Neutral Citation Number: [2025] EWHC 30 (KB)

Case No: KA-2024-000057

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13 January 2025

Before :

MR JUSTICE CONSTABLE

- -

Between :

JACOB MEAGHER

Appellant

- and -

(1) THE CHANCELLOR, MASTERS AND SCHOLARS OF THE UNIVERSITY OF CAMBRIDGE

- and –

(2) FINDLAY STARK
(3) MARK ELLIOT
(4) MATTHIAS LANDGRAF
(5) DEBORAH LONGBOTTOM
(6) SARAH D'AMBRUMENIL

Respondents

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Sarah Steinhardt instructed by Direct Access for the Claimant
Christopher Knight (instructed by Shakespeare Martineau LLP) for the Defendants

Hearing date: 17 December 2024

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JUDGMENT

Mr Justice Constable:

Introduction

1. Mr Meagher, the Appellant and Claimant, is a student at the University of Cambridge, the First Respondent and Defendant ('the University'), undertaking a PhD in law. Mr Meagher did not successfully pass his final *viva voce* examination of his doctoral thesis. He issued a claim against the University, together with five named individuals employed by the University, also Respondents to this appeal. No issue remains in respect of the former Seventh Defendant. This appeal relates to the participation of the Second to Sixth Defendants ('the Individuals') and to the strike out of claims in contract, under the Consumer Rights Act, and in tort. The claim alleges disability discrimination and victimisation of various kinds under the Equality Act 2010 ('the Act'), breach of contract and breach of common law duty of care. As a result, Mr Meagher claims substantial damages based on loss of anticipated earnings, together with general damages. Mr Meagher also seeks a declaration that the Defendants have discriminated against him, and requires by injunctive relief that the Defendants implement various adjustments. Mr Meagher obtained an injunction against the University in July 2024 stating that "No steps shall be taken in relation to the Claimant's PhD course or examination without the consent of the parties until the conclusion of these proceedings or further order."

2. The original Particulars of Claim filed were the subject of a strike-out application made by the Respondents on the grounds of incoherence. That application was listed for hearing before HHJ Duddridge ('the Judge') on 19-20 March 2024. Following receipt of the Respondents' skeleton, Mr Meagher filed an Amended Particulars of Claim ('APoC'), settled by counsel. The Respondents did not object to this re-formulated claim save in three respects, two of which are the subject matter of the appeal. The first is the continued inclusion of a claim against the Individuals, and the second is one particular of breach in the contract and tort claims.

3. The Judge found that he would have struck out the original Particulars of Claim. By way of case management decision, he struck out the claim against the Individuals as an abuse of process, in that they were 'not worth the candle' in the language of Jameel v Dow Jones Co Inc [2005] EWCA Civ 75, [2005] QB 946. He refused to permit the inclusion of one particular of the breach of contract claim and the duty of care claim. Mr Meagher appeals the Judge's decisions.

The Amended Particulars of Claim ('APoC')

4. It is necessary to understand in a little detail the claims that have been brought and, importantly, the respective roles of the University and the Individuals.

5. The APoC identifies the Individuals as follows (1) Professor Findlay Stark, Chair of the Degree Committee of the University's Faculty of Law ('the Faculty'); (2) Professor Mark Elliott, the Chair of the Board of the Faculty; (3) and (4) Professor Mathias Landgraf and Professor Deborah Longbottom, Co-Chairs of the University's Postgraduate Committee; (5) Ms Sarah D'Ambrumenil, Head of the University's Office of Student Conduct, Complaints and Appeals ('OSCCA').

6. As pleaded at paragraph 13(1) of the APoC, pursuant to section 109(1) of the Equality Act, anything done by any of the Individuals in the course of their employment is to be treated as done by the University, insofar as such conduct amounts to a breach of the Equality Act. As pleaded at erstwhile paragraph 13(2) of the APoC, pursuant to section 110(1), the Individuals may be personally liable for any action of theirs which, pursuant to section 109(1) of the Act, was to be treated as done by the University and which amounted to a breach of the Act by the University.

7. Under the heading 'Victimisation', the APoC, at paragraphs 16-20, briefly recounts the fact of previous proceedings under the Act, relating to the conduct of two other employees, Professor Worthington and Professor Armstrong. A settlement was reached in January 2019 pursuant to which Mr Meagher would restart his PhD. Paragraph 21 then asserts that he was subjected to a number of detriments in respect of his studies, such as the provision of a single supervisor who did not hold a position with the Faculty, and no advisor. It is said that Mr Meagher was subject to these detriments because of the previous action. The allegations relate to the University only, and the Individuals are not named.

8. Under the next heading, 'Thesis and Viva PCPs', paragraph 23 records that the assessment of whether to award students within the Faculty a PhD is made, in accordance with the University's regulations, based on a combination of a singular written thesis of around 100,000 words and an oral viva voce examination in which the candidate is asked questions about his thesis by two examiners appointed to assess his suitability for the award of a PhD. The requirements around the thesis and the viva are each said to be a process which is a provision, criteria or practice (a 'PCP') for the purposes of the Act.

9. Paragraph 25 then sets out the substantial disadvantages the Thesis PCP and the Viva PCP are said to have placed Mr Meagher at. The first, by way of example, is that Mr Meagher "*is less able than other candidates of the same ability to produce a singular lengthy and multifaceted piece of work such as a PhD thesis*".

10. At paragraph 26, the APoC then identifies the duty it is said fell upon the University to take such steps as were reasonable to avoid these disadvantages, and paragraph 27 set out those steps; the first of these, by way of illustration, is that the University should have permitted Mr Meagher to have his suitability for award of a PhD to be assessed other than by way of a thesis.

11. Paragraphs 28 to 33 set out an equivalent set of disadvantages as required adjustments in respect of the viva PCP. Paragraph 34 states that on or around 10 September 2018 the University's Disability Resource Centre ('ADRC') produced a Student Support Document ('the SSD') in respect of Mr Meagher. The SSD made recommendations for the conduct of the viva, including two of the adjustments forming part of the previously pleaded case namely that (1) any oral questions should have been (i) clearly signposted by reference to specific parts of the Mr Meagher's thesis, rather than asked in general terms, and (ii) asked in the active, rather than the passive, voice; and (2) Mr Meagher should have been allowed pauses and breaks after oral questions had been asked, in order to allow him to mentally retrieve the words or information that he needed in order to answer the questions.

12. Under the heading, 'the Claimant's Viva', the APoC first makes a complaint about the University's failure to have provided a proofreader to Mr Meagher. The pleading then states that the viva was to be conducted by a Professor Watt and Mee (as agents of the University), and chaired by Professor Gelsthorpe.

13. At paragraph 41, the APoC asserts that whilst Professor Gelsthorpe had been provided with the list of adjustments earlier identified in the pleading, Professors Gelsthorpe, Mee, or Watt had not been provided with the SSD itself and so their attention had not been drawn to the disabilities and need for adjustments, in breach of section 20 of the Act. At paragraphs 42 to 45, the APoC identifies those aspects in respect of which Mr Meagher says that the reasonable adjustments were not adhered to and that the viva was generally unsatisfactory.

14. Paragraphs 46 to 48 the APoC alleges that the significant damage to Mr Meagher's ill-health caused by the conduct of the viva and sets out particulars of the University's knowledge of these issues.

15. On 26 April 2023, the outcome of Mr Meagher's viva was delivered. They declined to recommend the award of PhD but indicated that Mr Meagher should be allowed to revise his thesis and resubmit it. It is from this point on within the APoC that the Individuals feature for the first time. Mr Meagher made complaints to the Degree Committee, under the Chairmanship of Professor Stark (the former Second Defendant). The APoC alleges, at paragraph 54, that the Degree Committee met and recommended to the PostGraduate Committee that (1) Mr Meagher should not be awarded a PhD; and, (2) two additional examiners should be appointed to assess whether Mr Meagher should be awarded a PhD. This would ordinarily entail a reassessment of the Claimant's thesis and a further viva examination; and (3) Mr Meagher should be permitted to amend his thesis prior to its consideration by new examiners.

16. Paragraph 55 contains the only substantive allegation against the former Third Defendant. It is said that Mr Meagher emailed Professor Elliot (Chair of the Board of the Faculty) alleging the discrimination and victimisation that he had been subjected to and requesting the reasonable adjustments, and Professor Elliot refused to engage and did not take steps towards implementing the adjustments requested.

17. Paragraph 57 states that the PostGraduate Committee met under the joint chairmanship of the former Fourth and Fifth Defendants (Professors Landgraf and Longbottom); this committee approved the recommendations of the Degree Committee referred to above, save that it did not adopt the recommendation to permit Mr Meagher to amend his thesis.

18. Paragraph 59 then alleges that notwithstanding the various repeated requests by Mr Meagher, the University repeatedly failed to make the requested adjustments and remains in breach of duty. At that stage Mr Meagher obtained the injunction.

19. The only specific or personal allegations made against any of the Individuals is that they were, without particularisation, 'the primary alternatively a decision maker' of the said committees. The Individuals are, in effect, taken to be, or represent, the personal embodiment of the decisions made by committees forming part of the

University management responsible for the determination of whether or what reasonable adjustments should have been made.

20. At paragraphs 66 and 66A, the APoC sets out the 'Summary of Equality Act Claims', and sets out 9 particulars of victimisation and discrimination against the University. Paragraph 67 claims that the former Second to Fifth Defendants are jointly and severally liable in respect of two such sub-paragraphs of paragraph 66, essentially alleging the failure to make reasonable adjustments in respect of the thesis and the viva.

21. Paragraphs 69 and 70 are allegations of breach of contract and duty of care against the University.

22. As regards remedies, paragraph 71 sought a declaration as regards the fact that the University and the Individuals discriminated against Mr Meagher. Paragraph 72 sought an injunction. This paragraph was pleaded somewhat ambiguously as to whether, or indeed how, injunctions were sought against the Individuals. On its face it seemed to include the Individuals, but the cross-referenced paragraphs seemed limited to complaints against the University. Paragraph 73 sought damages, on the basis that the non-completion of his PhD led to the lost opportunity to take up a tenancy as a barrister at a particular set of chambers and that Mr Meagher has, as such, suffered a substantial loss of earnings, as well as claiming general damages.

Appeals against a Case Management Decision to Strike Out

23. The decision to strike out the claims against the Individuals was a case management decision made pursuant to CPR rule 3.4(b).

24. As set out in Royal & Sun Alliance Insurance Plc v T&N Ltd [2002] EWCA Civ 1964 (QB), the Court is afforded a wide discretion in the context of case management decisions and, accordingly, a party seeking to overturn such a decision must overcome a high threshold. The ambit of discretion entrusted to the Judge is generous.

25. An appellate court will only interfere with a discretionary evaluation where an appellant can identify one or more of the follows errors (Azam v University Hospital Birmingham NHS Foundation Trust [2020] EWHC 3384 per Saini J):

    (1) a misdirection in law;

    (2) some procedural unfairness or irregularity;

    (3) that the Judge took into account irrelevant matters;

    (4) that the Judge failed to take account of relevant matters; or

    (5) that the Judge made a decision which was "plainly wrong".

26. As Saini J then observed, the appellate court's role is to police a very wide perimeter and it will be rare that a judge who has exercised a discretion having regard to relevant considerations will have come to a conclusion outside that perimeter. He also emphasised that the weight to be given to specific factors is a matter for the trial judge

and absent some wholly unjustifiable attribution of weight, an appellate court must defer to the trial judge.

27. A recent, helpful summary in respect of the powers of the Court to strike out claims as an abuse of process was given by Warby J (as he was then) in Duchess of Sussex v Associated Newspapers [2020] EWHC 1058 (Ch) at paragraphs 33-34:

> "*...(3) Rule 3.4(2)(b) is broad in scope, and evidence is in principle admissible. The wording of the rule makes clear that the governing principle is that a statement of case must not be "likely to obstruct the just disposal of the proceedings". Like all parts of the rules, that phrase must be interpreted and applied in the light of the overriding objective of dealing with a case "justly and at proportionate cost". The previous rules, the Rules of the Supreme Court, allowed the court to strike out all or part of a statement of case if it was "scandalous", a term which covered allegations of dishonesty or other wrongdoing that were irrelevant to the claim. The language is outmoded, but I agree with Mr White that the power to exclude such material remains. Allegations of that kind can easily be regarded as "likely to obstruct the just disposal" of proceedings.*
>
> *(4) "Abuse of process" is a sub-set of category (b). An abuse of process is a significant or substantial misuse of the process. It may take a variety of forms. Typical examples are proceedings which are vexatious, or attempts to re-litigate issues decided before, or claims which are "not worth the candle" (Jameel v Dow Jones & Co Inc [2005] EWCA Civ 75 [2005] QB 946). But the categories are not closed.*
>
> ...
>
> *34. In the context of r 3.4(2)(b), and more generally, it is necessary to bear in mind the Court's duty actively to manage cases to achieve the overriding objective of deciding them justly and at proportionate cost; as the Court of Appeal recognised over 30 years ago, "public policy and the interest of the parties require that the trial should be kept strictly to the issues necessary for the fair determination of the dispute between the parties": Polly Peck v Trelford [1986] QB 1000, 1021 (O'Connor LJ). An aspect of the public policy referred to here is reflected in CPR 1.1(2)(e): the overriding objective includes allotting a case "an appropriate share of the court's resources, while taking into account the need to allot resources to other cases".*"

28. In The Duchess of Sussex, the Court struck out various allegations so as to confine the case to what is reasonably necessary and proportionate for the purpose of doing justice between the parties, and that the allegations struck out did not go to the 'heart' of the case.

29. At paragraph 33(4), of Warby J's judgment, reference is made to 'claims which are not worth the candle' and the case of Jameel. It is this principle that lies at the heart of the appeal in respect of the strike out of the claims against the Individuals.

30. Before turning to Jameel itself, the principle that a Court may strike out as abusive claims which are in principle legally coherent but in respect of which there exists such

disproportionality between the benefit to the claimant and the cost to the defendant that continuation amounts to an injustice was established, at least in the context of group litigation, in A.B. & Ors v John Wyeth & Brother Ltd [1994] PIQR 109.The case involved a group action of around 5,000, mainly legally aided, litigants, claiming damages against the manufacturers and distributors of benzodiazepine anxiolytic or tranquilliser drugs, prescribed for them. In a very small proportion of the cases (3·4%), the prescribers, general practitioners and consultant psychiatrists employed by health authorities, had been joined in the proceedings as alternative defendants to the manufacturers: the claimants would only pursue such claims if the claims against the manufacturers failed. In those circumstances, any damages which might be recovered from the prescribers would be consumed entirely by the legal aid charges for the costs of the unsuccessful claims against the manufacturers. The prescribers successfully applied to strike out the claims on the ground the prescribers' irrecoverable costs were out of all proportion to any benefits which the plaintiffs might obtain from the litigation. The Court of Appeal dismissed the appeal. In doing so, the Court of Appeal rejected the submission that the court as a matter of law could not strike out a viable cause of action on the basis that the benefit to the claimant was so small compared to the irrecoverable costs of the defendants, as to do so would interfere with the constitutional right of access to the courts and contrary to authority. However, the Court of Appeal emphasised the limited circumstances in which cases would be seen as abusive in this way. Stuart-Smith LJ observed:

> "*In most cases, it will be quite inappropriate for the Court to enter upon the sort of cost benefit analysis which the judge undertook here. The Court cannot weigh the plaintiff's prospect of receiving £1,000 against the defendants' costs of £10,000 which may be irrecoverable; that can only be done at the trial. Alternatively, it is a matter for the commercial judgment of the defendant whether he attempts to reach a settlement with the plaintiff: and in so doing, he had to take into account as part of the equation that the plaintiff is legally aided or impecunious. But this case is quite different. One can see at a glance that the prescriber defendants will be put to astronomical expense in defending these contingent claims. And to what end? If the plaintiffs stood to obtain a substantial benefit, the position might well be different. But here the benefit is at best extremely modest, and in all probability nothing.*"

31. Jameel itself was a libel case. In the relevant aspect of the judgment, the Court of Appeal considered that, if the claimant succeeded in his action, the damages would be very modest indeed. It could be said that the claimant will have achieved vindication for the damage done to his reputation, but both the damage and the vindication would be small. The cost of the exercise will have been out of all proportion to what has been achieved, the court concluding that resolution of the issues would involve '*a lengthy and expensive trial*'. At 54, the Court observed that an abuse of process is of concern not merely to the parties but to the court. It is no longer the role of the court simply to provide a level playing field, and to referee whatever game the parties choose to play on it. The Court is concerned to ensure that judicial and court resources are appropriately and proportionately used in accordance with the requirements of justice. Lord Philips then referred to the case of Schellenberg v BBC [2002] EMLR 296, in which the High Court struck out a defamation action on grounds of proportionality. Eady J considered that the Court must have regard to the possible benefits that might accrue to the claimant as rendering what he considered to be 'such

a significant expenditure' potentially worthwhile. Given the overriding objective's requirement for proportionality, this meant that the judge was bound to ask whether '*the game is worth the candle*'.

32. Echoing these words, now adopted as shorthand for the *Jameel* principle, at [69], Lord Phillips concluded that '*The game will not merely not have been worth the candle, it will not have been worth the wick*'. He continued at [70]:

> *"It would be an abuse of process to continue to commit the resources of the English court, including substantial judge and possibly jury time, to an action where so little is now seen to be at stake. Normally where a small claim is brought, it will be dealt with by a proportionate small claims procedure. Such a course is not available in an action for defamation where, although the claim is small, the issues are complex and subject to special procedure under the CPR*."

33. Jameel was considered in Sullivan (AKA Soloman) v Bristol Film Studios Ltd [2012] EWCA Civ 570, relating to an infringement of copyright claim. The claim was struck out on the basis that the costs of fighting it were out of all proportion to the amount the claimant was likely to recover by way of damages, which was assessed by the judge as £50. Obiter, Lewison LJ identified that, to some extent, defamation cases were a special case given that the County Court has no jurisdiction overactions for libel and slander. The judge continued:

> "*What is important however is that Lord Phillips recognised that a small claim should normally be dealt with by a proportionate procedure. The mere fact that a claim is small should not automatically result in the court refusing to hear it at all. If I am entitled to recover a debt of £50 I should, in principle, have access to justice to enable me to recover it if my debtor does not pay. It would be an affront to justice if my claim were simply struck out. The real question, to my mind, is whether in any particular case there is a proportionate procedure by which the merits of a claim can be investigated. In my judgment it is only if there is no proportionate procedure by which a claim can be adjudicated that it would be right to strike it out as an abuse of process.*"

34. Etherton LJ, in his concurring judgment, sought to emphasise that the disproportion justifying the strike out is not merely between the likely amount of damages the claimant would recover if successful in the proceedings and the litigation costs of the parties, it includes consideration of the extent to which judicial and court resources would be taken up by the proceedings. The judge in that case had been entitled to conclude that strike out was appropriate where the proceedings would involve a large amount of court time and would cost a great deal of money to argue and would be a disproportionate use of the court's resources and unfair to the defendant.

35. Ms Steinhardt makes the point that in considering the question of proportionality in the context of a strike out, the Court must bear in mind the other powers that the Court has for dealing with issues of disproportionality, and, in particular, the refusal to allow the recovery of costs which may be disproportionate. For the Court to embark on exercising its powers of striking out in the context of disproportionality, there must be extreme or excessive disproportionality, over and above that which is already subject to cost management powers. It is not necessary to decide whether 'extreme' disproportionality will be a necessary touchstone in every case. However, it is clearly

right that the extent of disproportionality, bearing in mind other management techniques available to the Court, will obviously be an important factor which must be weighed carefully before coming to the conclusion, no doubt with caution, that the continuation of some part of or all the proceedings is an abuse of process.

Sections 109 and 110 of the Act

36. In considering the grounds of appeal, it is helpful to have clearly in mind the regime provided for within the Act which forms the basis of the relevant claims against the University and the Individuals.

37. Sections 109 and 110 of the Act provide as follows:

"109 Liability of employers and principals

(1) Anything done by a person (A) in the course of A's employment must be treated as also done by the employer.

(2) Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.

(3) It does not matter whether that thing is done with the employer's or principal's knowledge or approval.

(4) In proceedings against A's employer (B) in respect of anything alleged to have been done by A in the course of A's employment it is a defence for B to show that B took all reasonable steps to prevent A—

(a) from doing that thing, or

(b) from doing anything of that description.

...

110 Liability of employees and agents

(1) A person (A) contravenes this section if—

(a) A is an employee or agent,

(b) A does something which, by virtue of section 109(1) or (2), is treated as having been done by A's employer or principal (as the case may be), and

(c) the doing of that thing by A amounts to a contravention of this Act by the employer or principal (as the case may be).

(2) It does not matter whether, in any proceedings, the employer is found not to have contravened this Act by virtue of section 109(4).

(3) A does not contravene this section if—

(a) A relies on a statement by the employer or principal that doing that thing is not a contravention of this Act, and

(b) it is reasonable for A to do so."

38. It is common ground on the appeal, as it was before the judge below, that Mr Meagher was absolutely entitled, subject to the case management powers of the Court, to plead an unlawful disability discrimination case against the Individuals under section 110 of the Act. As Ms Steinhardt submitted with justification, claims under section 110 are not somehow subordinate to, or additive to, claims brought under section 109. A claimant with an entitlement to bring claims under both sections has the right to choose to bring the claims under one section, or the other, or both, against the relevant parties.

39. It is also relevant to the arguments before the Judge, and before this Court, that that the University had disavowed in its Defence any intention to rely upon section 109(4) of the Act, which provides a defence to an employer in relation to discriminatory acts carried out by an employee where it has taken all reasonable steps to prevent the employee so acting.

40. In terms of the regime as applicable to claims brought under the Act against universities, it is also common ground that the statute specifically provides that such claims must be brought in the County Court. The University relies upon this to emphasise that in so doing, Parliament must be taken to have intended (in contrast to other types of discrimination claims which are to be brought in front of an Employment or First Tier Tribunal), that the case management powers inherent in the CPR, including the power to strike out where the claim is an abuse of process, were applicable. This is obviously right. However, it is also right that in requiring such claims to be brought before the County Court, as submitted by Ms Steinhardt, there has been imposed a case management structure on such cases in which costs are likely to be low and capable of management.

The Judgment Below : the Claims against the Individuals

41. At paragraph 41, the Judge identified that the starting point of the analysis was that the Claimant was entitled to bring claims against the employees undersection 110. At paragraphs 42 and 43, the Judge characterised the claims against the Individuals as being against them in their capacity as decision-makers or amongst the decision-makers. In a passage that was not at least directly the subject of complaint, the Judge concluded that '*what is being complained about is not so much their individual acts of discrimination against the Claimant, but the effect of the decision making as agents for [the University], and in furtherance of [the University's] obligations to the Claimant.'* At paragraph 44, the judge noted the University's acknowledgement in its defence of its liability for any discrimination proved against the individual and the existence of his remedy in those circumstances against the University. The Judge observed at paragraphs 45-7 that the final injunctions sought would be 'more appropriately' granted against the University.

42. At paragraph 48, the Judge identified his assumption that the Claimant would effectively recover any damages from the University, such that adding the Individuals '*does not really provide any substantive additional benefit to the Claimant in terms of damages'*. In paragraph 49, he identified the University's argument that the Individuals would suffer detriment in the costs and time involved as defendants rather than merely witnesses. Paragraphs 50-51 dealt with a line of argument not relevant on appeal. At paragraph 52, the Judge identified the authority of Jameel, with the following summary:

> "*there will be cases where a claim is not worth the candle, in other words the costs of pursuing the action are so wholly disproportionate to what is actually involved and to the benefit the Claimant seeks, that it is an abuse of process for the Claimant to pursue it, bearing in mind the resources that are required of the Court and of the other party*."

43. At paragraph 53, the Judge noted that this question has to be approached 'with a degree of care', noting the Sullivan case referred to above. The exercise of discretion was then explained in the following paragraphs:

> "*54. The question for me, though, that these two decisions highlight is whether it is proportionate for the Claimant to be pursuing the individual Defendants when, as Mr Knight submits, there is little for him to gain, as compared with the additional costs and detriment to them of them being parties. In my view, that really requires me to focus on the particular remedies that the Claimant might obtain against them if he is successful.*
>
> *55. I have already commented on the fact that injunctions would be better framed against the First Defendant, and that a damages claim against the Personal Defendants does not really appear to add much of benefit to the Claimant, bearing in mind that the University will surely resolve any damages that are found in the Claimant's favour.*
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> *56. The Claimant said however, that he relies on the individual acts of discrimination carried out by the individual Defendants, and he seeks declarations as to those acts of discrimination. Discrimination is of course a very important matter, and the remedies provided under the Equality Act are very important remedies. Discrimination is something to be taken very seriously. It is a wrong in itself, and it is a wrong that the Court is required to address when it is raised in appropriate proceedings.*
>
> *57. On the other hand, Mr Knight is right when he says that the Court does not generally grant declarations that simply reflect findings that the Court has made in a judgment, and I would add to that that it is also a well-established principle that the Court will not grant declarations that are academic, in that they do not provide any substantial benefit to the party seeking them.*
>
> *58. Mr Meagher's submission is that the declarations he seeks would be of value to him because they would, in effect, amount to vindication of his position. There is a tension between that of course, and his application that he be anonymised, because if he is right in that application then of course he will not achieve public vindication because he will not be identified with the declarations in question,*

but I suppose what he will achieve is a more general vindication of his position in the sense that the Court will declare that wrongs have happened which should not have happened, and that may be of value, I suppose he would say, in relation to other litigants or other matters that he is concerned with.

59. However, in my judgment it is necessary here to focus on his pleaded case, and in my judgment his pleaded case does not set out individual acts of discrimination perpetrated by the Second to Sixth Defendants which are in any way distinct from his claim against the University. The key point here is that the acts that they have perpetrated, or he alleges that they have perpetrated, are precisely the same acts that he relies on in his claim against the University, and in reality as his pleading is framed, he is not pursuing them as individuals in any way that is separate from their identity as agents and decision makers on behalf of the University.

60. There is no part of his pleading which as such identifies individual conduct and seeks an individual remedy from them in respect of it. Indeed, the remedy section of his pleading is couched in general terms, and he seeks precisely the same remedies against all of the Defendants without seeking to distinguish between particular Defendants in respect of the particular remedies that he seeks as a result of the particular conduct of each of them that he complains of.

61. In those circumstances, I am afraid to say it is very difficult to see what additional benefit bringing the claim against the Second to Sixth Defendants brings to this, and it seems to me that the claim can perfectly properly be pursued against the University with those additional Defendants being named and identified as part of the factual matrix that is relied upon by the Claimant to establish his claim against the University, and it is not necessary, and it is not proportionate, bearing in mind the pleaded issues as we currently stand, for them to be parties in order for the Claimant to properly pursue his case.

62. I have come to the conclusion, albeit I found it somewhat finely balanced bearing in mind section 110 of the Act, that this is one of those rare cases where in effect, it is disproportionate to be pursuing the action against these individuals in such a way that it does amount to the broader form of abuse of process identified in the Jameel case, and therefore that the claim against the individual Defendants should be struck out, and that the claim against the University should continue with them as the only Defendant."

Grounds of Appeal 1-4

44. The grounds overlap.

45. Ground 1 asserts that the Judge '*erroneously treated the claims as being subject to the Jameel jurisdiction, ...when Jameel was concerned with whether a claim was brought in respect of matters that were more than de minimis, and not with the question of whether a claim which was concerned with matters that were more than de minimis could be brought against multiple alleged joint tortfeasors.*'

46. Ground 2 asserts that the Judge, '*wrongly regarded the fact that one alleged joint tortfeasor was in a position to meet any financial award that made as a reason*

supporting the striking out of claims against other alleged joint tortfeasors.'

47. Ground 3 asserts that the Judge *'failed to have any or any sufficient regard to the fact that parliament had conferred on claimants in discrimination claims an unfettered right to pursue claims against alleged individual discriminators as well as against alleged corporate discriminators.*'

48. Ground 4 asserts that the Judge '*failed to have any or any sufficient regard to the importance of claims under the Equality Act, and the undesirability of striking out such claims without a full examination of the facts on which they are based*'.

49. As Mr Knight for the University observed, the arguments advanced orally by Ms Steinhardt on behalf of Mr Meagher ranged at times considerably more broadly than the Grounds of Appeal, and indeed than the Skeleton Argument in support of those grounds. Grounds 1 and 2 of the Appellant's Grounds of Appeal and skeleton argument largely focussed on arguments of principle – that the Judge was simply not empowered to do what he did in the context of a multi-defendant section 109/section 110 discrimination case; Grounds 3 and 4 relate to the weight given to two specific factors. There is no direct attack on the issue of proportionality on which Ms Steinhardt focussed much of her oral submissions. Ms Steinhardt sought to characterise the expansion of her arguments as putting flesh to the bones of the Grounds. I consider that they went beyond that. No application to amend the Grounds was made.

50. Ground 1 was argued in the Appellant's skeleton as an error or misdirection of law. It was said that Jameel is not authority for the proposition that a valuable claim against one defendant can be dismissed because a judge considers that another jointly liable defendant is sufficiently solvent to meet any award made. It was argued that the Judge wrongly interpreted Jameel which was concerned with the value of the claim itself, not with the identity of the parties to it. In oral argument, Ms Steinhardt, correctly in my judgment, stepped back from any submission suggested by Ground 1 that it was, as a matter of law, simply not open to the Judge below even to consider carrying out a proportionality/weighing exercise (put bluntly: is the claim worth the candle?) in the context of a discrimination case, merely because the claim is one brought under the Act. Ms Steinhardt rightly recognised that such an assessment pursuant to CPR 3.4(b) is equally possible in principle in the present case, notwithstanding the fact that this is a claim under the Act. Insofar as a claim is required to be brought pursuant to a procedure subject to the CPR, it is plain that it is open to the Court to apply general principles of case management to any and all cases before it. In this respect, the Judge was right to consider that the type of abuse of process considered in Jameel was one which could be applicable in this case. There was no misdirection of law by the Judge in considering the potential applicability of striking out under 3.4(b) in line with the Jameel line of authorities.

51. Ground 2 is equally unsustainable insofar as it is to be construed as limited to as the identification of an error of general principle or misdirection of law. AB is clear authority for the proposition that, in an appropriate case, a court may exercise its case management powers to stop an action against some tortfeasors and not others if the action against some (and not others) is '*not worth the candle*'. Of course, in AB, the claims against the struck out tortfeasors were contingent, and this was of importance in the decision making (see the reasoning at [p.111]), but that is not a feature which

determines the application of the principle one way or the other; it is a factor (and might be an important factor) in the overall assessment process. In oral submissions the same point was made by Ms Steinhardt by focussing on the Judge's use of the term '*additional*' when considering the question of the benefit derived to the claimant for including the Individuals within the litigation. It was suggested that it was wrong in principle to do so, as it demonstrated that the Judge perceived the section 110 claims as somehow subsidiary to the section 109 claim. I do not agree. The Judge's use of language was merely reflecting the reality of the shape of the litigation, the context of the fact that the claim against the University was proceeding. In this context, it is of note that Ms Steinhardt conceded, again rightly in my view, that had the application been to amend a claim which had been commenced only against the University, the Court would have been entitled to consider what benefit to the litigation as whole the addition of the Individuals would bring when considering whether to permit the amendment (in a similar way to the assessment of cost v benefit analysis undertaken by the Court in MBR Acres v Free the MBR Beagles [2022] EWHC 1677 (QB): see paragraphs 28, 50 and 57). It is right that the test and the burden upon amendment is different to the test and burden under CPR3.4 (b), but the analogy demonstrates that it does not follow that in circumstances where the Court is considering as part of its case management whether some aspects of the claim are '*not worth the candle*' it cannot look to the reality of the litigation and the interaction between the allegations made against different parties. The factors in this case – that the University would be the party in fact paying any damages; that it was the proper party against whom any injunctive relief could be sought; and there was no risk that the University would not meet any judgment of the Court – were not themselves disputed. These factors cannot be said, as a matter of principle, to be irrelevant to and wrongly included within the assessment of the proportionality of pursuing the claims against the Individuals in the Jameel sense.

52. In relation to Ground 3, the Judge clearly started his analysis by identifying the clear right of the Claimant to bring its claim against individuals under section 110 instead of or additional to a claim against a corporate entity under section 109. In these circumstances, Ground 3 is unsustainable insofar as it asserts a misdirection of law or the exclusion from consideration of a relevant factor: the judge was fully aware of the Claimant's 'right' to bring a claim under section 110 of the Act. Indeed, this was his express starting point (see paragraph 41). It is not, as a matter of law, the necessary finishing point, as this Ground implies. This is because the right (at least where exercised in the County Court in proceedings subject to the CPR) will always be susceptible to being 'fettered' by an appropriate case management decision, in the same way that the 'right' to bring a coherent legal claim was effectively fettered by the case management decisions in Jameel and Sullivan. The argument that the Court '*is not empowered to deprive*' a claimant of the choice is akin to the arguments advanced and defeated in AB and Jameel. The Court is so empowered in the appropriate case.

53. In respect of Ground 4, Ms Steinhardt relied upon Anyanwu v South Bank Student Union [2001] UKHL 14 [2001] 1 WLR 638. That case rightly emphasised the fact-sensitive nature of discrimination cases, and the importance of the merits or demerits of such cases being determined on the facts to the broader public interest. However, it cannot be said that the Judge failed to weigh in the balance the relevant fact that this

was a discrimination case and this of itself is an important matter in the context of the assessment: he did so clearly at paragraph 56 of his judgment.

54. Returning to the test on appeals against case management decisions as set out at [24] above, the Appellant has not made out any misdirection in law by the judge. Each of the matters which the Judge considered was a matter which he was entitled to consider as being relevant, and the Appellant has not pointed to a particular relevant feature of the case that the judge failed to consider. No procedural unfairness or irregularity has been identified.

55. The only remaining basis of appeal available, therefore, is that the exercise of discretion by the Judge was '*plainly wrong*'. It is no doubt for this reason that in her oral argument, Ms Steinhardt wrapped her argument in the broad submission that each of the main cases demonstrating the exercise of discretion under this limb of CPR 3.4 (b), such as Jameel, AB, and Sullivan, illustrated the extreme nature of disproportionality and potential injustice which must exist before the bringing of a viable claim can be considered abusive. She submitted that such disproportionality simply does not exist in the present case, particularly when the importance of the ability to bring section 110 discrimination claims in addition to section 109 has a strong public interest element as well.

56. It would be an over-generous reading of the Grounds of Appeal to consider that such a general attack on the exercise of discretion formed a part of the appeal. Nevertheless, in case I am wrong about this, I consider the issue on the basis that this way of putting the appeal was open to the Appellant. Even though the Judge did not misdirect himself of the potential applicability of the *Jameel* type approach, nor misunderstand the fact that such cases would be rare, nor include irrelevant factors or exclude relevant factors, I therefore ask whether the exercise of his discretion was '*plainly wrong*'. I remind myself that it will be rare that a judge who has exercised a discretion having regard to relevant considerations will have come to a conclusion outside that ambit permitted to them.

57. The Judge was not plainly wrong. The Judge's characterisation of the substance of the claim against the Individuals – which characterisation was not challenged on appeal (and which was, in any event, correct) – was that the case advanced against the Individuals is not dependent upon any particular discriminatory act attributable personally to them. The Individuals have been included, in reality, simply because of their standing within the committees of the University which were responsible for the decisions against which the allegation of discrimination is made. It was plainly of some importance to the Judge that the claims made were not in substance personal against the Individuals, with those personal acts of discrimination or victimisation then being attributed vicariously to the employer; instead he considered, and with justification, that the relevant part of the pleaded claim focusses upon decisions made at an institutional/committee level within the University – for which there is no dispute that the University will be responsible should they be of the character ascribed to them in the pleading - and these decisions are then effectively attributed personally to the Chairs of the relevant committees irrespective of any particular act or otherwise of that Individual, simply by virtue of their position as Chair or Co-Chair of that committee. On the Appellant's logic, the claim could extend to including as Defendants each and every member of each of the committees involved in the decision-making about which complaint is made irrespective of how burdensome such

an approach would be for the Court managing such a claim or to the individuals themselves, and notwithstanding that such an approach would provide no actual benefit to the Claimant by way of outcome. The reality of the nature of the claims against the Individuals is also illustrated by the fact that the Appellant's allegations about a relevant committee's decision could succeed against the University even where the particular Individual included as Defendant voted against the majority within the relevant committee such that the impugned decision for which the Individual stands 'responsible' as Chair of the committee was made despite, rather than because of, the Individual's actions. The Judge was plainly justified in concluding that (to adopt the wording of Warby J in The Duchess of Sussex), the heart of this particular case is about the institutional decisions made by the relevant committees within the University, for which the University will be liable if discriminatory, rather than any particular identifiable discriminatory acts by the particular Individuals.

58. In light of this characterisation of the pleaded case against the Individuals, the Judge was entitled to conclude, on the facts of this case and notwithstanding the statutory entitlement to bring section 110 claims against the Individuals, that their involvement as separate defendants added material complexity and cost, but no benefit of substance to the Claimant. This is far removed from the more usual section 109/110 discrimination case where the case will focus on the personal discriminatory actions of particular individuals, whether or not they are included as Defendants, and then attribute these actions to the employer pursuant to section 109, not only so as to ensure that there is a party with the relevant pockets/insurance to ensure that a successful claim for damages is satisfied but also so that the individual's responsibility for discriminatory behaviour is subject to specific investigation and judgment, in respect of which there is clearly a public interest. It is no doubt because of the particular characteristics of this case that the Judge correctly considered this case to be a rare one.

59. Having considered this particular context and the justified fact that the actual benefit of including these individual representatives of the University's decision-making committees, in addition to the University itself, was in practical terms nil, it was for the Judge to weigh their continued involvement and the Claimant's right of action against them, against the inevitable additional costs and complexity of the Individuals being involved. Whilst it is undoubtedly right that that the additional cost was not going to be 'exorbitant' in absolute terms, the actual impact of personal involvement in litigation of this nature beyond merely participation as a witness cannot be underestimated. The Judge was also justified in concluding that any desire for vindication against an Individual would be satisfied in substance, to the extent warranted in due course, by the public judgment, and that the individuals were not the appropriate target for the sought injunctive relief which could only sensibly be instituted, if ordered, by the University. Ms Steinhardt's belated argument (in reply) that the Individuals' involvement could be justified on the ground that it entitled the Appellant to disclosure against the Individuals was not one made in front of the Judge below, and a contention that the Judge failed to consider this as relevant was not a Ground of Appeal. In any event, in light of the nature of the claims against the Individuals, only those documents in their possession in the context of their acting as the Chair or Co-Chair of the relevant committee (and thus as agent for the University) would be relevant and such documents would be discoverable against the University.

Personal allegations against the Individuals justifying some wider disclosure are not part of the case.

60. The Judge recognised the decision was finely balanced. It was for the Judge managing the case to weigh whether the extent to which permitting the viable claims against the Individuals was so disproportionate so as to be an abuse of process in the Jameel sense. It was open to him to determine that the claims against the Individuals were '*not worth the candle*'. It was a decision within the range of decisions a judge properly exercising their case management discretion could come to, on the particular facts of this case. Even if the Grounds of Appeal had included a broad complaint about the wrongful exercise of discretion rather than the four particular errors of principle alleged, the appeal would not have succeeded.

Grounds 5 and 6

61. These Grounds relate to the striking out by the Judge of paragraphs 69(3) and 70(3) of the draft APoC. Paragraph 69 alleges that the University is in breach of its obligation to provide educational services to the Claimant with reasonable care and skill. The particular at 69(3) pleaded was, '*the [University] failed to ensure that the Claimant's viva was conducted in accordance with the adjustments recommended by the ADRC (this failure was a breach of contract whether or not it was also an act of unlawful discrimination*'. Paragraph 70(3) was a particular drafted in materially identical terms, said to be a breach of the University's common law duty of care to perform the educational services that it provided to the Claimant with reasonable care and skill and/or take reasonable steps to prevent the Claimant from suffering personal injury, including psychological harm etc, (pleaded at paragraphs 14 and 15 of the APoC).

62. The Judge struck paragraphs 69(3) and 70(3) out as the paragraphs were an attempt to import the duty to make reasonable adjustments imposed by the Equality Act 2010 into the contractual terms and/or the tortious duty of care. The key paragraphs of the Judgment were as follows:

> "*77. In my judgment, this is a clear attempt to read duties imposed by the Equality Act across into ingredients of a duty of care, and it is impermissible for the reasons that are set out in the case of Smeaton v Equifax Plc [2013] EWCA Civ 108. In that case, which was concerned with slightly different subject matter, there was consideration of the extent to which statutory duties gave rise to duties of care in tort or other tortious duties, and it was held that in general, they do not.*
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> *78. Thomas LJ then referred to a dicta of Lord Hoffmann in the case of Her Majesty's Customs and Excise Commissioners v Barclays Bank Plc [2006] UKHL 28, at paragraph 39 where Lord Hoffmann said:*
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> > *"The question of whether the order, that is a statutory instrument, can have generated a duty of care is comparable with the question of whether a statutory duty can generate a common law duty of care. The answer is that it cannot."*

79. Lord Hoffmann referred to Gorringe v Calderdale Metropolitan Borough Council [2004] UKHL 15:

> *"The statute either creates a statutory duty or it does not (that is not to say as I already mentioned that conduct undertaken pursuant to a statutory duty cannot generate a duty of care, in the same way as the same conduct undertaken voluntarily) that you cannot derive a common law duty of care directly from a statutory duty."*

80. In my judgment, the Claimant is trying here to do precisely what Lord Hoffmann said cannot be done, which is to simply import a duty imposed by the Equality Act into, and as a component of, the implied term of reasonable skill and care, and/or a duty of care in tort. A set of reasons why that is impermissible is because as Mr Knight submitted, it is otiose and duplicative.

81. The Equality Act creates a duty to make reasonable adjustments. That duty has either been complied with or it has not been complied with. The analysis of whether there is a duty of care, whether in tort or its equivalent in contract, does not assist really to determine whether the duty has been complied with or has not been complied with. The duty exists independent of whether there is any duty of care or not, and it is not an ingredient of a duty of care. The duty is not to exercise reasonable skill to provide reasonable adjustments, the duty under statute is to provide them, and if they are not provided then there is a breach of the duty.

82. Furthermore, to be able to bring a claim in contract or in tort does, I agree with Mr Knight, undermine the scheme of the Equality Act. Discrimination is a wrong in itself, and the Equality Act provides remedies for it outside of any other scheme of remedies or cause of action. The obligation to make reasonable adjustments is a specific ingredient of the duties owed under the Equality Act.

83. Discrimination claims can obviously arise in cases where there is a contract between parties, and in cases where there is no contract between parties, precisely because it is a freestanding statutory wrong, in respect of which the statute provides remedies. The statute provides a clear statutory scheme for dealing with claims, including that such claims are allocated in the first instance to the County Court, where proceedings must be issued in the first instance even if they can be transferred to the High Court subsequently if they meet the requirements for such transfer.

84. It defines the scope of the claims, that is the parts of the Act that are justiciable by the County Court, and some which are not, and it deliberately imposes a short limitation period to ensure that discrimination claims are dealt with expeditiously and not left to linger for potentially the longer limitation periods that are provided for contract and tort respectively.

85. The liability of employers is defined by the Act but it is also subject to defined defences, and again, the statute there is creating rights and duties which are different from, and independent of any such rights or duties which might exist in contract or tort.

> *86. It is true that there is no authority that the parties have been able to find or refer to me which has decided in terms that the duty to make reasonable adjustments cannot, or does not give rise to a duty of care in tort or form part of the implied obligation to exercise reasonable skill and care in contract. The closest they have come in terms of citation of authority appears to be the case of The University of Bristol v Dr Abrahart (as administrator of the estate of Natasha Abrahart deceased), in which Linden J made some comment in the context of an application for permission to appeal, about whether there could be a duty of care in negligence alongside a discrimination claim.*
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> *87. In short, he indicated that he considered that the parties' positions were well arguable, but decided that he was not going to decide the issue because it raised issues of potentially wide application and significance that would be better off dealt with elsewhere, and because ultimately it did not affect the outcome of his decision, but that is not a decision which is binding on me, it is simply comment by the judge in the context of granting permission to appeal, and it is well understood that decisions in relation to permission to appeal are not regarded as authoritative, and should not be cited as authoritative when citing authorities.*
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> *88. I recognise that in general terms the Court should not strike out a case if there is a significant doubt as to the law that applies, but should instead allow the case to be determined on its facts before coming to views about the law, but it is not clear to me what a determination on the facts would add to my analysis.*
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> *89. My analysis assumes that the Claimant will be able to make good his fundamental allegation that the University failed to make reasonable adjustments, or to secure that reasonable adjustments were made in the conduct of his viva, but it seems to me that even assuming that to be true, for the reasons that I have given, it is simply not permissible to read the duty in the Equality Act across and treat it as an ingredient of a duty of care, whether in tort or the equivalent in contract.*
>
> *90. Given that the Claimant has not pleaded the equivalent of any breach of any alleged express term of the contract, I consider that these two paragraphs should be struck out of the amended particulars of claim."*

63. Ground 5 asserts that the Judge erroneously treated paragraphs 69(3) and 70(3) as an attempt to import the statutory duty to make reasonable adjustments pursuant to the Equality Act into the contractual terms and/or into a tortious duty of care; and Ground 6 asserts that the Judge erroneously regarded the fact that a breach of statutory duty to make reasonable adjustments was actionable under the Equality Act as precluding a claim in contract or tort as a result of the same matters.

64. In short, the Appellant does not challenge the Smeaton line of authority or suggest that the Appellant's case is that the contractual or tortious duty of care alleged is born directly from the existence of the statutory duty. Instead, the case depends specifically upon the allegation that the University's own ADRC made recommendations and that, such recommendations having been made (and irrespective of the statutory duty),

there was then a contractual or tortious duty of care to take reasonable steps to implement the recommendations. The case does not, in other words, leapfrog straight from statute to duty/breach (which would be impermissible pursuant to Smeaton), but depends critically upon the fact alleged that the ADRC made recommendations.

65. The Judge did indeed fall into error in his understanding of this aspect of the pleaded case. The starting point is the alleged existence of the contractual and/or tortious duties pleaded at paragraphs 14 and 15. These paragraphs were not, and could not properly have been, struck out. The particulars of breach then allege that, in circumstances where the ADRC had made recommendations, there was a failure of the pleaded duty not to put into place those recommendations. This is a case which is entirely distinct from the duty under the Act and it is not a case which offends against the principle in *Smeaton*. In eliding this particular of breach with the case under the Act, the Judge failed to recognise that there were two parallel but distinct cases. By way of illustration, it may be that (as a matter of fact), the recommendations made by the ADRC would or would not have met the statutory duty pursuant to the Act. A failure to take reasonable steps to implement them may, in theory at least, be a breach of the alleged contractual and/or tortious duties irrespective of whether any such failure also amounted to a breach of the Act. Conversely, even if the University did take reasonable steps to implement the ADRC recommendations, this is not determinative of any case under the Act.

66. As such, the Judge should not have struck paragraphs 69(3) and 70(3) out, and they should be reinstated.