence Research Dr Marianne Hester who wrote to the Deputy Vice-Chancellor, with extreme concerns

[67] The Claimant relies on evidence including the 'Why we fight the TERF war' pamphlet.
[68] DB - 685
[69] E.g., DB – 172, 174, 221, 582.

for the Claimant's safety and welfare in June 2019.[70]

47. The Claimant submits that the breaches that arise in this case include:

47.1 The Defendant participated in the propagation of the Open Letter. The Defendant failed to protect the Claimant from the harm arising from the Open Letter. The Defendant failed to make clear to all those students and staff who wrote it and propagated it that the contents of the Open Letter were harmful to the Claimant.

47.2 The Defendant failed to properly organise and explain the interaction between the disciplinary process and the complaints process. There was no case management of the complaint. There was no single person coordinating the complaint for the Claimant. It was messy, confusing and bewildering for the Claimant.

47.3 The Defendant allowed the disciplinary process to be disrupted and delayed. The Defendant organised the disciplinary hearings on days that they were advised against, causing the hearings to be disrupted by protestors, who in turn caused intimidation to the Claimant. The Defendant failed to warn AA and sanction AA for their conduct in doing so.

47.4 The Defendant further breached its duty of care by publicly stating to the BBC Radio 4 Today Programme in September 2019 that the Claimant was receiving some support through the Student Wellbeing services[71] as a result of the situation she was facing, something that she never consented to being shared.

47.5 The Defendant failed to take reasonable steps to protect the Claimant from bullying between January 2018 to the end of 2019. This was despite evidence being provided to the Defendant detailing threats to her safety and psychological integrity. The Defendant has repeatedly failed to appreciate the distressing and upsetting impact of their actions and other students' conduct on the Claimant. The Claimant relies on several events and actions set out in her witness statement, including the targeted abuse of the Claimant and her work at the 1 March 2020 Women Talk Back! event, much of which took place after dismissing her complaint.

47.6 The Defendant failed to take reasonable steps to risk assess the situation, only carrying out a summary of risk in September 2019 on the repeated request of the Claimant.

47.7 The Defendant mishandled and delayed both the disciplinary proceedings and the

[70] Claimant Witness Statement, §160
[71] Claimant Witness Statement §175

Claimant's complaint. The Claimant should not have been cross-examined in the hearing as she was. The Defendant's delay was unreasonable and without satisfactory explanation.

47.8 The Defendant negligently and wrongfully terminated the proceedings against AA, despite ongoing, repeated harm to the Claimant, and after considerable delay. The Defendant took an all or nothing approach when terminating the proceedings, when Regulation 9 permits conditions to be attached where mental health is alleged. No conditions or other remedies were considered.

47.9 The Defendant has not drawn evidence from those who sat on the disciplinary committee and instead hides behind its legal advisors.

47.10 The Defendant failed to take care for and adequately support the Claimant. The Defendant was informed of threats/ risks to the Claimant on which it ought to have acted. No remedial measures were put in place to ameliorate the impact of the University delay and the unnecessary distress this process had on her PhD studies. As highlighted by the Claimant "*Nobody from the University of Bristol has ever met with me to ask: "Raquel, after everything that has happened, how can we help you move forward and finish your PhD successfully?" Instead, after dismissing the disciplinary procedures against AA, the Defendant took a punitive approach towards me."*[72]

47.11 The Defendant failed to properly advise on her options, pressuring her to accept a suspension and failing to advise on the visa implications. [73]

Foreseeability of loss and damage

48. The University clearly knew or ought reasonably to have known that the Claimant was being subjected to the conduct complained of, and that that conduct might cause her psychiatric injury, and by the exercise of reasonable care they could have taken steps to avoid such injury (Green v DB Group Services (UK) Limited) [2006] EWHC 1898 (QB).

49. The Claimant's loss and damage is recoverable in law, as foreseeable losses arising from the Defendant's breaches of duty. Psychiatric injury in particular was a foreseeable consequence of the Defendant's actions. She feared the loss of her visa, her studies have suffered, and she has

[72] Claimant Witness Statement, §199(h)
[73] The Claimant recognises that this element of her claim is pleaded in discrimination, but it arises from the same facts, and from the exceptionally late disclosure of the Defendant.

incurred additional rent and living costs, and been unable to gain full-time employment.[74]

50. Green -v- DB Group Services also highlights how liability can attach to a failure to act to stop bullying and failing to make it clear that such behaviour is unacceptable:

"Had the claimant's managers intervened as they ought to have done, there were obvious steps that could have been taken to stop the bullying. It ought to have been made clear that such behaviour was simply unacceptable, and those involved warned that if they persisted, disciplinary action would follow … by whatever means the bullying could and should have been stopped." [103]

51. In terms of foreseeability, in Green the High Court concluded: "*I am also satisfied that the bullying gave rise to a foreseeable risk of psychiatric injury. Such behaviour when pursued relentlessly on a daily basis has a cumulative effect. … It is in my judgment plainly foreseeable that some individuals will not be able, to withstand such stress and will in consequence suffer some degree of psychiatric injury." … "It is in my judgment plainly foreseeable that some individuals will not be able to withstand such stress and will in consequence suffer some degree of psychiatric injury. Furthermore the claimant was a person who, to the knowledge of the defendant, had suffered depression in the relatively recent past and had been prescribed anti-depressant medication. She was therefore to their knowledge more vulnerable than the population at large*." [105]

52. Like with Green, the case of Allay Ltd v Gehlen UKEAT/0031/20/AT (V), an EAT decision, is illustrative of an employer's need to appreciate that they should have done more to prevent harassment to one of its employees (by taking all reasonable steps to prevent such harassment by a fellow employee). In the present case, the Defendant enabled an environment to perpetuate that caused harm to the Claimant, by failing to sanction those who they knew or ought to have known were causing her harm.

53. The Court in Collins also refers to the Australian Supreme Court case of Oyston -v- St Patricks College NSW SC 269: *"The steps taken .... were not adequate either to eliminate the foreseeable risk of injury which had arisen, or to provide adequate safeguards … such safeguards required active investigation of the complaints made and monitoring whether any bullying had been brought to a halt."*

54. In Connor v Surrey County Council [2010] EWCA Civ 286, a stress at work case involving a governing body's campaign to undermine a teacher's professional standing, the Court of Appeal enquired into the local authority's duty of care in circumstances where the local authority became needlessly embroiled in a dispute between a teacher and a school's governing body. The case is

[74] Claimant Witness Statement, §231

also authority that the court's conclusion on duty of care can be sensitive to the particular facts.

55. In this case, the local authority went "*wrong*", so said Sedley LJ "*in temporising and compromising with [what was going on between the teacher and governing body] instead of protecting the head, the staff and the school from it*". [121] Thomas LJ added: "*There can be no doubt that the Council and in particular Dr Paul Gray, the Director of Education and Ms Wright, the Director of Schools, and its other senior officers lost sight of their duties to the school by failing to ensure that there was provided a proper structure of governance at the school. Instead, by their vacillation and appeasement, they allowed a dysfunctional system of governance to develop and persist*." [126]

56. Applying this caselaw to the Claimant's case it is clear that the University knew that the conduct of its students and staff would give rise to a foreseeable risk of psychiatric injury to the Claimant. It is plain that the relentless nature of the vilification campaign against the Claimant and the Defendant's failure to address both the bullying and the complaint about it would have had such an effect. The Defendant's actions did nothing to stop the bullying and harassment. Further, the Claimant was, to the Defendant's knowledge, more vulnerable by virtue of her being an international student who was repeatedly confused by English university processes and isolated from her support networks.

57. The Defendant's breaches caused the Claimant loss and damage. This is contained in the Claimant's updated Schedule of Loss [CB-232], her second statement with respect to special damages, and in the expert reports of Dr Slinn [CB-240-243] and Dr Cullen [CB-244-266], plus her Student Counselling records, the Staff Counselling Records, and the Vulnerable Students record. The Claimant has provided an updated Schedule of Loss, representing the present position; the first Schedule of Loss having been served in June 2020, 18 months ago.

58. The Defendant knows and accepts that the Claimant suffered personally as a consequence of its actions. In November 2019 it offered payment to the Claimant in the sum of £5,000 for "*the distress and inconvenience that you have suffered, in line with the maximum figure normally recommended by the Office of the Independent Adjudicator for Higher Education (OIA) in serious cases*". It did so in order to "*put [the Claimant] in the position that [she] would have been in before these events occurred*". [DB – 256] This would not have been offered if the Defendant did not consider the sum to represent a loss consequential on their failings.

B Contractual claim

59. There was an (undisputed) contractual relationship between the Claimant and the Defendant, entered into in November 2017. The Claimant contends that damages in contract also arise from the facts in this case.

60. As set out in the Particulars of Claim, it was an implied term of this contract that the University would exercise reasonable care and skill in carrying out services towards the Claimant and not fall below the standards to be expected of a reasonable University education-provider. Every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill (s.49 Consumer Rights Act 2015).

61. The University owed the Claimant a contractual duty to exercise reasonable care and skill in the provision of its services throughout the course of her PhD. Abramova v Oxford Institute of Legal Practice [2011] EWHC 613 (QB) is authority that Section 13 of the Supply of Goods and Services Act 1982 (now the Consumer Rights Act) "*implie[s] a term that the educational services would be provided with reasonable care and skill. The effect of that term [is] to imply a term that the educational services would be provided without negligence.*" [58]

62. The Claimant did not receive the service that she expected from Bristol University. She did not get from the Defendant what she was contractually entitled to, namely a complaint that was handled fairly or disciplinary procedures that were managed fairly and transparently.

63. It cannot be fair for a complaint that starts in January 2018 to come to a conclusion in December 2019. It cannot be fair or transparent for disciplinary proceedings against the student who has bullied and harassed you, in breach of the University's rules and regulations, to be terminated without reason and without clarity.

64. The Defendant's policies, rules and regulations can be used to interpret and integrate the contract.[75] The Rules and Regulations for Students ("the Regulations") includes an "*Agreement [that] forms the basis of the relationship between [the student] and the University from the time you accept an offer of a place for your Programme."* Other rules and regulations form part of this "*Agreement, including the rules and regulations for health, safety and welfare, student discipline, examination regulations, fees, fitness to practise, acceptable behaviour expected of you, academic integrity, research conduct and misconduct and the use of*

[75] PoC §9-11

computer and library facilities."[76]

65. These Regulations include agreement that the Defendant will:

"• operate a fair and transparent disciplinary procedure as set out in our Student Disciplinary Regulations

• enable you to make a complaint about matters that affect you and to appeal against decisions made about you

• handle any complaint or appeal fairly, according to our Student Complaints Procedure and Examination Regulations"

66. It further sets out that students are expected to:

"• comply with University rules and regulations regarding student behaviour, attendance and unacceptable behaviour."

67. The Claimant submits that the Defendant breached its implied term in failing to undertake the above with the requisite care and skill.

68. Loss and damage is recoverable in law, as foreseeable losses arising from the Defendant's breach of contract. Such losses are set out in the Claimant's witness statement and updated Schedule of Loss.

69. As in Buckingham and Others v Rycotewood[77], the Claimant seeks damages arising from the Defendant's failure to exercise reasonable care and skill in carrying out these university services towards her.

C Discrimination

70. The Claimant also argues several breaches of the Equality Act 2010:

70.1 Unlawful indirect discrimination on the basis of sex (s.19)

70.2 Victimisation (s.27)

[76] DB - 1141

[77] Before HHJ Harris QC, Warwick County Court [2003] – a useful summary of damages arising from breach of contract in higher education – including general damages for loss of enjoyment of the course.

70.3 Sexual harassment (s.26)

71. The Claimant seeks damages for injury to feeling in respect of the above.

72. The Claimant has set out an agreed summary of the law of discrimination, and the issues in dispute, separate to this document.

Submissions on discrimination

73. It may be tempting to consider this case as simply one in negligence and breach of contract. It must however be given its full context and be viewed through the prism of the Equality Act 2010. This is, after all, also a case against a public body.

74. The Claimant has provided the cases of Forstater v CGD Europe and Others UKEAT/0105/20/JOJ and Miller v College of Policing [2021] EWCA Civ 1926 as valuable context to this dispute, and as evidence of the reasonableness and lack of any misconduct in the Claimant's views. Her deeply held philosophical views regarding "sex-based rights" as set out in her witness statement are now protected views under section 10 of the Equality Act 2010.

75. The Claimant was a female student who advocated for the advancement of women's rights, described in her witness statement as "sex-based rights". This came into direct conflict with trans activists who considered that her views – which are inextricably linked to her being female - should not be aired publicly and must be condemned.

76. The Defendant's witness, Mr Feeney, rightly accepted that the Claimant's political/ campaigning views arose from, related to, and were intertwined with the Claimant's sex, her being female.

77. Clearly the University also saw this issue as one where matters of discrimination, freedom of speech and human rights were relevant. They considered, however, that there was a complete equivalence to be allowed between AA's rights and conduct (and that of other students and staff who were also trans-activists) and those of the Claimant. This was wrong.

78. The Claimant never complained about or condemned the views of the trans activists. She complained not about their views, but about their vilification, silencing and condemnation of her and the organisations she works with, who speak up about women's rights. Their conduct in advancing their position including mass social media action, no-platforming, dishonest open

letters, use of misogynist language, distributing pamphlets that endorsed violence against women, and storming venues in balaclavas.

79. The Defendant's witnesses accepted that the conduct of these transactivists at the University was intimidating. By contrast, the Claimant carried out no such misconduct.

80. However, despite apparently accepting the conduct of AA to be wrong and despite accepting that AA's conduct impacted and harmed the Claimant, they utterly failed to condemn AA's conduct and that of AA's peers. The disciplinary action taken against AA was fruitless. AA is now employed by the Defendant. The Defendant sought to support rather than discipline AA: "*our priority is to ensure [AA] feels supported by the school at this time*"[78]. AA was vindicated by the University capitulating.

81. The Defendant now has several policies that support trans-activism (and highlight the existence of the PCP), but none that specifically support feminism. The Defendant's own employees participated in the Open Letter and further disseminated it. The University's Equality, Diversity & Inclusion Manager advised Legal Services to take no action back in March 2018 when the Claimant's complaint was first received, *"due to the principles of freedom of speech being applied to both sides*".[79] This corporate adoption of such views makes the finding of the PCP pleaded an inevitability.

82. By November 2019 senior employees of the Defendant are calling the Claimant's cheerful correspondence about a women's event she was running "*sh*tty*" and that there is "*no need to prioritise [the Claimant's] email*".[80]

83. Adverse inferences can be drawn too from the Defendant's choice of witnesses. They did not bring the decision-makers to give evidence, nor did they ask any of the University's senior/corporate leadership to attend (save for arguably Ms Weldes, who claimed to have zero knowledge of the contentious high-profile issues that were affecting the Claimant and the wider University community).

84. The Defendant thus indirectly discriminated against the Claimant, contrary to section 19 of the

[78] DB – 243 - No reason was given for this express prioritisation of AA over the Claimant, and nobody on email exchange appears to have seen anything surprising in this comment.
[79] DB - 194
[80] DB – 250-251

Equality Act 2010, by applying a Policy, Criterion or Practice ("PCP")[81] of not sanctioning students who rely on "trans rights" activism to justify their conduct. The Defendant prioritised trans activism over women's rights. The Defendant argues that its reason for dropping the disciplinary proceedings was simply AA's mental health – but as highlighted in the cross-examination, the reason was clearly to do with AA's rights as a transactivist and the Defendant's view that this was just a case of competing views ("*both sides*").

85. The existence of this PCP is clearly proven through the Defendant's own corporate documents, its public statements, how it co-ordinated and sided with gender identity groups in its internal and external affairs, in how it tolerated bullying, harassment and violence against gender critical feminists, how it deals with other women's complaints including regarding proposed removal of the word "*maternity*" in the University's maternity policy[82], in abandoning the disciplinary procedure against AA, in failing to take any action in respect of AA's breaches of confidentiality, and finally, in employing AA despite their misconduct.[83]

86. This PCP can be inferred from all the facts and circumstances in this case. If no explanation is put forward or if the Court considers the explanation of the D to be inadequate or unsatisfactory it will be legitimate for the tribunal to infer discrimination. The process of inference is a matter of applying common sense and judgment to the facts. [84]

87. This PCP has the effect of complaints against such students not being adequately pursued. This in turn has the effect of preventing people who suffer from unacceptable behaviour by these students from receiving the benefit of those policies, including the prevention of and protection from such bullying, harassment and intimidation. These are substantial disadvantages.

88. A one-off act might amount to a PCP but only if it will or would be done again in the future if a hypothetical similar case was to arise - the University's witnesses confirmed in cross-examination that they would do the same again.

89. The Defendant's disciplinary and complaints process substantially disadvantaged the Claimant. These substantial disadvantages are experienced most particularly by women. The targets of such bullying, harassment and intimidation are disproportionately women.

[81] Environment Agency v Rowan [2008] ICR 218; Agreed Legal Summary
[82] Claimant Witness Statement, §206-211
[83] Claimant Witness Statement, §229
[84] Dr Anya v University of Oxford and Anr [2001] EWCA Civ 405 [7-8]

90. The Claimant relies on the factual witness statements and exhibits of Naomi Cunningham of Sex Matters, Judith Green of Women's Place UK, and Dr Nicola Williams of Fair Play for Women, which demonstrate this disproportionate impact on women. The evidence includes statistical analysis of those who attend events and support their causes – they are overwhelmingly female. The Defendant has failed to counter this evidence – this is because they cannot counter this evidence.

91. The Defendant is unable to justify its treatment. The Claimant does not accept the legitimate aims set out. Their approach was disproportionate and unbalanced.

92. In terms of victimisation, the Claimant also carried out a number of protected acts (several of which are accepted as such by the Defendant (Defence - §79)).

93. The Claimant suffered detriment from the Defendant because of these protected acts (contrary to section 27, Equality Act 2010). A detriment means being put at a disadvantage. The Claimant was clearly put at a disadvantage by the Defendant's conduct – for instance through the impact the Defendant's actions had on her PhD and in the way in which the Defendant dealt with her complaint.

94. The Defendant also engaged in unwanted conduct related to or connected with the Claimant's sex, contrary to section 26(3) Equality Act 2010. The Claimant suffered detriment as a result.

95. The conduct had the purpose and effect of violating her dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant inside her academic institution. The unwanted conduct has features that directly and indirectly relate to the protected characteristic of sex. If unwanted conduct is not intended to cause distress, it can still have the effect of violating a person's dignity or creating an offensive environment. It can also be witnessed or overheard – indeed the evidence of harm to the Claimant's friends who were also attacked by other transactivist students (such as AA who threw a drink over a female friend of the Claimant) is relevant here.

96. Guidance can be drawn from the harassment cases of Conteh v Parking Partners Ltd [2010] UKEAT/0288/10/SM and Unite the Union v Nailard [2018] EWCA Civ 1203.

97. The Claimant further submits that evidence of discrimination is prima facie evidence of negligence and of breach of contract – a discriminating university evidently falls below the

standards to be expected and is a breach of the duty in respect of care and skill.

D Limitation

98. The Claimant does not consider any of her claims to be out of time as the Defendant states.

99. Her claims arising from breach of duty (in negligence and in contract) are in time.

100. The claims under the Equality Act 2010 are also in time. The Claimant brings her sex discrimination claims in relation to acts extending over a period of time, culminating in her complaint being formally and finally dismissed by the Defendant on 19 December 2019. The acts relied on were not unconnected or isolated specific acts by the Defendant but a long-term, systematic pattern of linked acts.

101. The Claim was issued on 19 June 2020, causing the final act to be in time and those preceding matters from February 2018 to also be in time. If so required, the Claimant relies on Section 118(1)(b) of the Equality Act 2010; the test applied by the court is what is "*just and equitable*" in the circumstances.[85] The Defendant failed to seek that this issue be addressed as a preliminary issue or at CCMC.

E Quantum

102. The breaches set out above caused the Claimant loss and damage. The Claimant seeks general damages, special damages, and damages for injury to feeling, in addition to a finding of discrimination.

103. In terms of causation, Dr Slinn diagnosed an adjustment reaction with prolonged depressed mood as a result of the Defendant's actions: *"The clear precipitant for her current mental state appears to be the treatment that she's been receiving on social media from her fellow student combined with what she feels was an inadequate response from Bristol University who have failed to protect her from bullying. In my opinion this is best considered to be an adjustment reaction, that is distress and an emotional response to having to adapt to the circumstances she finds herself in. Unfortunately, as these circumstances are on-going, so is her distress."*

6.3 My diagnosis at this time would be of a prolonged adjustment disorder with mixed anxiety and depressive features.[86]

[85] Commissioner of Police of the Metropolis v Hendricks ([2002] EWCA Civ 1686; [2003] ICR 530
[86] CB-260, §6.3

104. Dr Cullen also diagnosed an adjustment disorder precipitated by the Defendant's conduct. He states, "*I asked Ms Rosario-Sanchez whether she felt that her mental health was affected more by the social media campaign or by the university, and she said that it was the university.*"[87]

General damages

105. General psychiatric damage is set out in Chapter 4 of the **Judicial College Guidelines** ("JCG"), 15th Edition, Section (A). The Claimant also relies on several quantum reports[88] involving psychiatric damage caused by bullying to help guide how general damages can be awarded in this case.

106. The Claimant relies upon the expert report of Dr Cullen, consultant psychiatrist, dated 21 July 2021 in support of her claim for general damages, and of Dr Slinn, consultant psychiatrist, dated 2 December 2019. The Claimant has sustained psychiatric damage.

107. The Claimant scored 26 on the BDI II questionnaire, indicative of clinically moderate depression.[89]

108. The JCG set out a range of factors to take into account as follows:

108.1 **The Claimant's ability to cope with life, education and work.** The Claimant has proven that activities of daily living were interfered with, including her ability to cope with life, education and work and her personal relationships. Her psychiatric condition is intrusive as follows:

108.1.1 **Life:** The Claimant has low mood, poor concentration, poor sleep, struggles to enjoy things and has limited motivation. She is angry and has significant anxiety. She suffered with panic and difficulty breathing.[90] As a writer and women's rights activist, her life is intertwined with her education.

108.1.2 **Education**: The Defendant's actions caused the Claimant's academic studies to come to a standstill. There is evidence of a marked deterioration between the Claimant's long-standing and energetic academic career prior to attending

[87] CB-252, §2.11
[88] PHILLIPS v GREAT WESTERN AMBULANCE SERVICE NHS TRUST (2015); BRYONY HODGSON v CO-OP GROUP LTD (2012)
[89] CB-254, §4.1
[90] Dr Slinn's report [241]

Bristol University, and now.[91] Prior to 2019, the Claimant worked until 10pm in her own office and was excited by work. From 2019, the Claimant's ability to engage at all with her studies was so significant that she could not engage at all with her PhD.[92]

108.2 **The effect on the Claimant's relationships with family, friends and those with whom she comes into contact with**: Her psychiatric state impacted her relationship[93]. She found it difficult to speak with friends about what was happening to her.

108.3 **The extent to which treatment would be successful/ Prognosis**: Dr Slinn expressed that: *"Unfortunately, I suspect that her symptoms will not resolve until either the bullying stops, or the situation is resolved in some other way by, for example, her leaving the university or the other individual stopping their behaviour."*[94] Dr Cullen considers that *"her psychological disorder should resolve once this case has resolved"*.[95] The litigation and the subject of the litigation are deeply intertwined – the Claimant considers the University have failed to address her bullying. In defending the action, those impacts perpetuate.

108.4 **Whether medical help has been sought**: The Claimant accessed the counselling provided by the University. The Claimant's evidence on this was that she repeated herself over and over again, and it had limited utility. As stated by Dr Slinn, "[the counselling received] *does not change the underlying problem of ongoing harassment, together with lack of validation of her concerns.*"[96]

108.5 **Further factors include:** the Claimant's psychiatric damage must be seen in the context of the Claimant having no family in this country. Her PhD centred on abuse of women by those in a position of power (men purchasing female bodies).

109. The Defendant argues that the Court should take into account other causal factors when determining causation and quantum. The Defendant, in distancing themselves from what happened, argues that it was just the negative social media that caused her mental health to decline and that this was outside of their duty of care. Yet this ignores how the Open Letter was edited and propagated by the Defendant's own staff and within its networks. It ignores how Bristol University students, including PhD candidates, to whom its behaviour policies applies,

[91] Oral evidence of the Claimant: "*From elementary, middle and high school, to undergraduate and my masters. These were all with hectic extra curriculars."*
[92] CB-251, §2.9
[93] CB-250, §2.8
[94] CB–258§5.12
[95] CB-263, §6.15
[96] CB-258 §5.12

participated in the social media onslaught. It ignores the intertwinement of the University's complaints and disciplinary processes and their impact directly on the Claimant.

110. The Defendant will nullify the impact on the Claimant by saying that the Claimant continued to write and participate in activism and events. They will cite Dr Cullen stating that "*My impression that she is in part consciously choosing not to engage with studies.*"[97] This however ignores the Claimant's own evidence on this. She explained the difference between the amount of activities she participated in before her deterioration; she was a diligent activist, writer and campaigner. Her output as a result of the Defendant's conduct still deteriorated significantly.

111. The Defendant also relies on the Claimant's history of accessing some therapeutic support. But this was counselling sought due to the nature of the Claimant's academic and campaigning work in violence against women, not in respect of bullying or harassment she herself had sustained.

112. The Claimant was honest and open about this both in oral evidence, and when speaking to Dr Cullen: "She said that she did undergo counselling because of the difficult content of her research."[98] The expert did not consider this to be akin to a pre-existing diagnosis of anxiety or depression or similar. Dr Slinn equally did not note any notable psychiatric history.[99]

113. The Defendant will also highlight an apparent GP record of a history of depression and anxiety (and the Defendant will say this could pre-date their involvement). The Claimant when questioned about this, however, explained herself clearly. The Claimant explained that this entry was not right, and that she has not had any psychological difficulties prior to coming to Bristol to study. This is supported by the report of Dr Slinn, which confirmed the same.[100] Dr Cullen equally considered the Claimant's account of her history of mental health (including her access to support for her involvement in work involving violence against women) and arrived at the same conclusion.[101]

114. Dr Cullen found the Claimant to be: "*broadly consistent in her reporting of her mental health distress.*"[102]

115. In Part 35 answers, Dr Slinn noted that the GP had not interrogated the suggestion that the

[97] CB-262, §6.11
[98] CB-253, §3.3
[99] CB- 241
[100] *"Raquel has not had any psychological difficulties prior to coming to Bristol to study"*
[101] "*I note Dr Slinn's findings, and historical references made by Ms Rosario-Sanchez regarding her mental health*." She has been "*broadly consistent in her reporting of her mental health distress*." CB 262
[102] CB-262, §6.9

Claimant had had a history of mental health problems, whether in terms of chronology, severity, number of episodes and any remissions.[103] No previous mental health entries exist in her GP records. The Claimant also explains in her witness statement that she does not have a previous psychiatric history. She has not experienced abusive relationships before. The Claimant also explained in oral evidence that in her country, people do not go to their GP for mental health problems. Any inference that the Defendant seeks to draw from the Claimant not referring to mental health problems in earlier GP appointments would be unfair.

116. Further, the Claimant's use of the word "*Summer*", when questioned about the onset of her psychiatric difficulties, quite innocently from her perspective as a Dominican Republican, includes – for her – the month of May.[104] That the "*Summer of 2019*" was when the Claimant really recognised her struggle does not mean that this is when her problems began.

117. The duration of the injury is therefore to be taken from January 2018 to present, when the Claimant first started to experience the effects of the harm being inflicted on her by staff and students. This results in a 4-year adjustment disorder, with depressive and anxiety elements. The Claimant accessed counselling from Spring 2018 until Spring 2020.

118. Dr Cullen did <u>not</u> confirm that Ms Rosario Sanchez's deterioration was caused "*purely by her perception of the motives of the University as regards specific matters/events*" (wording from the Defendant's Part 35 question).

119. The Defendant will rely on the University counselling that they provided, but this must be seen in the context that the University was the source of the reason for the counselling. This started in Spring 2018 and finished two years later, in Spring 2020.

120. Dr Cullen reported that the Claimant feels "*depressed on waking, and the rest of the day is a battle to motivate herself*" [CB-251, §2.9]. Low mood is triggered by "*anything to do with the university*". Her sleep pattern is "*terrible*". She has little energy.

121. To mitigate her loss, the Claimant returned to the Dominican Republic three times in the summer of 2019. That the Claimant would seek respite and escape as a result of the Defendant's conduct, as described in this claim, is entirely foreseeable and reasonable. These were not "holidays" but, as the Claimant describes, as an international student living on the other side of the world from

[103] CB-277, §2.4
[104] Oral evidence: "*I consider May to be part of the summer.*"

her entire family, a chance to escape harm and recharge. Had she not done so she may well have been in an even worse position. She cannot be criticised for doing so. These are losses consequential on breach.

122. The Claimant also provides evidence, admitted by Application dated 2 February 2022, in support of her claim for special damages. Her witness statement explains the calculations clearly. She was not cross-examined at all on these special damages for rent and living costs incurred as a result of her PhD being delayed. She would have finished her PhD but for the Defendant's conduct.

123. Injury to feelings awards are to be made in accordance with the current "*Employment Tribunal awards for injury to feelings and psychiatric injury following De Souza v Vinci Construction (UK) Ltd [2017] EWCA Civ 87*"[105]: Such awards are separate to general damages for psychiatric injury.

124. The Claimant seeks "*an award in the middle of the middle Vento band, to reflect specifically those effects of the psychological injury she suffered which was expressly caused by the discriminatory element of the Defendant's conduct. The Claimant's psychological injury was aggravated by the fact that the Defendant's actions, including delay, in causing it were discriminatory. This was particularly exacerbated by the Claimant's personal situation, which is that she is a feminist, studying for a Doctorate in the field of violence against women and girls, who suffered psychological injury caused by the University at which she was studying, and as a result of her campaigning activity on behalf of women and girls.*" [106]

125. In addition to a declaration of discrimination and liability (which have inherent value to the Claimant), the Claimant accordingly seeks damages as follows: [107]

125.1 £14,000 in general damages

125.2 £35,000 in damages for injury to feelings

125.3 £5,800 for rent and bills

125.4 £2,200 airfares

125.5 Interest

[105] Also known as the "Vento bands" or "Vento guidelines". https://www.judiciary.uk/wp-content/uploads/2013/08/Vento-bands-presidential-guidance-April-2021-addendum-1.pdf
[106] Schedule of Loss CB - 232
[107] As stated in oral submissions.

Conclusion

126. The Claimant will amplify these submissions orally, as necessary.

127. The Claimant trusted the University, but they failed her. The Claimant thought that they would protect her, and they did not. The Court is invited to find in favour of the Claimant in respect of all her claims.

ALICE de COVERLEY
3PB
14.2.22