EMPLOYMENT TRIBUNALS

PRELIMINARY HEARING JUDGMENT

BETWEEN

CLAIMANT		RESPONDENT
PROFESSOR ROBERT CARTER	V	UNIVERSITY COLLEGE LONDON

HELD AT: LONDON CENTRAL **ON: 17-18 AUGUST 2020**

EMPLOYMENT JUDGE: M EMERY

REPRESENTATION:
FOR THE CLAIMANT **Ms K Hosking (Counsel)**
FOR THE RESPONDENT **Mr E Williams QC (Counsel)**

PRELIMINARY HEARING JUDGMENT

The claimant has territorial jurisdiction to pursue his claims under the Employment Rights Act 1996 and the Equality Act 2010 in the Employment Tribunals.

RESERVED REASONS

The Issue

1. The purpose of this open Preliminary Hearing was to determine one issue: whether the claimant's employment had a stronger connection with Great Britain than with Qatar, thus giving him the right to territorial legal jurisdiction in Great Britain and the right to pursue his claims in the Employment Tribunals.

2. The issue of territorial jurisdiction has been developed to what are now established case law principles: the claimant has to prove that his employment relationship has a stronger connection with Great Britain than with Qatar.

> *"It will always be a question of fact and degree as to whether the connection [in GB] is sufficiently strong to overcome the general rule that the place of employment [in Qatar] is decisive."*
> (*Ravat v Halliburton Manufacturing and Services Ltd* [2012] ICR 389, para 28)

3. The claimant undertook his work almost exclusively at the respondent's academic unit in Qatar, named University College London - Qatar (UCL-Q). Notwithstanding this, he argues that his employment at UCL-Q had an overwhelmingly stronger connection with Great Britain and British employment law than with Qatar and Qatari Labour Law, and that the Employment Tribunals therefore have jurisdiction to hear his claims of discrimination and unfair dismissal. He argues his work, his direct contribution to the respondent from teaching its courses, tutoring PhD students, conducting research, and providing a significant reputational and financial benefit to the respondent, in particular its Institute of Archaeology (IoA), all point to a closer connection with the UK. He points to the degree of control the respondent had over UCL-Q and its standards and processes. He contends that the respondent's Statutes and Regulations apply to him. He argues he believed there were significant difficulties in bringing a claim in Qatar, again pointing to a stronger connection with Great Britain.

4. The respondent argues that the claimant is wrong about his right to pursue a legal claim in Qatar - he could have done and instead he chose not to do so; he was a true expatriate worker recruited to work in Qatar for a role particular to Qatar; he performed his role exclusively in Qatar, he was paid in Qatar in Qatari Riyals, he received significant ex-pat benefits not available to the respondent's UK-based employees, he was managed from Qatar and in his 2nd employment contract he agreed to contract out of the respondent's disciplinary and grievance processes (and in particular its processes relating to Academics, Statute 18); he was dismissed under Qatari law, which was the legal jurisdiction in his contract and under UCL-Q's processes in Qatar. The respondent argues that the claimant can point to some connections between his employment and the UK, but insufficient to outweigh the clearly stronger employment connection to Qatar. His allegations arise out of his employment in Qatar under a contract governed by Qatari law, and the UK Parliament cannot have intended him the protection of UK law and accordingly the claimant cannot be entitled to bring claims in the UK.

Relevant case law

5. *Ravat v Haliburton Manufacturing & Services* [2012] ICR 389:

> *"The employment relationship must have a stronger connection with Great Britain than with the foreign country where the employee works. The general rule is that the place of employment is decisive. But it is not an absolute rule. The open-ended language of section 94(1) leaves room for some exceptions where the connection with Great Britain is sufficiently strong to show that this can be justified. The case of the peripatetic employee who was based in Great Britain is one example. The expatriate employee, all of whose services were performed abroad but who had nevertheless very close connections with Great Britain because of the nature and circumstances of employment is another."* (para 27)
>
> *"The reason why an exception can be made in those cases is that the connection between Great Britain and the employment relationship is sufficiently strong to enable it to be presumed that, although they are working abroad, Parliament must have intended that section 94(1) should apply to them... The case of those who are truly expatriate because they not only work but also live outside Great Britain requires an especially strong connection with Great Britain and British employment law before an exception can be made for them."* (para 28)
>
> The fact that the law of the contract was English, and the claimant had been given assurances this was the case, were relevant factors. Although the parties could not alter the reach of statutory employment protections by simply by agreeing to do so, *"as this is a question of fact and degree, factors such as any assurance that the employer may have given to the employee and the way the employment relationship is then handled in practice must play a part in the assessment."* (para 32)

6. *Jeffery v British Council, Green v SIG Trading* [2019] ICR 929:

> A true expatriate will have to show that the factors connecting the employee to the UK are especially strong to overcome the territorial pull of the place of work (para 2)
> The choice of law clause in a contract of employment will be relevant to the sufficient connection issue, but not determinative (para 62)
> *"It is obvious that an employee whose contractual rights against an English-based employer are governed by English law would, absent special circumstances, seek to enforce them in England"* (para 78).

7. *FCO v Bamieh* [2019] EWCA Civ 803:

> *The tribunal is required to carry out a comparative exercise - "an assessment of the strength of connection with Great Britain and British employment law is one of fact and degree calling for an intense*

consideration of the factual reality of the employment in question. There is no hard and fast rule; the application of the principle/s hinges on the individual circumstances." (para 65)

8. *Duncombe v Secretary of State for Children and Families (No 2)* [2011] ICR 1312

The circumstances of the claimant's employment – the UK government was their employer, the contracts were governed by English law, they were employed in international enclaves: this was another *"example of an exceptional case where the employment has such an overwhelmingly closer connection with Britain and with British employment law than with any other system of law that it is right to conclude that Parliament must have intended that the employees should enjoy protection from unfair dismissal."* (para 16).

Respondent's Statutes and Regulations

9. Statute 10. THE ACADEMIC UNITS OF THE COLLEGE

(1) There shall be such academic units of the College as the Council on the advice of the Academic Board may from time to time determine, with such powers as determined by the Council on the advice of the Academic Board. An academic unit shall normally comprise Academic Staff and Students. The Academic Staff of such units shall conduct research and teaching and shall undertake such administrative or other duties as may be deemed appropriate by the Head of the unit. The academic units of the College shall have such designation as the Council on the advice of the Academic Board may from time to time determine

(2) The Headship of such academic units shall be approved by the Council under arrangements specified by Regulations. The responsibilities of Headship of such units shall be notified in writing by the Provost to persons appointed to Headship. Such notification will be given prior to the commencement of the person's appointment as Head of the unit.

(3) The academic units of the College determined by the Council may be assigned to one or other of the College Faculties by the Council on the advice.

(4) For each academic unit of the College determined by the Council on the advice of the Academic Board, meetings at which the Head of the academic unit or his or her deputy shall be in the Chair, and which such Members of the Academic Staff of the academic unit as shall be determined by Regulation shall be entitled to attend, shall be held, as specified by Regulation, in each academic unit in each year.

10. Statute 18. ACADEMIC STAFF

PART I CONSTRUCTION, APPLICATION AND INTERPRETATION

Construction

1. This Statute and any Regulation made under this Statute shall be construed in every case to give effect to the following guiding principles, that is to say:
    a. to ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges;

    b. to enable the College to provide education, promote learning and engage in research efficiently and economically; and

    c. to apply the principles of justice and fairness.

Reasonableness of decisions

2. No provision in Part II or Part III shall enable the body or person having the duty to reach a decision under the relevant Part to dismiss any member of the academic staff unless the reason for his or her dismissal may in the circumstances (including the size and administrative resources of the College) reasonably be treated as a sufficient reason for dismissing him or her.

Application

3. (1) This Statute shall apply

    (a) to Professors, Readers, Senior Lecturers, Senior Clinical Lecturers, Lecturers, Clinical Lecturers or persons holding any other appointment (other than an honorary appointment) designated as an appointment on the Academic Staff of the College by the Council;

    (b) to staff holding academic related posts, being posts recognised by the Council for the purposes of this Statute; and

    In this Statute any reference to "academic staff" is a reference to persons to whom this Statute applies.

Interpretation

Meaning of "dismissal"

4. In this Statute "dismiss" and "dismissal" mean dismissal of a member of the academic staff and:

    (a) include remove or, as the case may be, removal from office; and
    (b) in relation to employment under a contract, shall be construed in accordance with section 55 of the Employment Protection (Consolidation) Act 1978. [*'Meaning of Dismissal'*]

Incidental, supplementary and transitional matters

7.

(1) In any case of conflict, the provisions of this Statute shall prevail over those of any other Statute and over those of any byelaw, rule or regulation and the provisions of any Regulation made under this Statute shall prevail over those of any other Regulation

…

(3) Nothing in any appointment made, or contract entered into, shall be construed as overriding or excluding any provision made by this Statute concerning the dismissal of a member of the academic staff by reason of redundancy or for good cause…

11. University of London Regulations

Regulation - Professors and Readers
…

4. In accordance with the procedures set out in this Regulation:
…
4.2 A Member Institution may confer the title of Professor or Reader of the University on an employee of the Member Institution who is a member of its academic staff.
…
Criteria for Professors and Readers

The following criteria shall apply to all appointments and conferral of titles:

Professors

In appointing a person as a Professor or conferring the title of Professor regard shall be had to the person's national/international standing in the relevant subject or profession as established by outstanding contributions to its advancement through publications, creative work or other appropriate forms of scholarship or performance, and through teaching and administration.

Legislation

12. Education Reform Act 1988

Academic tenure
202 The University Commissioners

(1) There shall be a body of Commissioners known as the University Commissioners (in this section and sections 203 to 207 of this Act referred to as "the Commissioners") who shall exercise, in accordance with subsection (2) below, in relation to qualifying institutions, the functions assigned to them by those sections.

(2) In exercising those functions, the Commissioners shall have regard to the need—

a. to ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and

controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions;
b. to enable qualifying institutions to provide education, promote learning and engage in research efficiently and economically; and
c. to apply the principles of justice and fairness.

203 Duty of Commissioners
(1) The Commissioners shall exercise the powers conferred by section 204 of this Act with a view to securing that the statutes of each qualifying institution include
a. provision enabling an appropriate body, or any delegate of such a body, to dismiss any member of the academic staff by reason of redundancy;
b. provision enabling an appropriate officer, or any delegate of such an officer, acting in accordance with procedures determined by the Commissioners, to dismiss any member of the academic staff for good cause;
c. …
d. provision establishing procedures determined by the Commissioners for hearing and determining appeals by any members of the academic staff who are dismissed or under notice of dismissal (whether or not in pursuance of such provision as is mentioned in paragraph (a) or (b) above) or who are otherwise disciplined; and
e. provision establishing procedures determined by the Commissioners for affording to any member of the academic staff opportunities for seeking redress for any grievances relating to his appointment or employment

Witnesses:

13. I heard from the claimant and from two witnesses he called - Professor Thilo Rehren who was employed as a senior academic of the respondent seconded to the position of Director UCL-Q and the claimant's Line Manager to 2011, and from Professor Richard Pettinger, the claimant's union representative from June 2019. For the respondent I heard from Ms Balogun, UCL-Q's Director of Human Resources. All provided signed statements which I read along with some of the documentation referenced in the statements in advance of the hearing.

14. I do not recite all the evidence I heard and was taken to, instead concentrating on the evidence relevant to the issues. Quotes are from the documentation and from my typed notes of evidence, the latter are not verbatim quotes, instead a detailed summary of the answer given.

The relevant facts

15. UCL-Q was created by way of an agreement between the respondent, the Qatar Foundation (QF), and the Qatar Museums Authority (QMA), *"to create a UCL Museology, Conservation, Archaeological Research, Training and Teaching Centre in Qatar known as University College London – Qatar (UCL-Q)"* (the UCL-

Q Agreement). The UCL-Q Agreement specified that UCL-Q *"shall remain an integral part of UCL and operate as a branch of UCL and shall not be established as a separate legal entity."* (63). While the UCL-Q Agreement had various break provisions, it was envisaged to be a long-term project with an initial 10-year term.

16. For the claimant and his witnesses, the lack of establishment of UCL-Q as a separate legal entity in Qatar meant that UCL-Q operated in a legal grey area. While operating under the auspices the QF, a charitable foundation closely connected to Qatar's rulers, its lack of establishment meant, for example that UCL-Q did not have a company registration number, usually mandatory in Qatar. The practical effect of this for the claimant and other expat employees was that (for example) UCL-Q could not pay some of the claimants' direct living expenses such as utility bills as had been envisaged, meaning these expenses were instead routed to UCL in London and into his wages, which were paid via London. Also, the claimant's employment contract was not registered with an Arabic translation with the relevant state agencies which, the claimant believed, was a precondition for legal employment status in Qatar.

17. QF provided the majority of UCL-Q's operating costs, salaries, research funding, also providing its premises and undertaking facilities management and maintenance. Facilities were to be made available to UCL-Q staff and any of the respondent's employees. QMS' main function under the UCL-Q Agreement was to provide administrative staff whose function was to liaise with the respondent regarding ULC-Q's research and academic programmes

18. The UCL-Q Agreement defines UCL-Q's purpose *"... to provide continuing professional education research … under the UCL name … UCL-Q will be subject to the quality assurance controls established and maintained by UCL, and will develop and offer continuing education, research and teaching equal in quality and standards to that provide by UCL at its main campus in London..."* (66). Degrees, diplomas and certificates awarded were to be *"equivalent in all material respects to those provided by and undertaken at UCL..."* as were the standards of training, the training curriculum and the standards of research programmes. Priorities for teaching and research at UCL-Q were to be agreed by the 3 parties to the agreement. Masters and Doctoral degree under the UCL name were to be offered and were soon in place, including Masters' and PhD students taught and supervised by the claimant. Students of UCL-Q were students of UCL, to whom relevant UCL policies applied, unless they conflicted with Qatari law (68-9). The Council of UCL had overall responsibility *"for all activities undertaken by UCL, including those of UCL-Q without prejudice to the role of the Board of Governors"* (70).

19. The UCL-Q Agreement required UCL-Q to appoint all academic, support and admin staff: *"At the outset, the majority of staff shall be appointed or seconded by UCL from among the academic and support staff of ULC in London. The remainder will be recruited by UCL using the same recruiting standards and procedures of UCL main campus in London, UK"* (68). The UCL-Q Agreement states that the respondent shall have day to day operational control of UCL-Q staff, including quality assurance.

20. In his evidence the claimant was asked what he understood by 'operational control'; his evidence, which I accepted, was that this included operational control over teaching, that the respondent's policies applied. Professor Rehren, the now former UCL-Q Director who had been seconded to this role as a senior academic in the IoA, was asked about the overall responsibility of UCL's Council; he said the overall responsibility related to UCL-Q following UCL procedures, quality assurance, the delivery of teaching and academic standards, external exams where the Faculty appointed examiners and overseeing exam procedures. Operational control, he said related to how UCL-Q operated in practice *"... so we follow UCL procedures, quality assurance, while QF and Board of Governors negotiated and agreed the topics of research".*

21. UCL Qatar was established by the respondent's Academic Board as an *"academic department of UCL"* from 1 August 2011 (836). The Minutes of the Academic Board refer to the respondent's Council approving, on the recommendation of the Academic Board, *"the establishment of UCL-Q as an academic unit of UCL with effect from 1 August 2011"* (839). There were two other respondent academic units, both based in the UK and similarly not formally assigned to a Faculty - Sainsburys Wellcome Centre for Neural Circuits and Behaviour and the Centre for Slavonic and Eastern European Studies.

22. Ms Balogun accepted that for academic revenue activities, UCL-Q fell under the Faculty of Social and Historical Sciences; she agreed that UCL-Q was *"closely connected"* to this Faculty and that UCL-Q's day to day operational control was directed by the respondent's Vice-Provost-International, later renamed as the Global Engagement Office (GEO).

23. On *"Employee Status"* the UCL-Q Agreement says the following: *"All staff will be based at UCL-Q and will be subject to all applicable UCL staff regulations and policies."* (70).

24. The Board of Governors of UCL-Q numbered 8, 3 appointed by the respondent, 3 jointly by QF and QMA, and two independent persons appointed jointly by all the parties (71). The Board's powers included operational and financial planning, budgetary control, establishment of independent professional panel to review programmes of research, training and teaching, to approve corporate partnerships and engage an independent auditor (70-71).

25. The 3 parties to the agreement established financial agreement on parties' contributions; the respondent submitted its business plan for UCL-Q to the QF and QMA for approval; there were provisions for revenue sharing of intellectual property developed at ULC-Q, and vesting of intellectual property to students. There was an expected revenue return to all parties – shown by the 'Ownership and Royalty Distribution Policy' diagram (62).

26. The claimant was recruited by the respondent to the post of Senior Lecturer in Arab Archaeology in September 2011 on an *"open-ended"* (i.e. not fixed-term or tied to a funding source) contract on UCL Salary Scale Grade 9 - the salary and grade of a similarly qualified Senior Lecturer within UCL in London. His recruitment panel included the Director of the IoA and the ULC-Q Director,

Professor Rehren. In relation to managerial matters Professor Rehren reported to the respondent's Vice-Provost (International) and in relation to academic matters he reported to the IoA.

27. The parties agree that the claimant's appointment was to an 'academic' post for the purposes of the respondent's Statute 18, 3(1)(a) - a Senior Lecturer post - and that the respondent's Statute 18 applied to this appointment. The job description specifies the claimant's role as *"one of the key early appointments at UCL-Q. The role holder will be expected to play a major role"* in developing the postgrad teaching and research programme in Arab Archaeology; the post-holder was to *"lead, conduct and publish research of the highest standards and wide international impact"* as well as contributing to UCL-Q's wider research and teaching strategies. The post-holder was to take on co-supervision of PhD and MA students. It is clear from the JD that the post-holder was expected to conduct the role in Qatar. (183-5).

28. Apart from the first two months of his employment when he was based in London (when he was paid salary plus London Allowance) and occasional trips home during which he may have conducted research at IoA facilities as well as taking annual leave, the claimant's place of work was exclusively Qatar. This was also the respondent's understanding from the outset – he *"will undertake all the work overseas"* (86). The claimant was paid by the respondent in London in Qatari currency into a Qatari bank account. His wage slip showed pay in Sterling. He did have the option of salary being paid in the UK in Sterling, although this would attract UK tax. He was classed as no longer ordinarily resident in the UK, meaning he did not have to pay UK income tax as long as he did not return for longer than 91 days in each tax year. His salary attracted zero income tax rate in Qatar. He received significant ex-pat benefits (including free accommodation and subsidised schooling, free utilities, subsidised transport, free flights for him and family, free medical insurance for him and family). UCL-Q employees assisted him and his family find accommodation and schooling. He therefore received specific and significant benefits over those payable to a UK-based academic. He was entitled to opt out of the USS Pension and instead receive a tax-free lump sum at the end of this employment; the claimant chose to remain in the USS.

29. The claimant's first contract of employment (the 1st contract) is written on respondent's headed paper and sent from its Human Resources Division in London. It specifies that the contract was between UCL-Q 'the First Party' and the claimant 'the Second Party.' It is now agreed that the claimant's employer was at all times the respondent, not UCL-Q, which had no legal status in Qatar. The contract states that

> *"All UCL-Q staff undertaking research must comply with UCL's Research Governance Framework … The appointment is also subject to the Statutes, Regulations for Management, and Financial Regulations of UCL ... insofar as these are applicable to the appointment. Copies of the Statutes, Regulations for Management and Financial Regulations are available for inspection in your Department."* (88)

30. There are references to the applicable legal jurisdiction in the 1st contract – the pension opt-out option (clause 3) sick leave (clause 11) and the right to terminate on grounds of gross misconduct (clause 13), all reference [Qatari] Labour Law No 14. Ms Balogun accepted in her evidence that because the claimant was subject to Statute 18, he could not have been dismissed under Qatari law as stated in his 1st contract.

31. A *"General Provisions"* Clause states the following:

> *"The provisions of this Contract are governed by the [Qatari] Labour Law and the executive decisions thereunder, and as such they constitute the basis to resort to in the event of any dispute arising between the two parties unless the conditions of this Contract include for favourable advantages to the Second Party."* (92).

32. As well as the respondent's operational control over UCL-Q, there was significant integration between UCL-Q staff and the IoA. The claimant supervised respondent students, including UCL students undertaking research in Qatar. Degrees awarded were UCL degrees. The claimant was subject to the respondent's Research Governance Framework.

33. The claimant's teaching role was overseen by the respondent's Faculty of Social and Historical Sciences. UCL-Q was subject to an 'Internal Quality Review' by the respondent's Education Committee which commented on the *"impressive level of integration"* between the respondent and UCL-Q (635).

34. The claimant's evidence, which I accepted, was that he considered himself a member of the respondent's academic staff. He acted as a peer reviewer for academic journals and a grant reviewer for funding agencies. He was involved in seminars and conferences run by IoA. He was required to complete the respondent's training on supervising research students and complete the same module forms and annual monitoring forms as the Respondent's employees in London, and obtain Faculty approval for them. He was also required by the Faculty of Social and Historical Sciences to draft a Departmental Learning and Teaching Strategy for UCL-Q, which required aligning with the IoA strategy (834). Assessments and examinations at UCL-Q were subject to the same arrangements for external examination as the respondent's. In his evidence the claimant described some of the processes he had to follow – exchanging forms with the Faculty; developing modules where the Faculty would also for changes, and the Faculty would sign off on the *module "just one example of the teaching admin"* involved. He described the policies and procedures *"we took from UCL - what they did to manage teaching and marking, the type of marking.... the communications with them about our teaching..."* ... *"We did all we could to build on the connections. It was very obvious we had this connection with UCL and why the work was directed from London".*

35. Ms Balogun accepted that staff and students from IoA and UCL-Q would spend time in each other's facilities - including UCL-Q students spending more than half a year in UCL's laboratory facilities in London (618) and that there was a pipeline of students from Qatar to study PhDs in London.

36. A significant piece of evidence was the respondent's own view on its close integration with UCL-Q. The claimant and other colleagues at UCL-Q were regarded an integral part of the IoA's RES – Research Excellence Framework return. The claimant contributed significantly to the IoA REF in the quality of his publications. The REF outcome provides a definitive rank of the institution's research excellence. The outcome of this REF was that the IoA was ranked 3rd in global rankings behind Oxford and Cambridge. The UCL-Q's REF contribution alone earned £345k per year in additional grant awards for the IoA (716).

37. The respondent was required to make a case to Higher Education Funding Council for England (HEFCE) on an audit of its REF. The respondent justified the inclusion of academics at UCL-Q by saying the following: the *"primary focus"* of the claimant and his UCL-Q colleagues was *"clearly and directly connected"* to the IoA (616). It referenced the recruitment of staff who worked at or who were educated at the IoA, the latter of which included the claimant. It stated that UCL-Q's academic focus was developed by the IoA, and that UCL-Q's Director was a member of IoA's SMT. It referenced joint research projects between IoA and ULC-Q (which included the claimant's research projects, one of which was administered from London); and the working relationship between UCL-Q and IoA laboratories which were *"designed to work in direct co-operation".* Also, that students and staff from UCL-Q spent more than half a year in IoA London; and vice versa. The HEFCE accepted the clear and direct connection between UCL-Q and the IoA in accepting UCL-Q research outputs in the respondent's IoA ranking.

38. Ms Balogun accepted that the higher the quality of the work in a REF submission, and the greater the proportion of staff proving high quality work, the more public research funding the respondent obtains; she also accepted it influenced competitive grant funding, that it was central to the IoA's reputation – she accepted the proposition that it is *"hard to overstate [the REFs] importance to Universities".*

39. On 7 July 2015 the claimant was appointed Professor of Arabian and Middle Eastern Archaeology in the University of London with effect from 1 October 2015. He was promoted under the standard UCL promotion procedure, involving UCL Statutes and Regulations, set out above.

40. The letter from HR Director Consultancy Services in London states that this promotion *"...reflects your outstanding academic achievement and your contribution to the work of your department and to UCL as a whole."* The claimant's pay-band was increased to 'professorial pay band 1' (a UCL band). His appointment was stated to be in Qatar. The letter states that *"Appointments to Chairs and Readership of the University of London tenable at ULC and conferment of the title of Professor … of the University of London on UCL staff are governed by the University of London's Regulation 3"* and a link was provided to this Regulation. The claimant was told he would be an ex officio member of the respondent's Academic Board and the Vice Provost's Office (International). He was told that *"attendance at meetings in the University of London, UCL,*

Faculty and department committees to which Academic staff may be appointed is an important part of the work." (115-6)

41. Ms Balogun for the respondent accepted that teaching and learning strategy prepared by the claimant and others had to be sent to the IoA for approval, that module and programme documentation had to be approved by the Faculty of Historical and Social Sciences, (e.g. page 665 Module Amendment Form), that the claimant completed annual monitoring forms to the Faculty, that UCL-Q's Board of Examiners were appointed by the Faculty, a Faculty Rep attended meetings of the Board of Examiners. Education Committee internal quality reviews were attended by academics from London and an external reviewer from another UK university. Ms Balogun accepted that UCL-Q had a very close connection with the Faculty, that the claimant had to comply with UCL policies and procedures - risk assessment, data protection, research ethics policies.

42. From 2016 the Claimant was managed by the new Director of UCL-Q. Dr Evans was appointed from within the respondent's staff and he reported into UCL London. In 2019 he applied and was appointed as Director of the respondent's GEO alongside his role as Director of UCL-Q. He split his time between both roles, working in both London and Doha.

43. In 2017 UCL commenced what it described an *"organisational change"* process for UCL-Q. In part the reason for this was internal – a decision of UCL to move away from an overseas campus model to what it described as a partnership model with overseas' academic institutions – an outcome of its Global Engagement Strategy. There were also factors specific to UCL-Q including issues around long-term financial sustainability: Professor Rehren said that QF would guarantee future funding for UCL-Q, in respondent documents there is reference to QF reducing budgets and a change of alignment within Qatar from historical and arts-based funding to science-based funding. One reason for the change process was described as the limited growth potential of academic programmes in archaeology. Issues were raised about the long term *"commitment requirements"* and oversight required from UCLs senior management towards UCL-Q and the opportunity cost of this. There was concern about perceived reputational issues in having such a close relationship with Qatar.

44. A decision was taken by the 3 parties to the UCL-Q Agreement to continue to operate UCL-Q in accordance with the UCL-Q Agreement and focus on its most popular MAs in the meantime, to continue the extensive CPD and short courses programme, and to reconfigure research activities to reflect the changes in the programme portfolio and align more closely to the strategic objectives of the 3 parties (121-122). A business plan was approved – again by the 3 parties and is described as *"fully aligned"* to all parties' strategic priorities. The plan envisaged the respondent winding down its programmes in Qatar by end 2020, that the academic portfolio would be refocussed away from archology and conservation, meaning laboratory use would decrease; that the research portfolio would be refocussed to be more closely aligned to its revised academic programme. Proposed organisational changes were envisaged, including to the claimant's role. A policy was proposed for selecting posts in the new structure,

competitive selection and *"potential redeployment elsewhere in UCL UK by using UCL's redeployment register"* were options outlined in the Organisational Change Plan.

45. UCL-Q had a *"Termination Procedure";* this was stated to be *"only applicable for those staff (excluding staff covered by Statute 18) employed"* at UCL-Q (145). One aspect of the policy was that it specified that only Qatari nationals are entitled to be represented by a Trade Union during a dismissal process; this is in accordance with Qatar national Labour Law. UCL-Qs dismissal processes were far swifter, with less process than under the respondent's Statute 18.

46. The claimant was consulted with. The claimant had no trade union advice when attending meetings about this change, because of Qatari law restrictions. At a meeting on 15 January 2017 with Dr Evans, Ms Balogun and a colleague in his support, the claimant was told about the impact of the MA Archaeology programme being stopped, he was told he would be offered a role as *"Professorial Research Associate":* he was told that the duties were teaching, research and admin; and his contract would be a contract of research. He was told as stated in the Minutes that *"researchers do not follow under Statute 18"* along with other differences between 'academic' and 'researcher' roles. He was told that this was a *"ring-fenced"* role as this was *"deemed suitable alternative employment"*; however, *"Assimilation"* did not apply because the content of the post has changed substantially (257-9).

47. On the morning of day 2 of the hearing further documents were disclosed by the respondent and allowed in following the claimant's consent: one document was an email from Ms Balogun dated 24 January 2017 to the claimant confirming that he could continue as a Graduate Tutor, *"the only stipulation is that the GT should be an experienced member of the academic staff of UCL".* Ms Balogun accepted that the claimant continued undertaking Graduate Tutor work, and was therefore still a member of the respondent's academic staff. Her point was that Statute 18 did not apply *"because the understanding was that this [statute] was not applied to the new position …".* Ms Balogun could not say whether there were any other of the respondent's academic members of staff to whom Statute 18 was disapplied.

48. Professor Rehren's evidence, which I accepted, was that the claimant would clearly still be an academic member of staff after the MA finished, even if funding for research projects would be coming to an end in 2020, *"... this is when UCL policies and procedures kick in... the Board decided to discontinue teaching but as an academic you can teach and research. Discontinuing the Masters does not discontinue their contract. There was lots ongoing... We continued teaching Post Grad and PhD students and we continued doing Prof Development courses. So only decided to stop one MA programme.... All staff were managed by UCL London. This was central in QF's interest in us as they did not want a separate entity – they wanted a real UCL department."*

49. The claimant was provided a letter on the conclusion of the Organisational Change Procedure ("OCP") on 22 March 2017, this stated that he had accepted the position of *"Professorial Research Fellow in Arabian and Middle Eastern*

Archaeology with UCL Qatar", and was told that his employment would be governed by contractual terms *"to be issued shortly"* and UCL-Q Conditions of Service for Research and Professional Services Staff would apply. The letter states that the *"Employer"* (expressed to be UCL-Q in this letter) has undertaken *"a comprehensive review of its employment contracts … to ensure greater compliance and consistency with ever changing employment and immigration framework in Qatar. The Employment Contract which will be issued to you was part of this review and is designed to reflect current law and practice under … the Qatar Labour Law. Save as expressly set out in this letter, the material terms and conditions of your employment with UCL Qatar will remain the same..."* (130-1). The letter does not say that Statute 18 would no longer apply, or that the post was not regarded as an academic position.

50. The claimant's 2nd contract of employment was not provided for some 5 months, on 23 August 2017. It specified that his employer was *"University College London, acting through its activity centre, UCL Qatar...".* His new role would take effect from 1 October 2017; as with his 1st contract, the respondent's Research Governance Framework applied, and his employment was *"... subject to the Statutes and Regulations (including Financial Regulations) … insofar as these are applicable to the employment"* (134).

51. The 2nd contract was for an indefinite period, unless terminated either in accordance with Qatar Labour Law or in accordance with clause 13 – notice period and termination - which states that *"either party may terminate employment in accordance with the periods of notice set out in the Conditions of Service for Research and Professional Services Staff …"* (which were provided along with the contract). The 2nd contract states that the claimant agrees he has *"no right of employment with [the respondent] in the United Kingdom or indeed any affiliated entity of [the respondent]".* The contract expressly states that his employment *"will bear no connection to or nexus with any entity including [the respondent] or perceived employment rights in the UK. Further the [claimant] acknowledges and agrees that the only rights pertaining to his employment [with the respondent] are as described under this Contract and the Qatar Labour Law".* (133-134).

52. The 2nd contract has a phrase very similar to the 1st contract: *"16: General Provisions: The provisions of this Contract agreement are governed by and construed in accordance with the Qatari Labour Law … and as such they constitute the basis to resort to in the event of any dispute arising between the two parties unless the conditions of this Contract include more favourable advantages to the [claimant]"* (142).

53. In his evidence the claimant described the process leading to this contract as *"very difficult … we were unable to get union representation. So I had a choice whether to go for this contract or to take the fight to UCL under the terms of the previous contract."* He says that after debate with colleagues and internal dialogue, and several discussions with Dr Evans in which he raised his concerns about being *"forced onto a new contract"* and that he was *"was unhappy being offered two very unpleasant options"* that he was *"working with"* Dr Evans and the Global Engagement Office to improve these terms. *"In the end I chose to*

take the new contract". He says he asked for clarification of his Professorial terms if he was no longer under Statute 18 and he received no clarification. He referred to a *"very heavy workload and two very major research projects"* and *"time struggle's playing their part"* in his accepting the 2nd contract. He says that he paid *"insufficient attention"* to the wording on jurisdiction. He regarded himself as likely the first person on this type of contract. He considered the 2nd contract to be *"contradictory and evidentially inaccurate"* given there was reference to *"no connection to"* the respondent, yet also reference to UCL Regs applying. He said that he discussed this paragraph with colleagues, that *"no-one understood"* this paragraph, and *"I moved on with the view that the contract was contradictory",* that he was *"maybe too comfortable with ambiguity".* On his role under the 2nd contract – he said that the research was as integrated with the IoA as before for the next REF, he continued teaching, and *"...the Faculty's scrutiny remained and intensified, no loosening after 2017."* I accepted this evidence. There is no separate job description for this post, the 2nd contract states that the role is to perform *"research and associated duties ... as the applicable head of department may require..."* (133)

54. Ms Balogun accepted that when working on the 2nd contract the claimant contributed to teaching, he continued to supervise research students, he continued to be a UCL Professor, and that many externally funded professorships can be research only roles. She accepted that a *"research only role"* did not mean the claimant was required to stop being an academic member of staff, and she was unaware of any senior academic member of staff undertaking a research only role who was switched to a non-academic member of staff. Ms Balogun accepted that funding for his post had come from open competition, she also accepted that a switch to fixed-term funding would not itself justify switching an open-ended academic post to a fixed-term contract. She accepted the proposition that the claimant's role under his 2nd contract was a *"paradigmatic case of an academic role".* Her point was that as part of the organisational change process it has been *"explained to the claimant"* that Statute 18 would no longer apply. Ms Balogun said that advice had been sought from London on the impact of Statute 18, that she *"could not recall"* if she was involved in these discussions, that this *"would have been a decision at a high level..."* considering what the post would look like post the closure of the MA programme. Her point was that in transferring him to the 2nd contract *"we were trying to safeguard his employment"* and because his role became a research-only position, that even though he was a core-funded member of staff with an open-ended contract, he had a research end-date which thus became his contractual end-date.

55. Ms Balogun said she understood there was a process to go through to change a role from an academic role to a non-academic role to which Statute 18 would not apply. This involved a written justification to Council with the reasons why the post had diminished. There was no documentation or evidence to suggest that this process was followed in the claimant's case.

56. A little over a year after the claimant commenced work under the 2nd contract, UCL-Q determined to dismiss the claimant from his role at UCL-Q. There was a settlement agreement offer in late 2018. On 20 January 2019 Dr Evans

proposed an Honorary position with UCL-Q to the claimant and this was agreed and accepted on 3 September 2019 – an Honorary Appointment as Visiting Professor from 16 September 2019 to 31 October 2020 at UCL-Q, for which he received a payment but he also agreed not to attend UCL-Q premises unless agreed in writing.

57. The first formal step in the dismissal process was a meeting on 10 March 2019 at which the claimant was provided with notice of termination, which was followed by a letter of dismissal on 20 March 2019 on notice. Because he had additional work to complete, he asked for and was granted an extension on his 3 months' notice, to 15 September 2019. He was granted the right to appeal under UCL-Q termination procedure which required an appeal within 7 days (168). The claimant signed acceptance of this letter, adding the words *"without prejudice to my legal position"* (170). He was entitled to create a profile on the UCL Redeployment Database for recruiting managers within the respondent to view and consider his suitability against vacancies. (274)

58. There followed negotiations between the claimant and UCL-Q, conducted mainly via its Director of HR Tanveer Razaq. The claimant submitted a complaint to Dr Evans and Mr Razaq on 15 April 2019 in which he made an offer to settle and outlined various issues of concern. Of the issues relevant to this Hearing the clamant referenced *"…UCL's treatment of myself, my department and my colleagues to be highly unethical, as well as deliberately designed to circumvent norms of proper academic management and the protections of academic jobs."* The claimant asserted that UK employment law may apply *"based on UCL's violation of UK employment practices"* (171-3).

59. As in 2017, during the dismissal process and his complaint that followed, the claimant had no access to trade union advice or representation. He eventually secured ULU representation, and he then submitted an appeal against dismissal to UCL in London, via Professor Pettinger, his ULU rep, on 10 June 2019, outside the UCL-Q dismissal policy time-limit of 7 days. The appeal asked several questions including why the respondent's redundancy procedures has not been not followed; why was the claimant not offered a transfer to London (285-6).

60. Professor Pettinger's evidence was that he was informed that a trade union rep in Qatar was not permitted and the claimant was forbidden from speaking to a TU rep, that *"we went through a whole rigmarole about who he could speak to and how... went through 8 iterations about whether he was entitled to a rep, whether he was entitled to speak to me, whether he was entitled to have people copied in, whether entitled to an adviser from UCU or a colleague. So a whole lot of flannel..."*

61. It was suggested to the claimant that this delay in appealing showed a lack of interest in pursuing a claim in the UK, as he would have known he had a potential claim in Qatar. The claimant's evidence, which I accepted, was that this failure to appeal was an *"omission rather than choice while I tried to get the union … when I was referred to a representative, Professor Pettinger, he informed me that this deadline was not something which disbarred me from making an appeal and he advised me to make an appeal ... Once I felt I had informed advice on the*

situation from Professor Pettinger I developed the resolve to tackle this situation and appeal." He referenced his grievance which referred to pressure and bullying, *"... it took me a long time to get proper advice and this is when I finally started to challenge it strongly. I had been too acquiescent…*"

62. Professor Pettinger's appeal was responded to on 17 June 2019, by Ms Balogun on behalf of UCL-Q, making it clear that Union representation was not allowed in Qatar. The letter says that the claimant's employment is governed by Qatari Labour Law *"as specified in his employment contract..."* that UCL-Q's processes had been followed, his role was ending because of the cessation of funding for his present role, that because his funding was ending *"there was no role to transfer"* to London. He was told that there is no *"UK-style redundancy"* in Qatar. On the allegation that *"these are all material breaches of statute as well as UCL's own procedures"* the response was *"it is not accepted"* that there had been any breaches of statute or procedures (287-9).

63. On the same day Professor Pettinger responded making several points including that the claimant had not received the same opportunities as a UCL redeployee, and he references *"equality of treatment under UCL statutes …"* (292-3). An addendum states that *"we have been provided with a document that states very clearly that Qatar staff are indeed UCL staff on central and substantial terms and conditions".* Ms Balogun's response (to the claimant, under Qatari law) is that UCL-Q's *"position on your employment status is clear. Your contract of employment is governed solely by Qatar Labour Law. You also work exclusively in Qatar and are managed by UCL Qatar. During your employment you received many benefits you would not have had access to … in England."* The letter refers to UCL-Q defending two employment claims in Qatar, which was held to be the appropriate forum for these employees, of the QF funding for the role ceasing, no other role being available at UCL-Q; it says the claimant had no further right of appeal against his dismissal (300-2).

64. On 6 August 2019 the claimant raised a grievance asserting he was employed directly by the respondent, that it appeared to have different termination process (Statute 18 and UCL-Q) dependent on location. He argued that UK regulations had been circumvented, to remove safeguards and oversight procedures *"I would add that it is not clear whether I should be subject to Statute 18 regulations or not."* He argued his 2017 contract is *"supposedly"* is not subject to Statute 18 protections, that it was signed in the absence of union advice, that he was told he would be dismissed if he did not accept this contract: *"I did not sign this contract willingly, and I felt bullied by the process."* He argued it was not clear whether Statute 18 applied or not; he says without union advice *"I was not permitted to obtain full knowledge and understanding of what the changes to my contract meant …"* (350-361). In a further letter he asserts that that his concerns relate directly to UCL's Employment Policy and he reiterates that the 2017 contract was signed without union representation and that he and several other colleagues felt bullied into taking on these contracts (395-6).

65. There is then a significant amount of documentation generated about the claimant's grievance and then a subsequent fixed-term offer to complete his research, also on the admissibility or otherwise of the respondent's Statutes. All

his grievance and additional /union correspondence were dealt with by UCL-Q HR, and contained the same points: Qatari law applies, he was not entitled to union representation, he had signed away his Statute 18 rights, he was an ex-pat employee.

66. There was a significant amount of time spent on evidence about whether or not the claimant could pursue a claim in Qatar. The claimant's case was that, to his knowledge, it was very difficult if not impossible for him to bring a claim, and he cited the fact that UCL-Q was not registered as a legal entity, his contract was not registered, and UCL-Q had not registered his 'dispute' with the relevant Qatar Ministry. He obtained some advice to this effect from a senior lawyer in Qatar. His evidence was *"I'm not a legal expert. As far as I am aware, it's very difficult to take this case in Qatar - to the extent that it was not even clear it should be attempted in terms of good use of time / resource."* It was agreed that UCL-Q had no legal status in Qatar, and Ms Balogun accepted that the claimant's contract had not been authenticated with an Arabic version at the Labour Ministry, that the respondent had not presented the dispute to the Department of Labour or National HR department in Qatar.

67. There was evidence that two employees of UCL-Q did bring claims against UCL-Q. They were employed on a specific project (the Sudan project) as post-doctoral researchers on fixed-term contracts. They were not recruited by UCL and had no relationship with UCL. One employee was a Jordanian national recruited in Jordan. Ms Balogun accepted that for the Sudan project UCL-Q's COO stated in writing that UCL-Q was a legal entity (114), she accepted that this was an incorrect statement; however she did not accept that the COO's statement would have had any impact these on the jurisdiction of these claims. However, Ms Balogun also accepted in her evidence that the reason for the COO's statement was because the Sudanese government, which was sponsoring the Sudan project, did not want any link with the UK; its agreement was with UCL-Q and not the respondent. which was why UCL-Q represented itself as a legal entity for the Sudan project. Ms Balogun accepted the point put to her, that this was a way to get around one of the legal *"grey areas",* to effectively *"pretend it was a legal entity."*

Submissions

68. I received written Skeleton Arguments at the outset and oral submissions at the end of the hearing.

69. Ms Hosking for the claimant in her written submissions set out the test, that in the case of an employee who works and lives abroad - a 'true expatriate' - the general rule is they will not gain jurisdiction to sue in the UK even if they were recruited in Britain by a British employer. She argued that the claimant's case was an exception, he was closely integrated into the respondent's operations, in particular the IoA, his involvement in the REF and the respondent's justifications for using his and his colleague's work, that UCL-Q is an integral part of UCL. In her oral submissions she said that *"the content of his work, the institutional and management context in which he worked, the policies which he was required to follow, the financial and reputational benefits of his work to the*

respondent, together with the protections peculiar to academic staff were all British."

70. Ms Hosking argued (per *Jeffery*) the respondent was established by a Royal Charter, is an exempt charity, and is a public institution as a top-ranked UK University - the claimant's work was *"as much a contribution to British life"* as was the work of Mr Jeffery for the British Council. The claimant was entitled to maintain his USS pension, akin to Mr Jeffrey's civil service pension, Ms Hosking argued this was an *"exceptional"* benefit for a truly expat worker.

71. Ms Hosking argued that the contracts in 2011 and 2017 were at best ambiguous, she referenced the fact the contracts state the claimant is subject to Statutes, in any event he signed the 2017 contract without advice and under duress. The Statute 18 protections are fundamental to academic employment in the UK, including the reference to academic freedom. The claimant may have been told orally the Statute 18 would not apply but he was told in writing that save as set out in the letter, his terms will remain the same; the claimant therefore accepted the 2nd contract with Statute 18 still applying.

72. Ms Hosking argued that the claimant had been assured his contract would be governed by UK law (per *Ravat*) and, given the contractual background and wording, the issues with the claimant's employment status in Qatar, the provisions of the contract which suggested Qatari law applied *"should be given little weight."* "On the face of it, as a result of the Respondent's actions, the Claimant would be unable to bring any claim under Qatari employment law. That is not a matter of the competing merits of British and Qatari employment law: the Claimant must turn to British law because he has nowhere else to go. It is submitted that that is a relevant factor in assessing the issue of sufficient connection."

73. Ms Hosking argued that the claimant was a careful, accurate and plainly honest witness. When he could not recall he said so, and he was straightforward even when his evidence was unhelpful to his case or where he regrets inaction, the same for his witnesses Professors Rehren and Pettinger. She argued that Ms Balogun was unwilling to concede points which clearly followed matters she had already agreed and she gave inconsistent evidence – her acceptance of senior research roles as a *"paradigmatic"* example of an academic role, but also that researchers would not fit into the Statute 18 definition - *"that is just inconsistent".* She argued that Ms Balogun's reference in her statement to *"confusion"* over the status of UCL-Q was inconsistent with her concession that the Sudan's project's designation as under the status of UCL-Q as a legal entity was a deliberate decision. She argued that the respondent's evidence should be treated with caution.

74. On the contractual position – Statute 18 – Ms Hosking argued that the respondent accepts that all of UCL statutes applied to the claimant under the 1st contract, and she pointed out the source of the Statutes – the Education Reform Act 1988 s203 – the duty of Commissioners to ensure that qualifying institutions' include the provision of Statute 18; also the reference in Statute 18 to English statutory law refers to Employment Protection (Consolidation) Act (EPCA) 1978,

s.55, a predecessor of ERA 1996 s.94. s.202 of the ERA1988 is the 'reason why' Commissioners have the duty – the requirement for 'academic freedom', as set out in Statute 18.

75. Ms Hosking made the point that 'academic freedom' is a concept about the *"public good",* that it is a *"part of public life and fundamental to the international reputation of UK's higher education".* She argued that this value and its international reputation is a reason why Qatar wanted to utilise these values – a reason way UCL *"was wanted in Doha".* She argued that the provision of Statute 18, a *"deeply British"* concept of academic freedom protected by statute, into the claimant's 1st contract is an *"overwhelmingly strong"* connection to Great Britain and its employment law.

76. On the 2nd contract, Ms Hosking said that it did not succeed in removing Statute 18; the provisions which incorporate the statutes are the same materially in both contracts. If the wording *"applicable to appointment"* qualifies Statute 18, it appears to refer to the nature of the role – academic or not. And the 2nd contract does not change the post – it's a professorial level research post - precisely the kind of post that is covered by the *"academic freedom"* protections of Statue 18. She argued that a *"reasonable person"* interpreting the 2nd contract with background knowledge would have understood it to incorporate Statute 18. Also, the 22 March letter, does not reference Statute 18. *"The only stipulation [for Statute 18 protection] is being an academic member of UCL staff. It follows that this stipulation must be fulfilled. There is no other way to read it."*

77. Ms Hosking argued that the claimant had also been told that he was a Graduate Tutor, for which he must be a member of Academic staff. She argued that whether considering the evidence around discussions on the post, or just focus on the contract, either way if the 2011 contract brought him under protection of Statute 18 *"so did 2017 contract".* She argued that the *"exceptional connection which is derived from Statue 18"* persisted to date of termination.

78. One of the factors to consider is the jurisdiction clause within the contracts - Lady Hale in Duncombe No 2 paragraph 16: the fact that the contracts were governed by UCL Statutes must be relevant to the protection they would enjoy; what is the law in the contract is relevant but is not determinative. And one way in which it is relevant is the expectations of each party to the contract. Ms Hosking argued that contrary to respondent's case, there are only 3 references to 'Labour Law' in the 1st contract, not Qatari labour law, it was not clear it was governed by Qatari law. As the claimant said in evidence, he did not think about jurisdiction, but he also noted that the reference to UCL Statutes and Regs applying was higher in the contract. The claimant's expectations were that he would be protected by UCL Regs and procedures which included Statute 18, and this was also the respondent's position - the reference to Labour law was in the context of the Statutes and Regulations of the respondent applying as Ms Balogun accepted – therefore not all of the contract's references to Qatari law applying could apply to the claimant as Ms Balogun accepted that UCL-Q termination process did not apply to the claimant under the 1st contract. So even of the governing law of the contract is Qatari, both parties accepted and expected that UCL Statutes would

take precedence. The effect of this under the Statutes is to import the protections available under the Employment Rights Act.

79. Could the claimant have brought a claim in Qatar? Ms Hosking argued that if it was possible to do so, this is not determinative, but one additional factor to take into account. As neither the respondent nor UCL-Q were registered as a company, they could not pay his utility bills for example, there is no legal 'personality' to sue in Qatar, and this is the advice the claimant received. The fact that other employees have sued is not decisive – they have fixed-term contracts and are funded differently, and UCL-Q claimed legal status (114), Ms Balogun could not say whether their contracts had been registered.

80. A number of other factors which weigh in C's favour - the integration with UCL in London, *"...the importance of REF cannot be overstated"* for the IoA along with the additional £345,000 pa in direct funding, the respondent's justification document (716), the claimant's role was connected to UCL in all of the examples given, including managing others preforming on short-term contracts based in the UK. - see paragraph 5.7 of the claimant's statement which was not challenged in cross-examination. Ms Balogun accepted that there was integration and *"it is important that the claimant was doing some teaching beyond 2017…"* and he continued to supervise research students, his Honorary appointment had been extended further to enable him to provide continued post-grad supervision.

81. Ms Hosking accepted that the claimant was *"a true expat"* in living and working in Qatar and receiving expat benefits *"… it's that the extent and depth of connections with UCL as a result of Statute 18, the content of his research work and as a result of the benefits of his work to UCL London"* all outweigh his expat status.

82. Mr Williams for the respondent argued that the claimant is not an employee who is entitled to the protection of the ERA 1996 or EA 2010: while the claimant can point to some connections with the UK and UK employment, these are not sufficient to outweigh the *"stronger connection"* of Qatar and Qatari law. Parliament cannot have intended the claimant would be protected by UK employment law, and there was nothing exceptional in the claimant's circumstances which achieved the *"high standard"* required to replace the usually decisive rule of place of employment. He was *"at all material times a true expatriate worker"* living in Qatar and working in Qatar, under the direction of Qatar-based manager, contracts were subject to Qatari law, and he was paid in Qatari riyals; he paid no income tax as an ex-pat and received significant ex-pat benefits. His role ended in Qatar, hence his contract was terminated under UCL-Q policies and Qatari law.

83. Mr Williams emphasised the differences with the facts in *Duncombe* where the claimants were teachers employed by the British government in an international enclave with employment contracts governed by UK law; also *Ravat* where the claimant was commuting between UK and his job overseas, was paid in the UK in sterling and was dismissed in the UK and paid a UK redundancy payment; and *Jeffrey*, where the claimant worked for the British Council (a quasi-govt

organisation) in Bangladesh running a language centre on a four-year posting; again the contract was subject to English law. The facts of all were exceptional cases showing an exceptional degree of connection. In *Jeffrey*, being recruited in the UK to work for a UK organisation was important, but not exceptional; a contract specifying UK law – again important but not exceptional; in this case Jeffrey had an entitlement to a civil service pension – an entitlement granted by a UK Act of Parliament; his salary was subject to a UK income tax deduction (a notional payment on his basic rate); and there was little to establish any connection with Bangladeshi employment law.

84. Mr Williams skeleton pointed to the facts which showed the claimant's case was *not "exceptional"* - the base of UCL-Q is in an Education Zone set up by QF, UCL-Q is *"answerable to"* the QF and a senior member of the Qatari royal family; that while UCL-Q was not a separate entity, and is part of the respondent, *"this was due to the complexities and restrictions of establishing a legal entity in Qatar as an overseas investor/organisation...".* He argued that in practice the respondent operated independently of UCL, that QF supplied and maintained UCL-Q facilities; QF provided virtually all UCL-Q's funding; it paid the claimant's housing costs; while staff were appointed by the respondent, senior staff could only be appointed after consulting and obtaining the approval to the other parties to the UCL-Q Agreement. While UCL would have day to day operational control of UCL-Q staff, the Board of Governors was a mix of the 3 parties. UCL-Q has its own policies and its staff are managed locally*. "This was precisely what happened with the claimant"* while working and in the termination process.

85. Mr Williams Skeleton argues the research programmes were in accordance with the 3 parties priorities. He argued that the claimant's job description was consistent with a role in Qatar, managed in Qatar, to develop UCL-Q in Qatar. He referenced the terms of the 1st contract which states Qatar Labour law is the governing law (cf *Jeffrey and Duncombe*, the expectation of the parties as to where rights would be enforced) and UCL-Q policies (sick leave) and holiday rights which are Qatar-based rights. He argued that the USS is not a statutory scheme (cf *Jeffrey*) there was a difference in holiday rights (cf *Jeffrey*)

86. Mr Williams stated that the claimant's 2nd contract followed a restructuring exercise at UCL-Q, the MA taught by the claimant was ending and the 2nd contract superseded the 1st contract; the claimant was no longer classed as an academic member of staff and so Statute 18 was no longer applicable. Mr Williams accepts the claimant was subject to the respondent's Statutes *"in so far as these are applicable to the employment",* but, he argued, Qatari law took precedence. The contract was based in Doha and the claimant acknowledged by accepting the contract the claimant had *"no right of employment with UCL in the UK..."* that his rights were under Qatar labour law. In the circumstances the claimant could have had no doubts that his employment contract was *"overwhelmingly"* connected to both Qatar and Qatari employment law. *"... if the claimant did not work in Qatar in that particular role, he would not be employed by UCL."* Mr Williams argued the claimant's position was very different from a *"posted worker"* (Jeffrey), who had contractual expectation of further postings and where there were no links to Bangladeshi employment law.

87. Mr Williams Skeleton argued that Parliament cannot be said to have intended the claimant, paying no income tax on his income and getting significant ex-pat benefits, to be entitled to the protection afforded by UK employment law for act that took place whilst working in a tax-free jurisdiction.

88. Mr Williams argued that the claimant's line manager was based in Qatar; the claimant only managed staff based in Qatar, his students were based in Qatar and he was dismissed by managers in Qatar. Further, his dismissal was carried out in accordance with Qatari Labour Law and UCL-Q's termination procedure

89. In his oral submission Mr Williams made clear the burden proof, on the claimant, and he must show that his employment had an especially strong - an exceptional link - to the UK, that parliament must have intended UK law to apply. He accepted that the claimant had strong connections with the respondent; he argued his connections were stronger with Qatari law – even if Statute 18 still applied. UCL-Q was under the umbrella of QF, an emanation of the state, so the claimant's argument he could not sue is a *"rabbit hole".*

90. Even if there is ambiguity, the claimant did not raise this at the time, or when terminated, he did not appeal. It was only later that these points were raised - *"The point is that it seems likely he knew he was covered by Qatari Law".* Given the claimant's intelligence, he *"demonstrated a peculiar vagueness"* on the terms of the contracts. Mr WIlliams argued that the claimant knew he was not covered by UK law.

91. Mr Williams reiterated his emphasis on the difference between the claimant's case and *Ravat* and *Jeffrey* – civil service pension, payment of UK tax, 'public' body: the cases are instructive. Mr Williams argued that 3 key issues face the claimant in proving his claim:

92. Firstly, Statute 18, which did not apply under his 2nd contract and which, he argued is a new focus from the claimant in his case. Statute 18 does not cover researchers. He did not accept that the reference to Statute 18 covering Professor and academic staff covered the claimant because he had been informed Statute 18 no longer applied - *"this disapplied the Statute"* and he knew he had signed away these rights Mr Williams argued that he can sign away Statue 18 rights that *"it's a grievance or disciplinary process. Not a statutory right"* and the overwhelming evidence shows he knew he was signing away Statute 18 rights - pages 257 and 415, this was *"a valiant attempt to say s.18 applies"*. Even if it does apply, he could enforce UCL Statutes in Qatari courts.

93. Secondly, the *"impossibility"* of suing the respondent in Qatar – when the claimant has not even tried to sue in Qatar, and he can't show he was prohibited from bringing a claim; the evidence of other cases was he could have done. Mr Williams said that there was nothing to stop him suing UCL in Qatar.

94. Thirdly, the 2nd contract was a research not an academic contract. The nexus of fact: an objectively reasonable observer with knowledge of the background would argue that the claimant has no right of employment with the respondent,

no connection with or nexus with UK law and Statute 18 rights no longer apply, *"this is what has been agreed between the parties."*

95. Mr Williams did not dispute there were some points in favour of the claimant – the integration of the department, the REF, but this *"does not get him over the line"*: he compared the claimant's role to a UK manager at a Polish car plant building parts for a car to be assembled in the UK – but the manager still works and lives in Poland, he argued in this analogy that there is no stronger connection with the UK.

96. Mr Williams argued the clear stronger connection with Qatar in the contract and in fact; that even if facts are resolved against the respondent it can't be said that Parliament would say the claimant should be protected by UK. The claimant received significant financial benefits as an expat worker *"and in a less robust system you know what your signing up to".*

Conclusions on the facts and law

97. The claimant had a significant hurdle to overcome the general rule, that his place of employment is decisive. I noted that the test is there may be *"some exceptions"* to this general rule, that the claimant must show that he had *"very close connections"* with Great Britain, because *of "the nature and circumstances of his employment"* that he must show that *"Parliament must have intended"* UK jurisdiction to apply.

98. It is clear that the claimant was an expat worker – this was accepted by him. The presumption is that he has no recourse to the UK courts, unless he can show he was an exception, that parliament must have intended him to be protected by the provisions of the ERA 1996 and EqA 2010.

99. I first considered what was a very complex contractual position, and whether Statue 18 applied to the claimant under the provisions of the 2nd contract. I concluded that it did. It is common ground that Statute 18 applied under the 1st contract. In determining that Statute 18 applied to the 2nd contract I noted the wording of Statute 18 7 (3) – that no contract can exclude Statute 18, *"concerning the dismissal of a member of the academic staff.."*

100. I considered whether the claimant remained, as he said, an 'academic' member of staff of UCL under his 2nd contract. Notwithstanding what he had been told in the meeting on 15 January 2017, no other document referenced the withdrawal from him of the protections of Statute 18. While he was told his post was research only, his work required, in part, 'academic' status, for example his Graduate Tutoring, and this point was made to him in writing. Ms Balogun accepted his research role remained, in fact, an academic role. He was also a Professor, a promotion given by UCL. Statute 18 explicitly states it applies to professors. The respondent adduced no evidence that an appropriate process was undertaken by it to remove academic status from his role under the 2nd contract, or that his Professorship somehow no longer gained Statute 18 protection. I concluded that the claimant's work under the 2nd contract was

explicitly academic in nature, that his work was the kind of work that Statute 18 was intended to apply to.

101. While Statute 18 states that an academic can't be excluded from Statute 18, the respondent's case is that the claimant agreed to remove himself from Statute 18's remit during the contract meeting on 15 January 2017 and by his accepting the terms of the 2nd contract. The contract very clearly and explicitly states that the claimant has no legal recourse against the respondent in the UK nor any right to a role. It explicitly states Qatar jurisdiction applies. He accepts he was told it no longer applied. I accepted the claimant's case, which in essence is that the 2nd contract must be considered in the context of his continuing status as an academic. I accepted that an 'objectively reasonable person' would interpret the 2nd contract in this context – his academic status. The claimant noted the 2nd contract stated that he was still governed by the respondent's regulations, where applicable to him. He received an explicit statement in writing that he was undertaking the duties of an academic. He and his former line manager were clear he was continuing the work of an academic. While the terminology of the 2nd contract is clear on the respondent's intentions – it wanted him to have no legal connection to the UK – the fact is that this contract did not correctly determine his status, which was an academic.

102. Noting the ready acceptance of Ms Balogun in her evidence, that the claimant was clearly undertaking an academic role under his 2nd contract, this fact must have been known by the Director of UCL-Q and, presumably senior management of the respondent. Ms Balogun could not recollect what was discussed about the claimant's status, and she alluded to decisions at a more senior level she may not have been privy to. This suggests that there may be potentially relevant evidence of why the respondent took the decision it did on status which was not in evidence.

103. I accordingly concluded that an objectively reasonable person, considering the background and the claimant's academic role, would believe that he remained an academic member of the respondent's staff under the terms of the 2nd contract. There was nothing in the respondent's Statutes which suggest that foreign-based academics working for it do not gain the protection of Statute 18 and that point was not argued by the respondent. The respondent provided no reasoning for its decision to determine that Statute 18 no longer applied to the claimant's role, apart from to say his role was no longer that of an academic, which clearly was not the case. According to Statute 18, the claimant could not contract out of it, and the provisions in the 2nd contract, including the jurisdiction clauses, must be read in this context. I therefore concluded that Statute 18 continued to apply to the claimant under the provisions of the 2nd contract.

104. An additional point: there is also the curiously worded general provisions clause in the 1st and 2nd contracts, on which there was no focus during the hearing. No evidence was adduced as to how such wording came to be inserted into a contract on UCL letterhead, and what its intention or meaning was. I considered the background surrounding this contract, the 'nexus of fact': this was the setting up of an academic centre of UCL based in Qatar, with an explicit requirement that there were close academic and research links between UCL and UCL-Q,

quality control provided from London, a significant number of staff being seconded from UCL, and the recruitment of the claimant and others with similar links to the respondent on open-ended academic contracts. The claimant and other UCL-Q staff in practice worked in close alignment with colleagues and with the IoA in London, as was required of them under the UCL-Q Agreement. I concluded that this context means that the following is the most likely interpretation of clause 16: that Qatar Labour Law No.14 must be *"the basis to resort to"* unless the contract confers any *"favourable advantages"* within it in the claimant's favour, and if so, these favourable advantages would apply. I considered the explicit reference in both contracts to the respondent's Regulations, the reference within the UCL-Q Agreement to the same, and the wording of Statute 18 7(3). I concluded that an objectively reasonable person with relevant background knowledge would conclude that the respondent's Statutes and Regulations were 'favourable advantages' which would apply to the claimant as a contractual entitlement which he could exercise.

105. Concluding that Statute 18 applied, I next considered what effect, if any, this had on the issue of jurisdiction. While the respondent did not, I find, have a genuine belief that the claimant was not an academic, the respondent's contention was that the claimant could pursue his rights in the Qatar, as the 2nd contract clearly stated. The claimant had been explicitly informed UK law and jurisdiction did not apply. However, given the findings about Statute 18, and the claimant's academic status, I concluded that less weight should be given to this contractual wording conferring jurisdiction on Qatar, for the reasons set out below.

106. Statute 18 expressly imports the provisions of E&W legislation, the EP(C)A 1978 (now s.98 ERA 1996) and ERA 1988 – and ERA 1988 ss.202-3 in turn requires all academic institutions to provide protections to all academics. These protections are the fundamental concept of academic freedom and specific protections relating to the dismissal of academics. I concluded that the provisions of the EP(C)A 1978 (as amended) and ERA 1988 as set out in Statute 18, which related to the dismissal process to be followed, were intended to apply to all academics employed by the respondent, which included the claimant. The explicit reference to E&W legislation being directly applicable to the dismissal process under Statute 18 applying is in-itself a further factor pulling jurisdiction towards the UK. I did not consider Parliament would have intended the statutory requirement of academic freedom and protection against dismissal as set in Statute 18 to be selectively applied to the respondent's academics depending on their country of work.

107. There were other factors which counted towards the conclusion that there was an exceptional pull towards the UK in the claimant's role which outweighed the fact of expat status. The first was the clear and obvious contractual requirement of close integration between the respondent and UCL-Q, which was an academic unit of the respondent, and the claimant's close integration with colleagues in the UK, and in the way he undertook his role as an academic throughout his employment to the date of his dismissal.

108. Another was the REF, which provided a clear benefit to the respondent, and the respondent's own justifications of the close ties between UCL-Q, including the claimant, and the respondent.

109. There is also the factor of the parties' expectations. I accepted the claimant's account, that he discussed the 2nd contract with colleagues, it was at best a confusing contract, while the claimant had been told Statute 18 did not apply and he was not an academic he did not believe or accept this was the case, but he instead determined to let the issue lie, for the time being. When the issue came to a head again in 2019, he again raised questions of his status. It was clear that the claimant had a genuine view that, despite the 2nd contract wording, he may have a right to take legal action in the UK.

110. On another relevant issue, could in fact the claimant have sued in Qatar, at best the picture was opaque. I accept that the claimant sought advice, and the advice he received was that there could be difficulties with him bringing a claim – UCL-Q's legal status, his employment had not been registered etc. It may be that the opaque legal position – the grey-areas – may not have hindered him; but on the other hand the two employee's whose claims were registered were in a completely different situation, and on a project where ULC-Q had asserted legal status. I concluded that the claimant was sufficiently discouraged because of the advice he received, in a very complex situation, from bringing a claim in circumstances where it was far from clear a claim would have been allowed to proceed in Qatar. Tied into this was his belief that the 2nd contract had some fundamental misconceptions about his status and that he could potentially take action in the UK. These were factors which dissuaded him from pursuing a claim in Qatar. I did not consider the claimant's failure to test the water and bring a claim is an issue which outweighed the clear and close connections between his employment and the UK.

111. Did the fact the claimant received a USS pension weigh in his favour, per *Jeffrey* who received a civil service pension while working for the British council? I concluded not, this was a voluntary benefit to him connected to his continued academic employment with a UK university, not a mandatory benefit tying him to a public sector pension scheme. I also did not accept that the contribution of the claimant, whilst clearly distinguished, can be described as akin to 'public service', notwithstanding the respondent's Royal Charter status, its charitable status, its educational or its mission status to deliver its function for the benefit of humanity.

112. Weighing up all of the above: the claimant's academic status, the provisions of Statute 18 and the legislative requirement that Statute 18 apply to all academic employees of the respondent, the close links between UCL-Q and the respondent, the REF justification, the claimant's links with the respondent with his research; and considering the counter-argument – his changed status and 2nd contract wording, the respondent's position on Statute 18, his expat status. I concluded that the claimant's employment had an especially strong connection with Great Britain, one that outweighed his expatriate status, and that Parliament must, in the circumstances, have intended the claimant to be protected by the provisions of British employment law.

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EMPLOYMENT JUDGE M EMERY

Dated: 8th September 2020

Judgment sent to the parties
On 08/09/2020

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For the staff of the Tribunal office

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