Neutral Citation Number: [2025] EWHC 342 (KB)

Case No: KB-2024-001518 and KB-2024-001772

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice Strand, London, WC2A 2LL

Date: 18 February 2025

Before :

THE HON. MR JUSTICE BOURNE

- - - - - - - - - - - - - - - - - - -

Between :

PROFESSOR THEODORA KOSTAKOPOULOU **Claimant**

- and –

(1) UNIVERSITY OF WARWICK **Defendant**
(A Corporate Body Incorporated by Royal Charter Under Royal Charter Number RC000678)
(2) PROFESSOR ANDREW SANDERS
(3) PROFESSOR CHRISTINE ENNEW OBE
PROFESSOR ANDY LAVENDER
MS DIANA ÖPIK

- -

Professor Theodora Kostakopoulou (acting in person) for the **Claimant Richard Munden** (instructed by **DWF Law LLP)** for the **Defendant**

Hearing dates: 2-3 December 2024 and 17 January 2025

- - - - - - - - - - - - - - - - - - -

APPROVED JUDGMENT

This judgment was handed down remotely at 10.00am on 18 February by circulation to the parties or their representatives by e-mail and by release to the National Archives.

The Hon. Mr Justice Bourne

Introduction

1. At a hearing on 2 and 3 December 2024 I considered a number of applications and cross-applications in claims KB-2024-001518 ("claim 1518") and KB2024-001772 ("claim 1772") namely:
   (1) An application by the Defendants dated 24 July 2024 to strike out the claims and/or for summary judgment on them.
   (2) An application by the Defendants dated 24 July 2024 for an Extended Civil Restraint Order ("ECRO").
   (3) An application by the Claimant dated 12 August 2024 to set aside the applications in (1) and (2) above.
   (4) An application by the Claimant dated 14 June 2024 for default judgment in KB-2024-001518.
   (5) A "deemed" application by the Claimant to set aside the Defendants' acknowledgments of service in KB-2024-001518.
   (6) An application by the Claimant dated 8 July 2024 for disclosure and information relating to the Defendants' costs and insurance in her 2021 claim.
   (7) An application by the Claimant dated 6 November 2024 for a declaration that a Limited Civil Restraint Order ("LCRO") made against her on 18 October 2024 has no effect.

2. The hearing then continued on 17 January 2025 to deal with the ECRO application mentioned at paragraph 1(2) above, the Claimant having requested more time for that purpose.

3. The Claimant appeared in person. The Defendants were represented by Richard Munden of counsel.

4. In brief summary the background facts are:
   (1) The Claimant was employed by the First Defendant ("the University") as Professor of Law from 2012 onwards.
   (2) In 2016, disciplinary proceedings were commenced against her, leading to her receiving a written warning on 9 December 2016.
   (3) On 27 June 2017 she issued a claim in the Employment Tribunal ("the 2017 ET claim") against the University and others, alleging detriment because of whistleblowing and other

protected acts, race and sex discrimination, breaches of her human rights and EU law. No part of that claim succeeded, despite applications to the EAT and the Court of Appeal.

(4) On 4 December 2019 further disciplinary proceedings were started against the Claimant and further allegations were added on 16 January 2020.

(5) On 25 February 2020 she issued a second Employment Tribunal claim against the University and two others, alleging the infliction of detriment (the commencement of the disciplinary proceedings) as a result of protected acts under the Equality Act 2010 and the Employment Rights Act 1996.

(6) The Claimant was dismissed by the University on 29 July 2020.

(7) In August 2020 she issued a third Employment Tribunal claim against the University and another, alleging wrongful dismissal, unfair dismissal and interference with her rights under the ECHR and the EU Charter of Fundamental Rights.

(8) On 15 January 2021 the Claimant issued a High Court claim against the same five Defendants who are sued in the present proceedings, for libel and malicious falsehood and infringement of her rights under the ECHR and the EUCFR and other provisions of EU law ("the 2021 High Court claim").

(9) On 21 December 2021, Sir Andrew Nicol struck out the 2021 High Court claim. He also dismissed applications by the Claimant for judgment in default of defence and to strike out passages of one of the witness statements filed by the Defendants, and ordered her to pay costs.

(10) On 9 March 2022 Asplin LJ dismissed an application by the Claimant for permission to appeal against Sir Andrew Nicol's decision. A further application to re-open the permission application was dismissed by Asplin LJ on 14 July 2022.

5. By these two claims the Claimant seeks to rescind the two operative parts of Sir Andrew Nicol's order, alleging that those decisions were obtained by fraud. She cites the principles in *Takhar v Gracefield Developments Ltd* [2019] UKSC 13, [2020] AC 450 at [56]-[57], [67], [76] and [104] ("*Takhar*").

6. The Defendants contend that these claims are "baseless attempts to relitigate the 2021 claim" and that they clearly do not and cannot satisfy the *Takhar* requirements.

7. There is also an issue about whether claim 1518 was validly served on the Defendants by email, which is material to the applications in paragraphs 1(4) and (5) above.

The order in which the applications are dealt with

8. The Claimant sought to persuade me that I must first decide her application mentioned at 1(3) above. She argues that the Defendants' applications are "inadmissible" and that the Court should simply refuse to entertain them. She complains that they are insufficiently particularised or supported by evidence, and that the substance of them is impermissibly contained in Mr Munden's skeleton argument which was recently served and, not being evidence, is not verified by a statement of truth. She therefore submits that they are manifestly ill-founded, an abuse of process and aimed at obstructing the fair disposal of her claims.

9. At various points during the hearing the Claimant contended that it is necessary to decide her application first, arguing that hearing the substance of the application first might influence or prejudice me in my decision and would be unfair.

10. Her written application requested a discrete, expedited 2-hour hearing to take place before the hearing of the other applications.

11. By an (amended) order dated 11 October 2024, Steyn J refused that request. Steyn J said:

> "A hearing of the parties' various applications has already been listed on 1-2 December 2024. It would be contrary to the overriding objective of dealing with cases justly and at proportionate cost (CPR 1.1) to list the Claimant's Third Application for a separate hearing, given that the issues are intertwined and it can be heard at the listed hearing without the need to extend the time estimate. In particular, listing a separate hearing of the Claimant's Third Application would increase expense and allot an inappropriate share of the court's resources to these claims, taking into account the need to allot resources to other cases."

12. The Claimant did not accept the decision of Steyn J but instead made an application dated 16 October 2024 to vary it. On 18 October 2024, Martin Spencer J dismissed that application and certified it as totally without merit. On that occasion he also made the same order in respect of another limb of that application, by which the Claimant had sought an order to "forward to KB enforcement" the Claimant's default judgment application in claim 1772.

13. The application to vary Steyn J's order therefore cannot be renewed orally. But in any event, I agree with Steyn J that the issues raised by the Defendant's applications are "intertwined" with the merits of the Claimant's objections to those applications. It would be impossible for me to decide whether there had been an impermissible failure to include the substance of the applications in the notices of application without knowing what the substance of the applications was.

14. There is obviously only one fair and appropriate way to decide these cross applications. That is to use the allotted Court time to hear them in full and then

decide them together. I therefore declined the Claimant's request to deal with her cross-application before allowing Mr Munden to open his applications.

The Defendant's application to strike out the claims and/or for summary judgment, the Claimant's cross-application to dismiss that application and the Claimant's application for disclosure

15. Under CPR 3.4(2)(a), the court may strike out a statement of case if it "discloses no reasonable grounds for bringing or defending the claim".

16. Under CPR 3.4(2)(b), the court may strike out a statement of case if it is "an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings".

17. For the principles applied to applications for summary judgment under CPR 24, I have adopted the summary set out in Mr Munden's skeleton argument, taken from *Easyair Ltd v Opal* [2009] EWHC 339 (Ch) at [15]:

> "i) The court must consider whether the claimant has a 'realistic' as opposed to a 'fanciful' prospect of success.
>
> ii) A 'realistic' claim is one that carries some degree of conviction. This means a claim that is more than merely arguable.
>
> iii) In reaching its conclusion the court must not conduct a 'mini-trial'.
>
> iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if they are contradicted by contemporaneous documents.
>
> v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial.
>
> vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case.

> vii) On the other hand, it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction."

18. The requirements of *Takhar* are quoted at paragraph 4 of the Claimant's Particulars of Claim in claim 1518 and paragraph 13 of her Particulars of Claim in claim 1772. The quotation is from paragraphs 56-57 of Lord Kerr's judgment, themselves quoting from *Royal Bank of Scotland plc v Highland Financial Partners Llp* [2013] 1 CLC 596 at [106] per Aikens LJ:

> "The principles are, briefly: first, there has to be a 'conscious and deliberate dishonesty' in relation to the relevant evidence given, or action taken, statement made or matter concealed, which is relevant to the judgment now sought to be impugned. Secondly, the relevant evidence, action, statement or concealment (performed with conscious and deliberate dishonesty) must be 'material'. 'Material' means that the fresh evidence that is adduced after the first judgment has been given is such that it demonstrates that the previous relevant evidence, action, statement or concealment was an operative cause of the court's decision to give judgment in the way it did. Put another way, it must be shown that the fresh evidence would have entirely changed the way in which the first court approached and came to its decision. Thus the relevant conscious and deliberate dishonesty must be causative of the impugned judgment being obtained in the terms it was. Thirdly, the question of materiality of the fresh evidence is to be assessed by reference to its impact on the evidence supporting the original decision, not by reference to its impact on what decision might be made if the claim were to be retried on honest evidence."
>
> (emphasis added)

19. I have added the emphasis on the requirement that there be fresh evidence which has an impact on the evidence supporting the original decision. Lord Sumption (also as part of a majority of the Court) said at [65] that "the proposition that an action to set aside a civil judgment must be based on new

evidence not before the court in the earlier proceedings … is well established" and at [66]:

> "If decisive new evidence is deployed to establish the fraud, an action to set aside the judgment will lie irrespective of whether it could reasonably have been deployed on the earlier occasion unless a deliberate decision was then taken not to investigate or rely on the material."

20. Applying *Takhar*, the premise of these two claims is that Sir Andrew's decisions must be set aside because, after the 2021 proceedings, the Claimant has obtained fresh evidence, which was not before the court in those proceedings, and which shows that parties or witnesses were guilty of "conscious and deliberate dishonesty" in relation to evidence given by them (or other relevant acts or omissions) at the trial which was an operative cause of the outcome.

21. Mr Munden also referred me to *Finzi v Jamaican Redevelopment Foundation Inc* [2023] UKPC 29, [2024] 1 W.L.R. 541 where the Privy Council held that the burden is on the claimant to establish (i) that the evidence of fraud was new in the sense that it had been obtained since the judgment or settlement or (ii), if the evidence was not new in that sense, any matters relied on to explain why the evidence had not been deployed in the original action. Where the evidence of fraud was not shown to be new in that sense, the claim was likely to be regarded as abusive unless the claimant was able to show a good reason which had prevented or significantly impeded the use of the evidence in the original action.

22. Claim 1518 is directed at Sir Andrew Nicol's decision to strike out the 2021 High Court claim.

23. In the 2021 High Court claim, it was alleged that allegations against the Claimant made or republished by the University and by Professors Sanders, Ennew and Lavender from January 2020 onwards amounted to libel and malicious falsehood, as did the contents of a statement by Ms Opik in March or April 2020. In particular it was said that Professor Ennew (the 3rd Defendant to the 2024 claims) on 16 January and 1 June 2020 published or republished defamatory statements alleging that the Claimant had attempted to influence potential witnesses in an investigation against her and had harassed and displayed threatening and intimidating behaviour towards students when questioning them about possible complaints against her.

24. Sir Andrew found that in the disciplinary proceedings leading up to the Claimant's dismissal by the University, there was no arguable breach of her rights under Article 8 ECHR. He noted that no cause of action had been identified under the Equality Act 2010. Having found that, by her contract of employment, she had agreed to be subject to any disciplinary process and therefore to any publication of disciplinary allegations in that process, he ruled that the Defendants had an unanswerable defence to the libel claims based on

"leave and licence" (see *Friend v Civil Aviation Authority* [1998] IRLR 253). Having found that the authors of each publication in the disciplinary proceedings had an undoubted interest in being able to speak freely to those to whom the words were published, and that the Claimant had not put forward any sustainable claim of malice, the Defendants also had an unanswerable defence of qualified privilege. Finally, he also ruled that the Claimant's claim infringed the principle in *Johnson v Unisys Ltd* [2003] AC 518, to the extent that it relied on loss caused by matters occurring in the disciplinary proceedings which led to her dismissal, those matters being within the exclusive province of the Employment Tribunal.

25. Claim 1518 is not an appeal. It cannot attack the merits of Sir Andrew's judgment or order on the evidence as it stood at that time. The question will be whether the Claimant has fresh evidence capable of showing that Sir Andrew's judgment and order were brought about by fraud.

26. Claim 1772 is directed at Sir Andrew Nicol's decision to order the Claimant to pay the Defendants' costs of the applications and of the action, to be subject to detailed assessment if not agreed, and to make an interim payment of £75,000 by 28 February 2022.

27. In that claim the Claimant alleges that the Defendants' claim for costs involved "artificially inflated costs, fraudulent misrepresentations, overcharging and double counting, a failure to properly categorise fee earners and apply appropriate hourly rates, the absence of a breakdown for routine communications and a general failure to adhere to the rules … reasonableness and proportionality" and that this was "a deliberate attempt to deceive the Court and to gain an unfair advantage through an unjust, unreasonable and disproportionate costs award that would penalise the Claimant, a female LIP deprived of her livelihood by the Defendants and their false accusations" (Particulars of Claim paragraph 9).

28. This claim too is not an appeal and cannot be concerned with the merits of Sir Andrew's decision. Still less is it an assessment of the reasonableness of the Defendant's costs. Again, the question will be whether the Claimant has fresh evidence capable of showing that Sir Andrew's judgment and order were brought about by fraud.

29. The Defendants' applications therefore depend on showing a negative, i.e. that neither claim 1518 nor claim 1772 identifies any fresh evidence which shows or could show that the Defendants deceived Sir Andrew Nicol about anything which was material to his decisions.

30. That means that the Defendants by their applications (1) are advancing a concise and blunt contention, namely that nothing in the Claimants' claims is capable of satisfying those *Takhar* requirements and (2) are not, themselves, relying on any new evidence. To the extent that they rely on evidence at all, it

would be evidence showing that any information relied on in the Claimants' claims which is or could be material was made available to Sir Andrew Nicol.

31. It follows that any documents relied on by the Defendants are documents already in the possession of the parties and used by them in the legal proceedings, i.e. the Claimant's Particulars of Claim in claims 1518 and 1772 and pleadings or statements in her 2021 High Court claim.

32. For that reason the Defendants' application is concisely expressed in 6 short paragraphs:

> "1. These claims (case managed together by Order of Master Dagnall dated 13 June 2024) seek recission of the Order of Sir Andrew Nicol dated 21 December 2021, which struck out the Claimant's 2021 claim (QB2021-000171) for libel and other causes of action against the Defendants. The Claimant exhausted her avenues of appeal, including applying to the Court of Appeal to re-open their refusal to grant permission to appeal (dismissed by the Court of Appeal on 14 July 2022).
>
> 2. The Claimant relies on the jurisdiction explained in *Takhar v Gracefields Developments Ltd* [2019] UKSC 13, by which the Court may rescind judgments obtained by fraud by one party, where that fraud has deceived both the Court and their opponent and has only been discovered after the conclusion of proceedings.
>
> 3. However, the Claimant's statements of case fail to plead (properly or at all) any allegation of any newly discovered and material fraud by any of the Defendants such as would fall within the Takhar jurisdiction. The statements of case do not therefore disclose reasonable grounds for bringing the claim.
>
> 4. Instead, the Claimant is seeking to rely on matters which she raised during the 2021 proceedings (before both the High Court and the Court of Appeal), including in her Claim Form, Particulars of Claim, application notice, witness statements, skeleton arguments and grounds of appeal (or in relation to costs, matters which she did not raise but could have raised). The Claimant is seeking to re-argue the 2021 claim, which has been dismissed and on which she has been refused permission to appeal. This is an abuse of the Court's process.
>
> 5. Further or alternatively, for these reasons, the Defendants believe that the claims have no real prospect of succeeding and know of no reason why they should proceed to trial.
>
> 6. The Claimant's attention is drawn to her right to serve responsive evidence, so long as such evidence is served on the Defendants at least 7 days before the hearing."

33. In my judgment, those paragraphs contain a sufficient explanation of the application. Further evidence would not be needed, but at the hearing of the application the Court would need to be shown the relevant documents in the 2021 High Court claim and to compare them with the Particulars of Claim in claims 1518 and 1772. The burden would be on the Defendants to demonstrate that nothing in the latter consisted of new and material evidence which could satisfy the *Takhar* test. But in practice, if the Claimant wished to contest the application, it would be reasonable to expect her to identify any such new and material evidence.

34. Section 10 of the application form N244 asks the question, "What information will you be relying on, in support of your application?" It then offers 3 tick boxes, respectively "the attached witness statement", "the statement of case" and "the evidence set out in the box below". The Defendants acted reasonably by ticking the second and third boxes, because they would be relying on the contents of existing statements of case and on their contentions in the 6 paragraphs which I have quoted above.

35. The parties would then be expected, and in due course they were directed, to file skeleton arguments shortly before the hearing. That is where they would be expected to go through the relevant statements of case, debating the question of what was or was not new and material in the *Takhar* sense.

36. In those circumstances I dismiss the Claimant's cross-application and certify it as being totally without merit. The Defendants' applications might succeed or fail but the Defendant was perfectly entitled to make them in the way that they did.

37. Turning to the substantive application, the Claimant objected to the words in paragraph 2 of the application notice, quoted above, which refer to a party's fraud having "deceived both the Court and their opponent" (emphasis added), contending that what matters is whether the Court was deceived.

38. Mr Munden responded that the words reflected passages in case law but that he was nevertheless content to accept the Claimant's position on this. It is therefore common ground that I must consider whether claims 1518 and 1772 put forward a case, sufficient to survive the Defendants' applications, that the Court was deceived in the 2021 High Court claim.

39. It is important to note what Sir Andrew Nicol did, and did not, decide in 2021. He decided the issues summarised at paragraph 24 above, which were overwhelmingly issues of law. He did not decide whether any of the statements made about the Claimant were true or untrue, and he did not decide any of the merits of the disciplinary proceedings against the Claimant or the University's handling of them, including her dismissal.

40. The Claimant complains that in the 2021 proceedings, the Defendants (in particular by their solicitor Mr Smith and their counsel Mr Munden) falsely

represented that two students, Ms Opik (the 5th Defendant to the present claims) and Mr Sharma, had made allegations of that kind against her which were credible and required to be investigated.

41. In claim 1518 the Claimant contends that those representations were false and fraudulent. She relies on evidence obtained in her Employment Tribunal litigation in 2022 and 2023 to show that neither Ms Opik nor Mr Sharma ever made a formal student complaint in accordance with any relevant policy or provided any signed witness statement. To the contrary, Mr Sharma was given a prompt termly meeting with the Claimant (and did not have any difficulty in arranging such meetings), and in a statement to Professor Lavender (the 4th Defendant to the present claims, who conducted the investigation) described her as "a great personal tutor" and "professional and helpful", saying that tutorial meetings had "gone smoothly".

42. According to the Claimant, the 2022-23 evidence also showed (1) that Ms Opik had no reason to make any accusation against her (about meetings) and was not a credible witness, and (2) that complaints of "harassment" against her used that word colloquially and not as a reference to the University's rules on harassment which reflect the provisions of the Equality Act 2010.

43. The Claimant's suggested conclusion is that Sir Andrew Nicol was deceived into finding that the disciplinary proceedings were genuine, or valid, so as to give rise to the "leave and licence" defence.

44. In response, Mr Munden submits that none of these points were new. Even to the extent that there was any new information, it did not begin to show that there had been any fraud in the 2021 proceedings.

45. In support of that submission, he points to paragraph 57 of the Claimant's 2021 Particulars of Claim, which stated:

> "Neither Ms Opik nor [Mr Sharma], her then boyfriend, have corroborated [Professor Ennew]'s false statements by providing a signed, formal complaint or a witness statement claiming that they were recipients of the behaviours the Third Defendant accused the Claimant of."

46. That contention about the lack of any signed, formal complaint or witness statement was not contradicted by the Defendants in the 2021 proceedings. There never was a Defence in the 2021 claim. Instead, there was a long witness statement by their solicitor, Timothy Smith, supporting the application to strike out. It went through the history of the student complaints in detail, identifying what Ms Opik and Mr Sharma said by reference to the emails (and in the case of Ms Opik, answers to a series of questions which record what she said at a meeting on 10 January 2020) in which they said it.

47. If there was some material fraud consisting of a positive, untrue statement, that witness statement must be where it is to be found, because that is the evidence on which Sir Andrew Nicol relied in reaching his decision. But, Mr Munden submits, nothing in any of the material to which the Claimant refers contradicts anything in that statement.

48. Having reviewed all of the material on which the Claimant relies, I conclude that there was no deceit or concealment in the 2021 proceedings relating to the issue of whether there was a lack of any formal allegation on which to base the disciplinary proceedings. That issue was before Sir Andrew who, in his judgment, said:

> "68. The Claimant also argues that the University's procedure was not properly followed: there was no complaint by any student and so the initiation of the process was flawed. She was not given a fair opportunity to put her case and she was not treated in the dignified manner that the University's policies require. She also submits that she objected frequently to the manner in which the complaints against her were being investigated. There was therefore no leave and licence or consent to the publications.
> …
> 70. … Mr Munden denied that the University had not followed the appropriate procedure (he submitted for instance that the Student Complaint procedure had not been followed because this was not a student complaint) but, if the Claimant was right it would go to her claims for unfair or unlawful dismissal which were the proper province of the Employment Tribunal. I agree with Mr Munden about this.
> …
> 72. I also agree with Mr Munden that the Claimant plainly did agree, as part of her contract of employment, to the University's disciplinary process and all of the publications were part of that process. The Claimant may have objected to the manner in which the disciplinary proceedings occurred but that is immaterial to the submission that she had consented at the time of her contract to the disciplinary process being the way in which allegations were to be investigated and therefore all the publications which were part of that process were made with her agreement. She objects that the disciplinary process was not properly followed, but that, too, would be a matter for the Employment Tribunal to examine."

49. That passage shows that Sir Andrew knew of the Claimant's objections to the disciplinary procedure and was not persuaded that those objections were capable of undermining the "leave and licence" defence.

50. As to the fact that Mr Sharma made some complimentary comments about the Claimant, Mr Munden points out that his evidence to the disciplinary investigation was in a written document which was item 37 in the bundle before Sir Andrew Nicol in October 2021. That document, which contained Mr Sharma's serious allegations about the Claimant asking him to testify in the

disciplinary and saying that Ms Opik had told lies, also contained the "great personal tutor" and "professional and helpful" comments which she has wrongly claimed were revealed by disclosure in 2022 or 2023. It is clear that Sir Andrew was not misled about that, to the extent that it was relevant at all.

51. In short, it is clear that the University pursued the disciplinary proceedings because of allegations made by Ms Opik and Mr Sharma. There is no evidence to suggest that those proceedings were a sham or not legally valid. Sir Andrew Nicol therefore was not deceived into concluding that the allegations were published in contractual disciplinary proceedings.

52. The second contention made by the Claimant in claim 1518 (at paragraph 32 of the Particulars of Claim) is that the High Court was deceived by nondisclosure of material facts, namely that she had been subjected to a "systematic campaign of bullying, harassment, and victimisation … by her employer … and its officials, particularly Professor Andrew Sanders and Professor Christine Ennew, in conjunction with Human Resources …", and that the Defendants had worked behind the scenes to build a disciplinary case against her, designed to remove her from her position.

53. There followed 77 paragraphs of particulars, mostly referring to emails. They trace a timeline of the disciplinary process. The Claimant summarised these as showing that she had been "framed" i.e. that the disciplinary process was bogus or the charges against her were trumped up.

54. However, as Mr Munden pointed out in response, nothing in that timeline clearly alleges any fraud practised by the Defendants in the 2021 proceedings. Almost all of it refers to internal messages, in particular from Professor Sanders, about the disciplinary proceedings, as if these revealed some impropriety. However, they do not. At most, they reveal some individuals expressing views about the disciplinary case with which the Claimant disagrees.

55. In particular, I have seen nothing in that timeline which, even arguably, shows that Sir Andrew Nicol was persuaded by any false information to arrive at the conclusions summarised at 24 above.

56. Those conclusions were largely matters of law, as I have said. Sir Andrew also held that the Claimant's pleaded case as to malice was hopeless, that being essential to his finding that the defence of qualified privilege was bound to succeed. He accepted a submission by counsel that, as the Claimant had claimed that the allegations against her amounted to malicious falsehood as well as defamation, it could be assumed that her Particulars of Claim contained the best case on malice that she could put forward. This too was a conclusion as to the legal position, though it necessitated a review of the Claimant's pleaded case on the facts.

57. For the avoidance of doubt, none of the material disclosed after Sir Andrew's judgment comes close to showing that a sustainable case of malice had previously been concealed. It remains a demonstrated fact that serious allegations were made against the Claimant, that the University took them seriously and that disciplinary proceedings ensued which led to her dismissal. There is no evidence that either of the students acted with malice. As Sir Andrew noted, malice in this context is akin to an allegation of fraud (*Henderson v London Borough of Hackney* [2010] EWHC 1651 (QB) per Eady J at [40]) and must be pleaded with the same care (*Turner v MGM* [1950] 1 All ER 449 per Lord Porter at 455a-e).

58. There is also no evidence that in re-publishing the students' allegations in the disciplinary process, any other Defendant acted with malice in that sense. At most, the evidence suggests (no more) that Professor Sanders may have overlooked the Claimant's diary obligations on one or two occasions when he put forward dates for a meeting, and it shows that the University's HR department had a role in progressing the disciplinary investigation and in the drafting of a report. That evidence does not, even arguably, have the significance which the Claimant seeks to attach to it. Nor do emails showing, for example, that one or more new Professors were being recruited, or that there were internal communications mentioning the fact that the Claimant, having been suspended, would not be available to carry out teaching engagements, or that Professor Sanders accessed some of her work emails to deal with matters arising from her absence. Even if any of this material could be deployed to any effect in the Claimant's Employment Tribunal proceedings, none of it would reveal that fraud was used to procure Sir Andrew Nicol's conclusions as to the legal obstacles to her 2021 High Court claim.

59. A third section of the Particulars of Claim in claim 1518 alleges "judicial impropriety and significant error", on the basis that analysis of Sir Andrew Nicol's judgment and other documents using AI tools shows that a large part of the judgment was taken directly from an application and witness statement filed by Mr Smith and the skeleton argument of Mr Munden. This, the Claimant contended, raises "serious concerns about the impartiality of Sir Nicol and the fairness of the proceedings", including "a lack of independent analysis and bias in favour of the Defendants".

60. I have concluded that nothing in that third section could enable the High Court to re-open Sir Andrew's judgment on *Takhar* principles. If a judge borrows excessively from one party's submissions, especially without attribution, to such an extent that it can be argued that the other party's case has not been properly considered, that may be a ground for an appeal, as I ruled in a recent case: *Kemsley v Cambridgeshire County Council* [2024] EAT 180. But that has nothing to do with showing that one party procured the judge's judgment by fraud.

61. Therefore, even if there were any reason to doubt that Sir Andrew Nicol had conducted a properly independent analysis (and I am not persuaded that there

is any such reason), it would not mean that the new claims have any prospect of success.

62. For completeness I should also add that the Claimant has not identified any evidence which, even on her case, could show that fraud had been used to procure Sir Andrew Nicol's finding that her claim was barred by the principle in *Johnson v Unisys Ltd* [2003] AC 518.

63. Sir Andrew expressed that finding in these terms:

> "95. In my view Mr Munden is right that the present action infringes the *Johnson* principle and does not come within any relevant exception. It is notable that Lord Dyson in *Chesterfield* expressly considered the manner of a dismissal which might be unfair because of defamatory remarks made in the course of the dismissal and which, it was alleged had made it harder for the Claimant to obtain another job. That is precisely what the Claimant says is her position. However, the authorities show that she must seek any remedy in that regard in the Employment Tribunal. The Claimant was suspended in the course of the dismissal process but, as I understand it, the suspension was on full pay and so the suspension did not cause her loss separate and distinct from the dismissal itself: certainly, no such loss is pleaded.
> …
> 98. The Claimant alleges that the disciplinary procedure was not correctly followed and she was treated unfairly by the University, but it is for the Employment Tribunal to decide those matters, not this Court."

64. The matters raised in claim 1518 simply do not touch on that conclusion.

65. I therefore accept that claim 1518 contains no reasonable grounds for bringing the claim and, as an unjustified attempt to re-open the 2021 proceedings, is an abuse of the court's process.

66. In reaching that conclusion, I have not disregarded authorities cited to me by the Claimant such as *Alpha Rocks Solicitors v* Alade [2015] EWCA Civ 685, [2015] 1 W.L.R. 4534 where Vos LJ cautioned against the use of striking out as a remedy in a fraud claim, because (at [21]) "establishing fraud without a trial is always difficult" (although the same paragraph notes that a defendant can always apply for summary judgment). The Claimant also cited related observations in cases such as *Allied Dunbar Assurance plc v Ireland* [2001] EWCA Civ 1129 (where summary judgment in a disputed fraud case was held to be inappropriate on limited evidence) and *Three Rivers DC v Bank of England* [2003] 2 AC 1 (where a claim for misfeasance in public office required to be tried on the evidence). The important point in the present case is that I am not resolving justiciable allegations of fraud at a preliminary stage. Instead, I am identifying the absence of any such justiciable allegations.

67. Nor have I ignored the Claimant's submissions about the importance of access to justice and aspects of her Article 6 rights such as equality of arms. The problem is that none of those principles entitles her to re-open the questions of law determined by Sir Andrew Nicol, in the absence of fresh evidence showing the use of fraud on a material issue. No such evidence has been identified.

68. Turning to claim 1772, this is an attempt to re-open the determinations in the 2021 High Court proceedings as to costs, on *Takhar* grounds.

69. That claim gives rise to the Claimant's application dated 8 July 2024, mentioned at paragraph 1(6) above, to which I shall return below.

70. The order of Sir Andrew Nicol of 21 December 2021 provided:

> "4. The Claimant shall pay the Defendants' costs of the strike out application and the Claimant's application for a default judgment, and of the action, to be the subject of detailed assessment if not agreed.
>
> 5. In respect of the payment ordered to be made in paragraph 4 above, the Claimant shall make a payment on account in the sum of £75,000 by no later than 28th February 2022."

71. At the hearing on 18-19 October 2021 there was no discussion about costs. After judgment the parties made written submissions. The statements of costs of the 5 Defendants came to a total of around £140,000. In their written submissions the Defendants asked for an interim payment of £100,000.

72. In her written response on 30 November 2021, the Claimant continued to argue the merits of her claim which Sir Andrew had struck out. She also accused the Defendants of having a strategy of "highly inflated, astronomical costs imposed to victimise the applicants". She said that she should not have to pay costs but that if the Judge disagreed, she invited his attention to the regime of fixed costs under CPR 44(6) and Part 45. She also listed numerous alleged breaches of rules by the Defendants which had had costs implications. On or around 30 November 2021 she also returned the Defendants' written submissions with her comments in red type, stating that the "reasonableness, truth and proportionality of the costs claims … should be subject to a very close scrutiny" and making various specific criticisms.

73. The Defendants responded on 1 December 2021, taking issue with the Claimants' criticisms and submitting that Parts 45 and 46 were irrelevant.

74. Sir Andrew declined to entertain any further submissions about the merits of his judgment and made his final order on 21 December 2021 including, as I have said, provision for an interim payment of £75,000 rather than the £100,000 sought.

75. The Claimant's application for permission to appeal included 19 grounds of appeal but none of these related to the costs order or the order for an interim payment, although she did include a request for a stay of execution in respect of what she described as the "unreasonable and disproportionate costs of £75,000". As I have said, the Court of Appeal dismissed the application. The Claimant applied to re-open that determination but that application was dismissed on 14 July 2022.

76. The interim payment has not been paid. There have been no Detailed Assessment proceedings.

77. Seeking to enforce the costs liability, the Defendants sought a charging order over a property owned by the Claimant and her husband. An interim charging order obtained in the County Court was set aside on 16 November 2023, but a further interim order was issued by the High Court on or around 1 May 2024 and was made final on 7 June 2024.

78. That appears to have prompted the Claimant to investigate the question of costs. She and her husband conducted research and came across the regime for fixed costs under CPR Part 45 (which was introduced on 1 October 2023 and applied to claims allocated to the new Intermediate Track), and then the Capped Costs List Pilot Scheme (which ran between 2019 and 2021 in certain business and property courts). They may have thought, wrongly, that these were relevant to the 2021 High Court proceedings. On 8 and 9 June 2024 they studied the statements of costs submitted by the 5 Defendants to Sir Andrew Nicol. They discovered what they have claimed is evidence of "serious, systematic and pervasive deception" in the form of, for example, double counting and duplication.

79. The Particulars of Claim in claim 1772 contain 43 paragraphs setting out the Claimant's resulting objections to the statements of costs.

80. I accept the submission of Mr Munden that those are precisely the types of objection which are commonly made and resolved in Detailed Assessment proceedings. Again and again, the Claimant alleges that excessive time or money has been claimed for specific tasks but that, without more, is not a proper allegation of fraud, and it is not turned into one by the addition of adverbs such as "dishonestly" or "artificially". There are numerous allegations of duplication and double counting but the same applies to those. The Defendants might have a good answer to the allegations, or any double counting might be explained by inadvertence. So even if the objections had any merit, it is doubtful that they could reasonably be regarded as prima facie evidence of fraud.

81. There is, however, an even more fundamental defect in claim 1772, namely that it is based on evidence which was available, and indeed before the Court, in the 2021 proceedings. The claim, as issued and pleaded, is based on nothing

more than the Claimant's scrutiny of the 5 statements of costs which were before Sir Andrew Nicol. Those documents were produced precisely for the purpose of being scrutinised by Sir Andrew, and the time to scrutinise them was in those proceedings. The Claimant recognised that in her submissions of 30 November 2021 by urging him to scrutinise them. It was her decision not to "investigate" (taking the word used by Lord Sumption in *Takhar*, quoted above) that evidence herself any further at the time.

82. Since issuing the new claim, the Claimant has seen the Defendants' interim bill of costs and some of counsel's fee notes which they disclosed voluntarily on or around 2 October 2024. She asserts that that new material supports claim 1772.

83. To take one example, the Claimant notes that in the fifth statement of costs before Sir Andrew Nicol, Mr Munden's fee for the hearing on 18 and 19 October 2021 was £16,500. However, counsel's fee note refers on one line dated 18 October 2021 to "Brief on Applications" and the sum of £13,500, on the next line dated 19 October 2021 to "Refresher" with no separate figure, and then on a third line dated 19 October 2021 to "Conference with Client" and a figure of £3,000. The Claimant urges me to draw the conclusion that the original claim for counsel's fees of £16,500 was fraudulent and that the true figure was £13,500, contending also that a conference on 19 October could not have given rise to a fee of anything like £3,000.

84. Mr Munden's response is that the £3,000 was his "refresher", i.e. the fee for the second day of the hearing, and it also included the conference which took place that day.

85. In my judgment, that explanation is reasonably apparent from the fee note. The word "refresher" means that there was a charge for the second day's attendance, and the £3,000 figure is clearly charged for that date (19 October) although the figure is on the next line where the conference is mentioned.

86. There is therefore no merit in the Claimant's contention about that charge. Nor has she identified any other item which could lead to the conclusion that there was any fraud which caused Sir Andrew to make his order relating to costs. There is no evidence, fresh or otherwise, suggesting any fraud at all.

87. I also note that Sir Andrew did not carry out an item-by-item assessment of costs. Instead, he directed a detailed assessment and ordered an interim payment of an amount which was only slightly more than half of the total figure sought by the Defendants. His order therefore recognised the fact that the sums sought by the Defendants would or at least could be disputed by the Claimant. That is a further reason why the more detailed criticisms of the Defendants' costs claim made by the Claimant in claim 1772 fall far short of establishing a *Takhar* ground for overturning the order.

88. Nor can the Claimant rely on speculation that relevant evidence might be contained in any other documents which she did not investigate in the 2021

proceedings. On 8 July 2024, she applied for an order that the Defendants disclose "the final statute bill of [the Defendants' solicitors] and receipts in [the 2021 claim] and to confirm that Zurich Insurance cover their legal costs". She relied on the contents of an email which she had sent to Master Dagnall on 2 July 2024. That email principally dealt with her application for default judgment, but she sought the information about insurance because "if the University's insurance with Zurich covered the costs … and the Defendants are not actually 'out of pocket', they have not suffered any loss that needs to be recovered through seeking and enforcing a charging order on our property", and "my fundamental rights to a fair hearing, respect for private and family life and property cannot be prejudiced by vague, uncorroborated, unassessed, unreasonable and disproportionate costs demands".

89. There is no merit in that application, which must be dismissed. The Claimant's point about insurance is misconceived, because the existence of insurance against legal costs does not prevent a party from obtaining or enforcing a costs order. No doubt the Defendant's "final statute bill" would be of interest in any detailed assessment of their costs, but there is no reason to believe that its disclosure would reveal anything which could support claim 1772.

90. I therefore conclude that claim 1772 also contains no reasonable grounds for bringing the claim and, as an unjustified attempt to re-open the 2021 proceedings, is an abuse of the court's process.

91. I also conclude that neither of the Claimant's claims has any reasonable prospect of success.

92. The Defendants therefore succeed on their application to strike out the claims and/or for summary judgment on them.

The Claimant's application(s) for default judgment and/or to set aside the Defendants' acknowledgments of service in KB-2024-001518

93. In light of my decision on the Defendants' applications the following issues are academic, but I shall decide them in case they become relevant as a result of any later decision.

94. On 14 June 2024 the Claimant applied for default judgment in claim 1518, stating that the Defendants had failed to file an acknowledgment of service and a Defence by 13 June 2024, that is to say within 14 days of service of the Claim Form and Particulars of Claim as required by CPR 10.3, with the consequence that she was able to enter default judgment under rule 10.2, read with Part 12.

95. The material parts of CPR 12.3 provide:

> "(1) The claimant may obtain judgment in default of an acknowledgment of service only if at the date on which judgment is entered—
> (a) the defendant has not filed an acknowledgment of service or a defence to the claim (or any part of the claim); and (b) the relevant time for doing so has expired.
>
> (2) Judgment in default of defence (or any document intended to be a defence) may be obtained only—
> (a) where an acknowledgement of service has been filed but, at the date on which judgment is entered, a defence has not been filed;
> (b) in a counterclaim made under rule 20.4, where at the date on which judgment is entered a defence has not been filed, and, in either case, the relevant time limit for doing so has expired.
>
> (3) The claimant may not obtain a default judgment if at the time the court is considering the issue— (a) the defendant has applied—
> (i) to have the claimant's statement of case struck out under rule 3.4; or
> (ii) for summary judgment under Part 24,
> and, in either case, that application has not been dealt with;
> … ."

96. This application therefore depends on showing that no acknowledgment of service was filed within the required time. It is common ground that no acknowledgment of service was filed by 13 June 2024. However, the Defendants' case is that the claim was not validly served on them and therefore time for an acknowledgment of service did not start to run.

97. The Defendants' applications for striking out and summary judgment have now been dealt with and therefore are no longer an obstacle to the applications for default judgment by virtue of rule 12.3(3), though the outcome makes them academic as I have said.

98. Following a hearing on 24 June 2024, on 19 July 2024 Master Dagnall ordered that, without prejudice to the question of whether valid service had yet occurred, claim 1518 would be treated as having been served on 24 June 2024 with acknowledgements of service to follow by 8 July 2024. The effect of that order (with which the Defendants have complied) was to regularise the onward progress of the claim, but without resolving the issue of whether there had already been valid service by the Claimant and a failure to acknowledge service by the Defendants. It does not affect the issues which I now have to resolve.

99. Turning to those issues, the Claimant purported to serve the claim on all 5 Defendants by email to the First Defendant's in-house senior legal counsel, Nick Wright, on 28 May 2024, stating:

> "Please find attached the sealed claim form that has been notified to you since 28 April 2024 … As the service is performed electronically, there is no need for me to attach 5 pdf files of the same documents.
>
> Please confirm that you will forward these documents to all the individuals since only you know their addresses.
>
> Alternatively, please disclose their addresses to me so that I could serve the documents to them."

100. The claim had previously been intimated by email to Mr Wright. He had responded to the Claimant on 23 May 2024, stating (among other things):

> "I do not have instructions to act for (and, therefore, accept service on behalf of) any proposed party other than the University.
>
> I do not have access to the addresses of any party other than the University. Had I those details, however, GDPR would prevent my releasing those address to any third party, including yourself."

101. The Claimant also purported to serve the claim on the Fourth Defendant by an email directly to him on 30 May 2024.

102. CPR Part 6.3 allows a Claim Form to be served by any one of a number of methods. They include, by paragraph (d), "fax or other means of electronic communication in accordance with Practice Direction 6A". Paragraph 4.1 of Practice Direction 6A states:

> "(1) the party who is to be served or the solicitor acting for that party must previously have indicated in writing to the party serving –
>
> (a) that the party to be served or the solicitor is willing to accept service by fax or other electronic means; and
>
> (b) the fax number, e-mail address or e-mail address or other electronic identification to which it must be sent".

103. I note also that paragraph 4.2 of PD 6A provides:

> "Where a party intends to serve a document by electronic means (other than by fax) that party must first ask the party who is to be served whether there are any limitations to the recipient's agreement to accept service by such means (for example, the format in which documents are to be sent and the maximum size of attachments that may be received)."

104. In the present case Mr Munden contends that no written indication was given by any Defendant which could possibly satisfy paragraph 4.1, and therefore that no valid service took place before the application for default judgment.

105. The Claimant showed me a document containing a chronology of relevant events and documents and setting out the arguments on which she relies (pages 395-398 of her bundle for the hearing).

106. Whilst there is no document in which any Defendant indicates that it will accept service of a claim form by email at an identified address, the Claimant places heavy reliance on correspondence with Mr Wright relating to the 2021 High Court proceedings.

107. Following the striking out of that claim and the order for costs, as I have said, the First Defendant applied for a charging order (and obtained an interim charging order) in the County Court. But by an order dated 16 November 2023 that Court determined that it had no jurisdiction to grant a charging order. The Claimant then applied for her costs, and wrote to the university's then solicitors, Wright Hassall, who copied her letter to Mr Wright. He sent an email to the Claimant on 8 December 2023, saying:

> "Please correspond directly with me in this matter. Wright Hassall are not instructed to act in respect of this correspondence."

108. In a further email on 22 January 2024, Mr Wright said:

> "I write further to the above matter and attach a Notice Of Change, detailing that the University will now be dealing with this matter in person.
>
> I have served a copy on the court.
>
> Please could you write directly to me form [sic] now on in place of Wright Hassall."

109. In her document the Claimant also relies on other uses of email which have taken place as establishing a "pattern of electronic correspondence for legal matters, effectively authorizing email service". On 29 April 2024 she says that she served an application to rescind Sir Andrew Nicol's judgment in the 2021 proceedings by email. Mr Wright used email to serve her with documents relating to the County Court charging order proceedings during the first 6 months of 2024.

110. The Claimant also contends that Mr Wright effectively made himself the "conduit" of service on the Second to Fifth Defendants by refusing to provide individual addresses for them and therefore by being a point of contact for them.

111. She also relies on the fact that after the purported service of claim 1518, she asked both Mr Wright and the Fourth Defendant whether they wanted postal copies of the documents and they did not reply.

112. Mr Munden retorts that an agreement for electronic service of proceedings must be precisely that, and that a mere general agreement to communicate by email is not sufficient. That was held by the High Court in *R (Karanja) v University of the West of Scotland* [2022] EWHC 1520 (Admin), where a statement that a particular email address was "the best contact point for you going forward" did not satisfy paragraph 4.1 of Practice Direction 6A. It is well recognised that rules about service of claims are applied strictly because service is the act by which a defendant is subjected to the Court's jurisdiction. See, for example, *R (Good Law Project) v Secretary of State for Health And Social Care* [2022] EWCA Civ 355, [2022] 1 WLR 2339 at [41] per Carr LJ (as she then was).

113. Mr Munden also points out that, even on her own case, the Claimant did not make the enquiry required by paragraph 4.2.

114. The Claimant further submits that even if service of claim 1518 was defective, it was still incumbent on the Defendants to file acknowledgments of service. That is because a party wishing to challenge the Court's jurisdiction should file an acknowledgment of service and make an application under CPR Part 11: see *R (Koro) v Central London County Court* [2024] EWCA Civ 94 at [68] per Stuart-Smith LJ.

115. In my judgment, that last point ignores the fact that it is the Claimant who is applying for default judgment. It is not an application by the Defendant for an order declaring that the Court has no jurisdiction, for which filing an AOS is a pre-condition.

116. I therefore turn to the different question of whether the Claimant can enter default judgment because no acknowledgement of service was filed within the time limit which would have applied if service on 28 May 2024 had been valid.

117. That question depends entirely on whether service of the claim was valid. In the very recent case of *Saadati v Dastghaib and another* [2024] EWHC 3336 (KB), Morris J noted that under CPR 13.2(1), any judgment in default of an AOS must be set aside if it was wrongly entered because any of the conditions in rule 12.3(1) or 12.3(3) was not satisfied. Rule 12.3(1) provides a condition that the Defendant has not filed an AOS within the required time. At [45], Morris J held:

> "I have been referred to *Credit Agricole Indosuez v Unicof and others* [2002] EWHC 77 (Comm) per Langley J at §18; *Shiblaq v Sadikoglu*

> [2003] EWHC 2128 (Comm) at §§19 to 24 and [2004] EWHC 1890 at §58 [2005] 2 CLC 380; *Olafsson v Gissurarson* [2006] EWHC 3162 (QB) at §§ 14 to 15, 28 to 29 and [2006] EWHC 3214 (QB) at §19; *Dubai Financial Group LLC v National Private Air Transport Services Co Ltd* [2016] EWCA Civ 71 [2016] 1 CLC 250 at §§28-32 and 37-42 and *YA II PN Ltd v Frontera Resources Corporation* [2021] EWHC 1380 (Comm) at §§14, 53-60. From these authorities, I derive the following propositions:
>
> (1) CPR 13.2 provides for mandatory setting aside of judgment in default. It applies not only where there has been service, but no compliance with the conditions in CPR 12.3, but also where there has been no valid service at all. Failure to file an acknowledgment of service in CPR 12.3(1) means failure to file when under a duty to file, and if there has been no valid service, there is no duty to acknowledge service.
>
> …"

118. It follows that the Court will not allow an application to enter a default judgment which would have to be set aside under rule 13.2 because it was "wrongly entered".

119. I therefore return to the question of whether there was valid service by email on 28 May 2024. It is quite clear that there was not. The requirements of paragraphs 4.1 and 4.2 of Practice Direction 6A are mandatory and are not subject to exceptions. As *Karanja* shows, an indication that service by email will be accepted must be specific. Therefore, an invitation to communicate by email, in different proceedings, falls far short, and Mr Wright did not give an indication (on 8 December 2023 or 22 January 2024 or at any other time) that claim 1518 could be served on the university in that manner.

120. Still less was there any indication that service could be effected on any other Defendant by email, whether to Mr Wright or to any other address.

121. Nor can such an indication be inferred from, or because of, Mr Wright's refusal (or inability) to provide contact details for other Defendants.

122. Nor does the Practice Direction provide for such an indication to be inferred, or dispensed with, because of any previous practice of communication by email.

123. Nor is there any basis for overlooking the lack of compliance with paragraph 4.2 of PD 6A.

124. In the absence of valid service on 28 May 2024, there was no duty on any Defendant to file an AOS within 14 days thereafter. There are therefore no grounds for the Claimant to be permitted to enter default judgment.

125. I also observe that even if default judgment could have been validly entered, it is highly likely that it would also have been set aside under CPR 13.3 on the basis that the Defendants had a real prospect of successfully defending the Claimant's allegations of fraud. That is all the more obvious in view of my ruling that those allegations themselves had no real prospect of success.

126. In view of these conclusions, it is unnecessary for me to determine the "deemed" applications to set aside the later acknowledgments of service which were or would have been permitted as a result of Master Dagnall's order. However, for the reasons given in my previous paragraph, I point out that this is obviously not a case which would have been suitable to be resolved by default judgment in the Claimant's favour.

The Claimant's application for a declaration that the Limited Civil Restraint Order ("LCRO") made against her on 18 October 2024 has no effect

127. On 18 October 2024, as I have said, Martin Spencer J dismissed and declared totally without merit (TWM) the applications to vary the order of Steyn J and to forward a default judgment application to KB enforcement. In his reasons he reviewed a number of the previous TWM applications and concluded:

> "7. In the circumstances, it is clear that the court's scarce resources are being unnecessarily and wrongfully wasted by the Claimant continuing to make applications that are totally without merit … and it is appropriate to make an Extended Civil Restraint Order."

128. On the same date he made the LCRO which is contained in a document separate from the other parts of his order. His reference to an "Extended" rather than a "Limited" CRO appears to have been a clerical error.

129. The LCRO by paragraph 1 orders that the Claimant is forbidden for a period of 2 years from issuing any application, appeal or other process in claims 1518 and 1772 and the 2021 proceedings without first obtaining permission from the judge in charge of the Media and Communications List (the part of the King's Bench Division in which this case was then being managed).

130. The LCRO also provided (among other things):

> "4. Any amendment or discharge of this order can be made only by Lord Justice Warby. If Theoora [sic] Kostakopoulou wishes to seek an amendment or variation, he/she must first seek permission of the judge in charge of the Media and Communications List or other High Court Judge to make the application to Lord Justice Warby. Such application (for

permission to make the application to Lord Justice Warby) is to be dealt with in accordance with paragraph 2 above (ie an application in writing to be dealt with on paper alone by the High Court Judge) and will be subject to the procedure set out in paragraph 3 above in respect of any application for permission to appeal any decision of the High Court Judge.

5. If any form of Proceedings, Application Notice, Appellant's Notice, Petition, or any other form of document which is within the scope of this order is purportedly issued, or filed, or served upon any party without the said permission having first been obtained (which acts or any of them for the avoidance of doubt will constitute a breach of this order and a contempt of Court) that party shall not be required to appear and respond, and the purported application / proceedings shall stand struck out without being heard. Further, no such application or other process will be issued by the Court.

…

8. THIS ORDER does NOT prevent you from taking any one or more of the steps set out below without the prior permission of the judge in charge of the Media and Communications List or Lord Justice Warby. YOU MAY:

(i) Apply, without obtaining prior permission, to set aside all or any part of this Order. Any such application should be made to the Royal Courts of Justice, Strand, London, WC2A 2LL, quoting the case reference number at the head of this Order and your application will be heard by a High Court Judge.

(ii) Apply, without obtaining prior permission, for permission to appeal against this order by filing an Appellant's Notice in the Court of Appeal (Civil Appeals Office Registry, Room E 307, Royal Courts of Justice, Strand, London, WC2A 2LL). You should not take this step until you have made application under 8(i) hereof."

131. On 6 November 2024 the Claimant applied for a declaration that the LCRO has no effect. She did not comply with the LCRO by seeking permission to make that application.

132. In the course of the hearing on 3 December 2024 I announced my decision that I had no power to entertain that application and gave oral reasons. I now set out those reasons in writing.

133. The application was in fact dismissed on the papers by order of Collins Rice J on 18 November 2024, which also declared it to be TWM. She said:

"The LCRO is not, even arguably, void on any of the grounds proposed.

> Martin Spencer J did not lack jurisdiction to make the LCRO. The Applicant's claim in the Media & Communications List was disposed of a number of years ago. The satellite litigation she has been seeking to pursue since then has related to the enforcement of a consequential costs order. The Applicant's attention is drawn to CPR 53.2(4)(b). Neither the enforcement proceedings nor the attempts to appeal or otherwise challenge them are specialist matters required to be heard by a Judge in the M&C List.
>
> As a matter of substance, the application mischaracterises the nature and effect of the LCRO as an unlawful interference with her rights of access to justice. As the LCRO sets out on its face, it is expressed not as a bar, but as a limited requirement for *judicial permission* to litigate further in this matter, made in response to evidence of her persistence in making unmeritorious and wasteful applications. On that basis, the LCRO was a proportionate response to the unwarranted demands the Applicant has been making on scarce and costly public resource, and one which it was within the proper remit of the Judge to make.
>
> The matters set out by the Applicant fall far short of evidencing bias, or the appearance of bias, in the Judge's imposition of the LCRO.
>
> The Applicant identifies no basis, in any event, to support her proposition that any of the matters of which she complains in the imposition of the LCRO could or does render it a nullity without any legal effect. This application is therefore procedurally defective in not complying with the directions set out in paragraph 8 of the LCRO for making a formal challenge to it. Had this been a compliant application to set aside the LCRO, however, it must have failed on its merits for the reasons set out above."

134. The Claimant asserts that that order has no effect because the underlying CRO also has no effect. But she also criticises the ruling of Collins Rice J and, looking back at the previous history, criticises order after order, and judgment after judgment, alleging that judges have neglected their duties and strayed into deliberate misuse of judicial power, giving judgments that are biased against her.

135. Having heard her arguments, I am satisfied that I have no power to make the order which she asks me to make.

136. I will not go back over the merits of all the previous applications and decisions because courts have made repeated TWM determinations which are binding on me, as they were on Martin Spencer J. But even if I could revisit any of those determinations, I would not be persuaded that there has been any material error in any of them.

137. Martin Spencer J was entitled to reach his conclusions and to make the LCRO, subject of course to any successful appeal to the Court of Appeal. The process of the Courts in making CROs under CPR PD 3C, subject to the appellate jurisdiction of the Court of Appeal, is perfectly sufficient to ensure respect for the fundamental principles of justice, and the requirements of ECHR Article 6, to which the Claimant has referred. Her disagreement, even strong disagreement, with the outcome does not mean that there has been any disregard of any of those principles.

138. It must also be noted that as Collins Rice J pointed out, the LCRO does not bar the Claimant from the court. It just imposes a permission filter on applications.

139. But even if I were wrong, and there had been any errors of any of the kinds alleged by the Claimant, they would be matters for an appeal, not for an application, let alone a repeat application to the High Court, let alone one made without permission.

140. The Claimant has made a discrete comment about a part of the LCRO based on the template used by the Court to draw up such orders. In brief, the process for applying to vary or set aside the CRO described in paragraph 8 of the order appears inconsistent with the more demanding or detailed process set out in paragraph 4. But the remedy for that, if remedy were needed, would be to follow the procedure prescribed by paragraph 4 to seek a variation which would make the position clear. None of this conceivably means that the Claimant is not bound by the LCRO.

141. Meanwhile, in the absence of permission to make this application, it is deemed by paragraph 5 of the LCRO to be automatically struck out. The LCRO continues to be valid and the Claimant is in breach of it.

142. Even if that were not so, her criticisms of the repeated orders including the LCRO fall far, far short of anything which could conceivably invalidate the orders. The fact is that court orders have effect unless and until they are set aside. The Claimant has not identified any proper reason why the LCRO could or should be regarded as a nullity, rather than an order against which she could attempt to appeal. I have no power to hear an appeal against the order of Martin Spencer J, and I am satisfied that nothing has been raised that could go beyond an appeal and strike at the very existence or validity of the LCRO.

143. For that reason, there is also no valid reason for me to reopen the decision made by Collins Rice J, and as a result of her certifying the application as totally without merit, there was in any event no power for that order to be reconsidered at an oral hearing.

144. Even if there were such a power, I could not entertain the application because permission has not been obtained under the LCRO.

145. It follows that the Claimant's invitation to me to re-open the determination of Collins Rice J is totally without merit.

The Defendants' application for an Extended Civil Restraint Order

146. The application for an ECRO was made in the same notice as the application to strike out claims 1518 and 1772 on 24 July 2024.

147. As I have said, the LCRO was made of the Court's own motion on 18 October 2024.

148. CPR 3.11 permits a practice direction to make provision for CROs. Practice Direction 3C makes provision in paragraphs 2.1-2.9 for LCROs and in paragraphs 3.1-3.11 for ECROs.

149. By paragraph 2.1, a LCRO can be made "where a party has made 2 or more applications which are totally without merit", and it restrains the party from making applications "in the proceedings in which the order is made without first obtaining the permission of a judge identified in the order". Paragraph 2.9(1) makes clear that such an order is "limited to the particular proceedings in which it is made".

150. By paragraph 3.1, an ECRO may be made "where a party has persistently issued claims or made applications which are totally without merit". By paragraph 3.2, unless the court otherwise orders, the effect of an ECRO is that the party is restrained "from issuing claims or making applications in … the High Court or the County Court if the order has been made by a judge of the High Court … concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made" without obtaining permission.

151. In *Sartipy v Tigris Industries Inc* [2019] EWCA Civ 225, Males LJ at [28] expressed agreement with previous decisions to the effect that to have acted "persistently", a person must have issued at least 3 relevant claims or applications. At [30] he added:

> "… although at least three claims or applications are the minimum required for the making of an ECRO, the question remains whether the party concerned is acting 'persistently'. That will require an evaluation of the party's overall conduct. It may be easier to conclude that a party is persistently issuing claims or applications which are totally without merit if it seeks repeatedly to re-litigate issues which have been decided than if there are three or more unrelated applications many years apart. The latter situation would not necessarily constitute 'persistence'."

152. In *Achille v Calcutt* [2024] EWHC 2619 (KB), Pepperall J noted that whilst a LCRO can effectively control a litigant who repeatedly makes applications in a

single set of proceedings which are totally without merit, it is not effective for a litigant who persistently issues claims or makes applications in multiple proceedings that are totally without merit. In the latter case, an ECRO may be appropriate.

153. Pepperall J also pointed out that:

(1) "Unless disturbed on appeal, a judge's finding that a claim or application is totally without merit is conclusive and the court subsequently considering whether to make a civil restraint order should not entertain argument as to whether such claims and applications were in fact totally without merit: *Crimson Flower Productions Ltd v Glass Slipper Ltd* [2020] EWHC 942 (Ch); *Chief Constable of Avon & Somerset Constabulary v Gray* [2019] EWCA Civ 1675." [6]

(2) "In addition, the court can take into account other claims or applications where, although not formally certified as having been totally without merit, the court considering making a civil restraint order is satisfied were totally without merit: *Sartipy v. Tigris Industries Inc*. [2019] EWCA Civ 225." [6]

(3) "Once the threshold question of the repeated (or for the higher level orders, the persistent) making of claims and applications which are totally without merit has been met, the court must of course consider all the circumstances in order to determine whether it should make a civil restraint order at all; whether any such order should be a limited, extended or general civil restraint order; and the terms of the order." [8]

154. Mr Munden relies on the fact that the Claimant has now had a total of 31 applications ruled as totally without merit within the past 3 years, in 3 ET claims and the 2021 High Court proceedings.

155. Of those, 24 are set out in the schedule to the Defendants' notice of application and the others have been certified since that Schedule.

156. It is also necessary to mention some activity in the employment proceedings. This was considered at the hearing on 17 January 2025, and I permitted the Claimant to make some further submissions and to attach some further documents which were sent to me on 20 January 2025. The relevant events were as follows:

(1) By a letter dated 4 March 2024 the Claimant applied to the EAT President, Eady J, for an order that she recuse herself from the Claimant's case.

(2) On 20 March 2024, a Ms Lindsay replied on behalf of the EAT Registrar and directed:

> "There is no matter relating to the Appellant's appeals that the President, Mrs Justice Eady, is currently assigned to consider. In the event that any matter arising from these appeals comes before her for consideration in the future, the application will fall to be considered by her at that time."

(3) Later on 20 March 2024, the Claimant asked by email what position Ms Lindsay held and why the Registrar was dealing with her application. By a further email on 21 March 2024 the Claimant expressed the view that neither the Registrar nor Ms Lindsay was authorised to deal with her application and asked for Eady J to make a decision on it.

(4) By a letter dated 1 May 2024 Ms Lindsay on behalf of the Registrar directed that the emails of 20-21 March would be dealt with as an appeal against the Registrar's direction of 20 March 2024 under rule 21 of the EAT Rules 1993, which provides that any party aggrieved by the disposal of an interim application by the Registrar may appeal against the disposal.

(5) On 2 July 2024 Eady J made an order, rejecting the arguments which had been put forward on 21 March 2024 and stating that the Claimant's appeal was vexatious and totally without merit.

(6) By a letter to Eady J dated 2 August 2024, the Claimant stated that the emails of 20-21 March had not contained any appeal against the Registrar's direction, or even any application. This treatment of her emails in the order of 2 July, she said, was a violation of the rule of law and fundamental rights, nullified her autonomous and free will and transgressed judicial impartiality. She posed the question of whether it was "a deflection strategy to avoid addressing the grounds of my recusal application of 4 March 2024". She asked for this "void or voidable" order to be withdrawn and for payment by the EAT of nominal costs of £76. Following further emails on 5 and 6 August 2024, the Claimant made an application dated 20 August 2024 for the withdrawal of the 2 July order on the basis that it was null and void, an apology and the nominal costs.

(7) On 29 October 2024 Eady J ruled that the order of 2 July was consistent with rule 21 and was not null and void, that the Claimant could have appealed against it and that this latest application was again vexatious and totally without merit. Eady J invited the Registrar to consider whether the Claimant's conduct of the litigation should be considered by the Attorney General (to consider making a restriction of

proceedings order under section 33 of the Employment Tribunals Act 1996).

(8) On 30 October 2024 the Claimant applied for a review of the order of 29 October 2024, arguing at some length that both of Eady J's orders were null and void because she had never appealed against the Registrar's determination. The mention of the Attorney General could, she argued, be seen as an attempt to intimidate her, and the order was "based on non-judicial motives". She stated that unless the "void" orders were rescinded within 2 weeks, she would proceed on the basis that they were void ab initio.

(9) On 29 November 2024 Eady J ruled that that application was a mere repetition of points which she had previously made and was vexatious and totally without merit. This order too would be referred to the Attorney General.

157. Mr Munden invites me to have regard to this continuation, up to a very recent date, of TWM litigation by the Claimant. For her part, she argues that I should ignore these events because, for the reasons set out in her applications, the orders of Eady J were void. I return to this below.

158. Mr Munden also points out that since the ECRO application was made and since the LCRO was made of the Court's own motion, the Claimant has sought to challenge the validity of the LCRO and has issued two more applications without complying with its requirements. One of those was the application to declare the LCRO void. The other, on 15 November 2024, sought an urgent directions hearing to deal with a number of case management matters including permission "to include new material evidence of fraud in the Ds' submitted to the High Court 2021 statements of costs". No order has been made on the latter application, presumably because it is deemed to have been automatically struck out by operation of the LCRO.

159. He submits that the persistence requirement is satisfied because the Claimant has issued repeated claims, all relating to her disciplinary investigation and subsequent dismissal by the University, and has by now made TWM applications in each of them.

160. Mr Munden therefore invites me to replace the LCRO with an ECRO and to extend its effect to the Employment Tribunal, which I take also to include the EAT. At present there is no active litigation in the ET but the Claimant's last application for permission to appeal is awaiting a hearing under rule 3(10) of the EAT Rules 1993. If any appeal were to succeed, the orders open to the EAT include orders remitting matters to the ET.

161. As to the relevance of tribunal decisions and the Court's power to restrain applications in tribunals as well as in the Court, Mr Munden has referred me to a number of authorities to which I will return below.

162. At the conclusion of proceedings on 3 December 2024 I directed the Claimant to file any further written submissions in response to the ECRO application by 17 December and she did so.

163. In her submissions the Claimant contends that this is an improper application designed to distract from the matters of which she has complained and to mislead the Court, amounting to contempt of court on the part of the solicitor who filed it. She invites me to consider making a CRO against the Defendants.

164. In support of her position, she argues that it is misconduct by the Defendants which has led to all the litigation as well as having a very considerable impact on her life, and that the university's lawyers have tried to obstruct her from effective access to justice, denying her any remedy. She insists that her claims are well founded and therefore have not amounted to vexatious litigation.

165. She takes issue with some of the detail put forward by Mr Munden or by his instructing solicitor in the ECRO application. She denies that 4 previous claims have been struck out, asserting that there were only 3 (the 2021 proceedings in the High Court and two ET claims), that the reason for striking out the 2021 claim was that there were unanswerable defences but not that the claim disclosed no reasonable grounds, and that as at 24 July 2024 (when the ECRO application was made) no claim by her in the High Court or in the County Court had been certified as totally without merit and no application in claims 1518 and 1772 had been so certified.

166. The Claimant submits that reliance against her on applications which were ruled TWM in the 2021 proceedings is an abuse of process. Any CRO if made at that time would by now have expired. It is well established, she says, that restraint orders should be made where needed because of current conduct and not because of past, resolved matters.

167. The Claimant further submits that the High Court has no power to make an order restraining proceedings in the Employment Tribunal, and that matters relating to the ET are therefore irrelevant. The cases which appear to contradict that submission can be distinguished because their facts were different.

168. The ET matters also should not be taken into consideration because they are subject to ongoing appellate proceedings in the EAT. There are also pending complaints to the Judicial Appointments and Conduct Ombudsman and the Judicial Conduct Investigation Office. Those matters cast doubt over the determinations relied on and a CRO could prejudice those further proceedings.

169. Moreover, the Claimant submits, this application by the Defendants does not permit the Court to make an ECRO under its inherent jurisdiction which would apply to the ET, because it is in terms an application made under the CPR rather than under inherent jurisdiction. She relies on the decision of the Upper

Tribunal (Immigration and Asylum Chamber) in *R (Ogilvy) v Secretary of State for the Home Department* [2022] UKUT 00070 (IAC). There, Lane J confirmed that the High Court does indeed have inherent jurisdiction to make a CRO which applies to tribunal proceedings. However, construing a CRO which had been made by the High Court in the case before him, he held that it did not encompass tribunals as well as courts. The order did not mention tribunals, and it was set out in CPR Form N19B, which is annexed to PD 3C. Accordingly:

> "… the use of Form N19B … demonstrates that Mostyn J was making an order under PD3C rather than under his inherent jurisdiction. Although it would have been possible to use the form in the exercise of his inherent jurisdiction, the fact that it was being so used would require to find expression on the face of the order. In other words, by using the form, the inference must be that, absent specific words to the contrary, the judge is to be regarded as operating under the CPR."

170. The Claimant argues by analogy that the ECRO application, which expressly requested "that the Court now makes an ECRO (form N19A)" is similarly limited, preventing the Court from using its inherent jurisdiction.

171. Overall, the Claimant submits that this application is a form of victim-blaming which, if successful, would prevent her from obtaining justice. She views it as part of a pattern of malicious conduct against her, possibly also evidencing discrimination on grounds of race or sex.

172. She also submits that the Court has been complicit in that process, denying her an expedited hearing which she requested on 12 August 2024 and making TWM certifications on false premises in order to facilitate the Defendants' application.

173. The Claimant also argues at length that TWM certifications in the 2021 proceedings should not have been made, claiming that the Courts have failed to apply the correct test and to give adequate reasons. She seeks to re-argue the merits of those certifications, claiming that her applications were "legitimate, reasonable, well-grounded in law and necessary".

174. So far as the charging order proceedings in 2024 are concerned, the Claimant seeks to argue that a certification by Master Armstrong cannot be seen in the transcript of judgment and was only added to the order at counsel's suggestion. She made further applications which were refused by Collins Rice J on 2 October 2024, and now argues that the judge "misused the TWM certification", did not provide proper reasons and overlooked important evidence.

175. Having considered both sides' submissions, I conclude that the law is as stated by Pepperall J in *Achille*, summarised above.

176. The authorities referred to there show that any previous certification that an application was totally without merit cannot be re-opened as the Claimant suggests. In any event, I am not persuaded that any of the previous certifications were wrongly made.

177. That means, or confirms, that there has been a very long and considerable history of litigious behaviour by the Claimant of a kind which it is necessary for the Court to restrain.

178. Although I take the Claimant's point that TWM applications made years ago do not necessarily support the need for a CRO now, the problem is the continuous nature of the TWM litigation, up to and including applications made since the issue of the ECRO application. On 13 September 2021 Nicklin J certified two applications as TWM and issued what he described as a "final warning" that any future TWM application would cause the Court to consider imposing a LCRO. Thereafter, such applications were made or certified in late 2021, again in late 2022, and then fairly frequently in 2023 and 2024. The existence of that continuous history is a present circumstance to which I must have regard.

179. So far as the relevance of the employment litigation is concerned, the cases to which Mr Munden has referred establish two important propositions:

    (1) When deciding whether to make a CRO under the CPR, the Court can take into account wholly unmeritorious claims or applications which have been made in a tribunal such as the ET or the EAT, even though the CPR does not provide for a CRO to restrain activity in tribunals: *Law Society v Otobo* [2011] EWHC 2264 (Ch) at [26-27] per Proudman J, explaining that:

        > "A string of such applications would be relevant to the question of whether the applicant was likely to abuse the processes of the court (for present purposes the High Court or the County Court) in future. It is relevant to the question whether or not the party can take no for an answer."

    (2) The High Court has inherent jurisdiction to make a CRO restraining proceedings in the ET and EAT, which sits alongside the power under the CPR to make such an order restraining Court litigation. See *Law Society v Otobo* at [49], *Nursing & Midwifery Council v Harrold* [2015] EWHC 2254 (QB) per Hamblen J at 36-37, *Law Society v Sheikh* [2018] EWHC 1644 (QB) per Jay J at 18 and *London Underground Limited v Mighton* [2020] EWHC 3099 (QB) per Stacey J at 35.

180. It is therefore not the case that the ET and EAT proceedings must be disregarded or that this Court cannot restrain activity in those tribunals.

181. The Claimant's argument based on *Ogilvy* is, in reality, a pleading point. The point is that the notice of application did not state that the order sought would include tribunal litigation. The wish for such an order was first stated in an email, with supporting authorities, on 14 January 2025.

182. That said, Mr Munden points out that the Claimant appears to have understood the application as at least potentially embracing the ET. In her cross-application of 12 August 2024, by which she invited the Court to dismiss both the strike-out and summary judgment application and the ECRO application as inadmissible, the Claimant stated (at paragraph 20C):

> "And by seeking an ECRO with respect to the Claimant's employment tribunal claims which are under appeal, the Defendants are asking the High Court to act ultra vires since it has no jurisdiction or competence to restrain the Claimant from acting in employment tribunals."

183. Similarly, in her written submissions of 17 December 2024 she stated:

> "29. What did Mr Smith ask the HC to do in his ECRO application at para 11 of Section 10 of the N244? 'To make an Extended Civil Restraint Order (form N19A) preventing the Claimant from issuing any claim or application against any of the Defendants concerning any matter involving or relating or touching upon or leading to claims nos. QB-2021-000171, KB-2024-001518 or KB-2024-001772, or Employment Tribunal claims nos. 13004457/2020 or 1306894/2020, without the Court's permission'.
>
> 30. But Mr Smith, who requested an ECRO under CPR's Practice Direction 3C '(form N19A)' at para 11 of his 2024 SO/SJ application, knows that:
>
> a) the HC has absolutely no jurisdiction on employment tribunal claims (- in any case, the Claimant does not have any ET pending matters);
>
> b) under CPR 3.11, 'court' does not include a tribunal as it is outside the scope of the Civil Procedure Act; please see section 1(1) of the Civil Procedure Act 1997.
>
> c) under Practice Direction 3C, para 3.2(1)(b), a High Court Judge can only restrain a party from issuing claims or making applications in the High Court or the County Court' if 'a party has persistently issued claims or made applications which are totally without merit' (para 3.1 of PD 3C). The phrase 'unless a court otherwise orders' is not to be interpreted in an expansive way so as to cover judicial bodies not mentioned in these rules. A HC judge cannot affect claims or proceedings made in the Employment Tribunals and to pre-judge appeals pending before the Employment Appeal Tribunal.

> d) the N19A form Mr Smith requested the High Court to complete has set boxes for the Court of Appeal (if a CA judge makes the order), the High Court, County Court(s), Any County Court and Any Court (if a CA judge makes the order). There is no reference to an employment tribunal or employment appeal tribunal on the form, which is plainly a manifestation of a CPR operation. There is also a recent authority on this, namely, R (on the application of Ogilvy) v Secretary of State for the Home Department [2022] UKUT 00070 at [75-77] distinguishing the operation of CPR's PD3C from the High Court's inherent jurisdiction."

184. In my judgment the Claimant's responses show that she was not misled about the Defendants' intentions in this regard but actually anticipated them, and she responded to them, so she has not been prejudiced by any change of position. The passage relied on from *Ogilvy* does not assist her as regards the Court's powers but was merely concerned with the construction of a particular order. The Court in any event is empowered to make a CRO of its own motion where it considers such an order to be necessary. The pleading point is therefore no bar to making such an order.

185. I also reject the Claimant's submission that a CRO of any kind is calculated to deny her access to justice in her dispute with the university. Although such an order is never made lightly, it must be remembered that a CRO imposes a filter on claims and applications, not a bar.

186. There is absolutely no doubt that the ECRO threshold, that "a party has persistently issued claims or made applications which are totally without merit", is satisfied in this case. To argue otherwise is absurd. Where the usual threshold is 3 TWM applications, there have now been more than 10 times that number. The Claimant argues that some of these are "stale", but that also emphasizes the length of the period of years during which she has persisted. Looking at her litigious activity in the round, it is characterised by her profound sense of grievance and an apparent inability to accept defeat, not only in any claim but also in any discrete application. Her repeated contentions that her opponents have committed fraud, or that their lawyers have committed professional misconduct, or that judges have acted with bias and in breach of their judicial oath, are all clear indications of persistent and vexatious litigation.

187. In my judgment the only real question is whether it is necessary to give the Defendants, and the Court(s) and the ET (and EAT) the further protection of an ECRO.

188. I have decided that that further protection is necessary, for four principal reasons.

189. First, the LCRO has not been effective to stop the Claimant from making meritless applications. The Claimant denies that that order has any legal effect

and has purported to make further Court applications without seeking the necessary permission.

190. Second, the LCRO does not apply to the ET or EAT. In the ET there has been a prolific quantity of TWM applications by the Claimant. Although proceedings have presently moved on from that tribunal, litigious activity of a similar kind has continued in the EAT up until very recently. In my judgment that carries some weight, notwithstanding two points made by the Claimant.

191. Although the Claimant argues that I should disregard the last certification by Eady J because she has made a complaint about it, it cannot be right that the Court cannot take any TWM certification into account while there is any extant challenge to it. That would reward litigants for persistently refusing to accept defeat and hamper the Court from providing the necessary protection against activity of that kind.

192. And, whilst the Claimant seeks to persuade me that the most recent orders by Eady J were void or wrong because they arose from emails which Eady J wrongly treated as constituting an appeal, that submission falls foul of the principle that a judge hearing a CRO application should not re-open the merits of previous TWM certifications. Moreover, the debate about the status of the emails in question cannot hide the fact that the EAT activity summarised at paragraph 156 above contains several of the hallmarks of the other applications which have been certified as TWM such as a refusal to accept defeat on any point, insistence that adverse orders are void and questioning of the good faith of judges.

193. Third, the Claimant's response to the ECRO application, written and oral, demonstrates that she does not believe that she has done anything wrong. She believes that the numerous judges in various courts and tribunals have somehow all been mistaken, or biased.

194. Fourth, now that the 2021 High Court claim, claim 1518 and claim 1772 have all been struck out, there is a logical risk that the Claimant unless restrained may attempt to continue the dispute in some new claim.

195. The fact is that, whatever the underlying merits of her long-running disputes with the Defendants, the Claimant has grossly misused the procedures of the Courts and Tribunals. She refuses to recognise that fact and seems to assert a right to continue in the same vein. I conclude that there is a serious threat that that conduct will continue, and that it may occur outside the confines of the LCRO. There are therefore good grounds for the grant of an ECRO, with provision under the Court's inherent jurisdiction to extend its effect to the ET and the EAT.

196. When drawing up that order, I will take the opportunity to ensure that there is no ambiguity of the kind to which I referred above in relation to the LCRO which the new order will replace. In order to ensure that the terms of the

LCRO have been respected, I have asked Warby LJ to discharge the LCRO and, simultaneously with my order, he is making an order to that effect.

Conclusion

197. That disposes of the applications before me.

198. The parties were shown this judgment in draft in the usual way, and invited to submit any clerical corrections.

199. The Claimant provided a document which was over 90 pages long, though much of that consisted of extracts from the documents to which it referred. Instead of clerical corrections, it just contained further attempts to argue her case on the merits, none of which were of any assistance to the Court. Nor were a string of emails which she put before me, putting questions to the University's solicitors about disclosure relating to one of its HR managers.

200. The draft judgment also invited written submissions on costs and any other consequential matters.

201. The Defendants applied for an order for their costs, to be subject to detailed assessment if not agreed, and for an interim payment of £85,000, being a reasonable proportion of the total costs of £116,654.36 claimed in the Defendants' statements of costs.

202. The Claimant responded, strongly objecting to the proposed order and asking for a hearing on costs.

203. I am satisfied that any hearing on costs would be an unjustifiable waste of yet more time and costs. I anticipate no difficulty in considering any reason put forward by the Claimant why costs should not follow the event. If costs are awarded, there will also be no difficulty for the Court in deciding whether there is any "good reason" not to order an interim payment under CPR 44.2(a) and in identifying the appropriate level of any such payment.

204. In the circumstances, my order provides for the Claimant to have a further 14 days to file and serve any written response to the application for costs and for an interim payment. In the absence of some compelling reason it will not be appropriate to grant any extension of that deadline. I will then deal with costs on paper.