

IN THE BRISTOL COUNTY COURT

B E T W E E N:

RAQUEL ROSARIO SANCHEZ

Claimant

and

UNIVERSITY OF BRISTOL

Defendant

CLAIMANT’S SKELETON ARGUMENT
For Trial

Introduction

1. This is a Skeleton Argument filed on behalf of the Claimant, for the Trial in this matter, listed to start, with a reading day, on Monday 7 February 2022.
2. This Skeleton Argument accompanies two electronic bundles, and an Authorities Bundle. The first, the Core eBundle, runs to 287 numbered pages (“CB”). The second, the Documents eBundle, that being the exhibits to the witness statements, runs to 1280 numbered pages (“DB”). References in this Skeleton Argument to pages in either e-Bundle are as follows: e.g. [DB-23], [CB-32]. References to paragraphs in the Particulars of Claim or Schedule to the Particulars of Claim are as follows, e.g. [PoC § 23] or [Schedule A §3] respectively. References to case law in what will be the tabbed Authorities Bundle (“AB”) are as follows, e.g. [Case Name, AB-Tab [space]].

Outstanding Issues

3. There are two preliminary issues:
 - 3.1 The Claimant renews her Application dated 5 January 2022, for permission to rely on a “*closed witness statement*”, served at the time of her primary witness statement. This short, closed statement includes highly sensitive personal information about the Claimant that is not appropriate for the public domain. A reasonable, proportionate Order is sought restricting public access to the addendum statement only.
 - 3.2 The Claimant also makes an Application under CPR 17 for permission to amend the

value of her Claim Form. This flows directly from a concurrent Application to adduce further witness evidence in support of her claim for special damages. The Claimant sets out in her witness statement, attached to this application, that she was only able to meet with her supervisor on 31 January 2022 to confirm an extension to her studies of 18 months. This has a knock-on effect on the level of damages she seeks, as set out in the Updated Schedule of Loss. This application to serve this evidence has been made without delay and the fee difference will be paid forthwith.

The Claim

4. The comprehensive Case Summary is at [CB-1]. This Skeleton Argument sets out the legal framework and opening argument for just resolution of the Claimant's claims.
5. This is a case where a young woman's fundamental psychological integrity has been damaged by the harmful actions of a prominent education institution. The Claimant, a female PhD student, from the Dominican Republic, seeks vindication for the Defendant's enduring failures. She seeks recognition of the Defendant's failures to protect her as a female, international student, and women's rights activist. She seeks recognition of the Defendant's failure to recognise that she was harmed by the actions of its staff and students who sought to silence her. She seeks recognition that the Defendant has reneged on its promise "*to ensure any harassment or abuse directed towards you will cease as far as possible so that you are able to continue working undisturbed on your PhD in the School.*"¹ She seeks recognition that she did nothing wrong; she sought simply to speak out in valiant defence of women's sex-based rights.
6. The Claimant has also faced considerable hardship through the Defendant's ongoing conduct and repeated obfuscation during this litigation. The disclosure from the Defendant was late, having first been requested on 18 June 2020, and only being received on 22 December 2021, falling behind on yet another Court deadline.²
7. In any event, the disclosure that has finally been provided by the Defendant (which it took months to provide, after repeated Unless Order applications were made) reveals the Defendant's unlawful breaches and discriminatory conduct, to an even greater and more pervasive extent.

¹ DB - 130

² Claimant Witness Statement, §223-226

The Claims

8. This is a multi-faceted claim in negligence, breach of contract and sex discrimination.

A Negligence claim

9. Through the course of this Trial, the Claimant will demonstrate the following:

9.1 That the Claimant is entitled, in law, to bring a claim in negligence for the actions of the Defendant (Winstanley v Sleeman & Anor [2013] EWHC B43 (QB) AB-Tab[]).

9.2 That there existed a tortious duty of care owed to the Claimant, a PhD student at Bristol University, by the Defendant. That duty of care towards the Claimant was heightened by virtue of her being an international student. (Cody and Others v Remus White Ltd and Another [2021] EWHC 1755 (QB) AB-Tab [])

9.3 That this duty of care was owed to the Claimant, as a student, in particular, in respect of (a) the processes used to manage and discipline its students' misconduct, (b) the processes used to manage bullying and harassment levelled at students and (c) in the processing of complaints by its students.

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

9.5 A proximal relationship exists between the Defendant, who owes the duty and the party to whom it is owed, the Claimant. Further, this situation is one in which the court will consider it fair, just and reasonable that the law should impose the duty.³

9.6 Further, the Defendant was vicariously liable for the actions of its employees, servants

³ Caparo Industries plc v Dickman [1990] 2 AC 358

or agents (Phelps v Hillingdon LBC [2001] 2 AC 619 652H-653E AB-Tab []), Green v DB Group Services (UK) Limited [2006] EWHC 1898 (QB) AB-Tab []), WM Morrisons Supermarkets plc (Appellant) v Various Claimants (Respondent) [2020] UKSC 12 AB-Tab []). The behaviour in question was directly and intimately connected to the work that several staff members were engaged to perform. Their behaviour was clearly within the scope of their employment, and sufficiently closely connected to their work to give rise to vicarious liability.

- 9.7 The Defendant assumed responsibility for the safety and wellbeing of the Claimant by involving itself in the February 2018 Meeting⁴ and, due to how it was handled by the Defendant, its aftermath.
- 9.8 This included Defendant staff member, Nathan Eisenstadt, editing and propagating the Open Letter⁵ condemning the February 2018 event that the Claimant was chairing. The Open Letter singled out the Claimant for abuse. That Open Letter, which was widely circulated by Defendant staff⁶, invited the Defendant to act, and when it did so the Defendant assumed responsibility and a duty of care for the students involved. The Defendant previously accepted that the Open Letter was serious and a potential risk of harm to the Claimant⁷, as well as having a “*chilling effect on freedom of speech at the University*”.⁸ The Defendant considered that the Open Letter “*plainly does constitute bullying and harassment*”.⁹
- 9.9 The Defendant’s internal communications about the event before and after it took place will further demonstrate how the Defendant assumed responsibility (discussed at length in the Claimant’s witness statement e.g., at § 59-62). This included repeatedly copying in staff and students into correspondence when they had spoken publicly against the February 2018 event. The Claimant sets out how employees of the Defendant colluded with or were in fact those who publicly condemned the February 2018 feminist event that the Claimant was chairing.
- 9.10 The Defendant also assumed responsibility by issuing a public statement in respect of the situation.

⁴ Claimant Witness Statement §14

⁵ Claimant Witness Statement, §21, §35

⁶ Claimant Witness Statement, §41

⁷ DB – 311, §16

⁸ DB – 312 §21

⁹ DB 315, §29(c)

- 9.11 The Defendant assumed responsibility for the Claimant by telling her, initially, that rather than dealing with her concerns under the Student Complaints Procedure, the Chair of the Defendant’s EDI Group would use the “*recent experience as an opportunity to reaffirm the University’s commitment to freedom of speech.*”¹⁰
- 9.12 The Defendant later further assumed responsibility by accepting the Claimant’s complaint.
- 9.13 The Defendant further assumed responsibility by seeking to then regulate the conduct of the students involved by initiating disciplinary proceedings. It did so against two students AA and FG, though the Claimant had identified other students/ student organisations. In respect of AA, the Defendant subjected them¹¹ to disciplinary proceedings for “*targeting a fellow student for vilification and condemnation*”. At the time, the Defendant agreed that the AA’s actions caused “*anxiety and fear to Ms Rosario Sanchez, damage to the reputation to the University and attempts to interfere with its functions*”.¹² The Defendant later sought to nullify that anxiety and fear, and continues to do so.
- 9.14 The Defendant further assumed responsibility to the Claimant in how it held and ran these disciplinary hearings. By allowing AA to repeatedly publicise the date and time of those events, without sanction, the Defendant caused the hearings to be thwarted and delayed, and to be attended to by students who were directing explicit abusive and derogatory language to the Claimant which caused her further harm and distress.¹³
- 9.15 The Defendant further assumed responsibility to the Claimant by asking the Claimant to be questioned as a witness in the disciplinary proceedings against AA. This was done in person and in front of AA, without special measures in place, and without the Claimant having any legal representation. The Defendant later accepted that giving evidence via video link may well have been more sensitive/appropriate.¹⁴
- 9.16 The Defendant further assumed responsibility by, in seeking to process the Claimant’s complaint, failing to take into account documentation that she had provided directly to them. This included evidence of ongoing threats/ harm (social media posts, pamphlets), her psychological records, demonstrating the harm caused to her by the

¹⁰ Claimant Witness Statement, §73-74

¹¹ AA uses they/them pronouns.

¹² DB – 316 §33

¹³ The Claimant relies on evidence including the ‘Why we fight the TERF war’ pamphlet.

¹⁴ DB - 685

students' misconduct. The Defendant in November 2019 sought to nullify the harm that the Claimant had been raising by wrongly stating that she had “*not provided any evidence of direct bullying and intimidation or of any specific threat to your own personal safety.*” This was despite ample evidence to the contrary.¹⁵

- 9.17 The Defendant further assumed responsibility by publicly stating to the BBC Radio 4 Today Programme in September 2019 that the Claimant was receiving some support through the Student Wellbeing services¹⁶ as a result of the situation she was facing, something that she never consented to being shared.
- 9.18 The Defendant thus breached its duty of care towards the Claimant, by falling below the reasonable standards to be expected, satisfying the test established in Bolam v Friern Hospital Management Committee [1957] 1 WLR 582. The Claimant relies on her own witness statement and the witness statement bravely provided by Dr Emma Williamson, the former head of the Centre for Gender and Violence Research, who remains an employee of the Defendant. She also relies on the email from the now Head of the Centre for Gender and Violence Research Dr Marianne Hester who wrote to Judith Squires, Deputy Vice-Chancellor, with extreme concerns for the Claimant's safety and welfare in June 2019.¹⁷
- 9.19 The Claimant will demonstrate that the Defendant, which had a duty of care towards her, failed to protect her from harm (Robinson (Appellant) v Chief Constable of West Yorkshire Police (Respondent) [2018] UKSC 4; AB-Tab [] Phelps v Hillingdon LBC [2001] 2 AC 619) AB-Tab []. They knew or ought reasonably to have known that the Claimant was being subjected to the conduct complained of, and that that conduct might cause her psychiatric injury, and by the exercise of reasonable care they could have taken steps to avoid such injury (Green v DB Group Services (UK) Limited) [2006] EWHC 1898 (QB) AB-Tab []. The Court will also be referred to bullying in education caselaw: Bradford-Smart v West Sussex County Council [2002] EWCA Civ 7 AB-Tab []; Collins (Ryan) v Trustees of the Time being of Abbey Christian Brothers Grammar School [2014] NICy 4 AB-Tab [].
- 9.20 The Defendant failed to take reasonable steps to protect the Claimant from bullying between January 2018 to the end of 2019. This was despite evidence being provided

¹⁵ E.g., DB – 172, 174, 221, 582.

¹⁶ Claimant Witness Statement §175

¹⁷ Claimant Witness Statement, §160

to the Defendant detailing threats to her safety and psychological integrity. The Defendant has repeatedly failed to appreciate the distressing and upsetting impact of their actions and other students' conduct on the Claimant. The Claimant relies on several events and actions, including the targeted abuse of the Claimant and her work at the 1 March 2020 Women Talk Back! event, much of which took place after dismissing her complaint.

- 9.21 The Defendant failed to take reasonable steps to risk assess the situation, only carrying out an assessment in September 2019 on the repeated request of the Claimant.
- 9.22 The Defendant mishandled and delayed both the disciplinary proceedings and the Claimant's complaint.
- 9.23 The Defendant negligently and wrongfully terminated the proceedings against AA, despite ongoing, repeated harm to the Claimant, and after considerable delay. The Defendant has not drawn evidence from those who sat on the disciplinary committee.
- 9.24 The Defendant failed to take care for and adequately support the Claimant. The Defendant was informed of threats/ risks to the Claimant on which it ought to have acted. No remedial measures were put in place to ameliorate the impact of the University delay and the unnecessary distress this process had on her PhD studies. As highlighted by the Claimant "*Nobody from the University of Bristol has ever met with me to ask: "Raquel, after everything that has happened, how can we help you move forward and finish your PhD successfully?" Instead, after dismissing the disciplinary procedures against AA, the Defendant took a punitive approach towards me.*"¹⁸
- 9.25 It is also relevant that the Claimant's PhD work at the Defendant's Centre for Gender and Violence Research is specifically in the area of violence and abuse against women, something she herself sustained through bullying and harassment.
- 9.26 The Defendant will seek to argue that it is not responsible for its actions or the actions of third parties. It will distance itself from its conduct. But it cannot shield itself behind the actions of others, whilst simultaneously relying on disciplinary proceedings against them that it failed to execute. Nor can it ignore that its own staff were part of the initial event escalating as it did, and the perpetuation of bullying against the Claimant.

¹⁸ Claimant Witness Statement, §199(h)

- 9.27 The Defendant's breaches caused¹⁹ the Claimant loss and damage. This is contained in the Claimant's updated Schedule of Loss [CB-232], her second statement, and in the expert reports of Dr Slinn [CB-240-243] and Dr Cullen [CB-244-266], plus her Student Counselling records, the Staff Counselling Records, and the Vulnerable Students record. The Claimant has reasonably provided an updated Schedule of Loss, representing the present position; the first Schedule of Loss having been served in June 2020, 18 months ago.
- 9.28 That loss and damage is recoverable in law, as foreseeable losses arising from the Defendant's breaches of duty. Psychiatric injury in particular was a foreseeable consequence of the Defendant's actions. She feared the loss of her visa, her studies have suffered, and she has incurred additional rent and living costs, and been unable to gain full-time employment.²⁰
- 9.29 Further, the Defendant knows and accepts that the Claimant suffered personally as a consequence of its actions. In November 2019 it offered payment to the Claimant in the sum of £5,000 for "*the distress and inconvenience that you have suffered, in line with the maximum figure normally recommended by the Office of the Independent Adjudicator for Higher Education (OIA) in serious cases*". It did so in order to "*put [the Claimant] in the position that [she] would have been in before these events occurred*". [DB – 256] This would not have been offered if the Defendant did not consider the sum to represent a loss consequential on their failings.

B Contractual claim

10. Liability arises in contract and in tort simultaneously. There is considerable overlap with the claim in contract [PoC §7-8].
11. In terms of breach of contract, Claimant will demonstrate the following:
- 11.1 That a contract of education was entered into between the Defendant and the Claimant in November 2017.
- 11.2 That this contract included an implied term that the Defendant would exercise reasonable care and skill in the provision of its services (per section 49 Consumer

¹⁹ On causation, the Court is assisted by Siddiqui v The Chancellor, Masters & Scholars of the University of Oxford [2018] EWHC 184 (QB) – AB [].

²⁰ Claimant Witness Statement, §231

Rights Act 2015, Abramova v Oxford Institute of Legal Practice [2011] EWHC 613 (QB) AB-Tab []

- 11.3 The Defendant’s policies, rules and regulations can be used to interpret and integrate the contract [PoC §9-11] (St Christopher School (Letchworth) Ltd v Schymanski and another [2014] EWHC 2573 (QB) AB-Tab [])
- 11.4 That there existed a contractual duty of care owed to the Claimant by the Defendant. The contract included an implied term that the Defendant would take positive steps to protect a student’s wellbeing. There is a duty to exercise reasonable care in the provision of education, particularly with regard to issues of safety. There will be overlap here with the negligence framework above.
- 11.5 Those breaches of contract caused the Claimant loss and damage.
- 11.6 That loss and damage is recoverable in law, as foreseeable losses arising from the Defendant’s breach. These are set out in her statement and updated Schedule of Loss.

C Sex discrimination claim

12. The Claimant also argues several breaches of the Equality Act 2010:
 - 12.1 Unlawful indirect discrimination on the basis of sex (s.19)
 - 12.2 Victimisation (s.27)
 - 12.3 Sexual harassment (s.26)
13. The Claimant will demonstrate as follows:
 - 13.1 The Defendant is an institution within the meaning of section 91 Equality Act 2010 (admitted by the Defendant [Defence §76]).
 - 13.2 The Claimant has the protected characteristic of sex. As a feminist activist and PhD student, she spoke out about sex-based rights.
 - 13.3 The Defendant indirectly discriminated against the Claimant, contrary to section 19 of the Equality Act 2010, by applying a Policy, Criterion or Practice (“PCP”)²¹ of not sanctioning students who rely on “trans rights” activism to justify their conduct. The

²¹ Environment Agency v Rowan [2008] ICR 218, AB-Tab [] is authority for the correct approach to PCPs.

Defendant prioritised trans activism over women's rights.

- 13.4 The existence of this PCP is clearly proven through the Defendant's own corporate documents, its public statements, how it co-ordinated and sided with gender identity groups in its internal and external affairs, in how it tolerated bullying, harassment and violence against gender critical feminists, how it deals with other women's complaints including regarding proposed removal of the word "*maternity*" in the University's maternity policy²², in abandoning the disciplinary procedure against AA, in failing to take any action in respect of AA's breaches of confidentiality, and finally, in employing AA despite their misconduct.²³
- 13.5 This PCP has the effect of complaints against such students not being adequately pursued. This in turn has the effect of preventing people who suffer from unacceptable behaviour by these students from receiving the benefit of those policies, including the prevention of and protection from such bullying, harassment and intimidation. These are substantial disadvantages.
- 13.6 The Defendant's disciplinary and complaints process substantially disadvantaged the Claimant. These substantial disadvantages are experienced most particularly by women. The targets of such bullying, harassment and intimidation are disproportionately women.
- 13.7 The Claimant will rely on the factual witness statements of Naomi Cunningham of Sex Matters, Judith Green of Women's Place UK, and Dr Nicola Williams of Fair Play for Women, which demonstrate this disproportionate impact on women. The Defendant has failed to counter this evidence.
- 13.8 The Claimant also relies on the cases of Forstater v CGD Europe and Others UKEAT/0105/20/JOJ AB-Tab [], and Miller v College of Policing [2021] EWCA Civ 1926 AB-Tab [] as both context and evidence itself of the impact on women in respect of these issues, particularly on those in academia. This included judicial acceptance by Knowles J of the term "TERF" as a slur.
- 13.9 The Defendant is unable to justify its treatment. The Claimant does not accept the legitimate aims set out. Their approach was disproportionate and unbalanced.

²² Claimant Witness Statement, §206-211

²³ Claimant Witness Statement, §229

- 13.10 In terms of victimisation, the Claimant also carried out a number of protected acts (several of which are accepted as such by the Defendant (Defence - §79)).
- 13.11 The Claimant suffered detriment from the Defendant because of these protected acts (contrary to section 27, Equality Act 2010).
- 13.12 The Defendant also engaged in unwanted conduct related to or connected with the Claimant's sex, contrary to section 26(3) Equality Act 2010. The Claimant suffered detriment as a result.
- 13.13 The conduct had the purpose and effect of violating her dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant inside her academic institution. The unwanted conduct has features that directly and indirectly relate to the protected characteristic of sex.
- 13.14 The Claimant relies on and distinguishes Conteh v Parking Partners Ltd [2010] UKEAT/0288/10/SM, AB-Tab [], Unite the Union v Nailard [2018] EWCA Civ 1203 AB-Tab [], Tesfargiorgis v Aspinalls Club Ltd UKEAT/0031/20/AT (V) AB-Tab [].
- 13.15 Alongside damages for injury to feelings, the Claimant seeks aggravated damages considering the Defendant's unnecessary, high-handed and oppressive conduct – this includes the conduct of the Defendant in the course of this litigation. (Commissioner of Police of the Metropolis v Shaw UKEAT/0125/11/ZT) AB-Tab [].

Limitation

14. The Claimant does not consider any of her claims to be out of time as the Defendant states.
15. Her claims arising from breach of duty (in negligence and in contract) are in time.
16. The claims under the Equality Act 2010 are also in time. The Claimant brings her sex discrimination claims in relation to acts extending over a period of time, culminating in her complaint being formally and finally dismissed by the Defendant on 19 December 2019. The acts relied on were not unconnected or isolated specific acts by the Defendant but a long-term, systematic pattern of linked acts. The Claim was issued on 19 June 2020, causing the final act to be in time and those preceding matters from February 2018 to also be in time.

17. If so required, the Claimant relies on Section 118(1)(b) of the Equality Act 2010; the test applied by the court is what is “just and equitable” in the circumstances. (Guidance, if so required, can be drawn from the cases of Anya v University Of Oxford & Anor [2001] EWCA Civ 405 (22 March, 2001) AB-Tab [] (making allowance for earlier acts which might throw more light on the act in question), and Commissioner of Police of the Metropolis v Hendricks ([2002] EWCA Civ 1686; [2003] ICR 530) AB-Tab []).

Conclusion

18. The Court is invited to find in favour of the Claimant on all her claims, and award damages accordingly.

ALICE de COVERLEY
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