Neutral Citation Number [2021] EWHC 602 (QB)

Case No: D90BM255

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

BIRMINGHAM DISTRICT REGISTRY

Birmingham Civil Justice Centre
33 Bull St, Birmingham B4 6DS

Date: 15 March 2021

Before :

HIS HONOUR JUDGE SIMON
(Sitting as a Judge of the High Court)

- -

Between :

RAMACHANDRAN SRINIVASAN	**Claimant**
- and -	
TATA TECHNOLOGIES (EUROPE) LIMITED	**Defendants**
JAGUAR LAND ROVER LIMITED	

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Mr Angus Gloag (instructed by **direct access**) for the **Claimant (trial only 30 Nov – 2 Dec)**

Miss Victoria Simon-Shore (instructed by **Wright Hassall LLP**) for the **Defendants**

Hearing dates: 30 November – 2 December 2020 & 20 January 2021

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JUDGMENT

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 10:30am on Monday 15th March 2021.

His Honour Judge Simon:

THE CLAIM

1. This is a claim under the Protection from Harassment Act 1997 [the 1997 Act] in the terms that were in force during the relevant period, being November 2011 to February 2012 [the Claim]. The Claimant is Ramachandran Srinavasan. The Defendants to the claim are TATA Technologies (Europe) Limited [D1] and Jaguar Land Rover Limited [D2].

2. The claim arises in the context of Mr Srinivasan being contracted by D1 through his company, Sriman Technologies Limited [STL], as a SAP Basis Architect working on an IT project for D2 called TURBO. A parallel, inter-related and similar project called eSMART was simultaneously under way, although as I understand it the TURBO project was more advanced. I shall refer in this judgment to 'the project' to mean either TURBO and/or eSMART as the context will make clear. The project team involved hundreds of individuals, both employees and contractors of D1 and D2. The exact details of the project structure are of only limited relevance to the issues in the case. Where they are relevant they have been referred to in the body of the judgment. There is no dispute that the project was a major IT infrastructure upgrade and of significant importance to D2.

3. By a contract dated 14 April 2011, Mr Srinivasan (through his company and previously the second claimant, STL) was engaged to provide his specialist services for a period of 12 months from early May 2011. Amongst other provisions, the contract included a clause for termination on either side upon the giving of 28 days' notice. Notice of termination was given by D1 on 24 February 2012 and payment was made for the full notice period without requiring Mr Srinivasan to work on the project. This followed his being asked to leave D2's site on the afternoon of 23 February 2012 due, according to the Ds, to their mounting concern about Mr Srinivasan's conduct and his lack of compliance with reasonable requests from those within the project team. By stark comparison, Mr Srinivasan claims that he was

subjected to a number of acts of harassment at the hands of employees/contractors of D1 and/or D2, for whose actions they are vicariously liable.

4. When the claim was issued on 10 November 2017, the 1997 Act formed only one of a number of heads under which it was brought. There has been extensive case management over the life of the proceedings, the decisions of some judges being subject to appeal by Mr Srinivasan, albeit unsuccessfully. I briefly mention the lengthy procedural history to indicate that I am aware of it but equally to make clear that, whatever Mr Srinivasan's views of earlier judgments (even in closing submissions he adopted some adjectives which suggested that he continues to contest the validity of some of them), they stand unaltered and the trial before me was conducted within the context set by those judgments. In particular, that context included the striking out of all heads of claim bar that under the 1997 Act [order of Carr J, 27 March 2019], the non-disapplication of the statutory limitation period as regards the 1997 Act claim (being six years up to the date of claim) and the limiting of the trial to the question of liability only at this stage [Order of Spencer J, 4 September 2020].

5. Although Mr Srinivasan was self-representing throughout the pre-trial hearings, for the purposes of the trial itself, heard by me from 30 November to 2 December 2020, he had the assistance of counsel, Mr Angus Gloag. Due to the procedural issues requiring determination on the first day of trial, the hearing of evidence did not begin until the second day. It concluded too late on the final day of trial for closing submissions to be made. Whilst Mr Srinivasan was content with written submissions, the Ds expressed a preference for oral submissions. The date of 20 January 2021 was subsequently fixed for those submissions to be heard. In the event, it was not possible for me to travel to Birmingham for the hearing, despite Mr Srinivasan's concerns for a fully in-person hearing. Rather than delay the hearing, I ordered that the parties attend court in person and I joined the hearing remotely.

6. For closing submissions Mr Srinivasan returned to self-representing. Both he and Miss Victoria Simon-Shore, who had acted as counsel for both Ds at trial, made detailed closing submissions, having provided authorities bundles in electronic format

in advance. Mr Srinivasan also furnished me with a detailed typed document that formed the basis of his oral submissions. There seemed to be some technical issue with the parties hearing me clearly over the remote link, however, the limited comments that I made were kindly and accurately relayed to the parties by the court clerk. I confirmed to both Mr Srinivasan and Miss Simon-Shore that I could hear them clearly throughout the full day of submissions.

Context of Judgment

7. In the particular circumstances of this case, I consider it important to give a brief context to this judgment on liability. It is not my intention to quote extensively from the case law, although I have considered all of the authorities sought to be relied upon by both parties. I set out below relevant extracts only. If I have not made reference to a specific case or quote relied on by either party, it will be because the case discloses no novel principle beyond that already established or, alternatively, no principle with a direct bearing on the facts of this case.

8. Similarly in relation to the evidence, to reprise all of the written and oral evidence in this case would not only make the judgment unwieldy but would detract from the purpose of any judgment, which is to make clear to the parties what the court has decided and why. The absence of a reference (wholly or partially) to a specific piece of evidence should not be taken to suggest that it has not formed part of the body of the evidence considered by the court in reaching the conclusions set out in this judgment.

9. Although the 1997 Act enacts both a civil claim for, and a criminal offence, of harassment, the instant case involves a civil claim under sections 1 and 3, subject to the interpretation in section 7. The standard of proof throughout is the balance of probabilities. Mr Srinivasan bears the burden of proof save in relation to the affirmative defence in section 1(3)(c) when the burden shifts to the Ds.

10. By the trial, the Ds had conceded that they would be vicariously liable for any findings of harassment made against their employees or contractors when acting in that capacity. As a result it has been unnecessary for me to consider the case law on this particular topic.

The 1997 Act

11. It is important to begin this section on the law with the relevant provisions of the 1997 Act in force at the time of events in the instant case, up to February 2012.

"1 Prohibition of harassment

(1) A person must not pursue a course of conduct—

(a) which amounts to harassment of another, and

(b) which he knows or ought to know amounts to harassment of the other.

(1A) …

(2) For the purposes of this section, the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to or involved harassment of the other.

(3) Subsection (1) [or (1A)] does not apply to a course of conduct if the person who pursued it shows—

(a) …

(b) …

(c) that in the particular circumstances the pursuit of the course of conduct was reasonable.

2 Offence of harassment

(1) A person who pursues a course of conduct in breach of section 1 is guilty of an offence.

(2) …

3 Civil remedy

(1) An actual or apprehended breach of section 1(1) may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question.

(2) …

…

7 Interpretation of this group of sections

(1) This section applies for interpretation of sections 1 to 5A

(2) References to harassing a person include alarming the person or causing the person distress.

(3) A "course of conduct" must involve—

(a)in the case of conduct in relation to a single person (see section 1(1)), conduct on at least two occasions in relation to that person, or

(b)in the case of conduct in relation to two or more persons (see section 1(1A)), conduct on at least one occasion in relation to each of those persons.

(3A) …

(4) "Conduct" includes speech.

(5) …"

The case law

12. The interpretation and application of the 1997 Act in practice has evolved over the years through a sizeable body of case law.

13. The House of Lords considered the 1997 Act in *Majrowski v Guy's and St Thomas's NHS Trust* [2006] UKHL 34, [2007] 1 AC 224. Although the central point on appeal was vicarious liability, Lord Nicholls of Birkenhead in the lead judgment said this about the objective nature of the court's assessment of alleged conduct, at paragraph 30 234C:

"Where … the quality of the conduct said to constitute harassment is being examined, courts will have in mind that irritations, annoyances, even a measure of upset, arise at times in everybody's day-to-day dealings with other people. Courts are well able to recognise the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the boundary from the regrettable to the unacceptable the gravity of the misconduct must be of an order which would sustain criminal liability under section 2."

14. When the case of *Majrowski* was before the Court of Appeal reported at [2005] QB 848, May LJ said this at paragraph 82:

"Thus, in my view although section 7(2) provides that harassing a person includes causing the person distress, the fact that a person suffers distress is

not by itself enough to show that the cause of the distress was the harassment. The conduct has also to be calculated, in an objective sense, to cause distress and has to be oppressive and unreasonable. It has to be conduct which the perpetrator knows or ought to know amounts to harassment, and conduct which a reasonable person would think amounted to harassment. What amounts to harassment is … generally understood. Such general understanding would not lead to a conclusion that all forms of conduct, however reasonable, would amount to harassment simply because they cause distress."

15. In *Ferguson v British Gas Trading Ltd* [2009] EWCA Civ 46, Jacob LJ said at paragraph 17:

> *"The only real difference between the crime of section 2 and the tort of section 3 is the standard of proof."*

16. In *Veakins v Kier Islington Ltd* [2009] EWCA Civ 1288, Maurice Kay LJ, having reiterated at paragraph 12 the need for the conduct amounting to harassment to be objectively judged to have been oppressive and unacceptable (the now accepted descriptors for culpable conduct), said this at paragraph 16:

> *"No malice is required, but the presence of malice would make the test of oppressive and unacceptable behaviour easier to achieve."*

17. In *Iqbal v Dean Manson Solicitors* [2011] EWCA Civ 123 Rix LJ noted at paragraph 45 that:

> *"The Act is concerned with courses of conduct which amount to harassment, rather than with individual instances of harassment. Of course, it is the individual instances which will make up the course of conduct , but it still remains the position that it is the course of conduct which has to have the quality of amounting to harassment, rather than individual instance of conduct."*

18. Although a case in respect of the section 2 criminal offence, *Kellett -v- The Director Of Public Prosecutions* [2001] EWHC Admin 107 was concerned with the extent to which a person might be liable if their alleged act of harassment only came to the

attention of the subject through the actions of a third party. The questions posed for the court were:

> *"(i) As a point of law, could the Appellant be guilty of the offence of harassment contrary to Section 2 of the Protection from Harassment Act 1997 when the harassment itself only occurred when a third party informed Shirley Carr [the complainant] about the telephone calls made by the Appellant?*
> *(ii) As a point of law, could the Appellant be guilty of the offence of harassment contrary to section 2 when the Protection from Harassment Act 1997 when the harassment itself only occurred when a third party informed Shirley Carr about the telephone calls made by the Appellant even though the Appellant, in his first telephone call, had specifically asked that Shirley Carr should not be so informed?*
> *(iii) As a point of law, were the bench entitled to find that the Appellant knew or ought to have known that Shirley Carr would have been informed about his telephone calls in the absence of specific evidence that he was in possession of the information that she would be so informed?*
> *(iv) As a point of law, were the bench entitled to find that the Appellant's pursuit of this course of conduct was not reasonable having regard to the fact that the said course of conduct involved, amongst other things, passing on suspicions concerning Shirley Carr's work activities to the appropriate officials of her employers?*
> *(v) As a point of law, on the facts, were the bench entitled to find that the Appellant knew or ought to have known that his course of conduct would amount to harassment of Shirley Carr?*

19. In answering these questions, Penry-Davey J stated at paragraph 15 that "*The court concluded in the words that I have already read that it was a foreseeable and inevitable result*" and continued with the following:

> *"16. In my judgment there is no error of law in the approach adopted by the Crown Court in this case and the questions posed are to be answered in the affirmative. The offence was only complete when the complainant was told of the telephone calls made by the appellant in that it was the knowledge of his conduct that caused her distress. But the fact that she had been informed of the course of conduct by a third party rather than by the appellant himself did*

not mean that there was no offence committed once she had been so informed, even in circumstances where the appellant had asked that she should not be so informed, so long as there was evidence on the basis of which the court could properly conclude, as it clearly did, that the appellant was pursuing a course of conduct which he knew or ought to have known amounted to harassment of the complainant.

17. The court could and did have regard also to section 1(2) providing that a person ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other."

20. In *Hourani v Thomson and Ors* [2017] EWHC (QB) 432 at paragraph 129, Warby J identified the three issues on which the claimant bore the burden of proof in relation to each defendant as: (1) Did the defendant engage in a course of conduct? (2) Did any such course of conduct amount to harassment? and (3) Did the defendant know, or should the defendant have known, that the conduct amounted to harassment? At paragraphs 140-141 & 148-149, Warby J said the following:

"140. There must, therefore, be conduct on at least two occasions which is, from an objective standpoint, calculated to cause alarm or distress and oppressive, and unacceptable to such a degree that it would sustain criminal liability: see Dowson v Chief Constable of Northumbria Police [2010] EWHC 2612 (QB) [142] (Simon J).

141. The reference to an "objective standpoint" is important, not least when it comes to cases such as the present, where the complaint is of harassment by publication. In any such case the Court must be alive to the fact that the claim engages Article 10 of the Convention and, as a result, the Court's duties under ss 2, 3, 6 and 12 of the Human Rights Act 1998. The statute must be interpreted and applied compatibly with the right to freedom of expression, which must be given its due importance. As Tugendhat J observed in Trimingham v Associated Newspapers Ltd [2012] EWHC 1296 (QB) at [267] "[i]t would be a serious interference with freedom of expression if those

wishing to express their own views could be silenced by, or threatened with, claims for harassment based on subjective claims by individuals that they feel offended or insulted".

…

148. In general it may be better to evaluate a given factual scenario in its totality, before reaching a conclusion on whether it amounts to harassment. But in this case I have no difficulty dealing, in isolation, with the question of whether it has been proved that the defendants' conduct actually caused alarm or distress, or other emotions or impacts consistent with it amounting to harassment. To do so involves picking out for separate consideration the question of whether the claimant has proved the harm which is plainly an element of the tort. As Lord Phillips said in Thomas at [29], "It seems to me that section 7 [(2)] is dealing with that element of the offence which is constituted by the effect of the conduct rather than with the types of conduct that produce that effect." On the facts of this case at least I see no great difficulty, either, in dealing in isolation with the objective aspect of the same question, namely whether the defendants' conduct was calculated or likely to produce alarm or distress. I can also reach a conclusion on whether the conduct reached the necessary level of gravity or, put another way, whether it was objectively oppressive, having regard to the subject-matter, the claimant's status, personality, and the other objective circumstances relied on.

149. But it seems to me that the question of subjective intention belongs in a different category, and is difficult to assess fairly other than in the context of the twin defences of legitimate purpose and reasonableness that are advanced in reliance on s 1(3). It seems reasonable to conclude that conduct which causes distress but might otherwise be fair and reasonable may in fact be unreasonable, if it is engaged in for an illegitimate purpose, or with malign intent. An example was given by Counsel in Thomas: "… the editor who uses his newspaper to conduct a campaign of vilification against a lover with whom he has broken off a relationship".

21. In *Gerrard & or v Eurasian Natural Resources & ors* [2020] EWHC 3241 (QB), Richard Spearman QC sitting as a deputy High Court Judge said this:

> *"37. It seems to me that these passages make clear a number of points which, in my opinion, are apparent from the wording of the PHA in any event. They include: (1) that the purpose of the PHA is to provide protection to victims of harassment in a broad range of circumstances (Lord Nicholls at [18]), including protection by way of prevention and deterrence (Lady Hale at [65]); (2) allied to point (1), that harassment is not defined in the PHA, but, in principle, extends to "[a]ll sorts of conduct" which constitutes "genuinely offensive and unacceptable behaviour" (Lady Hale at [66]); (3) allied to points (1) and (2), that harassment includes, but is not limited to, alarming or causing distress to the victim; and (4) that the mental element of the offence is made out if the perpetrator knows that the perpetrator's course of conduct amounts to harassment or if a reasonable person in possession of the same information as the perpetrator would think that it amounted to harassment, and, in particular, that "There is no requirement that harm, or even alarm or distress, be actually foreseeable, although in most cases it would be" (Lady Hale at [67])."*

22. At paragraph 49, the deputy judge said this:

> *"49. … the Court of Appeal in Levi v Bates [2016] QB 91. In that case, Briggs LJ (as he then was) explained at [27]-[31] his reasons why he considered that "it is not a requirement of the statutory tort of harassment that the claimant be the (or even a) target of the perpetrator's conduct" and "provided that it is targeted at someone, the conduct complained of need not be targeted at the claimant, if he or she is foreseeably likely to be directly alarmed or distressed by it". Ryder LJ said at [52]: "[The Judge] ought to have held that targeting is an objective concept that includes a situation where the conduct complained of is not only intended to harm a particular victim, but would also foreseeably harm another person, because of her proximity to the intended victim".*

23. The deputy judge then quoted from Simon J in *Dowson & Ors v Chief Constable of Northumbria Police* [2010] EWHC 2612 (QB):

> "*55. Simon J then considered issues relating to section 1(3)(a) of the PHA which are not relevant to the present case, before summarising what must be*

proved as a matter of law in order for a claim in harassment to succeed as follows at [paragraph142] (emphasis added):
"(1) There must be conduct which occurs on at least two occasions,
(2) which is targeted at the claimant,
(3) which is calculated in an objective sense to cause alarm or distress, and
(4) which is objectively judged to be oppressive and unacceptable.
(5) What is oppressive and unacceptable may depend on the social or working context in which the conduct occurs.
(6) A line is to be drawn between conduct which is unattractive and unreasonable, and conduct which has been described in various ways: 'torment' of the victim, 'of an order which would sustain criminal liability'."
As set out above, the limitation in Simon J's proposition (2) that the conduct must be "targeted at the claimant" was overruled by the Court of Appeal in Levi v Bates [2016] QB 91. However, this summary appears otherwise to have been approved in that case."

24. Bringing together his analysis of the case law, the deputy judge said this:

"85. In accordance with that analysis, harassment is a type of conduct. It is not defined in the PHA, but it constitutes genuinely offensive and unacceptable behaviour of an order of gravity which would sustain criminal liability, and it includes, but is not limited to, alarming or causing distress to another person. The action element of the crime (or tort) consists of carrying out that type of conduct. The mental element of the crime (or tort) is made out if the perpetrator knows that the perpetrator's course of conduct amounts to harassment, or if a reasonable person in possession of the same information as the perpetrator would think that it amounted to harassment. There is no requirement that harm, or even alarm or distress, be actually foreseeable, although in most cases it will be."

25. I have set out the legal principles above in some detail because, although there was no dispute between the parties, identified in closing submissions, as to the applicable law, there have been a number of decided cases on the 1997 Act. It is important that the parties understand the context that the court has applied to its consideration of the evidence.

Preliminary rulings

26. As mentioned above, there were a number of preliminary rulings to deal with at the outset of the trial. I gave ex tempore judgments at the time and will simply give brief details as part of this judgment.

27. The primary application was by Mr Srinivasan for an adjournment. This was intertwined with the absence of Mr Younis. An application had been made by the Ds at the PTR before Mr Beer QC, sitting as deputy High Court Judge, to adduce Mr Younis' statement, dated 24 April 2020, as hearsay. This was due to his being unable to attend the hearing in person or by any remote means. The deputy judge refused the application at that stage, indicating that he was not satisfied with evidence about Mr Younis' unavailability. Additional information was provided to me as to the efforts being made by those acting on behalf of the Ds to contact Mr Younis, who was abroad. The Ds took the view in light of the additional information that they no longer sought to rely on Mr Younis.

28. Mr Srinivasan applied for an adjournment of the trial to allow time for Mr Younis to return from abroad and attend in person. I refused the application to adjourn on the basis that the trial had already taken a long time to reach an effective listing (see comment of Newey LJ, dated 26 October 2020, when refusing permission to appeal the case management directions of Spencer J); there was no reliable indication of when Mr Younis would be back in the jurisdiction and if he would cooperate (the information pointing away from this); and his evidence was fairly peripheral. Having refused the adjournment, Mr Srinivasan applied for Mr Younis' statement to be admitted as hearsay. The Ds did not object to this unexpected application in respect of 'their' witness. I granted leave to adduce the statement as hearsay.

29. The Ds raised objection to the court considering any allegation of malice or conspiracy in relation to the assertion that Mr Yourell was re-employed/engaged some years after the event to destroy evidence. There was no proper particularisation of these allegations and indeed they amounted to little more than mere assertions. Their gravity demanded a proper evidential basis for them to be pursued and in the absence thereof I ruled that they would not be permitted lines of questioning or submission. I

deal with the inclusion of Harassment Act 9, the Health & Safety allegation, at the relevant point below.

30. A specific issue of disclosure arose. Mr Srinivasan, despite clear warnings during case management about the requirements for compliance with disclosure, had lately produced an email that he claimed to have printed off while working on the project. He had held it back in order to "expose" the failure of the Ds to make proper disclosure. In the circumstances, I ordered that overnight Mr Srinivasan should provide a short statement confirming that there was nothing further to disclose or alternatively furnishing any other documents that he had wilfully withheld. Mr Srinivasan duly produced a statement on 1 December 2020 averring to there being no outstanding disclosure.

Dramatis personae

31. Below is a list of the central, relevant people in the Claim. Other people named in the judgment are introduced within the body thereof.

Name	*Designation*	*Involvement at trial*
Mr Srinivasan	Claimant & D1 contractor	Written & oral evidence
Mrs Srinivasan	Claimant's wife	Written & oral evidence
Mr Yourell	D2 contractor	Written & oral evidence
Mr Patel	D1 employee	Written & oral evidence
Mr Younis	D1 contractor	Written evidence – admitted as hearsay on the application of the Claimant
Mr Askew	D1 employee	Written & oral evidence
Mr Voas	D1 contractor	No direct evidence
Mr Bridge	D2 employee	No direct evidence

References to the Trial Bundle appear as TBXXX.

32. For the trial, Mr Srinivasan had compiled a spreadsheet setting out nine alleged acts of harassment, with details of the evidence relied on in support thereof. It is necessary for me to consider the evidence in respect of each allegation in turn, to make relevant findings of fact and then to apply the legal principles set out above to

those findings, considering the acts as a whole. In doing so, I make clear that the burden of proof rests on Mr Srinivasan, save for the affirmative defence in s1(3)(c) where the burden shifts to the Ds. The other affirmative defences in s1(3) are not applicable. The standard of proof throughout is the balance of probabilities.

Harassment act 1

Reduction of work to Mr Srinivasan and simultaneous efforts towards Mr Srinivasan's replacement [Nov 2011 – Feb 2012]

33. It is Mr Srinivasan's case that his server designs were the "most-optimal and most-elegant", but that sub-optimal SAP server designs were being adopted by D2. He raised his concerns with Mr Bridge, an action which Mr Srinivasan states led to his being targeted by Mr Yourell and Mr Voas. Mr Srinivasan asserts that tension grew between himself and Mr Voas due to their competing designs, with Mr Yourell favouring Mr Voas, due to their knowing each other from a previous working relationship.

34. A number of specific acts asserted to be harassment under this heading are time-barred, however, Mr Srinivasan relies on documents disclosed in late 2020 to support his allegation. Specifically, he relies on notes of the outcome of an 'Away Day' [the Away Day] of senior D2 managers held on 9 November 2011. Those in attendance did not include Mr Yourell or Mr Voas, who were D2 and D1 contractors, respectively. It is possible that Mr Bridge was present, judging by the distribution list of the finalised notes of outcome from the Away Day, attached to an email dated 21 November 2011.

35. In the notes, which refer to a considerable number of people working on various aspects of the SAP projects, there is a reference to Mr Srinivasan having "made a major error and covered it up". There is no further detail as to what this is referring, although Mr Srinivasan believes it must refer to a test data transfer failure on the pre-prod server, which occurred in October 2011. Mr Srinivasan strongly refutes any suggestion that he made a mistake of any degree, major or otherwise, or that he covered anything up. An earlier email enclosing the first version of the Away Day notes, dated 11 November 2011, from Garrett Beggan notes that there were 22 people

flagged as 'red' and five flagged as 'yellow'. Mr Srinivasan asserts that his name was flagged red to indicate that he would exit from his contract.

36. In their initial statements, both Mr Yourell and Mr Patel had refuted the suggestion that there was a plan to get rid of Mr Srinivasan. In addendum statements they both accepted, having been shown the relevant emails that such a decision had been made at the Away Day, at least insofar as attaching a 'red flag' to Mr Srinivasan was concerned. They explained that when first asked about such matters it was some years after the event and they had not had available to them any documents to refresh their memories. Neither of them was directly involved in the decision, nor would they have been as Mr Patel worked for D1 and Mr Yourell was a D2 contractor and was not a senior manager and the Away Day was for D2 senior managers. Indeed, in the final set of notes from the Away Day, Mr Patel himself is the subject of comment, albeit positive.

37. Mr Yourell said in evidence that he was not Mr Srinivasan's line manager, although he was a project manager and would sometimes pass on work requirements. Mr Patel, he said, headed the SAP technical architecture team of which Mr Srinivasan was part and the latter reported to Mr Patel. Mr Yourell denied the interpretation put by Mr Srinivasan on his removal from the SAP Basis team support group, explaining that his being added in the first place had been an error. Mr Srinivasan, being an SAP technical architect, created designs for the instruction of the Basis team, who were essentially administrators. Mr Yourell was asked if he recalled Mr Srinivasan raising serious concerns in around July 2011 about server designs which were not optimal, in his view. Mr Yourell did recall concerns being raised, though not all the detail, save by reference to some of the documentation available. He noted that Mr Srinivasan had a strong opinion about the server design, but there was more than one way of achieving it and, from the notes, it seemed that Mr Srinivasan's proposal was not the one adopted. Mr Yourell agreed that the documents showed that Mr Srinivasan complained about the decision to Mr Bridge, a more senior manager. When asked if Mr Srinivasan had had the best interests of the project at heart, Mr Yourell agreed this was the case. It was Mr Voas' design that was pursued and Mr Yourell agreed that Mr Srinivasan worked on what he would have seen as a sub-optimal design. Mr

Yourell did not agree that Mr Voas "imposed" his design, nor that Mr Srinivasan was viewed as a "problem".

38. It was put to Mr Yourell that Mr Voas came to prominence as early as October 2011, relying on an email [TB 286] with the subject line "FIM to SAP interface, initial solution and future strategy". In this email, Mr Patel indicated to a co-worker, Mr Court, that Mr Voas would be leading this activity going forward. Mr Yourell said this was wrong. The interface referenced in the email was not an SAP technical design. Mr Yourell denied that there was any reduction in Mr Srinivasan's workload, to his recollection. He was unsure why there would be such a reduction, certainly at a point when Mr Srinivasan was the only person with the specific skill set in post.

39. Mr Yourell had not been part of the Away Day as that was for D2's senior managers only. He could not recall Mr Srinivasan making a "major error" and covering it up and he did not know to what this referred. Mr Yourell had been asked to recruit a Basis architect. By 1 December 2011, Mr Yourell acknowledged that a decision had been made to replace Mr Srinivasan. Mr Younis was ultimately recruited, but at the time there was a need for two Basis architects, one for TURBO, being Mr Srinivasan, and one for eSMART, being Mr Younis.

40. It was wrong to suggest that work was again being reduced from Mr Srinivasan and given to a Mr Shah, said Mr Yourell. Mr Shah was an administrator in the Basis team; he was not being given technical design work to do [TB313]. Mr Yourell accepted that he had obviously been given an action plan to replace Mr Srinivasan, the plan must have come from Mr Bridge and he was keeping Mr Bridge updated with progress about recruitment. It was also quite wrong to suggest that Mr Srinivasan was being marginalised [TB386] based on an email referring to Mr Younis as the "single point of contact", said to refer to both elements of the project. This email was clearly speaking of GRC, which was a single component of SAP used in both projects. Mr Yourell denied that there was any involvement between himself and Mr Voas to cause harassment or victimisation to Mr Srinivasan. A decision had been made at a D2 senior level to replace him that was nothing to do with either Mr Yourell or Mr Voas. Matters just came to a head in the meeting on 22 February 2012.

41. Mr Patel was involved in setting work requirements for Mr Srinivasan, with Mr Yourell overseeing. Mr Yourell did not monitor Mr Srinivasan's work; he was a representative of the client (D2) and had managerial responsibility for the work that D1 was delivering to D2. Mr Yourell did not approve holidays, work or pay matters; he was not Mr Srinivasan's line manager as was being suggested.

42. Asked whether Mr Srinivasan had made complaints over time about things that had happened, Mr Patel replied that it was not like complaints as such, rather just office discussions involving arguments and counter-arguments. Mr Srinivasan's concern about the server design was, in Mr Patel's words, "not an issue, but a difference of opinion about design". He added that the scenario involved multiple options and multiple ways of configuration. Mr Srinivasan had an opinion, Mr Voas had another opinion; there were many parties involved and many opinions. It was necessary to take views from all stakeholders and seek validation from IBM and SAP. Though Mr Srinivasan considered the adopted design to be sub-optimal, Mr Patel said that there "nothing right or wrong in any of these things".

43. Mr Patel refuted suggestions of Mr Srinivasan being marginalised. If there had been any reduction in workload, then Mr Patel said he would have been aware. One email might suggest that a particular task was being given to someone else, meanwhile there would be fifty other pieces of work for Mr Srinivasan to undertake. Mr Patel had only recently become aware of the 'red flag' part of the Away Day documentation. He had had no knowledge or involvement. He was aware that people were concerned or complaining about Mr Srinivasan's behaviour and lack of collaboration and Mr Patel tried to tell him not to argue too much, as one colleague to another. He felt they had quite a good working relationship and he was trying to protect Mr Srinivasan, who he considered to be "quite an asset", pushing back against those who were not happy with his way of working.

44. It was also Mr Patel's view that there was a need for two separate architects for each of TURBO and eSMART and that was his understanding at the time about the recruitment of Mr Younis. He was not aware at the time of a settled plan to replace Mr Srinivasan. Mr Patel's stand all along was that eSMART should be treated as a separate project with a separate SAP architect. He also confirmed that the email

about GRC was about a third system and seen in that context did not evidence any marginalisation of Mr Srinivasan. Asked if Mr Srinivasan ever complained about harassment, Mr Patel said that he mentioned arguments and about repeated requests to share knowledge, but not harassment. This was a normal office environment where a request was made and then followed up and there would be some pressure, which is the way that an office environment works, but there was no harassment. He did say that if he got a complaint, he would be on Mr Srinivasan's side.

Discussion of Harassment Act 1

45. Mr Srinivasan was contracted for a fixed term of one year. At the date of the senior managers' Away Day he was roughly speaking halfway through his contractual term. I am unable to accept Mr Srinivasan's proposition that the red flag meant that his contract would necessarily be terminated early. Had this been the case, then the Ds would have been at liberty at any time to give 28 days' notice in accordance with the contract. The decision to terminate early was not in fact taken until 22 February 2012 and then only as a result of matters coming to a head in the meeting the same day. Though Mr Srinivasan would argue that notice would not be given until Mr Younis (or another suitable candidate) was available to take over his position, he simultaneously argues that his workload was being reduced and tasks were being reassigned to others, which suggests that his role could have been adequately covered if his contract had been terminated early.

46. It is clear to me that Mr Patel, recognising Mr Srinivasan's prodigious talent as an SAP architect, was seeking to protect him from growing concerns about his behaviour in the workplace. Colloquially speaking, Mr Patel was very much on Mr Srinivasan's side. Mr Patel's evidence on its own undermines Mr Srinivasan's assertions under Harassment Act 1 that his workload was reduced and that he was marginalised.

47. In my judgment, Mr Srinivasan's view of everything that happened at D2, from the point at which a disagreement arose over the optimum server design onwards, was coloured by his perception that Mr Yourell, Mr Bridge and Mr Voas were part of a cabal intent on squeezing him out of his job. The evidence, viewed objectively, simply does not support this perception. It is a fact that a review of performance by senior managers engaged on the project had resulted in a red flag. No steps were

taken to give Mr Srinivasan contractual notice at this stage and it is possible that the contract would have been allowed to reach its natural conclusion or close to it, had it not been overtaken by events. Even if it had been terminated before the full twelve months had elapsed, that would simply have been in accordance with the contractual terms. As was acknowledged in evidence, contractors must live with the inherent lack of security of tenure when contracts include a break clause. It was open to the Ds to terminate the contract at any time without the need to establish fault or other pejorative finding against the contractor. It is not this court's concern as to whether the decision taken at the Away Day in respect of Mr Srinivasan was justified or not. Although Mr Srinivasan pleads the decision as an act of harassment, there is no evidence whatsoever to support this assertion. What I can conclude is that it was a decision open to senior managers when viewed purely in contractual terms. I am fortified in my conclusions about the decision by the inescapable fact that twenty-one other employees/contractors were flagged in the same way. These were decisions taken at a high level upon information available to senior managers. The decision in respect of Mr Srinivasan is incapable of amounting to harassment.

48. Once that high-level decision had been taken, it is understandable that others would be tasked with the process of identifying a replacement. Mr Srinivasan asserts that his seeing a draft job advertisement in mid-November 2011 on Mr Yourell's desk is further evidence of the latter's harassment of him. However, the email correspondence [TB309, dated 1 December 2011] makes clear that Mr Yourell was chasing Mr Williams for progress on identifying a candidate for the Basis Architect position (which was a position parallel to Mr Srinivasan's but on the eSMART project) as well as "find a suitable replacement for Ram Srinivasan as a result of the program mgmt *[sic]* team away day". Mr Yourell adds, "I'm not sure what contractual implications this would have …". Mr Patel, referred to in this email, was copied in. A further email [TB310, dated 8 December 2011] from Mr Yourell to Mr Patel asks about "news on contacting Liakat", a reference to Mr Younis, who was at this point a potential candidate for the eSMART Basis Architect post. This email also contains a record of a messaging exchange between Mr Yourell and Mr Patel on 5 December 2011 in these terms (exactly as recorded):

> "**me** [Mr Yourell]: Mark Adams from eSmart has just been to see me, he is going to request a 2nd client in QA once they have completed the config. probably thursday
> 12:35 **Sameer** [Patel]: thats fine
> we can sort it out on priority
> 1 day lead time
> **me**: He has completed a tech change and got Andy Guyan to sign so I'll give it to Kashyap [Shah] to review.
> 12:36 **Sameer**: Please give it to Ram.. he need to finalise client number as per schema
> **me**: Will do."

49. The relevance of this exchange is that although Mr Yourell is discussing an aspect of the eSMART project, upon instruction by Mr Patel to refer to Mr Srinivasan, he instantly accepts. It is actually small details like this contained in the documents that provide a more reliable window into what was going on at the time. This exchange also undermines Mr Srinivasan's assertion that Mr Yourell began to assign his work to Mr Shah due to efforts to replace him.

50. A further example in the evidence of Mr Yourell's approach to Mr Srinivasan is found at TB294-296. This an email trail dated 31 October 2011, shortly before the Away Day but some months after the concerns and criticisms raised by Mr Srinivasan about Mr Voas' designs. In it, Mr Yourell requests approval for two full days of overtime for Mr Srinivasan, in these terms:

> *"As discussed Ram worked the weekend of 21/10/11 & 22/10/11 to provide support and problem resolution for the HA testing exercise we carried out. He worked very long hours on both days (~12) and will be booking a day for each of the days worked.*
> *Apologies for not identifying it in advance. Please provide confirmation that Ram can go ahead and book this work in his time sheet for overtime purposes (standard day rates apply).*

Again, in my judgment, the tone and tenor of this email reflects a normal, professional working relationship from Mr Yourell's point of view.

50. In his Harassment Act schedule Mr Srinivasan cross-referenced a number of TB pages in support of Harassment Act 1. I have annotated them as follows:

TB313-314 [9 December] – Although this is an email headed as coming from Mr Shah, it is actually correspondence between Mr Srinivasan and someone called Mayur (then sent on from him to Mr Yourell). Mayur has an IBM extension to his email;

TB322-339 [15 December] – Pages 322 to 326 relate to a task which Mr Shah specifically notes to have been assigned to him by Mr Patel. Mr Srinivasan's displeasure with the way in which the task was progressed is clear from his last comment on 322, "I do not want any further explanations to my email";

TB327-328 [15 December] – These emails begin with one from Mayur (IBM) to Mr Srinivasan, who indicates he cannot check what is being asked of him and requests that others be approached. Mr Yourell indicates that Mr Shah was putting together a "build issue", noting that changes may be needed "in line with Ram's build specification document";

TB329 [14 December] – An innocuous enquiry from Mr Srinivasan to Mr Shah and response;

TB330-331 [15 December] – Evidence of Mr Shah communicating with IBM, with Mr Srinivasan copied in;

TB332-335 [16-19 December] – Mr Yourell asks Mr Shah to provide configuration notes to Mr Srinivasan, who has raised concerns about being kept abreast of work done;

TB336-338 [15-19 December] – Email correspondence in respect of eSMART from Mr Srinivasan and Mr Shah to IBM and response addressed to both;

T339 [19 December] – Email Mr Voas to Mr Shah, Mr Srinivasan copied in;

T345-349 [20 December] – Email chain beginning with Mr Shah to IBM about eSMART, Mr Srinivasan copied in, followed by emails clearly indicating Mr Srinivasan's direct involvement in the work and reference to Mr Yourell conducting a review with Mr Srinivasan and the latter's emails of clarification to IBM;

T350-352 [20 December] – Email response from IBM, asking for Mr Yourell and Mr Srinivasan to confirm agreement to proposed Build Sheet amendment;

T354-372 [21-23 December] – Email technical correspondence IBM with Mr Yourell/Mr Shah/Mr Srinivasan; Mr Srinivasan regularly copied in and in due course his email brings resolution to an eSMART-related issue;

T373-375 [6-9 January 2012] – Primarily involves correspondence between Mr Srinivasan and Mr Voas that suggest an ostensibly positive working relationship and considerable involvement of Mr Srinivasan in the work being discussed;
T380-385 [20-23 January 2012] – In common with many earlier emails this trail includes an 'Issue Statement' generated by Mr Shah, but with Mr Srinivasan copied into the correspondence and his contribution to the ongoing work still evident.

51. I have purposely analysed all the documents in this tranche of evidence relied on by Mr Srinivasan for two reasons. First, to reassure him that I have paid careful attention to the evidence in this case and secondly to illustrate the impact of either his subjective perception and/or self-serving hindsight on his case. There is nothing in the documents above that could justify the conclusion contended for by Mr Srinivasan regarding the diversion of work and his being side-lined.

52. The next point relied on by Mr Srinivasan is an email from Mr Yourell to Messrs Voas and Bridge about the appointment of Mr Younis as "*the new eSmart architect starting in mid January [sic]*". The email goes on to note that, "*This resource [Mr Younis] will ultimately become both eSmart and Turbo architect replacing Ram once we are in a comfortable position in terms of both workload and handover knowledge etc*.". Mr Patel had been copied into earlier emails with Mr Williams, D1 Human Resources, who confirmed a tentative start date of 16 January.

53. As regards Mr Yourell's email, it contains no more than a statement of fact. It had been decided that there should be a second SAP architect engaged to deal with eSMART, whilst Mr Srinivasan retained responsibility for TURBO. Senior management had also decided that Mr Srinivasan's involvement would at some point come to an end, without specifying when. Even if this were a communication that could foreseeably come to Mr Srinivasan's attention, which I seriously doubt, there is objectively nothing in it that amounts to harassment.

54. In mid-January 2012, Mr Younis became part of the project as anticipated. At that stage, responsibility for the SAP elements of eSMART and TURBO were split as Mr Patel considered necessary. Recruiting Mr Younis at the instigation of managers above Mr Yourell does not objectively amount to an act of harassment, when it was

simply a legitimate commercial decision. The email at TB386 does refer to Mr Younis as the single point of contact for "*all basis related tasks on TURBO and eSMART landscape*". Mr Srinivasan hailed this as a clear act of harassment by side-lining him. However, it originates from Mr Patel, against whom Mr Srinivasan alleged no culpability for harassment and, more importantly, as is plain from the email and expounded by Mr Patel in his evidence (and by Mr Yourell in his), the extent of the instruction is limited to the specific GRC component. When this was put to Mr Srinivasan, he refused to accept that the email was anything other than a direct attack on his workload and job. This is a further illustration of the way in which Mr Srinivasan's longstanding, fixed view of the case prevents him from acknowledging any interpretation of evidence that does not match his own.

55. Both Mr Yourell and Mr Patel provided supplemental statements to correct their evidence in their main statements that there was no plan to oust Mr Srinivasan. Neither of them was in any way involved in the decision and neither had available to them the documentary evidence to consider before completing their statements. Though Mr Srinivasan may, understandably, have thought of little else but his experiences during the contract with D1 for D2, other witnesses cannot be expected to retain a full and accurate recollection of events, when the first time they are asked to recall them is a number of years later. There is no evidential significance to the fact that Mr Yourell and Mr Patel needed to correct their original evidence through supplementary statements.

Conclusion on Harassment Act 1

56. To answer Warby J's questions under this head of allegation, there was a course of conduct to replace Mr Srinivasan, but the actions did not amount to harassment (conduct that was oppressive and unacceptable). There was no involvement of Mr Yourell or Mr Voas in the decision, which was taken by D2's senior management team following a performance review. There is no reference in the review to behaviour or related concerns nor to differences of professional opinion. The mistake referred to as having been made by Mr Srinivasan remains unclear, but he has not

proved any conduct that amounts to harassment. The decision would not be considered as harassment by a reasonable person in possession of the same facts.

57. As regards a reduction of work and being marginalised by Mr Yourell, I do not find this part of the allegation proved. Mr Patel, whose evidence was objective, reliable and compelling throughout, and in fact supportive of Mr Srinivasan whenever reasonably possible, was clear that if there had been such a reduction, he would have been aware of it and he was not. The emails relied upon by Mr Srinivasan retrospectively do not support his assertions when subjected to careful analysis and some were put to witnesses with a gloss on them from Mr Srinivasan, which was readily disproved. For this aspect of alleged harassment I do not even find that there was the course of conduct contended for by Mr Srinivasan. He was not marginalised and his workload was not reduced. I am fortified in my conclusions about the unreliability of his evidence on this point by his refusal to accept that which was plain on the face of some of the documents, because to do so would not advance his claim or because he was simply unable to be objective.

Harassment Act 2

Refusal of Mr Srinivasan's work from home requests

58. Under this heading, Mr Srinivasan alleges that Mr Yourell deliberately refused work from home (WFH) requests as an act of harassment. Mr Srinivasan relied on his contract with D1 which included a provision granting him sole discretion to decide where and when his contracted consultancy services would be carried out. Mr Srinivasan explained that he was required to seek permission from Mr Yourell whenever he wished to work at home and that Mr Yourell, in furtherance of his harassment of Mr Srinivasan, unreasonably refused, in the knowledge of the detrimental impact such refusals would have on him. Mr Srinivasan contended that the documents at TB319-321, all relating, according to him, to a "request for permission" to WFH on Wednesday 14 and Thursday 15 December were supportive of his version of the process involved. He noted that he had had to remind Mr Yourell about the request, which had not initially been responded to.

59. Mr Yourell's evidence about WFH requests was that he was not Mr Srinivasan's line manager and did not have access to his contract. He had not instructed Mr Srinivasan

to seek permission to WFH. Mr Yourell explained that there were about 400 people in the team and the wider culture of the team was that they were largely onsite, with lots of meetings generally taking place in the office. Home-based working was available when the need arose. The email 'invitations' in the evidence were not the process for requesting WFH permission, but a way of notifying Mr Yourell in his diary that that was where Mr Srinivasan would be. It was good for him to know which members of the team were onsite. Accepting such an 'invitation' email did not equate to granting permission. It was suggested that Mr Yourell refused WFH requests on some 25 occasions in furtherance of his harassment of Mr Srinivasan. Mr Yourell responded that this was incorrect as permission did not require to be sought and there was no harassment.

60. Mr Patel also gave evidence on this point. He stated that the use of the meeting 'invitation' was just more or less for information, not for seeking permission. He did not think Mr Yourell was required to give authorisation. There was a large team and the general expectation was to work from the office. Working from home might be one or two days per week but the person would inform close colleagues. The emails [TB319-321] were not a system for seeking permission, but a way of telling people that that was what was happening. WFH was always allowed. The suggestion that Mr Yourell was harassing Mr Srinivasan by refusing WFH was incorrect as WFH was within Mr Patel's jurisdiction.

Discussion on Harassment Act 2

61. The contract contained four schedules [TB42]. Schedule 4 with the sub-title of Location and Equipment contained the following provisions (reproduced exactly as drafted):

> *"Primary locations will be the suppliers own premises or at Jaguar Land Rover, Banbury Road, Gaydon, Warwick, CV35 ORR or Jaguar Land Rover, Abbey Road, Whitley, Coventry, CV3 4LF, or TATA Technologies office in Coventry The supplier's consultants may be required to attend meetings at other locations for time to time whereupon expenses will be payable to the supplier.*
>
> *The Supplier shall have sole discretion for deciding where and when the works specified in Schedule 1 of the agreement should be carried out."*

62. I reject the interpretation put on the documents [TB319-321] by Mr Srinivasan. I prefer the evidence of Mr Patel and Mr Yourell that the Google Calendar function was used to keep a record of when Mr Srinivasan was WFH so that colleagues and managers would know where he could be contacted and not as a mechanism to request permission. The reminder was automatically generated as the earlier notification had not been 'accepted'. Mr Patel said he was usually out of the country for most of each December, which may explain why the notification went to Mr Yourell on the occasion in question. Mr Patel's clear evidence, however, was that he, and not Mr Yourell, was Mr Srinivasan's line manager and WFH issues were in his jurisdiction. If, as Mr Srinivasan suggested in evidence, there was never an occasion on which his physical presence at D2's premises was required, it is surprising that Schedule 4 designated two of D2's sites and D1's Coventry offices as "primary locations". It is also clear that Mr Srinivasan did work onsite on many occasions and not because WFH had been refused. Mr Srinivasan's case under this head gave the impression of being constructed in retrospect when the documents relied on were disclosed, coupled with Mr Srinivasan's singular perception of events during the relevant period. Once again, I prefer the measured, objective and reliable evidence of Mr Patel, which on this point is consonant with the evidence of Mr Yourell.

Conclusions on Harassment Act 2

63. Mr Srinivasan's assertions under this heading are not supported by the evidence and I find that there was no course of conduct of rejecting WFH requests by Mr Yourell.

Harassment Act 3

Persistent training requests from Mr Yourell

64. Under this heading, Mr Srinivasan alleges that Mr Yourell harassed him in relation to providing training to Mr Younis, following his joining the project team. The provision by Mr Srinivasan of training was specifically excluded under Schedule 1 of his contract and Mr Srinivasan questioned rhetorically about who had provided training to him when he joined in May 2011. He maintained that there was nothing that he needed to inform Mr Younis about as the SAP Basis architecture was of a generic type and Mr Younis would be expected already to have all the necessary knowledge. In addition, all technical documents were available in D2's document

repository. The demands to train Mr Younis were therefore unreasonable and oppressive. However, due to Mr Srinivasan's concern about his job, he explained that in the end his did provide training. During cross-examination Mr Srinivasan conceded that the email correspondence indicated that he provided copies of blank templates and not actual training.

65. Mr Yourell explained that Mr Younis had specifically been brought in to act as eSMART SAP Basis architect, regardless of the longer-term plan to replace Mr Srinivasan. It was important for there to be overall consistency and interface between the TURBO and eSMART systems. It was not unreasonable to ask Mr Srinivasan to share his established knowledge of the TURBO project and his design decisions. The Microsoft Sharepoint repository did hold signed-off documents, but SAP systems are very complex with lots of different options. It would be perfectly natural for an SAP architect to read the documents and have a detailed set of questions when tasked with performing a similar role on the eSMART project, which was totally separate from TURBO but had to communicate with it. It therefore made sense to keep designs as consistent as possible, leading the eSMART architect to require knowledge about TURBO design principles, for example.

66. The templates provided by Mr Srinivasan to Mr Younis were simply blank documents. Mr Yourell denied that the request to share knowledge was part of his plan to terminate Mr Srinivasan's contract and/or that it was harassment. To fulfil his role as SAP architect for eSMART, Mr Younis needed an understanding from Mr Srinivasan about design decisions, for example, the numbering strategy for clients. Any follow-up or monitoring of progress with the sharing of knowledge was simply to encourage Mr Srinivasan to provide Mr Younis with that which he needed for his role in respect of eSMART.

67. Mr Patel disagreed with the suggestion that Mr Srinivasan was being asked to train Mr Younis; he was being asked to share his knowledge of the project work thus far. He also explained that, contrary to Mr Srinivasan's assertions, the documents in the repository alone would not provide all necessary information for Mr Younis. The knowledge transfer request would have related to Mr Srinivasan's designs on the TURBO project, which standards had been applied, for example, so that Mr Younis

would not be starting from scratch but would take Mr Srinivasan's design decisions into account. It was to bring Mr Younis "up to speed" by sharing information, it was not training. This was certainly not harassment but just normal practice, given Mr Srinivasan's involvement in the project since May 2011 and Mr Younis being newly appointed.

68. In Mr Younis' statement, admitted as hearsay, he sensed tension with Mr Srinivasan as soon as he had been appointed. The Ds' expectation was that the two of them would "sound off one another, discussing matters and ideally working in tandem. … We were to collaborate, bounce technical suggestions off one another which allow a peer review and helpful discussion. … I was therefore required to understand what [Mr Srinivasan] had already done in the [eSMART] project and he was to perform a "Knowledge handover"." Mr Younis described Mr Srinivasan as being very defensive from the outset, appearing to believe that Mr Younis was there to take things away from him and he was unwilling to work with him. Mr Srinivasan indicated no interest in an exchange of opinions, hearing the opinions of others or answering questions about his own work. Mr Younis approached the difficulties at first informally, then formally in writing, moving to copying in Mr Patel and Mr Yourell when unsuccessful. Even then, Mr Younis notes, Mr Srinivasan refused to provide basic key information about project work done and testing evidence. Mr Younis provides a resume of the meeting on 22 February 2012 in line with the evidence of Mr Yourell. He described Mr Srinivasan being angry and showing him hostility as well as to others in the meeting. Mr Younis rejected the suggestion that Mr Srinivasan had shared knowledge with him. He said any knowledge shared was limited and provided grudgingly.

Discussion of Harassment Act 3

69. At the point at which Mr Younis started work, Mr Srinivasan had a fixed view that the new arrival was swiftly to replace him. His characterisation of the requests as being for "training" is wholly unsupported by the evidence. Once again, the reliable and objective evidence of Mr Patel – consistent with that of Mr Yourell – satisfies me that Mr Srinivasan did not provide any training under sufferance, as he suggested, out of fear of losing his job. Rather, he did no more than forward blank templates and he

dug his heels in, so to speak, calculating that his refusal to share his knowledge would at least delay his being replaced.

70. Mr Yourell's and Mr Younis' requests of Mr Srinivasan to work collaboratively were entirely reasonable in the circumstances. Mr Younis was legitimately appointed, in the first instance, as the SAP Basis architect for eSMART and I again accept the evidence of Mr Patel (consistent with that of Mr Yourell) about the importance of the two projects dovetailing from an SAP standpoint. This required teamwork, assisting Mr Younis to be fully au fait with Mr Srinivasan's design decisions. Whilst it might be understandable that Mr Srinivasan felt as if he needed to delay any knowledge sharing to maintain his post, this was notably not the case that he was advancing on this point at trial. He sought to portray the reasonable knowledge sharing requests as being specifically for training, because this was explicitly excluded under his contract and the repeated requests would therefore be more easily proved to amount to unreasonable, and in Mr Srinivasan's view oppressive, conduct.

Conclusions on Harassment Act 3

71. In my judgment, the knowledge sharing requests, for this is what they amounted to, were legitimate and reasonable. Mr Srinivasan's refusal to comply and his increasingly hostile attitude generated the renewal of requests and the monitoring of the progress of such requests by Mr Yourell. There was self-evidently a course of conduct. However, at no stage, did the requests or their follow-up amount to unacceptable or oppressive conduct.

72. My conclusion as to the reasonable and acceptable nature of the conduct of Mr Yourell applies throughout under this head of claim. Given the detrimental impact on the eSMART project of Mr Srinivasan's continued refusal to work collaboratively and to comply with reasonable management requests, it is no surprise that Mr Yourell felt compelled to bring the situation to the attention of Mr Bridge. The concern about Mr Srinivasan's unwillingness to share project knowledge became even more acute given his conduct in the meeting on 22 February 2012.

Harassment Act 4

Mr Yourell unduly pressured Mr Srinivasan to quit the contract

73. This act of harassment is very specific and involves a single act, albeit within the context of the wider claim of harassment. The approach must be to determine whether this act has been proved to have occurred as Mr Srinivasan asserts and, if so, then to consider it within the total findings of fact about conduct to assess whether it amounts to harassment.

74. Mr Srinivasan alleges that Mr Yourell approached his desk at the end of a day in February 2012 and 'threatened', to use Mr Srinivasan's word, him to quit his contract. In oral evidence about this Mr Srinivasan said that Mr Yourell's words to him included the phrase "or face the consequences". It was put to him that he had not mentioned this phraseology at any earlier stage, but Mr Srinivasan said that it was a point he remembered. There was pressure to file all the papers in advance of the trial, which is how it came to be omitted. Mrs Srinivasan also confirmed that she recalled her husband telling her about the incident including use of the phrase "or face the consequences". Mr Srinivasan also relied on various assertions and some emails disclosed in advance of the trial.

74. Mr Yourell completely denied this allegation, noting that he was not Mr Srinivasan's line manager. He would not have spoken to an individual D1 resource, when he, Mr Yourell, was working for D2. Where there were performance issues to be addressed, he would leave them to D1 to manage.

Discussion of Harassment Act 4

75. Mr Yourell knew that the decision to terminate Mr Srinivasan's contract had already been made many weeks earlier. It is difficult to understand what possible advantage there was to Mr Yourell or indeed to anyone else involved in D1 or D2 in his making the threat asserted by Mr Srinivasan. Mr Yourell did not know that Mr Srinivasan had seen the advertisement for the eSMART post and made the assumption that his post was at risk. Mr Srinivasan had by this point become firmly entrenched in his concern about losing his job, which translated into an ever more entrenched negative attitude towards anything that he perceived to be, or to be capable of being, a step towards the ending of his contract. His world-view at this point was that Messrs Yourell and Voas were plotting against him, possibly involving others higher up in management.

76. Both Mr Srinivasan and his wife, for the first time in the proceedings, only in their oral evidence, were clear that "or face the consequences" was included in the alleged threat from Mr Yourell.

77. I must include at this point some observations about Mrs Srinivasan's evidence. She was of course not a direct witness to anything relied upon by her husband in support of his claim. That Mr Srinivasan would have unburdened himself on his wife in the terms she described would be entirely consistent with Mr Srinivasan's perception of his experiences. It does not particularly assist me in making findings of fact. Mrs Srinivasan acknowledged that the limitations of her evidence were such that she could only repeat, or try to repeat given the passage of time, things that her husband had said to her at the time about the goings-on while working on D2's project. She will have 'lived' this High Court claim alongside her husband over the last few years (as well as other litigation referred to in evidence) and though I do not doubt that she was merely trying to support him and assist the court as best she could, in my judgment her evidence adds little of evidential value for the reasons I have identified.

78. As far as Mr Yourell saying "or face the consequences" is concerned I find it difficult to accept that such a stark and intrinsic element of the alleged threat should have been overlooked until so late in the proceedings. Mr Srinivasan has been prolific in producing documents during the course of the proceedings and he personally drafted both his and his wife's statements. There was no commercial advantage to the Ds in Mr Srinivasan 'quitting' the contract as he would have had to have given the same 28 days' notice as the Ds. Though in theory Mr Srinivasan could have left the project without giving notice – and I assume that this is what he means by 'quit' the contract – I conclude that this is an unlikely outcome to be sought by Mr Yourell or the Ds. Mr Yourell had been pressing Mr Srinivasan to work collegiately with Mr Younis. The oral evidence and contemporary documentary evidence shows that those acting on the Ds' behalf considered Mr Srinivasan to hold important project-related technical information of value to them. Were he forced out at that stage under duress such an outcome would have been self-defeating.

Conclusion on Harassment Act 4

79. Though it is entirely feasible that Mr Yourell may have spoken to Mr Srinivasan around this time about the ongoing saga of 'knowledge transfer', I am not satisfied on the balance of probabilities that there was any threat made of the type alleged by Mr Srinivasan.

Introduction to Harassment Acts 5 to 7

80. It is self-evident that Harassment Act 5 is intrinsically connected with Acts 6 and 7. I have dealt with the evidence and certain observations under separate headings, however, my conclusions on this conglomerate allegation are set out at paragraphs 96 to 98 below at the end of the section on Harassment Act 7.

Harassment Act 5

Attack on integrity and terming Mr Srinivasan as a risk

81. Mr Srinivasan relies on emails from Mr Bridge that requested termination of his contract with immediate effect as well as referring to Mr Srinivasan as a 'risk'. This stance on the part of Mr Bridge was the result of a project team meeting attended by Mr Srinivasan on 22 February 2012. The Ds say that at this meeting the issue of 'knowledge transfer' was raised. In response, Mr Srinivasan is said to have asserted, words to the effect, that the information was his by way of intellectual proprietary right. It was this stance, say the Ds, that caused urgent consideration of Mr Srinivasan's position and the decision to terminate with immediate effect, though it must be noted that this was in accordance with the contract by the giving of 28 days' notice, though not requiring him to work the notice period. His increasingly oppositional stance is what caused the Ds to consider him a risk to the project.

82. In his evidence, Mr Askew spoke of the 'due diligence' he undertook before meeting with Mr Srinivasan to inform him of the termination of his contract. The concern about jeopardy to the security of the site arose from his access to IT systems and continued physical access to the site. A person with a potential grievance would definitely pose a risk, applying such criteria, Mr Askew said. Mr Srinivasan maintained very strongly that he was never any risk whatsoever to the project, that he only had the best interests of the project at heart and that he made no comment at any stage about intellectual property rights. He denied becoming angry in any team meeting, taking the opportunity to reiterate that all he had done was to "bring to very

optimal state" the server designs. At one point in his evidence, Mr Srinivasan suggested that no one had done more for D2's project than he.

Discussion on Harassment Act 5

83. Mr Srinivasan only seems able to view the issue of risk from the perspective of his own professional competence. That was never in question. The risk about which the Ds were concerned was related to what Mr Srinivasan might do in response to being told that his contract was being terminated. Given his increasingly oppositional behaviour and attitude, there was concern, which I find to have been legitimate and reasonable, that Mr Srinivasan posed a risk to the project. This does not necessarily need to be characterised as his deliberately making a conscious decision to sabotage anything, but it was reasonable and justified for the Ds to believe that Mr Srinivasan's volatility was such that in the heat of the moment he would act in a way that would be contrary to the Ds' interests.

Harassment Act 6

Asking Mr Srinivasan to leave the worksite immediately with threat of eviction by police in default

84. Allied to Harassment Act 5, Mr Srinivasan alleges that the process by which he was informed of the termination of his contract and the Ds' requirement that he leave the site immediately was a further act of harassment. He asserts that no reasons were given by Mr Askew at the time of his being informed, nor any written notice. The threat of involvement of the police, according to Mr Srinivasan, and the escorting off site were all aspects of this act of harassment directed towards him. He stated that he was very alarmed and distressed and the Ds do not dispute this in general, although there is a difference of recollection as to the exact details of what transpired once Mr Askew had informed Mr Srinivasan. Mr Srinivasan also states that he feared the possibility of physical harm and/or violence involving the police, given his disabilities and vulnerability.

85. Mr Askew explained that having to terminate an individual's employment or contract at short notice and require them to leave the workplace immediately was a situation that he might encounter once every couple of years. This was not the first time that he had had to perform this particular task. The request to do so in respect of Mr

Srinivasan having been brought to Mr Askew's attention, he had requested a delay before implementation so that he could undertake what he termed 'due diligence'. This was to satisfy himself as to the reasons for the action. He was anxious to ensure that it was not simply the result of a 'fall out' within the office or a reaction to Mr Srinivasan's conduct in one difficult meeting. Mr Askew spoke to a number of people to get some context. Having satisfied himself of the propriety of the decision and the intended mode of implementation, he specifically chose a time at the end of the working day to minimise the number of people who would be present in the mainly open-plan office. It was important to manage the process in an appropriate and dignified way. Mr Askew also wished to limit any embarrassment to Mr Srinivasan. The timing was also intended to take account of Mr Srinivasan's transport arrangements.

86. Mr Askew described talking to Mr Srinivasan for a reasonable length of time. It was a very difficult discussion, Mr Srinivasan being clearly upset, distressed and concerned. At one stage of the conversation, Mr Srinivasan said that he would refuse to leave. It was Mr Askew's expectation that this would necessitate referring the situation to the next level, which he was trying to avoid. There was discussion about Mr Srinivasan returning to his desk to collect his personal belongings and leaving the site. Mr Askew could not be sure if he mentioned anything about logging on to the work laptop, but he probably would have done. Logging on would not have been permitted. Mr Askew described leaving the meeting room with Mr Srinivasan, who did try to use his laptop and was told not to. Mr Askew did not recall Mr Bridge being present in the meeting or at any stage thereafter. Again, with the passage of time, Mr Askew could not be sure about the exact words used, but there would have been a mention of security. References in emails subsequently disclosed about keeping matters confidential were genuinely reflective of the sensitivity of the information and the need to limit it only to those who had to be made aware. Mr Askew did not want other members of the project team talking about the situation.

Harassment Act 7

Escorting Mr Srinivasan from the workplace

87. Mr Srinivasan alleges that having climbed onto his mobility scooter, still very much experiencing the shock of being asked to leave (and after having sat on the floor

struggling to breathe), Mr Askew and Mr Bridge followed him to his desk, where his laptop was forcibly taken from him. He describes the action as escorting him like an offender, in front of the 'Team' and a number of staff members of D1 and D2. Mr Srinivasan states that Mr Yourell and Mr Voas were "conspicuously absent", but that Mr Patel and other consultants were present at the time. Mr Srinivasan felt extremely humiliated and distressed. Mr Srinivasan emailed D1's HR department at 23.50 that day complaining about the "offender-like treatment and irreparable damage to his reputation". In his spreadsheet, Mr Srinivasan asserted this act to be "malicious harassment on aggravated standards of Disability Hate Crime *[sic]*".

88. Mr Askew did not recall Mr Bridge being present and reiterated his care behind the timing of the meeting to reduce the number of onlookers and any embarrassment. Some limited presence was unavoidable. Despite Mr Srinivasan's assertions, Mr Patel was clear that he was not present at the time. Mr Yourell's evidence was that he was at his desk when Mr Srinivasan came out of the meeting room.

89. Mr Askew, understandably given the passage of time (both from the date of the event and between that date and the first time he was asked to recall it), cannot recall all the details of the meeting on 23 February 2012. However, he was clear that he would always be very sensitive about the likely shock to the recipient of such bad news without prior warning.

Discussion of Harassment Acts 5 to 7

90. The decision having been made to dispense forthwith with Mr Srinivasan's services, I note that there was no suggestion that Mr Bridge (or anyone else) raised objection to Mr Askew's proposal for time to complete his own enquiries, even though the level of potential risk had been adjudged as sufficient to warrant the intended action. This sits comfortably with my assessment of Mr Askew, as a thoughtful and measured manager who appreciated the serious consequences to Mr Srinivasan of the decision to terminate and was concerned to satisfy himself about the decision before pushing forward with its implementation. In an entirely reasonable and understandable fashion, he sought a pause for thought, but was in due course satisfied that the intended action was necessary and justified.

91. In the circumstances that pertained at this point, the 22/23 February 2012, Mr Srinivasan had, in my judgment, however it might be seen in hindsight as self-preservation, adopted an oppositional stance to reasonable management requests, believing that they were all intended wrongly to push him out of his post on the project. It is clear to me that, although the decision to terminate had been taken in early November, there was no impetus for any swift implementation thereof. There was the question of recruitment which took time and by late February 2012, Mr Srinivasan was still in post. If, as he maintained, all of the information that Mr Younis could possibly have required was available in the repository, then it is surprising that Mr Yourell and Mr Bridge felt the need to pursue the 'knowledge transfer' point. On this, I prefer the evidence of Mr Patel to the effect that project documents in the repository are all well and good, but sharing design thoughts and implementation would be expected as a normal part of cooperative working on projects such as these for D2.

92. It had been in the gift of the Ds to give Mr Srinivasan 28 days' notice at any point after the decision to terminate, but they had not done so, seeking in my judgment to effect a smooth transition over time. There was no precipitous action. There was no action that would amount to harassment, there being no conduct that was unreasonable and unacceptable. However, faced with an increasingly uncooperative and non-compliant contractor, those acting on the Ds' behalf continued to seek a resolution of the impasse with regard to 'knowledge transfer' or, as Mr Patel put it, knowledge sharing. There was never any official warning that a continued failure to comply would result in termination of the contract; such potentially strong leverage was never employed. [I have already rejected the allegation that Mr Yourell made an unofficial threat under Harassment Act 4]. Mr Patel preferred a quiet word with Mr Srinivasan about his behaviour and approach as it was not a question of quality of work.

93. This is all indicative of an aspiration on the part of the Ds that progress would be made and Mr Srinivasan would comply with what, in my judgment, were perfectly reasonable colleague and management requests. Sadly this underestimated the strength of feeling created by Mr Srinivasan's perception that he was being singled out and persecuted either for no reason save the desire of Messrs Yourell and Voas to

remove him, seeing him as a threat to their dominance within the project, or only for illegitimate reasons to do with his ethnicity or disability. I am satisfied that this strength of feeling led to the point at which Mr Srinivasan, in a team meeting on 22 February 2012, asserted something akin to a proprietary right in the intellectual property within the information subject to the knowledge sharing/training dispute. This was the tipping point that caused an urgent reassessment of Mr Srinivasan's continued involvement in the project.

94. I acknowledge that Mr Srinivasan would have been very distressed by the events at and following the meeting with Mr Askew on 23 February 2012. He will forgive me for observing that he is a gentleman of excitable disposition and I have little doubt that he could not accept the decision that was being communicated to him, as he himself asserts. I am less persuaded that he would have been alarmed in the sense of fearing harm or violence. I do not underestimate the shock of the news, even though Mr Srinivasan had been anticipating the potential termination of his contract at any time as a result of becoming aware of the advertisement – at least that was his interpretation. However, the involvement of security would only have been necessary if Mr Srinivasan refused to comply with Mr Askew's requests. My assessment of Mr Askew, both from what he said in evidence and how he presented, is that he would have conducted the meeting calmly and with particular sensitivity both to the situation in general and to Mr Srinivasan's individual needs in particular. I do not find that there was a mention of the police, as this is quite inconsistent with the reality of the situation in that there was ready assistance available through D2's security, if such really became necessary.

95. In relation to what happened on 23 February 2012, I unhesitatingly prefer the measured and reliable evidence of Mr Askew and that of Mr Patel, the latter being very clearly aware of both Mr Srinivasan's prodigious talent as an SAP architect and his character flaws. Given the very strong, negative reaction that Mr Srinivasan describes having to the meeting on 23 February 2012, it is little surprise that the reliability of his recollection of events may have been adversely affected.

Conclusions on Harassment Acts 5 to 7

96. Taking Harassment Acts 5 to 7 together, it is clear that there was a course of conduct from referring Mr Srinivasan's conduct in the meeting on 22 February 2012 to his being escorted off site at the end of the following day. None of the actions involved individually or collectively amount to unacceptable or oppressive conduct. The evidence, documentary and oral, satisfies me that the actions of the Ds' employees and/or contractors were a legitimate and reasonable response to Mr Srinivasan's unreasonable lack of cooperation and compliance with the explicit and implicit terms of his contract with D1.

97. No one knew that Mr Srinivasan had deduced that he was to be replaced and that his conduct, from the point of accidentally seeing the job advertisement that led to Mr Younis' appointment, was heavily influenced by his theory that Mr Yourell, Mr Voas and Mr Bridge were in a conspiracy against him, a theory that I am driven to conclude was objectively baseless. Beyond self-preservation, it is difficult to understand the purpose behind Mr Srinivasan's adopted intransigence. Mr Younis began in post in mid-January and some five weeks later Mr Srinivasan has still not shared information with him that would allow him to work on eSMART. Those acting on behalf of the Ds took a suitably staged approach to encouraging Mr Srinivasan to comply with reasonable colleague and management requests, following up the requests with monitoring compliance. Mr Srinivasan's behaviour at the meeting on 22 February 2012 evidently changed the landscape and led to the decision to terminate on notice but with immediate cessation of work on the project.

98. My analysis of the chronology of events and the evidence lead me to conclude that none of the conduct under these heading (Acts 5-7) amounted to oppressive conduct and no one could objectively conclude that it was anything other than genuine and justified responses to Mr Srinivasan's challenging presentation over the relevant period of time.

Harassment Act 8

Attack on Mr Srinivasan's integrity (post-termination)

99. The thrust of this allegation is harassment by way of access being gained to Mr Srinivasan's work emails post-termination. In particular, Mr Srinivasan complains

about comments made in emails that slighted him by reference to risk and about the setting up of an out-of-office message from his work email address including the forwarding of emails addressed to him to others within the project.

100. Mr Yourell made the point that Mr Srinivasan's work email address and contents were the property of D2 and it was necessary to gain access so that any information stored within or attached to emails could be retrieved. In addition, there was a need to ensure that emails received directly to Mr Srinivasan's inbox would be known about and could be responded to. As Mr Patel put it, the actions in accessing Mr Srinivasan's emails were all from a "perspective of reference", there having been no handover due to the way in which the contract was terminated. There could be old decisions on architecture or older versions of documents that might be needed for reference, as well as possibly core data or "running work". He added that the emails are the property of the client. Whatever happens, the email address and contents are the property of the company not the individual.

Discussion on Harassment Act 8

101. It was clear from the evidence in this case that there was considerable correspondence between Mr Srinivasan and IBM, for example, as an intrinsic partner in the project work. The fact of his departure from the project needed to be notified only to those, whether internal or external, who sought communication with him.

102. A further point about this particular head of allegation is that all of the evidence relied on by Mr Srinivasan only came to his attention in October 2020. His claim was issued in November 2017 and thus it is difficult to see how this could amount harassment, arising only as a result of disclosure shortly before trial. This particular legal point was not addressed during at trial, but I am quite satisfied that all that was done was perfectly within the bounds of normal commercial practice. The email account was created for the purposes of Mr Srinivasan's engagement as a contractor. His rights and/or control over it and its contents ceased upon the termination of his contract and, in the circumstances of his departure, from 23 February 2012. As Mr Patel said, access was required for reference and D2 was entitled to access as the owner of the email address and its contents. It was also entirely legitimate to create

an out-of-office email so that anyone communicating with Mr Srinivasan after his departure would be aware that they needed to contact someone else.

103. Ironically, had an out-of-office email been created which did not have Mr Srinivasan's electronic signature, this might have given rise to speculation by some as to the nature of his departure. The creation of the email as it was done would not have this potential negative connotation.

Conclusion on Harassment Act 8

104. As far as this head of allegation is concerned, there is absolutely nothing in it. There was arguably a course of conduct in gaining access and creating the out-of-office email, but it involved no slight on Mr Srinivasan, being nothing more than necessary in the interests of D2, to which the email account and its contents belonged in any event. There was no unacceptable or oppressive conduct and thus no harassment.

Harassment Act 9

Failure to undertake relevant Health & Safety Assessments

105. This head of allegation was a very late addition to the claim and the spreadsheet. The Ds expressed concern that having not had notice of it prior to trial they could not provide documentation to rebut it, but I considered that it was a very self-contained topic about which there could be oral evidence. Mr Srinivasan's physical disabilities are evident, lacking lower body limbs. He is obviously reliant on his mobility scooter. He complained of a failure to carry out a health and safety assessment and to formulate a personal emergency evacuation plan as specific acts of harassment on the part of D1 and D2. He made reference in support of this part of the claim to his having to utilise part of the road within D2's complex in order to circumvent a fixed turnstile which had to be negotiated by those accessing and egressing from the site. He asserted that he had expressed concern to Mr Patel a number of times as the latter accompanied him to the site gates and that Mr Patel said every time that he would look into it. This did not happen but Mr Srinivasan did not want to antagonise Mr Patel as he would be left with no one. He also said that he did not raise concerns himself due to fears of losing his job.

106. Mr Patel was asked about Mr Srinivasan having to use the roads on site due to blockages on the pavements, but he responded there was a large security gate, fully controlled by security, who would open it to allow Mr Srinivasan passage. However, there was pavement for him to use up to the gate and from immediately outside the gate. Mr Patel accompanied him many times on the route off site and he said Mr Srinivasan might have raised complaints about accessing the site, but he could not recollect it. As to risk assessments, Mr Patel stated that when Mr Srinivasan joined, D2 were informed about his disability needs. There was a Health & Safety department next to the site gate and representatives came and inspected the working area and the toilet facilities. D2 had an internal procedure for completing paperwork and conducting a survey, which they did.

Discussion on Harassment Act 9

107. This head of claim can be dealt with in short compass. The dates for it are obviously from before Mr Srinivasan began to work at the site, in May 2011, and must therefore be based on some alleged continuing act of harassment in order to bring it within the limitation period. Mr Patel dealt with health and safety in his evidence, being clear that an assessment was certainly undertaken by the relevant department within D2 in advance of Mr Srinivasan's commencing work. This element under the head of claim therefore falls away as Mr Srinivasan's case is pure speculation and I accept Mr Patel's evidence on the point.

108. As to the lack of an evacuation plan, Mr Srinivasan may be correct on the point that such an evacuation plan had not been formulated. However, the suggestion that this was a deliberate omission on the part of either defendant as an act of harassment is fanciful. Even if one accepts that an omission is capable of amounting to harassment, there is no evidence whatsoever to support Mr Srinivasan's assertion. It is notable that the only evidence relied on by him under this head is his own witness statement and the late introduction of this head seemed to have been an attempt to keep this complaint alive within the claim (where it had originally appeared under a totally discrete Health & Safety heading).

Conclusion in Harassment Act 9

109. In the absence of any reliable evidence to support Mr Srinivasan's case on this point, I dismiss it.

Consideration of harassment overall, based on conduct found proved

110. Finally I turn to consideration of all conduct found to have occurred, not just individual acts or tranches of acts, to gauge whether as a whole they amount to harassment. I have identified those heads of allegation under which I have found there to have been a course of conduct. However, neither individually nor collectively is there any objective evidence of conduct that was unacceptable and oppressive. An objective assessment of the actions of those for whose conduct the Ds are responsible, reveals that they were responding to a progressively more oppositional contractor. Those in positions of management in relation to the TURBO and eSMART project were justifiably concerned about action or inaction on the part of Mr Srinivasan that threatened the successful completion of this vitally significant development for D2. However gifted Mr Srinivasan is in his specialist role as an SAP Basis Architect, he was but one element in a major infrastructure of hundreds of individuals working on the project. He did hold valuable knowledge about his designs and other work that he refused to share and he became gradually more antagonistic and confrontational.

111. I am very alive to Mr Srinivasan's perspective at the time, feeling that his position was in jeopardy, but the assessment of harassment is from the point of view of a "reasonable person in possession of the same information as the person whose conduct is in question". A reasonable person faced with the conduct and behaviour of Mr Srinivasan – however justified in his own mind – would consider that the actions of Mr Yourell, Mr Askew, Mr Bridge and/or anyone else acting on behalf of either D1 or D2 did not amount to harassment. To the extent that any conduct might arguably have become oppressive – a finding I do not make – it would in any event have been reasonable under s1(3)(c) of the 1997 Act.

Conclusion on the claim as a whole

112. For the reasons set out in detail above, Mr Srinivasan has failed to prove any act of harassment against either of the Ds. The claim is therefore dismissed as against both Ds.

113. It will be necessary to consider any ancillary orders. As Mr Srinivasan is not represented, rather than ordering simultaneous exchange of written submissions on costs and any ancillary orders, I order the Ds to file and serve their submissions on costs within 14 days of this judgment. Mr Srinivasan shall file and serve a response 14 days thereafter.

Mr Srinivasan's application for permission to appeal

114. In response to the circulation of the draft judgment on 8 March 2021, Mr Srinivasan applied for permission to appeal, asserting unparticularised serious errors in law and mis-directions, as well as disregard for evidence.

115. In the absence of anything specific to demonstrate any real prospect of success, permission to appeal is refused.