

ENGLAND AND WALES / JUDGMENT

# Mohammed Arif v John Baker & Ors

COURT  
IN THE BIRMINGHAM COUNTY COURT

BEFORE  
HIS HONOUR JUDGE TINDAL  
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## Source record

Neutral Citation Number: [2026] EWCC 14

IN THE BIRMINGHAM COUNTY COURT

Case Number F00BM913

Birmingham Civil Justice Centre

Bull Street,

Birmingham

Date: 2nd April 2026

Before: HIS HONOUR JUDGE TINDAL  
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Between: MR MOHAMMED ARIF  
- and -  
(1) MR JOHN BAKER, MR BRIAN LETTS  
AND MR SUKY SAMRA (REPRESENTING THE  
OFFICERS AND MEMBERS OF THE  
EXECUTIVE COUNCIL OF FORMER WALSALL  
CONSERVATIVE FEDERATION IN THE  
PERIOD 2014-2018)  
Claimant  
(2) THE CONSERVATIVE AND UNIONIST  
PARTY (SETTLED)  
Defendants  
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Ms Akua Reindorf KC (Instructed by Simons Muirhead Burton) for the Claimant  
Mr Edmund Beever (instructed by HCB Solicitors) for the Defendant  
Hearing dates: 26th, 27th and 28th November and 1st, 2nd, 3rd, 4th and 5th  
December 2025  
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**JUDGMENT**

- ----- This County Court judgment is authorised to be cited under Practice Direction (Citation of Authorities) [2001] 1 WLR 1001 paragraph 6.1 (the ‘Citation Practice Direction’)

**Judgment**

HHJ TINDAL The Case Arif v Baker

1. This is a race and religious discrimination claim under the Equality Act 2010 (‘EqA’) by the Claimant, a British Muslim of Pakistani family origin. He is a former Conservative Councillor in Walsall, who was deselected and expelled by the Walsall Conservative Party in 2016. His claim against the national Conservative Party (‘the national Party’) has settled and while his claim against the local Party continues, its Federation which existed during events from 2014 to 2018 has been dissolved. The local Walsall Conservative Party (‘the Walsall Party’) is now an unincorporated association represented here by its Defendant officers (‘the Defendants’), in particular Councillor Samra. Another central protagonist, Councillor Peter Washbrook, has also since sadly died in 2018. If a week is a long time in politics, as Harold Wilson once said, the events in this case can fairly be described as political ancient history.
2. However, I have unusually published this County Court judgment as there is a public interest in how political parties address internal issues of race and religion – as all major parties have experienced over recent years. The House of Lords gave guidance in *Watt v Ahsan* [2008] 2 WLR 17, which itself is relevant to the Claimant’s claims of race and religious direct discrimination as a British Muslim of Pakistani origin. As I will explain that is more nuanced than simplistic accusations of ‘Islamophobia’. Indeed, I discuss whether there can be less favourable treatment because of race or religion when others of the same race and religion are treated better. Also, no case I have found addresses victimisation in the context of political parties, or whether ‘re-posts’ on social media can be protected acts for victimisation. Given that gap in authority, should it be relevant, this judgment can be cited under the Citation Practice Direction.
3. The Claimant makes twenty-two separate allegations of direct race and/or religious discrimination and/or victimisation against the Walsall Party, although there is considerable overlap between them, so they can be grouped under five ‘Topics’:
  - (1) The non-approval of the Claimant as candidate for St Matthews Ward and rejection of his appeal against that in September-October 2015).
  - (2) The non-selection of the Claimant as candidate for that ward in March 2016.
  - (3) The disciplinary process and expulsion of the Claimant in April-June 2016.

- (4) The Walsall Party's provision of evidence to the Claimant's successful appeal against expulsion to the national Party in 2017-2018.
- (5) The Walsall Party's re-expulsion of the Claimant in October 2018. The judgment is structured as follows (findings/conclusions on Topics in italics):
  - (i) Procedural History and Issues (paragraphs 4 - 10) (ii) The Evidence (paragraphs 11 - 35) (iii) Findings of Fact (paragraphs 36 - 120) (iv) Legal Principles (paragraphs 121 - 155)
- (v) Conclusions (paragraphs 156 - 280)

## Judgment

Arif v Baker At the end (paragraphs 281 - 285), I will summarise my conclusions and discuss the way forward. The Procedural History and Issues

4. Watt established that claims for discrimination by political parties fell within what is now Part 7 EqA, relating to discrimination claims against 'associations'. Therefore, the County Court has jurisdiction under s.114 EqA, rather than the Employment Tribunal as with discrimination claims at work. Under s.118(1) EqA, the time limit for a County Court claim is six months 'starting with the date of the act to which the claim relates'. However, as I will explain, s.118(6)(a) EqA provides 'conduct extending over a period is to be treated as done at the end of the period'. The Claimant says all the actions he alleges were one 'continuing act' by the Walsall Party and so that time only started to run from the 'last act': his re-expulsion by the Walsall Party communicated to him on 31st October 2018. The Walsall Party denies that and says with the exception of events in October 2018, the claim is out of time.
5. The Claimant originally presented this claim on 30th April 2019, exactly six months after his re-expulsion, although it was not technically issued by the Court until 13th May 2019 (although nothing turns on that extra delay within the Court). The Claim Form and Particulars of Claim were served on the Defendants (then the Walsall Federation and the national Conservative Party) on 17th July 2019. The Walsall Party served a Defence on 13 September 2019 and the national Party served a Defence on 12 September 2019. The Claimant replied to both. The claim was allocated to the Multi Track and following some agreed stays to explore Alternative Dispute Resolution ('ADR') which proved unsuccessful at that stage, in November 2020 at CCMC, directions were made to a trial planned for a trial window in mid- 2022, largely because of delays due to COVID.
6. However, as I said, the national Party settled the Claimant's claim, which had in essence been that it had failed properly to investigate his discrimination complaints against the Walsall Party. The settlement was approved in a consent order in January 2021 on terms there should be an investigation into the Claimant's allegations against the Walsall Party by a fully independent specialist discrimination barrister. The national Party and the Claimant later agreed to instruct Aileen McColgan QC (now KC). However, the Walsall Party declined to participate in her investigation. She reported on 6th September 2021, upholding some of

but not all of the Claimant's complaints of discrimination and victimisation ('The McColgan Report'). As I shall explain later, the McColgan Report is a very helpful source of evidence for my own findings of fact, however Ms McColgan KC's conclusions are not binding on me.

7. The Claimant nevertheless maintained his claim against the Walsall Party which had been stayed pending the McColgan Report. In March 2022, the parties agreed further directions and exchanged their current witness statements in August 2022. The parties were unable to agree a trial date for a 12-day trial until October- November 2023. However, in September 2023, the Walsall Conservative Federation gave notice to dissolve itself, although this did not in fact happen until 2024, by which time the current Defendants as officers of the local Conservative Party unincorporated association were appointed as representative defendants.

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8. The Claimant prepared amended Particulars of Claim on 25th June 2024, which set out 14 different 'protected acts' for the victimisation claims I need not set out at this stage; and 22 separate allegations of direct race and religious discrimination, or alternatively victimisation. In essence, those 22 allegations are follows:
  1. The conduct of the approval interview on 28 September 2015.
  2. Declining to approve the Claimant as a candidate in September 2015.
  3. Refusing to allow the appeal against non-approval on 22 October 2015.
  4. Making arrangements prejudicial to the Claimant for the selection meeting on 31 March 2016.
  5. Conducting the selection meeting on 31 March 2016 in a manner prejudicial to the Claimant.
  6. Accusing the Claimant orally on or around 29 April 2016 and by letter dated 20 June 2016 of campaigning against the Party.
  7. Failing to inform the Claimant he was under disciplinary investigation at any stage prior to the conclusion of the investigation.
  8. Failing to interview the Claimant in connection with the disciplinary investigation.
  9. Failing properly or at all to inform the Claimant of the allegations against him in May-June 2016.
  10. Refusing in June 2016 to suspend the disciplinary investigation and hearing on the instructions of the national Party pending an investigation.
  11. Failing to give the Claimant a fair hearing at the disciplinary meeting on 30 June 2016.

12. Fabricating evidence for the disciplinary meeting on 30 June 2016.
13. Purporting to expel the Claimant from membership of the Federation and the Party on 30 June 2016.
14. Failing to give reasons for the Claimant's expulsion.
15. Relying on fabricated evidence at the appeal hearings on 9 November 2017 and 13 September 2018.
16. Convening a meeting on 24 October 2018 to consider suspending or refusing membership to the Claimant.
17. Persisting in holding the meeting on 24 October 2018 notwithstanding the outcome of the Claimant's appeal against his previous expulsion had not been circulated.
18. Relying at the meeting of 24 October 2018 on evidence which did not form a proper basis for suspending the Claimant or removal of membership.
19. Relying at the meeting on 24 October 2018 on evidence which had been improperly obtained.
20. Deciding on 24 October 2018 to suspend or refuse membership to the Claimant.
21. Purporting to suspend or refuse membership to the Claimant by letter of 31 October 2018.
22. Maintaining its refusal to readmit the Claimant into membership. As I said at the start, I have arranged those complaints into five 'Topics':

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- (1) Topic 1, 'Non-Approval' is allegations 1-3
  - (2) Topic 2, 'Non-Selection' is allegations 4-5
  - (3) Topic 3 'Disciplinary Expulsion' is allegations 6-14,
  - (4) Topic 4: 'Appeal' is allegation 15 only
  - (5) Topic 5: 'Re-Expulsion' is allegations 16-22 As I discuss in more detail below, all of the allegations of both direct discrimination and victimisation were denied by the Defendants in their Defence of 15th July 2024.
9. One cause of over a year's delay in not listing this trial until November-December 2025 is that the parties did not appear to reflect on whether they still needed 12 days, which had been the original time estimate at the CCMC in November 2022, when the national Party was still a Defendant. However, at pre-trial review on 20th October 2025, the parties agreed the trial time-estimate could be reduced down to 8 days, from 26th November to 5th December 2025. The parties also agreed an assessor was unnecessary despite s.114(7) EqA and the trial

should be listed before myself as an Equality-ticketed judge (indeed, a former fee-paid Employment Judge).

10. The parties agreed a List of Issues, which I amend slightly given discussions at the start of trial and indeed as they narrowed after the evidence and submissions:
  - (1) Direct Race and/or Religious Discrimination:
    - i. Did the Federation's officers do or fail to do any of the 22 acts or omissions alleged ? Were they 'detriments' under s.101 EqA ? ii. Were any of those acts or omissions because of the Claimant's race (Pakistani national origin) and/or religion (Muslim) under s.13 EqA ? iii. Did the Federation's officers treat the Claimant less favourably than they would have treated a hypothetical comparator of a different race and/or religion in materially same circumstances under s.13 EqA?
  - (2) Victimisation
    - i. Did the Federation's officers do or fail to do any of the 22 acts or omissions alleged ? Were they 'detriments' under s.101 EqA ? ii. Did the officers subject the Claimant to those detriments because he had done any of his pleaded protected acts under s.27 EqA ? iii. Were the Claimant's acts 'protected acts' under s.27 EqA ?
  - (3) Are the Defendants now standing in the shoes of the Federation responsible for proved allegations of discrimination as principals for the discrimination or victimisation by officers as agents under s.109 EqA ?
  - (4) Does the Court have jurisdiction for any discrimination or victimisation which took place before October 2018 (i.e. Topics 1-4) on the basis earlier conduct is part of a continuing act under s.118(6)(a) EqA ?
  - (5) Remedy if any claims succeed:
    - i. Is the Claimant entitled to a declaration in relation to his claims ?

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Arif v Baker ii. Is the Claimant entitled to compensation for injury to feelings ? iii. Is the Claimant entitled to compensation to reflect loss of earnings ? iv. Is the Claimant entitled to a mandatory injunction re-admitting him into the Walsall Party ? In closing submissions issue (3) was not really disputed and it was agreed an injunction would require further submissions if I upheld the claim. The Evidence

11. As I said, before turning to my findings of fact, given the time passed between the events in dispute and the present, it is first necessary to consider some of the difficult evidential issues which arise. In relation to documentary evidence, whilst I have a bundle of 1600 pages, there are significant gaps in the documentary record. For example, in Topic 1, there are no minutes (because I understand they are not taken) or outcome letter of the 'approval

meeting’ in September 2015; what at first sight appear to be minutes of the ‘selection meeting’ in March 2016 in Topic 2 is in fact a response by the Walsall Party to the Claimant’s complaint to the national Party; and there is also no letter after the ‘expulsion meeting’ in June 2016 in Topic 3, which is the subject of allegation 14. It is not clear what has happened to these documents, although the Claimant alleges fabrication of disciplinary evidence in Topics 3 and 4 (allegations 12 and 15) and there was concerning late disclosure of the re-expulsion meeting notes from October 2018 and an important email from Councillor Samra in August 2015 shortly before the approval meeting, as I discuss in relation to his evidence below. Yet the absence of some documents disadvantages the Defendants, as in October 2018 when the national Party upheld the Claimant’s expulsion appeal on a technicality the Walsall Party could not disprove after Cllr Washbrook’s death. He had previously been the Chairman of the Walsall Party from 2014-2017, was at the heart of the events under Topics 1, 2 3 and 4 until he died, yet I obviously do not know how he would have responded in evidence to the allegations against him (save for limited hearsay statements for the Claimant’s expulsion appeal before he died). That might have been raised had there been any application to extend time under s.118(1)(b) EqA as just and equitable for Topics 1, 2 3 and 4, but the Claimant does not make that application. Instead, his argument on time is they all form part of one ‘continuing act’ (or ‘conduct extending over a period’) ending with Topic 5 (which is plainly itself a ‘continuing act’, so in time).

12. Having said that, whilst the absence of key documents and Cllr Washbrook’s evidence at trial affects the inferences I can draw about why events happened from the primary facts of what happened (and so the burden of proof under s.136 EqA), there is less dispute over those primary facts of what actually happened. Indeed, Cllr Washbrook’s voice is heard loud and clear through the many letters and emails he wrote and what the Walsall Party minuted him as saying at meetings. Indeed, in my experience of discrimination cases over 25 years, he expressed himself more candidly than many would in such circumstances. Therefore, even if I am inhibited in making findings about Cllr Washbrook’s actions which are disputed (e.g. a comment to Cllr Bird about ‘the dogs of war’), I can analyse what he did and meant by what he wrote and was recorded as saying, in the light of all the other evidence I have. Consequently, whilst the burden of proving primary facts is on the Claimant on the balance of probabilities, I am certainly able to make all necessary findings of primary fact, (as I will do in the next section). After all, the McColgan Report

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Arif v Baker made detailed factual findings which made up the majority of her report of over 100 pages. Indeed, as I discuss in a moment, I have more evidence than Ms McColgan KC, since I not only have the factual evidence she collected so assiduously, I also have the evidence of the Defendants and other witnesses for the Walsall Party who had declined to take part in her investigation. Nevertheless, especially against the detailed background of the McColgan Report, I hope to be able to focus a little more shortly my findings of fact relevant to the pleaded allegations of discrimination.

13. That leads on to the evidential status of the McColgan Report itself to my decision. Ms Reindorf KC for the Claimant suggested in her Skeleton Argument that, whilst the McColgan Report carefully analyses the inference evidence, I must go further and scrutinise all the primary facts and inference evidence myself. I certainly agree I must make my own findings of fact and draw my own inferences, but that still leaves the status of the McColgan Report itself, which Mr Beever for the Defendant says I should exercise caution about placing any reliance on. However, he accepted the McColgan Report was admissible (not least because it is in the bundle and there is no objection to it: CPR PD32 para.27.2), but pointed out the factual evidence gathered in it was hearsay, to which s.4 Civil Evidence Act 1995 applies: “(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of [it].
- (2) Regard may be had, in particular, to...(a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness; (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated; (c) whether the evidence involves multiple hearsay; (d) whether any person involved had any motive to conceal or misrepresent matters; (e) whether the original statement was an edited account, or made in collaboration with another or for a particular purpose; (f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.” This applies to statements of fact made by those whose accounts are recorded in the McColgan Report. Factual findings in past trials (unless creating an estoppel) are inadmissible in a later trial where the judge must make their own findings: *Hollington v Hewthorn* [1943] KB 587 (CA). However, that does not apply to conclusions by expert investigators, even if not instructed to give expert evidence to the Court within CPR 35: *Rogers v Hoyle* [2014] 3 WLR 148 (CA). It is now common for public authorities facing discrimination allegations to commission a report from an expert barrister like Ms McColgan KC. In my view, as she was not acting as a judicial fact-finder, but as a discrimination expert, her record of the factual accounts of those who spoke to her is admissible factual hearsay evidence whose weight depends on s.4 CEA: c.f. *Rogers*. But insofar as that factual hearsay comes from a person who did not give evidence before me (unlike the Claimant for example), their evidence is admissible but of less weight than if they had been cross-examined, in addition to the various other factors in s.4(2) CEA.
14. However, insofar as the McColgan Report contains opinion evidence, the position is rather different. There are two types of opinion evidence within it. Firstly, opinions expressed by those who contributed to Ms McColgan KC’s investigation

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Arif v Baker but who have not been cross-examined are likely to be of very limited weight: c.f. BXB v Watch Tower [2020] 4 WLR 42 (HC) at [64]. Secondly, Ms McColgan's own conclusions as to whether the Walsall Party discriminated are themselves only opinion evidence, just as the expert air accident investigators' conclusions were held to be in a later trial concerning an aircraft crash in Rogers. Nevertheless, Ms McColgan's conclusions on discrimination itself, which is the 'ultimate issue' I must decide for myself, cannot supplant my own conclusions: Kennedy v Cordia [2016] 1 WLR 597 (SC) at [49].

15. Indeed, in my own view Ms McColgan KC's conclusions on discrimination cannot even be persuasive of my own conclusions (although I emphasise not at all through any lack of expertise or diligence on her part), but only because she did not have the benefit which I have had of hearing from the Defendants and their witnesses. Whilst Ms Reindorf suggested I could draw adverse inferences from the Defendants' failure to participate in the McColgan Report, I disagree for three reasons. Firstly, it is true there are situations where the Court can draw adverse inferences from the absence of evidence (e.g. from failure to call a particular witness who can give relevant evidence: see Royal Mail v Efobi [2021] 1 WLR 3863 (SC) at [41]). But I am not aware of (and Ms Reindorf did not cite) any authority for adverse inferences (as opposed to costs sanctions) from a failure to arbitrate (which is akin to what the McColgan Report was), especially where it was not mandated by the Court (c.f. Churchill v Merthyr Tydfil CBC [2024] 1 WLR 3827 (CA)). Secondly, the furthest the EqA went in that direction (as did its predecessor statutes) was to enable adverse inferences to be drawn from an employer's failure to answer a discrimination questionnaire under s.138 EqA, although that provision was repealed in 2014. In any event, Ms Reindorf's submission sought to go far beyond s.138 questionnaires, which were a statutorily-sanctioned process to address the forensic obstacles in proving discrimination. By contrast, the McColgan Report was commissioned as part of a settlement between the Claimant and national Party to which the (then) Federation were not party and since then it has been replaced by the current representative Defendants who were not even parties to the litigation (as opposed to witnesses in it) at the time. Thirdly, as Lord Leggatt said in Efobi at [41] and [43], inferences are generally a matter of common sense, but the precise inference must be identified. In this case, the obvious inference to be drawn from the Defendants' non-participation in the McColgan Report is not that they had discriminated and sought to conceal it, but simply that they contested the allegations and wished to 'keep their powder dry' for the Court trial. In my view, the McColgan Report's conclusions (as opposed to the factual hearsay evidence) are only relevant insofar as they contextualise the witness evidence, as I shall explain below.
16. Turning to that witness evidence, Mr Beever reminded me of the analysis of Leggatt J (as he then was) in Gestmin v Credit Suisse [2013] EWHC 3560 at [16]-[22]: "16...[It is] a faulty model of memory [to see it] as a mental record fixed at the time of experience of an event and then fades (more or less slowly) over time. In fact, psychological research has demonstrated that memories are fluid and malleable, being constantly rewritten whenever they are retrieved.

This is true even of so-called 'flashbulb' memories .... External information can intrude into a witness' memory, as can his or her own thoughts and beliefs, and both can cause dramatic changes in recollection. Events can

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Arif v Baker come to be recalled as memories which did not happen at all or which happened to someone else...

18. Memory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs. Studies have also shown that memory is particularly vulnerable to interference and alteration when a person is presented with new information or suggestions about an event in circumstances where his or her memory of it is already weak due to the passage of time.
19. The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty...to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces.
20. Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. A witness is asked to make a statement, often.....when a long time has already elapsed since the relevant events...[It] is usually drafted for the witness by a lawyer.. after the witness's memory has been 'refreshed' by reading documents...often include[ing] statements of case and other argumentative material as well as documents which the witness did not see at the time...Then, usually months later, the witness will be asked to re-read his or her statement and review documents again before giving evidence in court. The effect...is to establish in the mind of the witness the matters recorded in his or her own statement and other written material, whether they be true or false, and to cause the witness's memory of events to be based increasingly on this material and later interpretations of it rather than on the original experience of events...
22. In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts.... Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."

17. There are many similar observations. In *Simetra v Ikon* [2019] 4 WLR 112 (CA) Males LJ emphasised the importance of contemporary documents at [48]-[49]: “I would say something about the importance of contemporary documents as a means of getting at the truth, not only of what was going on, but also as to motivation and state of mind of those concerned. That applies to documents passing between the parties, but with even greater force to a party’s internal documents including e-mails and instant messaging. Those tend to be the documents where a witness’s guard is down and their true thoughts are plain to see. Indeed, it has become a commonplace of

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Arif v Baker judgments in commercial cases where there is often extensive disclosure to emphasise the importance of the contemporary documents. Although this cannot be regarded as a rule of law, those documents are generally regarded as far more reliable than the oral evidence of witnesses, still less their demeanour while giving evidence....It is therefore particularly important that, in a case where there are contemporary documents which appear on their face to provide cogent evidence contrary to the conclusion which the judge proposes to reach, he should explain why they are not to be taken at face value or are outweighed by other compelling considerations....”

18. However, *Gestmin* and *Simetra* were commercial cases with plentiful documents. That will not always be the case, as the Court of Appeal (Asplin LJ, Andrews LJ and Birss LJ) observed in *Natwest v Bilta* [2021] EWCA Civ 680 at [49]-[51]: “It was of paramount importance for the Judge to test that evidence against the contemporaneous documents and known or probable facts if and to the extent that it was possible to do so. We say, ‘if and to the extent that it was possible to do so’, because it is important to bear in mind that there may be situations in which the approach advocated in *Gestmin* [at [22]] will not be open to a judge, or, even if it is, will be of limited assistance. There may simply be no - or no relevant - contemporaneous documents, and even if there are, the documents...may be ambivalent or otherwise insufficiently helpful.... Even in a case which is fairly document-heavy (as this one was) there may be critical events or conversations which are completely undocumented.... Faced with documentary lacunae of this nature, the judge has little choice but to fall back on considerations such as the overall plausibility of the evidence; the consistency or inconsistency of the behaviour of the witness and other individuals with the witness's version of events; supporting or adverse inferences to be drawn from other documents; and the judge's assessment of the witness's credibility, including his or her impression of how they performed in the witness box, especially when their version of events was challenged in cross-examination.” That observation in *Natwest* has obvious resonance in this case, given the gaps in the documentary record that I have already mentioned. Therefore, as acknowledged in *Natwest*, in this case I cannot adopt Leggatt J’s approach in *Gestmin* at [22].
19. Nevertheless, Leggatt J’s warnings in *Gestmin* at [16]-[21] about the fallibilities of recollection are particularly apposite in this case for three reasons:

- (1) Firstly, similarly to Natwest, this case concerns events a decade ago (albeit then ensuing over three years, not three weeks as in Natwest). Moreover, as discussed, there are gaps in the documentary record especially in the early stages. As a result, for that period there are fewer contemporary documents to ground witness' recollections given the passage of time and so correspondingly much more scope for malleable memories to be coloured by later events and beliefs as discussed in Gestmin at [16] and [18].
- (2) Secondly, there is the distorting effect on memory, not only of the litigation process which Leggatt J described in Gestmin at [19]-[20], but also – in different ways – by the McColgan Report. As I shall explain, this upheld some – but not all - of the Claimant's discrimination complaints from 2015, 2016 and 2018 (and the victimisation claims from 2018 only).  
Participation

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Arif v Baker in 2021 in Ms McColgan KC's investigation by the Claimant and his witnesses, when the litigation had already started, may have had a similar distorting effect on recollection as litigation itself does (Gestmin), whilst partly vindicating the Claimant's narrative of an 'Islamophobic campaign'. Conversely, for the other Defendants and Walsall Party witnesses, there is an evident sense of indignation and injustice at some of the findings in the McColgan Report, which may influence how they gave evidence, especially as their statements were prepared in 2022 not long after the report. This is what I meant by the McColgan Report 'contextualising' the oral evidence.

- (3) Thirdly, whilst Leggatt J's observations in Gestmin on the fallibility of memory and the 'natural desire to give a good impression in a public forum' apply to most if not all witnesses, there is an extra dimension when the witnesses at this trial are either politicians or work in local politics. Not only do they have perhaps more need than most to protect their public reputation, it is the skill of a good politician to be able to condense complex issues into a simple narrative. That was in evidence in the way some of the witnesses on both sides gave their evidence. Whilst Judges are now more cautious of placing weight on a witness' demeanour (as Leggatt J said in Gestmin and Males LJ in Simetra said), with appropriate caution a Judge's 'impression of the witness under cross-examination' is still relevant: Natwest at [51].
20. Turning to my impressions of each witness, this last point was particularly evident with the Claimant's evidence. I say immediately that he struck me as an honest witness, in particular on the central aspect of his political integrity – whether he campaigned for Labour against Mr Samra (as he then was) in the 2016 local election, having lost out to him as candidate. As I shall detail, the Claimant pointed to his reputation as a Conservative Councillor and his campaigning for Conservative colleagues (but not Mr Samra) in 2016. Moreover, at the hearing in October 2018, all three witnesses who attended said the Claimant had not said they should vote Labour. Having said that, it may well be during the election the Claimant privately shared his view with close friends and colleagues that he believed Mr Samra was

anti-Muslim but that was not the real allegation he faced. Since then, the Claimant has built a narrative that Councillor Samra (as he became in May 2018) was his ambitious and manipulative ‘antagonist’ and the ‘eminence grise’ behind the Claimant’s downfall in 2016 as part of Mr Samra’s own bid to become a councillor. Faced with accusations he led a ‘Muslim clique’ in the Walsall Party, regrettably the Claimant’s narrative counter-alleged a ‘Sikh clique’ led by Cllr Samra, along with Mr Johal, Mr Gandham, Mr Sohal and others. Ms McColgan KC found that: “[The Claimant’s] identity as Muslim was ‘weaponised’ by individuals including [Cllr Samra] in their campaign against the ‘Muslim cemetery’. There was then.... a ‘witch hunt’ against Muslim Party members.” The Claimant’s witnesses, in particular Mr Barnard who chaired a public meeting about the cemetery in 2011, took up that narrative of Cllr Samra as anti-Muslim. Yet, the Claimant barely mentioned the cemetery incident in his statement and his oral evidence about it was contradicted by his own witness Councillor Bird who recalled the Claimant politically unwisely campaigning for the cemetery on faith grounds. In reality, the Claimant’s ‘Sikh v Muslim’ narrative, like many political narratives, was reductionist and obscured reality. I will find the Walsall Party was not divided on faith grounds until Islam was made an explicit issue by the Executive

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Arif v Baker Committee’s response to a petition challenging them in 2014. Before then, the divide was between the ‘old guard’ of Cllr Bird, the Claimant and others in control of the Walsall Party before 2012; and the ‘new guard’ from 2012 of Cllr Washbrook, Mr Samra, Mr Letts, Mr Baker, Mr Sohal and Mr Gandham, but also latterly Muslim colleagues like Mr Rasab and Mr Ali. The documentary record has gaps, but it actually suggests the Claimant’s main antagonist and the driving force against him was Cllr Washbrook, whom the Claimant dismissively called Mr Samra’s ‘acolyte’. For all those reasons, I found the Claimant an honest witness, but not totally objective and self-reflexive, so treat his evidence with some caution.

21. In a very different way, one could also see the politician’s narrative with Councillor Bird, the Conservative Leader of Walsall Council. One would imagine the last thing a Council Leader would want to do is give evidence against his own colleagues, yet Cllr Bird seemed to approach his evidence in the same robust way as he would a boisterous Council meeting: we even had the occasional polished soundbite. Nevertheless, he clearly came to Court to tell the truth as he saw it, even if it did not always assist the Claimant (including over the cemetery issue). I am not sure I could describe his evidence as ‘impressive’ in the orthodox sense, but I have no doubt whatsoever that Cllr Bird’s evidence was reliable and straightforward.
22. However, just to show that there are different types of politician and Councillor, I would indeed describe the evidence for the Claimant of Councillor John Murray as impressive in the orthodox sense. Perhaps rather less concerned to present himself with his public persona than the Claimant and Cllr Bird, Cllr Murray was calm, clear and cogent in his evidence, even under searching questioning by Mr Beever. Asked in detail about the non-

approval meeting in September 2015 which he chaired, Cllr Murray was entirely prepared to make concessions, but on the key points stood his ground convincingly and in detail. I entirely accept his evidence.

23. The Claimant's witness Mr Barnard was plainly honest but only directly involved in the cemetery issue, where he chaired a public meeting called by the Claimant. Given the divisiveness of that meeting – and Cllr Samra's personal challenge of the Claimant on behalf of those opposing the cemetery – his recollection has clearly changed over time and illustrates some of the difficulties with memory discussed. However, Mr Barnard was not directly involved in later events.
24. The Claimant's other witness, Ms Akhtar, was even less involved in key events than Mr Bernard. She gave rather impressionistic evidence of a vague sense of antipathy due to her Muslim faith and one occasion in traditional dress from Cllr Samra, Mr Baker and others. But it is not easy to square with her appointment and invitation by them to re-stand as Secretary alongside Cllr Samra as Chairman. I accept that Ms Akhtar's perspective is genuine, but there was no real solid evidence for it and I did not find her own evidence was particularly relevant to the issues before me.
25. Turning to the Defendants' witnesses, by contrast, Mr Sandeep Sohal was involved in many of the key events, including the non-approval of the Claimant in Autumn 2015, his expulsion in June 2016 and re-expulsion in October 2028, albeit not perhaps as a leading player. Nevertheless, as their first witness, the Defendants rather 'sent ahead Mr Sohal into the forensic minefield' to try to disarm and explain some of Cllr Washbrook's occasionally remarkable correspondence and actions. Whilst it is well-established that a witness' 'demeanour' can be an unreliable guide,

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Arif v Baker in fairness to Mr Sohal, his attempt to reconcile his evident loyalty to the Peter Washbrook he knew and respected, with some of the stronger comments in his letters, was clearly at times uncomfortable for Mr Sohal. Nevertheless, he was honest – and realistic – enough to accept that Cllr Washbrook's views did include racial considerations at times, which had in part set the agenda for some of the decisions about the Claimant, whilst emphasising what he saw as Cllr Washbrook's honourable motives. In short, Mr Sohal struck me as a man of principle, but also one led by a strong sense of loyalty to his more experienced colleagues and as guided by them. For those entirely human reasons, I found Mr Sohal an honest but not an independent or objective witness, so I treat his evidence with caution.

26. Mr Letts is a Defendant, was Treasurer of the Federation and has been a member of the Walsall Party since the 1990s. He was similarly respectful towards Cllr Washbrook, whom he pointed out in the past had a good relationship with Muslim people, even if the way Mr Letts put it may raise contemporary eyebrows, it was clear what he meant. Nevertheless, Mr Letts saw no difficulty with Cllr Washbrook calling the 2014 expelled petitioners a 'Pakistani

Islamic group' and Mr Letts agreed with Cllr Washbrook it was trying to take over the Federation and to undo all they had done. Mr Letts also defended Cllr Washbrook's questions to the Claimant at the non-approval meeting in September 2015, including those about his stance on Palestine and Kashmir even though Mr Letts agreed they were linked to the Claimant's faith and national origin. But Mr Letts was clearly uncomfortable with how anonymous statements had been obtained alleging the Claimant had campaigned for Labour in the election in May 2016 which led to the Claimant's expulsion. Mr Letts accepted there was a difference between the names of the witnesses he had met and those attributed to the anonymous witnesses. Mr Letts wisely did not vote in 2016 although he did in 2018, to which I return at the end of the judgment. I found Mr Letts honest but again fiercely loyal to Cllr Washbrook and close to Cllr Samra.

27. Mr Baker, another Defendant, presented differently between his oral evidence and his statement. In the latter, he said he was part of the decision to expel the Claimant in June 2016, but the note of the meeting (which I accept is accurate) said he was absent. But in oral evidence, Mr Baker was clear and cogent that he always voted without any thought to race or religious issues, which to him were 'immaterial' (including Ms Akhtar wearing traditional dress). Indeed, late-disclosed minutes from the 2018 re-expulsion showed him exercising an independent mind, as one would expect from a former Magistrate. However, I return to his role in that meeting at the end of the judgment. I do not accept Mr Baker lied in his statement. I find he trusted other Defendants, most obviously the lead Defendant Mr Samra, to compile his statement and did not check it properly. Therefore, I can attach no real weight to his statement, but I found his (limited) oral evidence clear as to his own thoughts.
28. Mr Gandham was a more recent member of the Walsall Party from 2011 and executive from 2014, who organised the selection meeting in March 2016. When pressed why he had arranged it at the Samra Club owned by the father of Cllr Samra: a candidate; Mr Gandham fairly pointed out he had asked for a postal vote, but the national Party had insisted on a meeting which he had to arrange at very short notice and the Samra Club was the only available option, but he trusted external Party staff to run the meeting properly. On the other hand, Mr Gandham was clearly fiercely

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Arif v Baker loyal to Cllr Washbrook and Cllr Samra and saw nothing wrong when he participated in the petition expulsions in 2014 and the Claimant's non-approval appeal in 2015. He attended but did not vote at the Claimant's expulsion in June 2016, but there is no record of him reporting hearing the Claimant had been campaigning against Cllr Samra. However, with the 2018 re-expulsion, Mr Gandham thought since the Claimant did not attend, he could not dispute the allegations, even though Mr Baker (and to a lesser extent, Mr Letts) took a more independent approach to the addition of new charges relating to social media. My impression was Mr Gandham greatly respected and deferred to both Cllr Washbrook and Cllr Samra and in all those processes essentially followed their lead rather than making his own mind up about the issues.

Like Mr Sohal, I found Mr Gandham honest but not independent, so once again, I treat his evidence cautiously.

29. Councillor Rasab is a British Muslim whose heritage is from Kashmir, like the Claimant, but he gave evidence for the Defendants seeking to show a different side to the Federation. Cllr Rasab has an interesting political background - he previously was a member of the Labour Party, but was close to Conservative Councillor Bealby (as was the Claimant and Mr Samra). Mr Rasab (as he was) joined the Federation in 2014 and campaigned for Mr Samra in 2016, when he says he heard local Muslims say the Claimant had told them not to vote for Cllr Samra because he was racist (i.e. anti-Muslim), which Mr Rasab reported to Cllr Washbrook. However, Mr Rasab was not one of the witnesses in the 2016 disciplinary process (although was in the 2017-2018 appeal, during which he suggested he had no ambition to become a Councillor). Mr Rasab described a close relationship with Cllr Washbrook, who while dying in 2018 encouraged Mr Rasab to stand as a Councillor to replace him, that Mr Rasab did, after approval by a committee led by Mr Samra. Mr Rasab was then elected in 2018 (as was Cllr Samra). He sat on the Claimant's re-expulsion panel in October 2018 and became Chairman of the Federation in
2020. Again, Cllr Rasab stuck me as an honest witness, albeit one fiercely loyal to – and very trusting of – both Cllr Samra and Cllr Washbrook. My impression is that, like Mr Gandham and Mr Sohal, Cllr Rasab essentially followed their lead rather than exercising independent judgment, so I similarly treat his evidence with caution.
30. The authorship of the statements to the disciplinary investigation of the (initially) three witnesses 'A', 'B' and 'C' who reported in June 2016 that the Claimant had campaigned against Mr Samra in the May 2016 election is very much in dispute and less straightforward to resolve. As I have mentioned, Mr Letts' recollection is not clear, Cllr Samra says he was only involved as a witness at the time (although I analyse that below) and in the absence of Cllr Washbrook, it is difficult to piece together. In particular, there is a difference in how I approach this evidence (i) in finding myself whether the Claimant campaigned against Mr Samra (particularly relevant to remedy if his claims succeed); as against (ii) whether individuals within the Federation genuinely believed the Claimant had campaigned against Mr Samra (relevant to their mental processes and so to discrimination and victimisation).
31. The first 2016 witness before me was Mr Ilyas Ahmed. He campaigned in 2016 for Mr Samra and says that most likely in May 2016, he gave Cllr Washbrook and Mr Letts his own statement. It recorded that whilst out canvassing, repeated Muslim voters told Mr Ahmed the Claimant and Mr Azam (I understand the father of Cllr Azam de-selected in 2013 and expelled in 2014) had asked them not to vote for Mr

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Arif v Baker Samra because he was 'racist' (i.e. anti-Muslim) and to vote for Labour instead. Mr Ahmed appears not to have attended the hearing in June 2016 and did not attend in October 2018. Before me, Mr Ahmed accepted in 2016 he had not himself heard the Claimant either criticise Mr Samra or request anyone to vote Labour, only reported conversations (i.e. hearsay), from unidentified voters, although he did recall it was during the April 2016 election campaign, not the March selection campaign where Mr Samra and the Claimant both stood. But he was less clear how he knew which one of those the voters meant. So, I can only place limited weight myself on his hearsay evidence, but I accept he reported what he genuinely thought voters were telling him 'on the doorstep'. However, Mr Ahmed was also unclear about how he came forward to report this, but the obvious (and I find actual) person who encouraged him was Mr Samra, whom I will find below, was more involved in the disciplinary process than he cared to admit in his Court witness statement.

32. The other 2016 witness before me was Mr Arshad Mahmood, who was a thoroughly unsatisfactory witness: appearing to be making up his evidence as he went along. I can accept from Mr Ahmed's evidence Mr Mahmood (and his friend Mr Mehboob Matloob whom I shall discuss in a moment) were with Mr Ahmed when he met Cllr Washbrook and Mr Letts in May 2016. Whilst Mr Matloob gave a statement (said to be 'A') to the disciplinary hearing in June 2016 as well as a (named) statement to the Claimant's appeal in 2017 and the re-expulsion hearing in October 2018, Mr Mahmood did not give a statement in 2016. But in his 2017 statement (also used in 2018), he reported campaigning for Mr Samra in 2016 and – like Mr Ahmed – hearing on the doorstep the Claimant was campaigning against Mr Samra. He added he had a meeting with the Claimant to act as a go-between with Mr Samra, but the Claimant criticised them for supporting Mr Samra who was a racist. However, in his Court statement, Mr Mahmood did not mention these meetings (or indeed hearing even reports the Claimant was asking voters to vote Labour). Yet in cross-examination, Mr Mahmood was determined to do everything he could to vilify the Claimant, irrespective of whether it was relevant to the question he was asked (when allowing Ms Reindorf to get a word in edgeways), or indeed had mentioned in his disciplinary or Court statements. For example, Mr Mahmood for the first time suggested the Claimant had shouted at a community member for letting Mr Samra attend to speak at a mosque (which in fact Mr Samra was permitted to do, despite the mosque having an association with the Claimant). But when Mr Mahmood was presented with evidence that the supposed victim of the Claimant's ire in fact supported his appeal in 2017 as did the mosque, Mr Mahmood suggested Mr Azam senior (who was also expelled in 2016) must have pressurised them. In short, I found Mr Mahmood a totally unreliable witness whose evidence I entirely reject. Far from supporting the Defendants' case, given that one of the few things he said aligning with any reliable evidence was that he was among those who met Cllr Washbrook and Mr Letts in May 2016, his involvement at that time raises real questions about how the three of them came to that meeting and how their statements were prepared.

33. This leads on to Mr Mehboob Matloob, who did not give evidence to me, but gave statements in 2016 and 2017, not only in similar terms to Mr Ahmed, but also claiming the Claimant told him personally not to support Mr Samra as he was racist. (Mehboob Matloob has a similar name with another more peripheral witness in the 2018 process Arkheil Mehboob about whom I heard little). From the unchallenged statement of the Claimant's solicitor Mr Clough, the Claimant told Mr Matloob on

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Arif v Baker Monday 17th November 2025 that both Mr Matloob and Mr Mahmood wanted to withdraw their statements (although only Mr Mahmood was being called as a witness). Whilst Mr Mahmood simply declined, Mr Matloob spoke to Mr Clough and told him he wanted to withdraw his disciplinary statements in 2016 and 2017, although he did not say they were inaccurate, but simply he did not want to be involved. However, on 24th November, Mr Matloob rescinded that. In those circumstances, particularly given the close relationship between Mr Matloob and Mr Mahmood, who was a thoroughly unreliable witness, I do not consider I can attach any weight under s.4 CEA to Mr Matloob's evidence in my own findings, However, I remind myself there was no evidence of such concerns about the evidence of Mr Matloob before the disciplinary panels in 2016 and 2018. (One of the members of the 2016 panel expelling the Claimant was Mr Shahzad Ali who gave a Court statement but did not attend to give evidence, so I attach limited weight to it, although I return to Mr Ali's role briefly in that important decision).

34. The final witness was Cllr Samra, portrayed by the Claimant as his main antagonist. Whilst I consider that minimises the role of Cllr Washbrook, since his death Cllr Samra (who has a law degree) has undoubtedly been the leading figure for the Defendants. As Ms Reindorf noted, there was a common error in the statements of Cllr Samra and Mr Letts, Mr Gandham, Mr Baker and Mr Sohal who all said none of the members expelled in October 2014 'gave any reasons why they signed the petition' when the minutes show four plainly did (even if they were rejected). This and other matters (e.g. I find that Cllr Samra as lead Defendant had some involvement in Mr Baker's inaccurate statement) suggest a Lady Bracknell-like pattern: not just co-ordination of statements, but of thought processes. This is partly why I have found the Defendants' witnesses followed the lead of Cllr Washbrook and latterly of Cllr Samra. As he is still a sitting Councillor, I stress I find Cllr Samra was honest, but honesty is not the same as reliability. Even making full allowances for his physical discomfort due to health (for which I gave breaks), I did not find Cllr Samra's evidence reliable and reject it unless corroborated by reliable evidence:

- (1) First there was concerning late and non-disclosure of important documents. Until the last day of evidence, there were no proper minutes of the crucial re-expulsion meeting in the Claimant's absence of 24th October 2018. I do not accept his excuse he simply overlooked to disclose them. I find it was a deliberate non-disclosure by him, including as the notes revealed no witness (even Mr Matloob) actually heard the Claimant suggest voting Labour. Cllr Samra also accepted non-disclosure of his email of 25th August 2015 (found in the

McColgan Report) criticising the Claimant in terms anticipating those at the approval meeting the next month in terms clearly relying on the Claimant's Muslim faith and indicating an intention to stand against him.

- (2) Secondly, Cllr Samra's evidence was repeatedly inconsistent with what was actually in the bundle, even aside from the 'common error' point above. For example, Cllr Samra's October 2018 disciplinary invite letter (as Cllr Washbrook's 2016 one had) said officers had 'carried out an investigation and determined' that the Claimant actively campaigned against Mr Samra in 2016, suggesting it was pre-determined, not least as Cllr Samra (as he had become) was running the disciplinary process. Yet, he denied that he had.
- (3) Thirdly, Cllr Samra's evidence was also inconsistent with his own and other evidence. For example, he did not mention in his statement he chaired Mr

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Arif v Baker Rasab's selection meeting in 2018 (when he had stressed that with Ms Nasreen two paragraphs earlier). More fundamentally, Cllr Samra said he 'did not take part in any investigations nor be involved with other witnesses' in the Claimant's 2016 expulsion process, yet he was the common link between the various witnesses in 2016 who had all campaigned for him. The Claimant alleges that Cllr Samra fabricated witness evidence in 2016.

- (4) Fourthly, as I also develop later, some of Cllr Samra's answers were simply implausible: such as Cllr Washbrook referring to a Trojan Horse in 2014 in the 'Greek' sense, not referring to Islam as he specifically mentioned; and Cllr Samra seeing no conflict of interest in sitting on the Claimant's approval appeal panel when he planned to stand against him in upcoming elections.
  - (5) Finally, whilst demeanour is not always reliable, especially for a witness in physical discomfort, Cllr Samra often did not give straight answers and was rightly reminded by Ms Reindorf that it was not a political interview.
35. Given those limitations in the oral evidence of the witnesses, the caution required with the factual hearsay evidence in the McColgan Report; and the gaps in the documentary record, in making my findings of fact after such a long passage of time, I must proceed carefully. Nevertheless, even in very complicated fact-finding exercises, there is still a way forward. Merely by way of example, in the very different context of fact-finding at a re-trial after a previous judgment had been set aside for fraud, in *Takhar v Gracefield* [2026] 4 WLR 12 (Ch) at [79]-[90], I adopted a 'holistic approach' of layering-up different types of evidence. It seems to me a similar approach is warranted here, albeit perhaps not quite as complicated (I was then making findings of fact not only about original events, but the conduct of the earlier litigation itself). I would summarise it in this case as having five steps:

- (1) Burden of Proof. As I discuss later in some detail, s.136 EqA provides that ‘if there are facts from which the court could decide, in the absence of any other explanation, that A [discriminated], the court must hold that the contravention occurred unless A shows that he did not [discriminate]’. Nevertheless, in *Efobi* Lord Leggatt stressed at [30] the burden of proving primary facts from which inferences can be drawn remains on the claimant: “[s.136 EqA] means that the claimant has the burden of proving, on the balance of probabilities, those matters which he or she wishes the tribunal to find as facts from which the inference could properly be drawn (in the absence of any other explanation) that an unlawful act was committed. This is not the whole picture since, along with those facts which the claimant proves, the tribunal must also take account of any facts proved by the respondent which would prevent the necessary inference from being drawn.” However, as Lord Leggatt added at [40], whilst the Court at the first stage must leave out of account any explanation from the defendant which it then evaluates at the second stage, the first can include ‘common-sense inferences’ from primary facts found, which I shall also include on occasion, along with findings of primary fact proved by either side as explained.
- (2) Agreed and Incontrovertible Evidence. With the burden of proof well in mind, the first ‘layer’ of evidence at the foundation of my findings of primary fact is the agreed and incontrovertible evidence. Ironically, for such

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*Arif v Baker* a bitterly-contested case, the timeline of events is not really contested. I will go on to test each successive layer of evidence against this foundation.

- (3) Contemporary Documents. Similarly, whilst there are significant gaps in the documentary record, what was actually said in emails and even many of the minuted meetings is not really contested either, even if the inferences to be drawn from those contemporary documents is strongly disputed.
- (4) Hearsay Factual Evidence. As discussed, the McColgan Report contains a few quotes from documents not before me and substantial hearsay evidence from some not called to give live evidence. I must evaluate consistently each part with s.4 CEA, balancing the greater proximity to events (and greater objectivity of some witnesses), with their lack of cross-examination.
- (5) Oral Evidence. I have already given my impressions of each witness, but all their evidence which I accept is part of the factual findings I make, albeit calibrated and checked against the other layers of evidence discussed. Findings of Fact

## Background

36. Walsall is a town on the northern edge of the West Midlands conurbation with Birmingham to its south and Wolverhampton to its west. Like the rest of the West Midlands, Walsall is very ethnically diverse: in the 2011 census, 15% identified their ethnicity as ‘Asian British’

rising to almost 19% in the 2021 census How life has changed in Walsall: Census 2021. The same statistics show a rise in the population describing their faith as Muslim from c.8% to c.11% over that decade. Until boundary changes in 2024, there were three Parliamentary constituencies: Walsall North, Walsall South and Aldridge-Brownhills; and a total of 20 Council seats. Walsall South was the most diverse and from 2010-2024, it had seven wards in the Walsall Metropolitan Borough Council: Bentley and Darlaston North, Darlaston South, Paddock, Palfrey, Pheasey Park Farm, Pleck and the ward which includes Walsall town centre together with some deprived areas: St Matthew's.

37. In the 2011 census, 22% of St Matthews ward was Asian British (religion was not recorded). In the 2021 census, nearly 33% were Asian British with 25% describing their faith as Muslim (and 6.5% as Sikh). Build a custom area profile - ONS. Therefore, Muslim voters are a significant group in St Matthews. The ward has three councillors on Walsall Council. In 2004, the Claimant became one of three Conservative Councillors and from 2006, the seats were on three-yearly rotation with one seat being contested each year. The Conservatives won in 2006, 2007, 2008 (the Claimant) and 2010 (Cllr Imran Azam who has a role in this story). However, in 2011, the third Conservative Councillor lost his seat to Labour. While the Claimant held on to his seat from Labour in 2012, it was only by 3% of the vote.
38. The Claimant is Muslim and was born in Pakistan in 1958. Like so many others in our multicultural society, his father came to the UK in the 1960s and in 1971 the Claimant and the rest of his family joined him. The Claimant became a British Citizen aged 18 in 1975. He was a Computer Software Consultant for many years for large companies and from 1997 and 2003 owned a recruitment and consultancy agency. However, since then his career has been primarily political. He had joined

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Arif v Baker the Conservative Party and its Walsall association in 1991 with the support of Councillor Beilby, who also encouraged Mr Samra to join, as indeed did the Claimant. He first became a Councillor for St Matthews Ward in 2004, was a Cabinet Member for several years using his IT and procurement expertise and sat on the Crime Commissioner Panel, Police Authority and Pension Fund Board. He chaired working groups for the Council in Walsall and undertook community work.

39. During the 2000s, the original three local Conservative Associations of Aldridge and Brownhills, Walsall North and Walsall South underwent reorganisation, with the latter two Walsall Associations merging into a Federation, based on a Conservative Central Office model constitution. Its officers comprised a Chairman, two Deputy Chairmen (one political, one membership), Treasurer, one officer for each of the two constituencies and up to four additional officers. Each officer was elected at an AGM, stood for a three-year term but could be re-appointed for another year. They all sat on an Executive Committee along with a President and representatives of each ward and sub-committee. Below were local ward branches which if constituted with 20 members (as St Matthews was), could select their own

Council candidates.

40. By 2010, most if not all the members of the Executive Committee were Councillors, including the Claimant. Whilst he saw no difficulty with their leadership at this time I accept the more common view within the Federation was that it was mismanaged and nepotistic, with the Executive Committee appointing only their allies. Mr Baker vividly described how the Conservatives were losing seats and some Councillors even 'crossed the floor' to Labour, leading to a shambolic AGM in 2010, when the Midlands Regional Director, Ms Carys Parry, agreed with Mr Baker action was needed. She and Robert Ashman the Midlands Field Director intervened in Walsall.
41. As I mentioned, in 2010, Imran Azam, a local Muslim of Pakistani origin like the Claimant, was successfully elected as a Councillor alongside him in St Matthews. Whilst it was suggested this infuriated Mr Samra who had been promised he could stand, Mr Samra pointed out that he never stood for branch selection in St Matthews as he was selected for another ward, Willenhall South. To illustrate the culture then, adjoining that was Willenhall North where the daughter of Councillor McCracken (another Executive Committee ally of the Claimant) was standing for branch selection and her husband was also standing for selection in St Matthews. Yet Cllr McCracken in 2010 then unusually stood against a fellow Conservative Councillor Sanders in Paddock Ward (where Mr Letts is a member), around the same time as the Executive Committee intervened in Paddock Ward for selecting a different candidate (who lived outside the area) than their nominee, Zahid Ali. Whilst the Claimant is not suggested to have been involved to any real extent in these various political machinations and apparent nepotism, he was part of the 'old guard' Executive Committee which was increasingly seen as dysfunctional as a result.
42. All this turmoil led in 2011 to the national Party putting the Federation into 'Assisted Status', suspending the Federation and appointing an 'Action Team' to run it. This was led by Mr Murray as Chairman and Mr Richards as Secretary, both from Aldridge-Brownhills (which had not joined the Federation); and from Walsall, Cllr Imran Azam, Bob Bernard, Bridget Benton, Peter Hancox, Gurmeet Sohal and Marion Letts, along with Mr Baker, Mr Letts, Mr Samra, Mr Gandham and another recent 2011 recruit to the Walsall Party, Lt Col Peter Washbrook.

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43. Lt Col Washbrook (originally known as Hryhoruk) was born in Canada but emigrated to the UK aged 15 and joined the Army, where he served for 38 years and worked his way up to Lieutenant Colonel. He had also been a President of Courts Martials and Boards of Enquiry. In a statement for the disciplinary appeal before he sadly died in May 2018, Cllr Washbrook (as he had become) responded to what he called the Claimant's 'repeated accusations of Islamophobia, racial discrimination and bias'. He said he served alongside officers from

many countries, including in Brunei alongside Muslim officers. Indeed, Mr Rasab, a Muslim himself, spoke warmly of Cllr Washbrook. Given what follows, I should make clear that I do not find he was 'anti-Muslim' in the sense of unthinkingly 'Islamophobic'. As I shall explain, religious and racial issues played a more complex role. I do not doubt that in 2014, Lt Col Washbrook, as a relatively recent arrival in the Walsall Party with huge organisational experience, was considered the ideal choice to become the first Chairman of the re-launched Federation when it came out of Assisted Status in March 2014. Mr Samra was appointed as Deputy Chairman (Membership), Mr Gandham Deputy Chairman (Political) and Mr Letts Treasurer, with Mr Baker President of the Federation, as I said, not involved day-to-day.

44. Whilst the Walsall Party was still led by the Action Team in 2013, there were two incidents which seeded some of the conflict it experienced later under Lt Col Washbrook's leadership as Chairman in 2014 (he became a Councillor for Paddock Ward in 2015). The first was a controversy which first erupted in early 2013 over plans for a cemetery in St Matthews Ward. As I explained, the McColgan Report placed real significance on this as the start of conflict between the Claimant and Mr Samra and the 'weaponisation' of the former's faith by the latter and fellow Sikhs. With the benefit of the evidence of (now) Cllr Samra which Ms McColgan KC did not have, but also rather different evidence under cross-examination than she had from the Claimant, Mr Barnard and Cllr Bird, I agree the 'cemetery incident' is important, but for slightly different reasons: namely the start of antipathy between the Claimant and Mr Samra which they both saw in religious terms. It is a good example of how memory can be distorted and why contemporary documents matter.
45. We have two key contemporary documents from early 2013: a press report and an anti-cemetery campaign flyer by Mr Samra and his (Sikh) colleague Mr Johal. The press report recorded that a developer (who was in fact Muslim) had applied for planning permission for a cemetery and the Claimant as Councillor had arranged a public meeting due to opposition to it led by Mr Samra relating to concerns about traffic, flooding and the impact on the Green Belt. The flyer Mr Samra and Mr Johal co-wrote afterwards raised the same issues. There was no reference to faith at all. Yet Mr Barnard remembered the meeting was unpleasant with personal accusations led by Mr Samra and Mr Johal, against the Claimant and his colleague, Councillor Imran Azam (on the Council planning committee). However, as the Claimant accepted, this was influenced by the fact that in the past, both he and Mr Azam had ward surgeries in premises linked to the cemetery developer. Whilst they properly stopped those when the planning application came in, this obviously fuelled a (misplaced) accusation of corruption at the meeting. Mr Barnard told Ms McColgan KC this was the focus of attacks at the meeting and any racial agenda was 'covert'. Yet in evidence to me Mr Barnard suggested this was attacked as a 'Muslim cemetery', which had not been what he had told Ms McColgan KC in 2021, but had been what Mr Azam had alleged and she accepted. Moreover, whilst the Claimant

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Arif v Baker told me that he campaigned against the cemetery, not only is his statement silent on this issue, that is not clear from the press report at the time; Mr Azam told Ms McColgan KC the Claimant had told him he would stay neutral; and Cllr Bird distinctly recalled the Claimant had campaigned in favour of the cemetery as a 'Muslim cemetery' which prompted Cllr Bird to warn him it was a 'dangerous game' electorally given local opposition. Whilst the cemetery planning application was refused, the incident cemented an antipathy between the Claimant and Mr Samra: the Claimant left believing Mr Samra was anti-Muslim; and Mr Samra left starting to believe the Claimant had a Muslim 'sectarian' agenda.

46. The Claimant's suspicions of Mr Samra's 'Sikh agenda' were only aggravated by the second incident in 2013: the de-selection of Cllr Azam in St Matthews in November and selection for the 2014 elections of Mr Johal, the Sikh party member who campaigned against the cemetery alongside Mr Samra, despite St Matthews having a far greater Muslim than Sikh electorate. However, whilst the Claimant was concerned at this development, Cllr Azam became personally convinced Mr Samra, Mr Johal, Mr Gandham and others were pursuing a Sikh vs Muslim agenda. As the McColgan Report says, the Action Team rejected his complaint where he alleged: "Membership of the whole borough is handled by one individual – Suky Samra – who is also an officer of the St Matthews branch and the choosing of members becomes apparent when you look at the membership which clearly shows that long standing members have not been renewed or notified that their membership has expired." The Petition Controversy
47. The 'Petition Controversy' as I shall call it, had five (overlapping) stages: (i) the unprecedentedly fast increase in members joining the Federation in an unorthodox way, overwhelmingly from the local Muslim community; (ii) a petition signed by 77 members (including many of the new ones but also former Cllr Azam) calling for a vote of no confidence in the Executive Committee; (iii) the expulsion of the members who had signed the petition by that Committee; (iv) the appeal of the expelled members which the Claimant supported; and (v) the national Party overturning the expulsions and directing Mr Samra be removed from office; and the reaction of both him and Lt Col Washbrook to the national Party's decision. Each of those aspects needs separate analysis, before drawing together the threads.
48. However, before descending into the detail of those sub-issues, it is helpful to step back and give some national (and Midlands) context to what happened with the 'Trojan Horse Affair'. As is well-known, in Spring 2014, a letter was leaked to the press suggesting a 'plot' by a group associated with the Salafist tradition of Islam to take over management of schools in Birmingham and elsewhere. The Department of Education commissioned reports and OFSTED-led inspections anticipating many disciplinary prosecutions for teachers, although it has been reported that few were prosecuted, of those still fewer successfully and disciplinary sanctions of some were later overturned: e.g. *Anwar v NCT* [2016] EWHC 2507 (Admin). It is not for me to comment on what the truth of the 'Trojan Horse Affair' truly was,

but it is highly relevant to this case that the national furore was at its height during 2014.

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Arif v Baker

49. This febrile political atmosphere in 2014 perhaps explains the response of the Walsall Party Executive Committee to an unprecedented sudden increase in membership whom they assumed were Muslim. Mr Letts as Treasurer recalled in July 2014, he received a financial statement from Conservative Central Office showing around 130 new members of the Walsall Party who had not joined locally (or paid them the £25 fee) but online via the national Party. A meeting on 15th July 2014 noted the increase in membership, some of whom Mr Samra noted were not even on the electoral register and he was tasked with investigation. An email from the national Party in August 2014 suggested many new members even with different postal addresses had used the same email address. Carys Parry also told them only two credit cards were used. She later told Ms McColgan KC that it seemed like 'entryism', or as Mr Letts put it, a 'takeover'. She told the Executive to 'welcome' the new members but ask them to verify their membership. I accept Ms Parry and the Executive were right to be concerned about this sudden and unorthodox new influx of members. Cllr Samra recalled Lt Col Washbrook 'did a full audit of these members and the majority were from Muslim/Pakistani backgrounds'. In evidence, Cllr Samra accepted he had helped with that 'audit', though could not say any other criteria were included save faith/ethnicity which they assumed from the names. He insisted that was reasonable, even though he accepted the names only did not show they were Muslim as such; or even if so, were of Bengali or Indian national origin.
50. In any event, the Executive Committee's concerns were dramatically amplified when on 28th August 2014, Lt Col Washbrook received a petition of 77 members calling for an Extraordinary General Meeting (sufficient under Federation Rules): "...to notify you as the Chairman of Walsall South and North Conservative Association of our deep frustration and disillusionment at the lack of co-ordinated political activity by the Association in the Local and European elections in May 2014 and more recently in the by-election in Birchills and Leamore. The attached petition contains signatures of 77 members of the Association.... We now call upon the Chairman and the Secretary of the Association to convene an urgent general meeting within 28 days of all members in accordance with the Constitution governing Conservative Associations to discuss the following agenda; 1) Motion of no confidence in current Executive Committee of the Association and 2) Subject to 1, the election of Officer of the Constituency Association." On the statistics I have, in the 2012 local elections (just before Assisted Status) with one Councillor place in each of the 20 wards up for election, Labour had received c.45% of the vote and 9 seats, the Conservatives c.34% of the vote and 7 seats, with the Liberal Democrats in third place with 7.4% and 2 seats (with the other two to Independents). By contrast in 2014 with 19 seats contested, whilst Labour ended up still with 9 seats and the Conservatives 7 (although Lt Col Washbrook was not

elected), UKIP gained 3 seats on c.27% of the vote to the Conservatives' 31%, with Labour gaining from the Conservatives in two seats, including St Matthews where Mr Johal lost, having replaced Cllr Imran Azam deselected in 2013. Indeed, he and another Mr Azam from the same address (I find his father, later expelled alongside the Claimant) signed the petition. Indeed, they had the most obvious motive to create the petition. Yet Imran Azam told the expulsion meeting in October: "Mr Azam said he struggled to understand why he had been de-selected as a councillor.... Mr Azam listed his work for the party and as a councillor.

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Arif v Baker Although he had been de-selected he had helped in Bloxwich and offered to help in other wards. Mr Washbrook asked about the timing of the petition which was just as recently joined members were eligible to vote (having been members 3 months). Mr Azam said he knew nothing about this. He did not know who started the petition or who circulated it... On [why he signed the petition], Mr Azam replied that he had seen the letter and understood it to be within the constitution.... Mr Azam was asked how the Executive had been negligent. He replied that no help had been given in elections and by-election. Mr Washbrook asked what more could have been done in the by-election. Mr Azam agreed that campaign had been fought hard. Mr Sohal asked if he had helped in his former seat at the election. He replied that his offers of help had not been responded to. Mr Hicken asked Mr Azam if he knew who had delivered the petition to his home and who had collected it. Mr Azam said he did not know, his father dealt with it." Both Imran Azam and his father were not new members and I have not been told what proportion of the 77 petitioners were the c.130 new members. It certainly appears that most of the petitioners have names which could have been Pakistani or Bengali family names, but the agenda related to the leadership of the Walsall Party. Notably, the Claimant did not sign the petition; and whilst there was plenty of rumour he was behind it, there is no evidence he was involved and I find he was not

51. Lt Col Washbrook and the rest of the Executive, who had only been in place a few months since March 2014, obviously saw this petition as an existential threat. As Mr Letts explained, in 2014 the Action Team had spent two years significantly improving the Federation, which had just come out of Assisted Status and appointed a new Executive. But suddenly they were faced with the 'imposition' of 130 new members and a few months later, a petition trying to unseat the new Executive. However, Lt Col Washbrook's concerns went further in a letter of 31st August 2014 to Alan Mabbutt, the national Party Director of Organisation. He wrote that: "We have identified a Pakistani Islamic group who are attempting to remove the Executive and take control of the Association. These are predominantly new members who were recruited specifically for this purpose. They have petitioned for a SGM without foundation in pursuance of their own separate agenda. We do not consider that the petition is valid. As the petitioners' actions are inconsistent with the objectives and well-being of the party we propose to terminate their membership.... In Jan 2014 when we were advised that the Association was coming out of assisted status a small group of Muslim councillors

started to aggressively sign-up compliant members from their Islamic community. The group's intentions are to have a controlling majority at AGM for the election of officers and selection of local candidates. This...was pursued covertly by registering and funding these via the Conservative web site. There were also persistent efforts by this group to obtain a comprehensive list of the existing membership to ascertain how many new members they had to sign up..... Members of the Islamic community alerted us to this process having been approached to join the party for this purpose. However, they were not prepared to speak out publicly in fear of intimidation or being vilified by their peers. We monitored this...and noted a number of irregularities; new

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Arif v Baker members shared a common contact E-mail address, a number were not on the electoral register or shared addresses and were of Pakistani heritage.... The instigators of the petition wish to conceal their identity. With the possible exception of 3 people, all of the petitioners are of Pakistani Islamic heritage. This attempt to take control of the Association by gerrymandering membership provides irrefutable evidence as to the purpose of this group... Walsall was identified as...prone to electoral fraud; vote harvesting, postal vote abuse and fraudulent registration. These practices are prevalent in Pakistan and regrettably there are members of our community who derive from this heritage that believe they can emulate those practices here in UK. I am concerned in identifying this group in terms of racial or religious profile for fear of being labelled as racist or not being PC. However, I would be negligent in my duty as Chairman of the Association to ignore the evidence and where it leads. Over 29% of the electorate voted for UKIP locally and an additional 15% went on to vote for UKIP in the EU Election. UKIP have only one policy 'Immigration'. It would be electorally disastrous in Walsall to allow the Association to be taken over and dominated by a Pakistani Islamic clique.” In a similar letter to the Secretary to the national Party Board Stephen Phillips on 12th October 2014, after the petitioners had been expelled, Lt Col Washbrook said: “In August 2014 we identified an Islamic group of Pakistani heritage who attempted to remove the Executive and take control of the Association. The group consisted of members who were recruited specifically for this purpose. The Association Council averted this Trojan Horse attempt to subvert the legitimate procedures of the party by rejecting the membership of 57 individuals and expelling an additional 77 members who participated in a petition to remove the Executive.” (my italics)

52. Therefore, it is crucially important to this whole case to appreciate that there were (at least) two streams of thought about the petition within the Executive:
- (1) On one hand, I accept Mr Baker’s evidence that he saw the petition purely in political terms. He considered the Federation had recovered from a dire state before Assisted Status to much-improved and efficient operation. He considered this unorthodox group of new members had ‘joined the Walsall Party behind its back’ and whilst ‘entitled to their opinion’, they were judging the Executive about the local elections after an inadequate period. Accordingly, he considered it was legitimate to investigate and if necessary to expel the

petitioners. In fairness, that was not a view limited to the Walsall Party: the McColgan Report notes that was also the view of Carys Parry.

- (2) However, on the other hand, Lt Col Washbrook went much further: he framed the petition as a ‘Trojan Horse attempt’ to remove the Executive and take control of the Walsall Party. Whilst Cllr Samra suggested this was a simple allusion to the Homeric myth, I am afraid I found that disingenuous. As I have said, 2014 was the height of the ‘Trojan Horse Affair’ in the UK. Lt Col Washbrook, in his August and even more explicitly in his October letters to the national Party, was drawing an exact parallel with the petition. He not only called it a ‘special interest group’, as the Executive’s letter

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Arif v Baker inviting the petitioners to a meeting in September put it. Lt Col Washbrook expressed the petition as a ‘Trojan Horse’ takeover bid by a ‘Pakistani Islamic clique’. (Technically ‘Pakistani’ is a national origin, not a ‘race’ - unlike ‘Sikh’ - but it falls within the definition of ‘race’ under s.9 Equality Act 2010 ‘EqA’ as discussed below). In short, Lt Col Washbrook was framing the petition in explicitly racial-religious terms. I come later to whether that was directly discriminatory, which is not as simple as it seems. It certainly does not mean Lt Col Washbrook can be labelled simplistically as a ‘racist’ or an ‘Islamophobe’ – any more than can be the national politicians of all parties in 2014 who fuelled the fire about ‘Trojan Horses’, which clearly spread to Lt Col Washbrook. He clearly did not see himself as racist and I do not doubt he was on friendly terms with many Muslims, such as Mr Rasab; and his letters refer to being ‘tipped-off’ by Muslims. Nevertheless, unlike Mr Baker, Lt Col Washbrook chose to articulate the petition in explicitly racial-religious terms; and drew an implicit distinction between what he might have termed ‘Good Muslims’ (i.e. those who tipped off the Executive about the petition, or Mr Rasab); and ‘Bad Muslims’ such as the petitioners with their illegitimate ‘Trojan Horse’ agenda. It is not my place to debate that categorisation in political discourse, which is not uncommon. I simply emphasise it is ‘racially/religiously-framed’, when Mr Baker saw no need to do that with the petition. The question is the extent to which such ‘racial-religious-framing’ influenced others on the Executive.

53. On 18th September 2014, the Executive discussed the new members and petitioners and noted several petitioners had told them they were not members of the party and only one of 64 responded to letters inviting them to validate their membership. The minutes do not refer to race or religion. Indeed, Lt Col Washbrook was determined there should be a hearing to decide whether to expel and the rules be strictly followed and any members of the Executive who felt conflicted should not vote. The meeting was arranged for the 2nd October 2014 and attended by Carys Parry and chaired by Maggie Punyer, the Midlands Regional Chair. The invite said: “Officers of the Association have determined that you recently joined the party as part of a special interest group. The intention of this group is to undermine the political cohesion, activities and objectives of the Association. You recently participated in an attempt to undermine, remove and replace the officers of [the] Executive, in support of the

group's aim of taking immediate control of the Association." imntrol of th Given (i) this was expressed as a conclusion more than an allegation; (ii) the letter said it would be the Executive under challenge (albeit under an independent Chair) who would decide it; and (iii) the date given was the 1st October 2014, it is surprising any petitioners at all attended the meeting on 2nd October 2014. Yet three did, including former-Councillor Imran Azam as I said, who was expelled by majority with three Executive members not voting. Mr Matloob Hussain told the Executive on 2nd October 2014 he signed the petition but did not see the covering letter: "Mr Hussain found his subscription had lapsed. He was concerned that the party were losing council seats and had been persuaded to stand in Palfrey Ward [in 2012 as] no other member was available....[but he had] had no help in the election. His other concern was he could have helped to get the vote out in St Matthews Ward but was not asked to help. This is why he

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Arif v Baker signed the petition and apologised for doing so. He had thought it was calling for a round table meeting to bring everyone together. He was not part of a group seeking to undermine the party and apologised again." Despite that explanation, Mr Hussain was also expelled by a majority of the Executive. So was Mr Hakin Ali who said he had signed the petition because he was concerned at the loss of the Council and de-selection of existing councillors (probably Cllr Imran Azam in St Matthews, who was replaced by Mr Johal who lost the seat to Labour). Mr Ali said he did not know who signed the petition and that he would not have said if he had. He was duly expelled unanimously. Others who had written into the meeting explaining their reasons for signing the petition were also expelled, along with the 67 petitioners who were members but did not respond.

54. Yet as I said, the Defendants' witnesses made the common error of saying the attendees gave no reason for signing the petition, which is plainly wrong. It also suggests Executive 'groupthink' at the 'mass expulsion meeting', as I shall call it. Whilst I accept Mr Baker voted without thought to race or religion, Lt Col Washbrook openly framed the issue in those terms and Mr Letts and Mr Sohal candidly admitted the Executive knew of his views. Whilst not endorsing them all, Mr Letts accepted he also saw the petitioners as a 'Pakistani Islamic Group'. Mr Sohal defended Lt Col Washbrook's essential view, if not how it was expressed. Mr Gandham clearly respected Lt Col Washbrook and there is no suggestion in the notes he exercised any independent judgment, I find he followed his lead as well.
55. Mr Gandham did stress the Executive had sought external advice from the regional Party and national Party. Yet he accepted both Carys Parry and Maggie Punyer had told the McColgan Report that they advised the Executive strongly against expelling the petitioners as a group rather than on an individual case-by-case basis, but he disputed that was true. Certainly, Maggie Punyer objected to the conclusions of the Mort Report which overturned the expulsions, although I have no evidence that Carys Parry did. However, even if the regional officers supported the expulsions (along similar lines to Mr Baker, with no 'racial-

religious framing’), I accept Cllr Bird’s evidence the national Party did not advise the Executive to expel the petitioners as a group. That would also be contrary to the findings of the Mort Report. Simon Mort was Chairman of the national Party’s Disciplinary Committee (and also signed off its guidelines for expulsions to which I return). Around mid- October 2014, he was commissioned by the national Party Chair Lord Feldman to carry out an investigation, which was significantly delayed by the 2015 General Election, so Mr Mort and his colleagues only visited Walsall in June 2015 (as Mrs Punyer later complained) and sent out their report on 15th July 2015.

56. The Mort Report’s conclusions and recommendations were unflinching: “Membership functions (including renewals) were not carried out properly. A culture of unwelcome towards new members existed. The fundamental democratic right to petition was denied. The reasons put forward by the officers of the Federation and relied upon by the Executive of 2 October 2014 were fundamentally flawed for the following reasons: There was insufficient evidence upon which the accusations laid could be substantiated. There was insufficient evidence that they were part of a special interest group. There was

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Arif v Baker insufficient evidence that the group was determined to undermine the political cohesion of Walsall Conservatives. The Panel recommends to the Board that: 1. The practice of new members reporting at the constituency office to present identification documents be discontinued. 2. The members who have appealed be reinstated... 3. The decision of the Executive Council meeting held on 2 October 2014 be set aside.

4. The existing Deputy Chairman (Membership) [i.e. Mr Samra] be removed from office..... 5. The responsibility for membership of the Walsall Federation should fall to the Deputy Chairman (Membership) West Midlands Region who must report in this context to the Chairman of the National Convention.”
57. One of the people spoken to by the Mort team (although not mentioned in its Report) was the Claimant, who clearly supported the petitioners’ appeal. Nevertheless, I have no evidence whether the petitioners complained of Islamophobia or that the Claimant did so on their behalf. His statement is silent on this point, focusing instead on his email to Alan Mabbutt to inform him the Federation had organised selection meetings in St Matthews and Paddock wards and deselected his ally Barbara McCracken; and that his support for a local Parliamentary candidate was conditional on the national Party promising to investigate the mass expulsions. However, the Claimant does not say he told the Mort Report he felt the expulsions were influenced by race or religion, nor that the appeals were on this basis; and Mr Beever wisely did not ask him about this, simply to confirm that the Mort Report made no reference to it (or indeed to him). I return to this when discussing the Claimant’s ‘protected acts’ for the purposes of his victimisation claim.

58. However, Ms Punyer was not the only person unhappy with the Mort Report. Cllr Washbrook (as he had become for the Conservative safe seat of Paddock ward in the 2015 May elections) wrote to Mr Semple, Chair of the National Convention on 13th August 2015, asking him to set aside the Mort Report, saying (my italics): “5. The [Mort Report] Panel accepted the evidence from Councillor Arif on behalf of the 77. He was the leader of this special interest group, financed the new members and was instrumental in composing the Petition letter. Arif did not come forward as a witness to the hearing on 2 Oct 14 and actively attempted to conceal his involvement from the Executive. Of more concern is the Panel's conclusion and recommendations are based solely on the testimony of those who were sanctioned and their leader....
12. The management team did not perceive this as a sinister plot. I cannot recall anyone using an emotive term of this nature. They were however concerned, that if this divisive sectarian attempt to remove and replace the Executive became public, or was successful at some later date, it would seriously undermine support for the Conservative party; within the local membership and at the General Election.... 15..... Although being of Pakistani Islamic heritage or a member of a mosque, was not in itself a factor in the decision process, it added to the evidence of affiliation between members of the group....
23. Arif was not charged as he did not sign the petition and the members of his group were not prepared to come forward and implicate him. Although he gave evidence to the Panel as one of the principal witnesses, the report

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Arif v Baker is silent on his testimony or involvement. I would appreciate the opportunity to have sight of the written evidence that was relied on and presented to [it].

24. We were not recalled to answer any questions or respond to accusations .... clearly made to the Panel. None of the points detailed specifically in the Panel's report were put to us. The removal of the Deputy Chairman (Membership) is without due process and is also totally unjustified....
25. There can be no doubt that this was a sectarian Trojan horse attempt to take control of the Executive. As it did not succeed we can only speculate as to its purpose. It can also be stated with certainty, that had these events been made public, it would have severely damaged both our finances and the Conservative political prospects at the Election. This group was prepared to use corrupt methods to promote their own self-interest, without regard for the consequence to the party. On this basis alone expulsion of those responsible was warranted under the terms of the Constitution.
26. The decisive action taken by Walsall Executive to expel those guilty had put an end to corrupt sectarian recruitment practices in the Walsall Federation; sending a clear message that vote rigging will not be tolerated, has now been overturned.

27. In view of the serious breach of The Appeal Procedure I formally request the Board set aside their decision...and re-open this investigation.” Therefore, Cllr Washbrook was unrepentant that the petition was a ‘sectarian Trojan Horse attempt to take control of the Executive’ of a group sharing ‘the affiliation of being of Pakistani Islamic heritage’ (albeit despite previous letters, he claimed that was not a factor in the expulsions) and he explicitly saw the Claimant as its leader.
59. Similarly, Mr Samra blamed the Claimant for his removal as Deputy Chairman (Membership) by the Mort Report and on 25th August 2015 emailed Stephen Phillips at the national Party, which is quoted in the McColgan Report, but not disclosed to the Court, as I noted above. I find this was a deliberate non-disclosure by Mr Samra who was seeking to conceal what he had said at the time. In the email, having referred to the ‘Muslim cemetery’ issue, Mr Samra said the Claimant was: “....openly critical of the police for not distinguishing between those who wish to go to Syria on Humanitarian grounds and those who are radicals. Walsall has been a hotspot of terrorist activity lately and a number of high- profile arrests have been made... [He] sponsored a meeting at Walsall Council to co-ordinate a campaign and march in London in support of Kashmir. As a Councillor and member of the Cabinet these issues are perceived as Conservative policy, supporting a narrow section of the Pakistani population. Although these issues resonate in predominately Muslim Labour areas of the community, they are counterproductive and have driven many local Conservatives into supporting UKIP. It is for these reasons that I have decided that I will be standing against him in the upcoming St Mathews ward selection. Furthermore and very alarmingly, at a campaign meeting in April this year, attended by myself, [the Claimant], [Peter Washbrook] and members of the Bangladeshi community. A family member of the M & T family stated ‘Uncle Arif comes round every year and takes our postal votes, he fills them in and sends them off’. I will let you draw your own inference from that !” (my italics)

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Arif v Baker So, Mr Samra sought to present the Claimant as corrupt, but also ‘sectarian’ and ‘supporting a narrow section of the Pakistani population’ which may resonate with those voters, but drive others towards UKIP. Moreover, to highlight the Claimant’s ‘sectarian agenda’, Mr Samra referred to ‘Walsall being a hotspot of terrorist activity’ and appeared to link that to a march in London relating to Kashmir, which was raised as a live issue within the Claimant a month later at the approval meeting. Topic 1: ‘Non-Approval’ in September-October 2015

60. Indeed, I move on from ‘the petition controversy’ to the first pleaded complaints in Topic 1: the Claimant’s non-approval as a Conservative candidate on 28th September 2015 and the rejection of his appeal on 22nd October 2015. The pleas of Cllr Washbrook and Mr Samra were to of no avail – the national Party did not set aside the Mort Report and 75 of the 77 expelled members (2 having resigned) were re-instated to the Walsall Party and Mr Samra was removed as Deputy Chairman (Membership) with his role being transferred to the regional Party (much to Ms Punyer’s frustration). However, the Walsall Party Executive co-

opted Mr Samra as Secretary. The Claimant and his allies, including de-selected Councillors Imran Azam and Barbara McCracken, as well as Mr Barnard and Cllr Bird, wrote to Lord Feldman to express their concern on 17th September 2015, although there is no suggestion the Walsall Party Executive were aware of this letter.

61. Nevertheless, the Claimant (and Cllr Bird) clearly did not anticipate what Cllr Washbrook would do at the upcoming selection meeting on 28th September 2015. There are no notes for this meeting, chaired by Cllr Murray from Aldridge who explained that is the convention, but I broadly accept his account of that meeting in his statement, from which I quote with some interpolations from other evidence: “The make-up of the panel was split between representatives from the three constituencies, Walsall North, Walsall South (the Federation area) and Aldridge Brownhills, with those from the Federation.... having a majority of 4-3 over those from Aldridge Brownhills...[The Claimant said present were Cllr Bird as Council Leader with John Rochelle like Cllr Murray from Aldridge; and from the Federation Executive Cllr Washbrook, Brian Letts, Sandeep Sohal and John Baker, with Mr Samra notably being absent]... The usual procedure is that a list of questions is agreed, which are asked in turn by the respective panel members with time given for supplementary questions. After the interview is over there is an immediate vote by secret ballot with no group discussion, to prevent stronger characters influencing others on the panel. This process is usually a formality for sitting councillors (and I expected this to be the case in respect of Mr Arif’s interview), except where there may have been incidents arising during the current term that may call into question their suitability for being able to seek re-selection as a councillor. We saw five or six candidates prior to Mr Arif, some of whom I did not really consider to be councillor ‘material’, but all of whom were effectively given a rubber-stamp by the majority by way of approval (some of whom I did not vote for). [The Claimant agreed the approved candidates were Mushtaq Ahmed (a former Councillor who had as his referees Mr Samra and Gurmeet Sohal); Zulfiqar Ali (whose referees were Gurmeet Sohal and

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Arif v Baker Mushtaq Ahmed); Yasin Mohammed, whose referees were Cllrs Bird and Andrew); Akbar Ali (whose referees were the Claimant and Sue Arnold), and Glyn Marston (whose referees were Mr Samra and Cllr Hicken].... But at Mr Arif’s interview things were different [Cllr Bird recalled whilst none of the others had ‘embarrassing’ material put to them, despite his own objection, Cllr Washbrook put three matters to the Claimant]. The Walsall representatives turned on him like a pack of wolves. It was dreadful. They ignored the standard questions and started dragging up things, one of which I remember from about 5 or 6 years prior to the interview concerned one of Mr Arif’s properties that had been used by the tenants as a cannabis factory. The police had investigated and it was quite clear that Mr Arif had had no knowledge of this, which was normal given that this was a commercial property. He was accused of all sorts of things in the further questions put to him, none of them proven. Those questions were not relevant to whether he should be allowed to continue to stand as a councillor. He was already a

long standing, well-established, well-respected councillor. They just turned on him with these accusations, which appeared to have been pre-written for them, you could see that they were reading from these pre-written scripts which were not their own. Mr Arif was vilified at this interview. There was little I could do..as chair other than attempt to bring members back to order, but I could not stop them from asking whatever they wanted. Me and the other Aldridge Brownhills members asked the correct questions on the list, but it was obvious the Walsall members (Peter Washbrook, Brian Letts, Sandeep Sohal and John Baker) had pre-determined their vote and were just looking to justify not approving Mr Arif, [as] duly occurred.” Mr Murray was so concerned, he emailed Mrs Punyer and others shortly afterwards: “I feel obliged to write to you because I am not entirely confident that the decision regarding [the Claimant] was made with absolute impartiality and open-mindedness by all members of the committee... I have no hard evidence that any member of the committee showed bias for or against him, but my ‘gut feeling’ is there may have been certain pre-determinations...”

62. I accept that some of Mr Murray’s language in his statement is a little florid: e.g. ‘turning on him like a pack of wolves’, since he accepted as Chairman he had agreed in advance the three additional questions for the Claimant if he denied anything embarrassing to the Party – which he had done to allow him to address them. Cllr Murray also accepted the Federation rules had been technically complied with. Cllr Bird also accepted he had previously sprung embarrassing material on a candidate if they denied anything embarrassing to disclose. Whilst no such questions were asked of any of the other five candidates, in fact as the Claimant accepted, they were legitimate candidates who had either previously been elected councillors (Mushtaq Ahmed), had councillors as referees (Mohammed Yasin, Akbar Ali and Glyn Marston), or Executive member support (Zulfiqar Ali). There is no evidence any of them had anything embarrassing to disclose, although crucially nor that any were associated with the 2014 petition. The Claimant also accepted Mushtaq Ahmed, Mohammed Yasin, Akbar Ali and Zulfiqar Ali were all Muslims of Pakistani origin like himself. I reject any insinuation they were compliant ‘Muslim stooges’ only approved to cover up his non-approval (as Zulfiqar Ali would show in 2016).

## Judgment

Arif v Baker Walsall’s Muslim community were a key part of the electorate and I accept for most of the committee, the four other Muslim candidates were approved on merit, even if as Cllr Murray said, some had more merit than others. Their approval will be a very important consideration when I examine later if there was discrimination.

63. Nonetheless, as a matter of primary fact, none of the approved candidates were sitting councillors like the Claimant and I accept the evidence of Cllr Murray and Cllr Bird that it was extremely rare for a sitting councillor not to be approved. Moreover, I also find on the balance of probabilities that Cllr Washbrook’s questions of the Claimant were not simply pre-planned, they were a deliberate attempt to discredit him and prevent his approval. After all, only a month earlier, Cllr Washbrook described the Claimant (in fact I find incorrectly) as

the leader of the 'Trojan Horse' group trying to unseat the Executive, led by Cllr Washbrook. Likewise, also a month earlier Mr Samra (who was not present at the approval meeting) had similarly complained to the national Party about the Claimant's agenda, including 'sponsoring a meeting at Walsall Council to co-ordinate a campaign and march in London in support of Kashmir'. It is no coincidence that Cllr Washbrook asked at the meeting what I will call 'the Kashmir question': "As a Councillor and cabinet member, you organised a meeting about Kashmir at the Town Hall....to organise people to march for Kashmir in London next Sunday...outside Indian High Commission in London to raise concerns about Indian soldiers killing innocent Kashmiri men and women in occupied Kashmir by India... Can you comment on how this activity might be perceived and interpreted by the electorate locally and nationally?" However, as Cllr Bird said, the Kashmir issue was a significant one for the Pakistani -origin community in Walsall and a humanitarian issue which every candidate in St Matthews supported and he had himself. The same was true of 'the Gaza question': "In August 2014 as a Councillor and Cabinet Member and a member of the Walsall Coalition for Palestinian Rights, you organised a peaceful demonstration urging Walsall Council to fly the Palestinian flag, in solidarity with people..affected by the conflict in Gaza. [the Press quoted]... 'Councillor Arif, Conservative member for St Matthews Ward said the subject crossed party and religious lines'. Have you supported any other protest activities related to Palestine? Can you comment on how this action might be perceived by the electorate both locally and nationally?" In 2025-26 this is now a political issue on an even greater scale than it was in 2014. Mr Letts and Mr Sohal stressed that a Councillor must represent the whole ward, not just one community in it, which is of course true. Nevertheless, I accept the evidence of the Claimant and Cllr Bird that they saw them as humanitarian stances crossing party and religious lines, as the Claimant was specifically quoted as saying. None of the other candidates (Muslim or not) were asked about their stance. However, 'the Cannabis question' was specific to the Claimant. It related to the prosecution in 2010 of the Claimants' tenants who were using premises he let to them to cultivate and store cannabis on a commercial scale. Nevertheless, as the Claimant and Cllr Bird said, in fact the Claimant had called the Police himself, the prosecution had been widely publicised in the local media and the Claimant since stood as a Councillor and still been elected. It was clearly 'old news', which was

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Arif v Baker the conclusion Cllr Murray reached despite being previously unaware of it. Along with Cllr Bird, the Claimant understandably objected to all these questions. Mr Letts, Mr Baker and Mr Sohal all said he was 'confrontational' (although the questions were clearly confrontational) which was a factor for the panel in refusing his approval: voting with Cllr Washbrook as they did with all candidates.

64. I find on the balance of probabilities that (unbeknownst to the rest of the Approvals Committee, including Mr Baker, Mr Letts and Mr Sohal), this was precisely what Cllr Washbrook wanted to achieve. Whilst he clearly had an animus against the Claimant

because he perceived him to be the leader of the ‘Pakistani Islamic clique’ that tried to oust the Executive, as he said in August 2015, the Claimant was not ‘charged’ as he did not sign the petition and ‘members of his group’ (as Cllr Washbrook put it) did not implicate him. So, Cllr Washbrook knew he could not confront the Claimant about the petition itself. Instead, I find on the balance of probabilities that in seeking to discredit him, Cllr Washbrook not only asked ‘the Cannabis question’ which he knew was ‘old news’. He also asked questions intended to ‘frame’ (in many senses of the word) the Claimant as having a ‘sectarian political agenda’. ‘The Gaza question’ deliberately challenged the Claimant’s publicly-quoted stance that issue ‘crossed party and religious lines’. Moreover, ‘the Kashmir question’ presented the Claimant as sectarian in a ‘Pakistan vs India’ sense, just as Mr Samra had presented him in August as ‘supporting a narrow section of the Pakistani population’ in his email he deliberately failed to disclose. I do not go so far as to say the two of them ‘hatched a plan’ together, but Mr Samra’s view of the Claimant clearly aligned with that of Cllr Washbrook and it is notable Mr Sohal thought Mr Samra was not present at the approval meeting as he and the Claimant had ‘bad blood’. Yet I accept Mr Sohal, Mr Baker and Mr Letts did not share the same animus as Cllr Washbrook and Mr Samra. These factual findings are important to the discrimination claim as I discuss later. I find the reason why Cllrs Murray and Bird thought Cllr Washbrook’s questioning of the Claimant was a ‘stitch up’ is that this is precisely what Cllr Washbrook intended.

65. The Claimant was dismayed at his non-approval and on 14th October 2015 wrote to Cllr Washbrook to appeal, which struck a delicate balance between putting forward his clear allegations and aggravating Cllr Washbrook further. He responded in detail to the three questions in the way I have already summarised. He also pointed out the Procedure for the Selection of Local Government Candidates gave them ‘preferential treatment for their current seat, but not automatic reselection’. The Claimant (rightly) suggested there was a clear bias against him, adding (my italics): “I believe that the questions I was asked by the selection committee were deliberately unfair and designed to prejudice the vote against me. I do not believe that the questions selected for other candidates were similar in nature or contained elements of race and religion as mine did. I would therefore question the objectivity and fairness of the author of the questions and would like disclosure of the questions put to other candidates....”
66. The Claimant’s appeal against non-approval was arranged for 22nd October 2015 to be chaired by an external Party official – the Area Deputy Chairman Mrs Boulter. The minutes show her determination to limit the appeal to the correctness of the procedure followed on 28th September 2015, stopping Cllr Bird exploring the legitimacy of the three questions which he had objected to Cllr Washbrook asking.

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Arif v Baker There is rather an irony in Mrs Boulter's zealous insistence on process, given that it is to my mind extremely surprising that the Walsall Party's rules permitted people involved in the original decision under appeal to vote on the appeal against it, including Cllr Washbrook, Mr Letts and Mr Baker. They were also joined on the appeal by Mr Gandham and Mr Ali; and surprisingly by Mr Samra, despite his intention to stand against the Claimant. He said that given the focus was procedure and he had not sat on the original panel, he saw no conflict of interest. I find on the balance of probabilities that he deliberately ignored his plain conflict of interest in order to ensure the Claimant was not approved so that he could stand instead. Again, I must consider later whether that was discrimination or victimisation. At the approval appeal hearing itself, the Claimant and Cllr Bird objected to the composition of the panel, but were overruled on the advice of Ms Parry by Mrs Boulter. The Claimant had a 5-minute address which Cllr Washbrook then answered in the same time. Cllr Murray then addressed the meeting and accepted that there had been other occasions where pre-planned questions had been asked. Cllr Murray said that he had allowed Cllr Washbrook to ask his questions to allow the Claimant to answer, although in answer to Cllr Bird's question, Cllr Murray agreed this was the first time there had been such a departure from set questions, although Mr Letts pointed out Cllr Bird had asked such 'ambush' questions in the past. Mrs Boulter repeatedly intervened to insist they simply look at the process. Despite that, both the Claimant and Cllr Bird tried to make the point how unusual these questions were, but once again Mrs Boulter objected. Mr Samra asked Cllr Murray if he considered the meeting had been conducted correctly and the minutes record that Cllr Murray said it had. However, given his email at the time, I accept Cllr Murray actually said it had been conducted within the technical rules and he went no further than that. When the Claimant argued (as I find, correctly at least for Cllr Washbrook) the approval meeting had been predetermined, once again Mrs Boulter intervened to focus on procedure, even though he had raised a procedural fairness complaint, namely the absence of 'preferential treatment' for sitting councillors in the procedures. Nevertheless, the appeal was dismissed unanimously as Cllr Washbrook and Mr Samra each always intended that it would be.

67. Whilst the Claimant had no technical right of appeal against that decision, unsurprisingly he suspected the approval appeal was as much pre-determined as the original decision, as I find it was, certainly by Cllr Washbrook and Mr Samra. On 9th November 2015, the Claimant raised a complaint to the national Party which I do not have, although the McColgan Report summarised it in these terms: "An email from MA of 9 November 2015 to SP for the attention of Lord Feldman protested that the decisions were incompatible with natural justice which [under] the Party Constitution applied to "Any removal ... of office or other position" within the Party, reiterated MA's view that he had been subject to discrimination on religious grounds and threatened legal action." This led to a report by Marcus Booth and Caroline Roberts of the national Party ('the Roberts-Booth Report') which summarised the Claimant's email like this: "[A] formal complaint to the Conservative Party Board which alleged that he had been discriminated against on religious grounds by the Walsall Federation Approval Panel and...that the approval process therefore breached the Party's constitution [as]...

natural justice was denied... The Panel has been asked to investigate this matter and to establish whether

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Arif v Baker there are reasonable grounds to conclude that such discrimination took place and consequently that natural justice had been denied.” As I discuss later, Mr Beever rightly accepted the Claimant’s complaint was a ‘protected act’ under s.27 EqA for the purposes of his victimisation claims. Moreover, the Walsall Party were plainly aware of this, as was Cllr Washbrook, Mr Sohal, Mr Baker, Mr Letts and others including the Claimant were all interviewed by Mr Roberts and Ms Booth on 12th January 2016 and Mr Samra emailed them days later (although in his evidence, he suggested he was not involved at all).

68. Indeed, as noted in the McColgan Report, on 16th December 2015, Cllr Washbrook objected to the investigation, including the allegations of discrimination, saying: “Has [the Claimant] made his accusations in writing and identified those he is complaining about ? Has he submitted new evidence to support this new complaint or is it a rework of his unfounded allegations of prejudice and racial bias which were addressed and rejected at his appeal ? If the latter is the case, then his complaint is malicious and should not be allowed to proceed. With respect he cannot continue to regurgitate the same issue because he does not like the final decision of an exhaustive process and independent review.” (my italics) However, as I have explained, far from the October approval appeal ‘addressing and rejecting the allegations of prejudice and racial bias’, it did not explore them at all. Indeed, Mrs Boulter tried to shut down the Claimant’s attempts even to criticise the questions. Nevertheless, this shows Cllr Washbrook saw the Claimant’s appeal to him on 14th October as ‘unfounded allegations of prejudice and racial bias’. Moreover, the timing of the Roberts-Booth investigation caused the Walsall Party some difficulty, since as again noted in the McColgan Report, on 4th January 2016, Alan Mabbutt from the national Party instructed Cllr Washbrook not to proceed with the St Matthews branch meeting on 12th January, or the Federation’s AGM on the 20th January. Cllr Washbrook, as he was to make a habit of doing, ignored these instructions and proceeded with the AGM, but not the St Matthew’s ward meeting and selection. On 20th January 2016, he explained his decision to Mr Mabbutt: “At this point I cannot see any compelling reason or impropriety not to proceed [with the AGM]. Rest assured if the Disciplinary Committee finds in favour of [the Claimant] I will be the first to resign and I suspect followed by other Officers and members. It will be for the Board to decide on the constitutional validity and outcome of the AGM in light of the...Report.” At that AGM later that day on 20th January, Cllr Washbrook was re-elected as Federation Chairman, Mr Samra as Deputy Chairman (Political) and Mr Gandham as Deputy Chairman (Membership) respectively, with Mr Sohal and Mr Shazhad Ali as Vice Chairman, Mr Letts as Treasurer; and Cllrs Follows and Martin as North and South Walsall Conservative representatives respectively. In an email to Mr Mabbutt which could have done little to placate the latter’s sense of irritation at being disobeyed, Cllr Washbrook described it as a ‘very successful AGM where the only discordant note was the Claimant raising the issue of

the expelled members’.

69. Unbeknownst to the those at the AGM, on 18th January 2016, the Roberts-Booth Report had sent to the national Party its report upholding the Claimant’s appeal on lack of natural justice, but not on grounds of discrimination. The report concluded:

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Arif v Baker “The Panel consider the decision not to approve Cllr Arif as a prospective council candidate was not motivated on religious grounds. However the Panel consider that it would not be unreasonable for an individual to conclude that natural justice had been denied to Cllr Arif. The Panel therefore recommend that the application of Cllr Arif for approved council candidate status be re- heard by a newly constituted Panel (none of whom should have served on the initial approval panel), made up of senior members of the West Midlands Region, to ensure the principle of natural justice is seen to have been upheld.... Reasons: The Panel understands that Cllr Arif was instrumental in leading the efforts to reinstate the 170+ [sic] expelled members (who were primarily Muslim) and noted that relations between Cllr Arif and the Association Executive appear, at best, to be strained. There is, it would appear, personal animosity, of historic origin, between certain key individuals. In Cllr Arif’s approval interview, he was asked three questions..not asked of other potential candidates. The Panel acknowledge that the approval panel should be entitled to make appropriate enquiry of prospective candidates. The Chairman of the Association explained to the Panel that the origin of these questions lay with concerns expressed by local residents obtained during canvassing. One of these related to a police raid at a property co-owned by Cllr Arif in 2010, a matter already in the public domain. The other two questions related to Palestine and Kashmir where Cllr Arif holds publicly expressed views. We understand that he has further undertaken action to support the Palestinian cause and to raise concerns against certain alleged actions of India in Kashmir. Whilst it is entirely plausible (as was explained to the Panel) that these questions were raised (rightly or wrongly) out of concern about a perceived sectarian agenda (beyond religion and/or race) and/or from a concern that these are not issues on which a member of the Council should focus, the open wording of the questions presented was such that they could potentially have been perceived to have been asked with a religious agenda in mind (although the Panel do not believe religion was the motivation). It should be noted that Cllr Arif is a Councillor of over 12 years standing, generally acknowledged to be conscientious and hard-working, and that there was no compelling suggestion put to us that he has conducted himself in a sectarian or divisive way in his time as a Councillor...”

70. Of course, there was no evidence available to the Roberts-Booth team, as there has been to myself, that the questions were a deliberate ambush by Cllr Washbrook. Yet even without that, the Report observed that ‘the open wording of the questions presented was such that they could potentially have been perceived to have been asked with a religious agenda in mind (although the Panel do not believe religion was the motivation)’. I will have to reach my own view about the latter later. Accordingly, this was the second time in the space of less than a year that the Claimant’s first support for an appeal and now personal appeal to the

national Party had led to it overturning the Walsall Party's decision-making. If Cllr Washbrook and Mr Samra considered the Claimant their mutual enemy before the Roberts-Booth report, that can only have been reinforced by its decision to recommend the Claimant's application for candidacy re-approval be reconsidered independently. That recommendation was adopted by the national Party on 25th January 2016:

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Arif v Baker "The Board of the Conservative Party therefore instruct that the application of Cllr Arif for approved council candidate status be re-heard by a newly constituted Panel (none of whom should have served on the initial approval panel), made up of members of the Party in the West Midlands, to ensure that the principle of natural justice is seen to have been upheld.... The Board regrets that relations within the Walsall Conservative Association continue to be strained and calls on individuals to put their personal differences aside and unite to pursue an agenda not based on faction, clique, control or personal animosity, but of unity in the interests of the Conservative Party. The Board is concerned that its instructions following the [Mort Report's] recommendations do not appear to have been implemented in full. The Board requests a Report from Officers on progress towards implementation of [those] recommendations...by no later than Friday 20th February. The Board noted that the AGM of the Association had taken place. The Board of the Party seeks an urgent explanation from the Officers of the Association as to their actions in proceeding with the meeting despite advice and instructions to the contrary." Cllr Washbrook responded on 19th February 2016 to that request for an update in detail. It is only necessary for me now to quote Cllr Washbrook's closing paragraph: "In relation to the decision not to place Arif on the candidate list, the Federation has been dealt with in an extremely prejudicial manner. There have been a series of malicious and false accusation of religious discrimination made against the Officers of the Federation, orchestrated by Arif. He has received unqualified and unprecedented preferential support and treatment in every instance." (my italics). Once again, this underlines Cllr Washbrook's evident anger about the Claimant's complaints of discrimination, although of course he will have noted the Roberts- Booth report had not upheld them, which doubtless reinforced Cllr Washbrook's view those complaints were 'malicious and false'. But despite what he had said to Mr Mabbutt before the AGM, Cllr Washbrook did not resign as Chairman. Topic 2: The Selection Meeting in March 2016

71. Nevertheless, by late January 2016, the May 2016 local elections were coming up fast, with the deadline for selected candidates to enter in early April 2016. On 18th February 2016, the independent panel approved the Claimant as a Conservative candidate, that was ratified by the national Party on 1st March, which resolved that: "The Board of the Conservative Party RESOLVES that [the Claimant's] selection as a local government candidate is a matter for the Conservative Party members within the Ward only and without any further reference to the Federation Officers, or the Executive Council or whatever. The Board further RESOLVES that the decision of the Party members in the Ward in the matter of [the Claimant's] selection shall be final." Mr Samra had previously been approved to stand as the prospective candidate. He resolved to stand against the Claimant as he had said he would back in August

2015.

72. As the Branch Chair for St Matthew's ward (as well as the newly- if controversially  
- elected Federation Deputy Chairman (Membership)), it fell to Mr Gandham to

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Arif v Baker organise that selection process. He recommended a postal vote because of the contentiousness and the pressure of time, but the national Party insisted on a selection vote at a public meeting. On 16th March 2016, Mr Gandham emailed Mr Mabbutt with evident frustration at the national Party's stance, saying: "[We intend] to allow all of the qualifying members of St Matthews ward to exercise their Constitutional right to vote, for the candidate of their choice; without fear of intimidation, verbal abuse or the threat of violence. We intend to carry out this process in a totally transparent, independently verifiable way and in doing so eliminate any possibility of vote rigging. However, it would appear the only procedural option you are prepared to contemplate is one that disqualifies many of those entitled members and places party members at risk, against their wishes. On whose local knowledge or evidence do you casually dismiss [my recommendation for a postal vote] I have made in good faith...? [W]e have not held a St Matthews Ward AGM, as you wrongly stated in your response; we took your guidance and have cancelled the meeting twice. You also neglect the fact that there will be many new members at this Ward meeting. Also, that the religious or racial selection issues have never been addressed in an open forum. With regard to the Ward General Meeting, I have provisionally selected the 30 March 2016, I have sourced a venue and we are expediting the documentation accordingly; in the absence of a postal option. However, no matter which date we choose, many of our members will be unavailable due to the proximity of the school holidays. The timing of the meeting is also a dilemma as many of our members have work or family commitments. [For] example, a husband and wife cannot both leave their children unattended at home, to attend a meeting. Clearly we cannot meet everyone's preferences in this regard. There is no written rule in the Constitution or selection procedure which states that members must be present throughout the meeting. In fact, the election of Ward officers at an AGM takes place, without the candidates addressing the meeting.... By insisting on a General meeting with the requirement for members' to be present throughout, you have created a new rule that will arbitrarily disenfranchise yet more members. You appear to place greater emphasis on the administration of the meeting giving scant attention to the constitutional rights of the electorate. What precisely are the Board's priorities in this regard? The candidates have provided a comprehensive CV and a 500- word narrative on why they wish to be the candidate; this will be sent to all members. This more than adequately meets the requirement of a candidate's personal address to the electorate. Many of the Ward members have already made up their minds on their choice of candidate and need only now to exercise their right to vote. Our preference is still a postal ballot which we believe a foolproof system of polling the membership..." Nevertheless, the invitation letters for the 30th March meeting went out to members on 20th March. On 22nd March, Mr Philips emailed Mr Mabbutt ruling out a postal vote as 'open to abuse and we don't trust Walsall'. They instructed Robert Ashman, the

Field Director for the Midlands, to have two officers supervise the meeting:

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Arif v Baker “Please would you ensure these two people have had no prior involvement with the long-running dispute in Walsall and that they have checked the accuracy of the electoral roll for the Ward in advance of the meeting and scrutinise the ballot carefully.” Councillor Bird agreed and suggested he ‘certainly would prefer a neutral venue’.

73. However, the venue found by Mr Gandham was the ‘Samra Club’, owned by Mr Samra’s father and used many times over the years for Walsall Party functions, although presumably never before for a contentious selection contest between a sitting Councillor challenged by a rival whose father owned the venue sharing their name. In evidence, Mr Gandham was pressed about why he had selected the Samra Club. He pointed out that because of the pressure of time between the national Party’s re-approval of the Claimant as a candidate at the start of March 2016 and the deadline for candidates to stand in the election only just over a month later on 7th April, he had asked the national Party for permission to use a postal vote, but they had refused. Mr Gandham said in evidence that he had investigated and there was no other venue of the same capacity and which was ‘free’. Of course, that term is ambiguous: the Claimant’s solicitors’ note was that Mr Gandham said ‘free of charge’, but my own note is that he simply said ‘free’. In context, I understood him to mean ‘free’ in the sense of ‘available’, which given the short notice he had been given, I find plausible despite other difficulties with Mr Gandham’s evidence which I have mentioned. To my mind, the crucial point is that Mr Gandham’s contemporaneous email, even after he had found the Samra Club, still pressed for a postal vote; and despite the Claimant’s suspicions I do not accept that Mr Gandham did so to fix the vote in some way. If Mr Gandham had chosen The Samra Club simply to favour Mr Samra, he would not have continued to press for a postal vote which would have been more neutral. I therefore find on the balance of probabilities that Mr Gandham chose the Samra Club principally because he was instructed to arrange an attended meeting – against his better judgment – and The Samra Club was the only available venue. In short, I accept Mr Gandham’s evidence that he had to organise a contentious meeting in a large venue with very little notice by the end of March, had tried to find a different venue than the Samra Club but none were available, but he expected the regional Party staff to run the meeting properly.
74. On 30th March 2016, the selection meeting took place at the Samra Club. As I said, the apparent minutes of that are the Walsall Party’s response to the Claimant’s complaint. I am also cautious of Carys Parry’s (hearsay) evidence in the McColgan Report given her previous involvement. But there is hearsay evidence in the McColgan Report from Robert Ashman (not previously involved) who attended: “[G]reat care had been taken to ensure only members attended. Regional personnel had their own independent list to sign people in and required membership cards though not photo ID. There were 180 or 200 members in attendance, more than the membership of most associations in safer seats. It was clear the

room was ‘packed with people signed up by both sides’ but a lot of work had been done to ensure that people who were signed up were bona fide members and his view was that most of those whose memberships had been paid for without their knowledge had been weeded out..” Moreover, back in April 2016, in response to the Claimant’s then wide-ranging complaints about the meeting, Robert Ashman had told Mr Mabbutt in an email:

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Arif v Baker “On the night anyone who was on the list and confirmed their name and address was allowed in. Members who had a valid official membership card but weren’t on the list were checked against the electoral register and if they were registered in the Ward they were allowed in. Anyone who was not on the membership list and no membership card were not permitted to enter. Some members did go home and return with their cards. It is incredibly difficult to check out these members as a number have names that appear differently on the register to their membership cards and driving licence / passports. Suki Samra’s mother was not permitted to enter because she had no membership card and wasn’t on the list. When she returned with her card it was noted her name appears differently on the membership list and the electoral roll. I worked on the premise that wherever possible we would allow people to attend if they were able to prove that they were valid members of the Association. We did our best in very trying circumstances to ensure the signing in of members was done in accordance with the rules.”

75. I accept Mr Ashman’s account, not least as the Claimant’s allegations relating to the selection meeting itself have narrowed since to voter impersonation, although the only instance given is a lady called Diane Walker. On 7th April, she wrote to Lord Feldman the Chair of the national Party (witnessed by the Claimant) saying that whilst she had been recorded as voting at the meeting on 30th March, she had been on holiday at the time. However, she did not speak to the national Party when it tried to contact her. Like Ms McColgan KC, I cannot place much reliance on Ms Walker’s untested hearsay evidence. Indeed, given that Mr Samra won by a margin of at least 12 votes, Ms Walker alone made no difference. Indeed, even assuming there was voter impersonation of Mrs Walker, or possibly of a few others (for which there is no solid evidence for such a serious allegation), there is simply no evidence about who was responsible: certainly not that it was at Mr Samra’s instigation (who could not even ensure his own mother could get in first time around), as opposed to by one of his over-enthusiastic supporters without his knowledge). Similarly, it is equally possible that over-enthusiastic supporters of the Claimant, especially in the light of his allegations to the Roberts-Booth investigation, without his knowledge campaigned for him and against Mr Samra by alleging that he was racist, to which I return. Be all of that as it may, Mr Samra won the selection by at least 12 votes. Topic 3: The Local Election and Expulsion of the Claimant in April-June 2016
76. I turn to perhaps the most contentious and complex topic: the 2016 election and expulsion of the Claimant. The Defendants contend – as they found in expelling the Claimant – that he had secretly campaigned against Mr Samra during the campaign in April 2016 for the

election on 5th May – indeed even encouraged people to vote Labour. The Defendants invite me to make my own findings on the balance of probabilities about this issue for the purpose of contributory fault. But the Claimant accuses the Defendants – in particular Mr Samra – of fabricating evidence against him to exclude him, which given Cllr Samra is now a sitting Councillor, is an extremely serious allegation with ramifications for his future political career.

77. Nevertheless, as I have said, in relation to a discrimination claim which is focussed on the subjective motivations of the Defendants and their fellow decision-makers, I must not only reach my own conclusions on the balance of probabilities on the evidence I have about the conduct of the election campaign and the preparation of

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Arif v Baker the disciplinary case; but also make findings about what the decision-makers genuinely believed at the time on the evidence they had in front of them. I will differentiate those findings in three parts: my own findings about the election campaign; my own findings about preparation of the disciplinary case; and my findings about the expulsion decision. However, I start with brief reflections about the evidence on this topic, picking up from my reflections on the evidence earlier.

78. Returning to the five steps I take to the evidence, I first have the burden of proof. Technically, the Defendant bears the burden for my own findings of fact about what actually happened in the election campaign for contributory fault. However, it is so closely linked to the allegation of evidence fabrication, which is unquestionably on the Claimant, that I nevertheless place the burden on him on the balance of probabilities to prove what happened in the election campaign, even though that involves proving a negative to an extent. Next, I bear in mind the agreed and incontrovertible evidence, which is unfortunately thinner on the ground on this topic than on the others, but includes matters such as the broad timeline, result of the election and what the Claimant accepts about the disciplinary process (e.g. that he was invited to view the disciplinary statements and also to a disciplinary hearing). Next there are the contemporary documents, which are all contested, but to very different degrees. At one end are the minutes of the hearing on 30th June 2016, taken by Mr Richards from Aldridge Branch, although as the Claimant was not there, he does not agree them (and Mr Richards minuted the approval appeal in October 2015, not entirely accurately about what Cllr Murray said). At the other end, there are the disciplinary statements from Mr Samra and three anonymous statements the Claimant claims were fabricated, particularly one supposedly by a Mr Moz Khan (who later disavowed giving any 'statement'). There are also later disciplinary statements on the appeal from Mr Samra, Mr Ilyas Ahmed, Mr Mehboob Matloob, Mr Arshad Mahmood, Mr Akheil Mehboob and Mr (now Cllr) Rasab. Next, there is hearsay evidence from the national Party in the McColgan Report and from others in support of the Claimant's appeal. Finally, there is live evidence from Mr Ahmed, Mr Mahmood and Cllr Rasab, but also from Mr Samra and Mr Gandham;

and on procedure from Mr Letts, who also gave evidence about the hearing with Mr Sohal, who actually voted. Last but obviously not least there is the evidence of the Claimant. My findings are based on all this and indeed the whole of the evidence.

79. The Claimant is accused of not only telling voters not to vote for Mr Samra because he was a racist, but to vote Labour. Only Mr Mahmood gave live evidence that he had heard the Claimant say that and I entirely reject Mr Mahmood's evidence for the reasons given earlier: he did not say that in his statement and indeed appeared to be making up his live evidence as he went along. All the other evidence that the Claimant campaigned against Mr Samra and/or for Labour is entirely hearsay. It is either hearsay from Mr Mehboob Matloob about a conversation he claimed with the Claimant which I reject and can place no reliance on given his closeness to Mr Mahmood; the fact Mr Matloob purported to withdraw his statement then changed his mind shortly before trial; and the fact that he has not attended trial to be cross-examined. Or there is hearsay evidence from live witnesses who say they heard voters 'on the doorstep' say the Claimant had campaigned against Mr Samra and for Labour: (now) Cllr Samra, Mr Rasab, Mr Gandham and Mr Ahmed. As hearsay evidence, this must be evaluated applying the criteria in s.4(2) Civil Evidence Act

1995. On one hand the evidence is by live witnesses who made contemporary

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Arif v Baker statements to similar effect (except Mr Gandham). But on the other, these Defendant witnesses have a motive to misrepresent what happened and I have found some collaboration in their statements. Even if what they say accurately reflects what voters told them, it involves multiple hearsay where it is extremely difficult to evaluate its weight. To my mind, it is striking the Defendants have not called a single actual voter to come to Court and say they heard the Claimant say these things. Moreover, as I have said, the circumstances of the making of the original disciplinary statements is concerning. Mr Mahmood – a thoroughly unreliable witness – was present at the meeting between himself, Mr Ahmed and Mr Matloob with Cllr Washbrook and Mr Letts, but he did not apparently make a statement at the time. Yet Mr Khan was not present, yet was said to have made a statement he later denied. I shall have to consider in a moment whether any of the original disciplinary statements were fabricated and if so by who, but certainly these statements raise serious questions about their reliability and authenticity, which in turn undermines the weight of the 'live hearsay evidence' about voter allegations from all the Defendants' witnesses.

80. As against that, the Claimant was insistent he had not campaigned against Mr Samra and for Labour and gave to my mind three compelling reasons why he would not have done so; and I find on the balance of probabilities that he did not do so. Firstly, the Claimant pointed to his election letter to St Matthews Ward on 10th April 2016: "I have had the honour of representing St Matthews Ward for the last 12 years. I have recently been deselected by the local branch and I will not be able to stand in May's election. I have personally nothing to gain from this letter, but I would like the truth to be known...traffic congestion caused as a

result of the Caldmore Road one-way scheme...I do not like politicians misleading the public. I thought I would respond further to the letter from the two Labour ward councillors, Aftab Nawaz and Eileen Russell dated 20th March 2016 to expose their hypocrisy..." It is simply not credible that the Claimant would send out leaflets in St Matthews heavily criticising Labour for hypocrisy then go round door-to-door campaigning for Labour. Secondly, the Claimant supported Conservative candidates in other wards, including Cllr Martin who sat on the Executive and was re-elected in Paddock Ward and Zulfiqar Ali, approved when the Claimant was not in September

2015. After the election, on 23rd June 2016, Mr Ali (who was not elected) wrote: "I am shocked to learn about the suspension and intended expulsion of Mohammed Arif by Walsall Federation of a long-standing member and Councillor not just for St. Matthew's Ward but helpful throughout Walsall, including Pleck. Councillor Mohammed Arif ran my whole election campaign from holding organising meetings, designing, writing leaflets, target letters, designing petitions to the election day action and coordination. When I learnt of his deselection, I went to see him with my agent and former Pleck Councillor Mushtaq Ahmed and we asked him to lead the election campaign in Pleck as I was getting no help from the Walsall Federation's executive committee. I was aware in the last 2 elections in St. Matthew's Arif and Imran Azam (2 sitting councillors) were ignored by the newly selected candidate. Councillor Arif had ran last the local elections in 2015 for the previous candidate in Pleck. I knew there

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Arif v Baker were several key figures sympathetic to the Labour candidate in Pleck who had warned Arif to stay away as it would have consequences for his future elections in Walsall. He shared these warnings with me and then ignored the threats and spent his time helping the Conservative Party in Pleck and worked until very late evenings on most days. We did not win Pleck and were never expected to either, but we got a good campaign together so much so that the Labour Party was so worried that they had to pull councillors from other areas to help, including St. Matthew's. This must have helped our other candidates in Walsall. There were many rumours about Councillor Arif joining the Labour Party in Pleck, but these were malicious rumours spread by the Labour supporters to cause more friction and in-fighting. Mohammed Arif is a recognised loyal Conservative Party figure across Walsall who has helped to recruit many people like me, including Suky Samra who deselected him. I know Arif campaigned for the Conservative Party in St. Matthew's Ward, Pleck, Paddock and other areas. I have seen him work his socks-off for the Party. He doesn't deserve this treatment." This underpins what I found earlier that Mr Ali was not just a 'Muslim Stooge' loyal to Mr Samra approved on 28th September 2015 to cover his tracks, when Mr Ali was firstly critical of the Executive and Mr Samra; and secondly said that Labour supporters were responsible for spreading false rumours about the Claimant. Again, it is not credible that the Claimant would campaign for Labour in St Matthews, but for the Conservatives in other wards. Thirdly, there is the simple point the Claimant made in cross-examination that he had been de-selected but was still approved, expected Mr Samra to lose the

election (which he did by 7% of the vote), when the Claimant could then re-stand in St Matthews the next time. In those circumstances, it would have been ‘politically suicidal’ to campaign against Mr Samra and for Labour. It is much more likely the Claimant focussed on other wards, leaving the coordination of ‘Muslim support’ for Mr Samra in St Matthews to others. Indeed, there is contemporaneous evidence of this (again hearsay as the witnesses were not called, but more reliable than the Defendants’). In June 2016, Mr Chaudray and Mr Munir wrote letters of support for the Claimant (at least one mentioned by Cllr Rasab albeit inconsistently with those letters) to the effect that the Claimant was aware and agreeable to them having discussions with Mr Samra to co-ordinate support, but nothing came of it. Clearly, plenty of other Muslim members of the Walsall Party were politically active in St Matthews Ward during the election. Indeed, one – Mr Azam – was also expelled for campaigning against Mr Samra. To my mind, that is the key to what I find actually happened, as I shall now explain. Topic 3(i): The April-May 2016 Election Campaign

81. It is beyond doubt the Claimant was incensed by Mr Samra’s selection on 30th March 2016 and believed that he had been the victim of discrimination. As the McColgan Report noted, on 4th April 2016, the Claimant emailed Lord Feldman complaining of corruption at the selection meeting and he had been deselected due to Islamophobia saying ‘what other reason is there to deselect a loyal, hard-working across the ward councillor?’ The Claimant made various complaints (which he has not pursued before me) of irregularities at the meeting. Moreover, Mr Samra had won the vote and the Claimant already saw him as the ‘eminence grise’ behind what was now starting to feel like a campaign against him within the Walsall Party (which I can understand, given Cllr Washbrook’s conduct). More simplistically, the

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Arif v Baker Claimant had come to see Mr Samra as anti-Muslim since the cemetery incident. Therefore, I have no doubt in my mind that - privately to close friends and colleagues such as Mr Imran Azam and his father - the Claimant had accused Mr Samra of Islamophobia in engineering his deselection. That is hardly far-fetched when he maintains that allegation and pursues it in public at Court a decade later. Nevertheless, whilst he could not bring himself to campaign for Mr Samra, as I have explained, the Claimant rolled up his sleeves and began campaigning hard in other wards for other Conservative candidates like Mr Ali and Cllr Martin; and indeed, he occasionally publicly attacked Labour in St Matthews with his election flyer.

82. Moreover, the balance of the evidence suggests the Mr Samra was offered support in St Matthews by supporters of the Claimant, which is inconsistent with him campaigning against Mr Samra. The Claimant’s friends Mr Mohammed Munir and Mr Chaudry had discussions with Mr Rasab and Mr Mahmood about support for Mr Samra. Assuming it is the same Mr Mohammed Munir, I do not accept their evidence that he told them the Claimant had instructed him not to help Mr Samra, since that is inconsistent with Mr Munir’s letter and was not squarely alleged against the Claimant at the time. If it was Mr

Chaudhary Munir as Mr Rasab says and he was a different person, what Mr Rasab was told is still inconsistent with what the Claimant said to Mr Mohammed Munir and Mr Chaudry and I find their contemporary accounts more reliable than Mr Rasab's recollection after a decade, especially as he did not make a statement until a year later for the appeal. In any event, Mr Rasab himself accepts Mr Chaudry was prepared to offer support despite being a 'good friend' of the Claimant, albeit on terms which Mr Samra did not accept. Mr Samra said as much in his own disciplinary statement at the time, albeit without naming Mr Chaudry. I do not accept Mr Chaudry would even have offered to help in the first place if the Claimant had instructed supporters not to help. Likewise, as confirmed by letters of support on the Claimant's appeal in 2017, there was another offer of help to Mr Samra in St Matthews by the Mount Street Mosque in St Matthews, where the Claimant had regularly attended for over a decade and where Mohammed Azam (Imran Azam's father) was a trustee. Nevertheless, the Mosque's Vice-President Mr Mushtaq Ahmed agreed with his colleagues that Mr Samra could address the mosque at Friday prayers on 22nd April. Even leaving aside Mr Ahmed's allegation that he was pressurised by Mr Samra and Mr Rasab to give a statement against the Claimant in 2016 which they denied, the fact the Claimant did not try to prevent Mr Samra addressing his own mosque is once again inconsistent with the Claimant campaigning against Mr Samra in St Matthews. In short, the Claimant's denial of doing so is corroborated by contemporary evidence.

83. Therefore, I find on balance of probabilities the Claimant did not campaign for Labour, against Mr Samra or accuse him of racism to voters. But whilst I cannot make detailed findings about this and can only infer it from the evidence, it is entirely possible other members of the Walsall Party were secretly campaigning against Mr Samra. The Claimant was later expelled alongside Mr Mohammed Azam, father of Mr Imran Azam, the Councillor de-selected in 2013. Indeed, they had as much of a motive as the Claimant to suspect Mr Samra of Islamophobia, since they both signed the petition and Mr Samra supported their expulsion in 2014, but they were re-admitted by the Mort Report in 2015. I do not make a positive finding that Mr Mohammed Azam campaigned against Mr Samra. Yet the evidence relied on by the Defendants all alleges that he was involved. Moreover, Mr Ahmed

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Arif v Baker also referred to a former Councillor who tried to persuade him not to help Mr Samra, who was not the Claimant, although the identity of this person is very unclear.

84. Whether or not there was a 'whispering campaign' by some members of the Walsall Party against Mr Samra accusing him of racism and dissuading Muslim voters from supporting him, certainly I do find on balance of probabilities that rumours started flying round the local community to this effect. I find this was nothing to do with the Claimant, although as Mr Zulfiqar Ali pointed out, it was in Labour's interests to stoke up this controversy as well, although I make no finding its campaign team did so. I find that gossip about Mr Samra spread through the Muslim community in St Matthews. As Ms Reindorf said, it is also easy to

see through (for want of a less racialised phrase) ‘Chinese whispers’ how that could have led to voters mixing up what had been said by supporters of the Claimant in March during the selection campaign with April in the election campaign. All this explains why I accept on balance of probabilities that some voters told Mr Samra and his supporters, including Mr Ahmed, Mr Rasab and Mr Gandham, that the Claimant and Mr Azam thought Mr Samra was racist and did not want them to vote for him, or even did want them to vote Labour. However, I repeat I also find on balance of probabilities – indeed I am satisfied so that I am sure – that the Claimant did not do as alleged.

85. Nevertheless, those rumours were swirling around during the election campaign and Mr Samra complained to Cllr Washbrook, who told Cllr Bird to speak to the Claimant. He denied it and had Cllr Bird witness his postal vote for Mr Samra. The Claimant on 29th April emailed Mr Mabbutt and Mr Philips at the national Party to inform them of this and that he had deflected press enquiries about de-selection: “I know that moves are afoot to try to blame the defeat on certain people and try to get them expelled, including me. Stephen will recall, witnesses appeared in front of Simon Mort’s committee to state that at the request of Mr Samra ward members were asking others not to vote for me in 2012.” Moreover, the Claimant said he also met Mr Mahmood (Mr Matloob and Mr Ahmed did not attend) to try and clear up misunderstanding. However, this did not placate Mr Samra who lost the seat to Labour on 5th May 2016 (which meant the loss of Conservative control of Walsall Council), even though he polled more in St Matthews than the Claimant had done in 2012 and Mr Johal had done in 2014 (if not as much as in 2015 where the Conservative vote rose dramatically in Walsall generally). I naturally defer to the local political expertise of the Walsall Party, but I would have thought that was a risk it must have known it was taking when de-selecting a sitting councillor in a marginal seat a month before a local election.
- Topic 3(ii): The May-June 2016 Disciplinary Investigation

86. One of the mysteries of this case is how the disciplinary process actually started. I am conscious of course we do not have the direct evidence of Cllr Washbrook, Nevertheless, before his death in May 2018, he made a written statement to the appeal which has been admitted as a hearsay statement. He said that at the end of April 2016, Mr Samra made a complaint, he passed it to Cllr Bird (which prompted the Claimant’s email to the national Party of 29th April). Then Cllr Washbrook said: “In the subsequent weeks I received additional complaints from four prominent residents of Muslim Pakistani heritage.... I invited the Federation

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Arif v Baker Treasurer (Brian Letts) to assist me and hear the allegations. A meeting was held at the Royal Hotel Walsall at which the four individuals voluntarily came forward to provide verbal reports concerning the activities carried out by Mohammed Arif and Mohammed Azam during the election campaign and the comments they were making encouraging the electorate to vote for other candidates. At the conclusion of the meeting, we both agreed that there was sufficient

compelling evidence to consider initiating action for the expulsion of a party member under the Guidelines for Expulsion....” In an email to Lord Feldman on 7th June 2016 (discussed below), Cllr Washbrook named those four individuals as Mehboob Matloob, Arshad Mahmood, Ilyas Ahmed and Waheed Rasab. However, in his Court witness statement, Mr Letts said the four he met at the Royal Hotel named themselves as Matloob Mehboob, Arshad Hussain, Ilyas Ahmed and Moz Khan. Whilst I accept the first three were Mehboob Matloob, Arshad Mahmood and Ilyas Ahmed, I also accept Mr Ahmed honestly only remembered three of them at the hotel. Whilst Mr Rasab accepted he may have been there (to which I return), he certainly did not give a statement at the time. Nor did Arshad Mahmood – one of the few things he told me in evidence which is correct. Moreover, as Mr Ahmed confirmed (and Mr Letts fairly conceded may be right), Mr Moz Khan was also not at the hotel meeting. Perhaps he was canvassing in Bentley and Darlaston North where he stood as the Conservative candidate in that election. Yet Mr Khan’s name is attributed to ‘Statement C’ at the disciplinary hearing, without any explanation of how his statement came to be produced. This together with Mr Khan later claiming he never made a statement, leads the Claimant to allege that ‘Statement C’ was fabricated.

87. I come to Mr Khan and Statement C in a moment, but there is of course one person ideally placed to provide disciplinary statements to Cllr Washbrook from his own campaign team, including Mehboob Matloob, Ilyas Ahmed and Arshad Mahmood: Mr Samra himself. Yet in his Court witness statement, Mr Samra said: “Other than provide a witness statement I had no dealings in this matter, I did not as Mohammed Arif has pertained take part in any investigations nor did I involve myself with any other witnesses.” However, I find it totally implausible that three (or four) of Mr Samra’s campaign team just happened to come forward as a group after the election without his knowledge or encouragement when he had complained about the Claimant before the election. It was obvious in Mr Mahmood’s evidence how he deferred to Mr Samra and I do not accept he acted independently. I find the same is true of Mr Ahmed and Mr Matloob. Indeed, Mr Rasab said he and Mr Samra grew up together. I find Mr Samra encouraged them and put them all in touch with Cllr Washbrook.
88. In any event, whether Mr Samra was involved in the preparation of the witnesses’ original disciplinary statements, there were other serious issues with them:
- (1) Mr Ilyas Ahmed’s disciplinary statement (‘B’) was apparently the most straightforward and I broadly accept that during the campaign he had heard (I have found, inaccurate) gossip on the doorstep about the Claimant campaigning against Mr Samra and encouraging people to vote Labour; and that he was also visited by a former councillor (whom I need not name, but I find without the Claimant’s knowledge) accusing Mr Samra of racism. Nevertheless, Mr Ahmed said he had prepared his statement in advance of

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Arif v Baker the meeting and handed it to Cllr Washbrook there. But that was not what Mr Letts remembered; and in his own Court statement, Mr Ahmed said that Cllr Washbrook at the hotel meeting had asked him to prepare a statement. Moreover, Mr Ahmed said there was only himself, Mr Mahmood and Mr Matloob there, but Cllr Washbrook at the time said Mr Rasab was involved.

- (2) By contrast, despite being at the Royal Hotel, Mr Arshad Mahmood did not originally prepare a statement at all until the Claimant's appeal in 2017. In any event, I have found Mr Mahmood made things up in his evidence.
- (3) Mr Mehboob Matloob's original disciplinary statement ('A') not only alleged hearing on the doorstep that he had campaigned against Mr Samra, but also that he heard the Claimant himself accuse Mr Samra of racism during a 'lengthy conversation'. Whilst there are messages between him and the Claimant, I accept the latter's evidence that he only met Mr Arshad Mahmood. Indeed, given Mr Matloob's close connection to the thoroughly unreliable Mr Mahmood and that Mr Matloob also briefly indicated he wanted to withdraw his statements before recanting, I can place no reliance on him. Yet, it is not suggested Mr Samra was present at any conversation, so I cannot find on balance of probabilities he knew Mr Matloob was saying he had met the Claimant when only Mr Mahmood did. Moreover, the Claimant's Reply at paragraph 9 does not plead Statement A was fabricated.
89. However, the combined effect of paras.51.12 and 30 of the Particulars of Claim, paragraph 29 of the Defence and paragraph 9 of the Reply are that the Claimant did plead 'fabrication' with 'Statement C' in the disciplinary, attributed to Moz Khan: "I have been a member of the Conservative party for the last two years. I have also been a local Candidate for the party. I have run my own business in Walsall for 25 years and I am on a committee and am well respected in the community. I have supported local Conservative candidates in Palfrey, Paddock and St Matthews in 2015, I also worked with Sue Arnold in the parliamentary campaign. This year I worked tirelessly for Suky Samra the candidate in St Matthews. When canvassing my community, I was repeatedly told that Councillor Arif who has a close connection with our community had been to see them, and that Arif had told them to vote for the Labour candidate as Suky Samra was a 'bad person' and did not like 'Muslims' and had deselected him. After the election result, I was shocked that Suky lost so I went to see the people who had promised me their support for Suky, they told me that Arif had persuaded them to vote for Labour. I firmly believe that Suky Samra lost the election because Councillor Arif persuaded the community in St Matthews to vote for the labour candidate."
90. Yet Mr Moz Khan was the 2016 (and 2015) candidate in Bentley. In 2018, he said: "My name is Mozamil Khan and I have stood as a Conservative Party Candidate in Bentley and Darlaston North in 2015 and 2016 and this year in Palfrey Ward. It was recently brought to my attention that a statement has been given in my name. I have now seen a copy of it. It is known as

‘Statement C’ and submitted to Walsall Association and to Central Office. I wish to state that I have never given any statement to the local association or anyone else in relation to former St. Matthew’s Councillor Mohammed Arif. I wish to withdraw the statement given in my name.”

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Arif v Baker Moreover, Mr Khan spoke to Ms McColgan KC, who recorded that: “Moz Khan told me that he had overheard people gossiping that [the Claimant] had informed people not to vote for [Mr Samra], though he had not himself seen [the Claimant] campaigning against him and did not know whether he had done so. He told me that a week after the 2016 elections Mr Samra....had visited and asked him about the discussions he had overheard. He had told Mr Samra he had ‘heard the community have been discussing him during the election and he had made a note of this. I am not completely sure of what’s happened as I’ve not witnessed this myself’. I asked Mr Khan whether he had ever made a statement in connection with [the Claimant] and Mr Khan said that he had not, that he had been asked by [Mr Samra] about the reports about [the Claimant] and that he (Mr Khan) ‘had told [Mr Samra] not to send any document but they had sent it’. He was later shown a statement by [the Claimant] which had not come from him, though [the Claimant] thought it had and he had been asked to (and did) sign a statement saying that the other (unsigned) statement had not come from him.” In an unguarded moment in evidence, Mr Samra suggested Mr Khan had said his disciplinary statement had been drafted by his daughter, which is a surprising detail to know for someone who ‘had no involvement other than providing a statement’.

91. As I have detailed at paragraphs 46, 56, 59, 66, 69-70 and 74, the Claimant and Mr Samra had been rivals since the cemetery incident in 2013-2014 and their mutual antipathy only hardened over the ‘Petition Controversy’, the Mort Report, the approval appeal, the Claimant’s further discrimination complaint, the Roberts- Booth Report, the selection meeting, then finally the election campaign which Mr Samra now thought he had lost because of the Claimant. By the time he did lose, I find on balance of probabilities Mr Samra had come to hate the Claimant. Nevertheless, despite that and though Mr Samra was an unreliable witness, I cannot find on the balance of probabilities find Mr Samra fabricated Statement C:
- (1) Firstly, as Mr Beever said, Mr Samra denies the finding and the only evidence against him is untested hearsay from Mr Khan. I must apply the criteria in s.4(2) CEA. (a) It has not been explained why Mr Khan could not have come to give oral evidence, especially as in 2019 he complained that he had been removed from the approved candidate list by the Federation Chairman – by 2019, Mr Samra. In relation to (b), (c), (d), (e) and (f), this now gives Mr Khan a motive to misrepresent matters, especially given his original 2018 letter is not contemporaneous to 2016 and he did not mention any conversation with Mr Samra until the McColgan Report in 2021, so it is difficult properly to assess the weight to be given to Mr Khan’s account.

- (2) Secondly, Mr Khan's account to Ms McColgan is not fundamentally inconsistent with 'Statement C'. Unlike 'Statement A' (Mr Matloob), 'Statement C' does not allege hearing the Claimant himself denigrate Mr Samra, but rather of rumours in the community: what Mr Khan later told Ms McColgan. Whilst in 2018 and 2019 Mr Khan denied giving 'Statement C', he did not actually disagree with its contents. Mr Samra also said he knew Mr Khan's daughter had drafted it, but did not suggest Mr Khan approved it. This might explain (i) how 'Statement C' came about and came to be attributed to Mr Khan; and (ii) why he legitimately objected the next year.

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Arif v Baker

- (3) Thirdly, whilst I did not find Mr Samra a reliable witness, it is a large step from that to find that a sitting Councillor was lying under oath (which is why a different story began emerging under cross-examination) on untested hearsay evidence. Indeed, even with the benefit of hearing from Mr Khan, I note that Ms McColgan did not find Mr Samra fabricated his statement. So I find 'Statement C' was not 'fabricated' as alleged. I could simply say this allegation is not proved, but given its seriousness, I prefer to make a positive finding on balance of probabilities. I find Mr Samra spoke to Mr Khan who told him essentially what is recorded in Statement C (which Mr Khan later played down to Ms McColgan). However, 'Statement C' was prepared (possibly by his daughter) without Mr Khan's knowledge or approval and tendered by Mr Samra to Cllr Washbrook, who himself assumed it was an approved statement like the others.
92. Nevertheless, it shows how central Mr Samra was to the disciplinary investigation, despite his denials. Indeed, I note Cllr Washbrook said at the 30th June hearing: "Four local campaigners came forward on the eve of the election to detail their complaints about the activities of Mohammad Arif and Mohammad Azam. I gave them an assurance as Chairman of the Federation that we would carry out an investigation after the election. I enlisted the support of Brian Letts, a member of the management team and Federation Treasurer and arranged a meeting at the Royal Hotel on 19 May 2016 to hear the complainant's evidence. All 4 individuals and the official candidate were very vocal and verbose in their condemnation of the actions of both Mohammad Arif and Mohammad Azam during the election." (my italics). This suggests four men came to the Royal Hotel; but also Mr Samra (the official candidate) was there or at least involved. Mr Ahmed did not mention a fourth man, but if there was, it may have been Mr Rasab, who accepted he could have been and who was named as present by Cllr Washbrook in his June 2016 email. Mr Samra's involvement, shows that he was central to the process, not just a witness. After all, Mr Samra (i) was the candidate who had lost and who blamed the Claimant for it; (ii) had complained during the election campaign (as Cllr Washbrook mentioned at the expulsion hearing); (iii) his campaigners were Mr Ahmed, Mr Mahmood and Mr Matloob who came forward after the election; (iv) as did Mr Samra's old friend and 'right-hand man' Mr Rasab; and (v) Mr

Samra was clearly involved in obtaining Mr Khan's statement. Indeed, I find on the balance of probabilities that Mr Samra played a central role in instigating the disciplinary process, which I find that he took as a chance finally to oust the Claimant, whom he blamed not only for campaigning against him during the 2016 election, but for undermining him even before that with the Mort and Roberts-Booth Reports and the chaotic March 2016 selection meeting.

93. Having said that, I find from the start of June 2016, Cllr Washbrook took over the 'prosecution' of the disciplinary process against the Claimant and Mr Mohammed Azam. Indeed, Cllr Washbrook wrote to the Claimant on 2nd June (my italics): "The Executive Council of Walsall Conservative Federation will consider your Membership of the Conservative Party for the following reasons: Officers of the Association have carried out an investigation and determined that you Mohammad Arif, actively campaigned against the Conservative Party candidate in the May 2016 local Election in the constituency of Walsall South. A number of local residents have

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Arif v Baker independently come forward to report that you made derogatory comments about the Official Conservative Candidate in St Matthews and you encouraged Conservative supporters to vote for the Labour candidate. Active support of another political party and acting against the interest and objectives of the Conservative Party is incompatible with your continued membership of the Walsall Conservative Federation. You will have an opportunity to be heard at the next meeting of the Executive Council. The meeting will be held on 30 June 2016 at 1900hrs at the Royal Hotel, Ablewell Street Walsall, West Midlands, WS1 2EL and will be Chaired by an independent Chairman. If you would like to attend, please let me know in advance of the meeting, no later than the 17 June..." As I have italicised, this disciplinary invite suggested that officers (i.e. himself and Mr Letts) had investigated (i.e. the discussions at the Royal Hotel) and determined the Claimant had campaigned against Mr Samra. Whilst Mr Samra suggested this was a slip, I remind myself Cllr Washbrook stressed in a later statement that he had served as a President of Courts Martials and Boards of Enquiry. I do not accept the word 'determined' was a slip: it was a fact: Cllr Washbrook and Mr Letts had indeed 'determined' the Claimant had done this but gave him 'an opportunity to be heard'.

94. In response, on 6th June 2016 the Claimant complained to Lord Feldman, the Chair of the Party alleging 'the Party had condoned Islamophobia in Walsall'. Lord Feldman emailed Cllr Washbrook asking him to pause the disciplinary process until there had been an external investigation by an external Panel: "...to determine why the Party lost St Matthew's Ward and consequently control of Walsall Council. May I suggest to you that until this Panel has reported its findings to the Board, the Federation set aside the meeting scheduled to discuss the expulsion of Mohammed Arif. I cannot see any merit in proceeding with this meeting. The interests of our Party are best served with a cooling-off period now until the Panel can be established,... Would you kindly acknowledge receipt...together with your agreement...."

However, just as he had with the AGM in January 2016, Cllr Washbrook declined in the email of 7th June to which I have already referred. He explained that: “The reasons we lost St Matthews in a straight fight between Labour and Conservative was a lack of time to campaign and the active, deliberate and coercive campaigning directed at Conservative Supporters by Arif and Azam, for which there is overwhelming evidence... Having analysed the election statistics and Mr Samra’s hard campaign, he summarised the disciplinary case and named the four witnesses. He then added: “The second factor was a lack of campaign time. This was a direct consequence of the process and procedure you initiated in November 2015.. You will recall...directing a disciplinary investigation [of the Claimant’s] false and uncorroborated accusations of religious discrimination by the local panel. This resulted in a prolonged, drawn out and totally unnecessary investigation which found no evidence of religious discrimination. There followed Arif’s appearance before an independent panel. However, the original questions put to Arif that were deemed to be fair and

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Arif v Baker appropriate, were withheld from this new panel. There followed a direction to convene a local ward election in St Matthews. The Ward Chairmen Harry Gandham made strenuous representations directly to you, to hold a postal ballot to expedite the process and avoid a sectarian confrontation at the meeting, to no avail. I attended that meeting as Chairman and witnessed that division. It was clear from the outset that voters on the losing side, would not be voting in the election for the candidate who won. A huge Conservative own goal that clearly contributed to loss of the seat. With respect, had you supported the original local panel's decision in November, not to place Arif on the candidates list, which had been properly appealed, reviewed and finalised. I believe we could now be celebrating a win in St Matthews and could have avoided the Conservative schism in that ward. I disagree with your assessment; I believe it would be in the best interest of the Party to bring this matter to an early conclusion. I see no merit in allowing the current unresolved accusations to fester for another year without resolution. These last 8 months have shown it will only encourage further email complaints, lobbying and infighting.... We are currently in opposition with no elections or selections on the horizon. This is a situation has been totally created by Arif. All he had to do is stay silent and inactive until after the election. [Y]ou are asking for,, the Federation to condone his actions... clearly in breach of the Constitution and Party rules. Moreover, he was responsible in effecting our defeat in St Matthews. I fail to understand why Arif is suddenly so important to Mike Bird at this time. Moreover, why does it warrant your direct intervention on his behalf at this early stage of investigation on what is after all a local Association matter.” Whatever else one makes of Cllr Washbrook, he was not craven to authority.

95. The same day, 7th June 2016, the Claimant also emailed Lord Feldman alleging that he was ‘once again being victimised and will undoubtedly be expelled’. Despite that, initially on 17th June, the Claimant told Cllr Washbrook he would attend the hearing despite the fact he knew it was proceeding against national Party advice and he alleged Walsall Party officers (he did not specifically accuse Cllr Washbrook but it was obvious) ‘had already

predetermined this so there can only be one outcome'. The Claimant also prepared statements in support, some of which I have already mentioned, like Mr Zulfiqar Ali's. However, Cllr Washbrook then told the Claimant he could not have a copy of the statements, even as anonymised (which he claimed he did because the witnesses said they had been pressured, although only one – ('A' Mr Matloob) suggested that). Instead, the Claimant was told he could view the anonymous statements, which must have been on or after 27th June, which is the last date of the statements provided: only three days before the disciplinary hearing. As the national Party later found, this breached Rule 3.6 Sch.7A of the Constitution: "...Officers...shall ensure that the individual receives in writing, at least 14 days before the meeting of the Executive Council considering the motion:

- (i) notification that they have moved the suspension, termination or refusal (as the case may be) of his membership of the Federation; (ii) the grounds for the motion and any supporting evidence; (iii) notification that he has the opportunity to appear before the Executive Council to make representations and provide evidence as to why such motion should not be confirmed...." Unhappy at those conditions, the Claimant declined to attend the hearing.

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Arif v Baker Topic 3(iii): The Expulsion of the Claimant on 30th June 2016

96. The hearing duly proceeded under the chairmanship of Mr Livingstone, from Burton-on-Trent Conservative Association, as minuted by Mr Richards from Aldridge. The Claimant was not present at the hearing and so cannot contest the detailed minutes endorsed by Mr Sohal who voted to expel. So, despite a slight issue with Mr Richards' minutes of the approval appeal in October 2015, I find his minutes of the expulsion hearing on 30th June 2016 were fair and accurate. I do not doubt Mr Richards made very sure his minutes were as accurate as possible, since although it was not his decision to proceed, Mr Richards faithfully recorded in those minutes not only the instruction of Lord Feldman to pause the disciplinary, but also Mr Phillips' email after Cllr Washbrook's refusal to do so on 15th June saying that: "The Federation Chairman has...reject[ed] the Party's Chairman's request. The Panel, established to review the processes adopted by the Federation in recent times, will no doubt wish to consider this exchange of emails as part of their deliberations. I assume should Mr Arif be subject to disciplinary action by the Federation, he will wish to exercise his right of appeal." Indeed, despite his witness statement saying to the contrary, this is the one meeting which Mr Baker chose not to attend. Mr Letts attended but understandably did not vote, although his wife Mrs Letts did so. Moreover, after Mr Hancox – in that meeting as later a dissenting voice – questioned the status of Mr Gandham and another Executive member Mrs Benton, they decided they would not vote either. Therefore, the only witness from whom I heard live evidence who participated in the decision to expel was Mr Sohal. However, I also have the statement of Mr Shazad Ali, who unsuccessfully applied to be a candidate in 2016, who concurred with the decision and identifies himself as a practising Muslim, although Mr Ali did not attend trial, so I can attach less weight to his evidence than

I can to Mr Sohal's. As the minutes do not record all those who voted, according to Mr Harry Gandham's statement, the other members of the panel who voted were: Mr Livingston as the independent Chair from Burton Association, Mr Richards as minute-taker, then from the Federation: Mr Sohal, Mr Ali, Mr Mushtaq Ahmed, Mr Jas Johal, Mr Hernake Singh, Mrs Marion Letts, Mrs Gurjeet Kaur and Cllr Rose Martin, for whom the Claimant had campaigned in the 2016 election. However, the notes also refer to Mr N Gandham and Mr P Hancox as being present. Indeed, at the start of the meeting as I said, Mr Hancox both queried the right of some to vote; and raised whether the hearing should proceed given the national Party's stance, but it did after he accepted Cllr Washbrook's point that the Walsall Party had the right to proceed and Lord Feldman had not suggested that it did not. (Cllr Washbrook's email of 7th June was not read or summarised) Cllr Washbrook then addressed the meeting and read out the disciplinary statements, rather than calling witnesses. "Cllr Washbrook addressed members and started by confirming that Mr Arif and Mr Azam had been communicated with by e-mail with offer to supply them with the statements implicating them. It was confirmed that they had three opportunities to see the statements but had not availed themselves of these opportunities. Mr Livingston asked if the meeting approved of the reading of the statements by Cllr Washbrook in the absence of the two members being considered for expulsion. All members [agreed]. Cllr Washbrook informed members that the individuals who had made the

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Arif v Baker statements were concerned about intimidation because they had come forward and therefore preferred their identities to remain unknown but were willing to identify themselves to members attending if necessary. Cllr Washbrook asked if the meeting agreed to one reading of the statement as all statements referred to both members in question. This was agreed."

97. Cllr Washbrook then gave the panel some background to the investigation, referring to Mr Samra's complaint, the discussion with Mr Bird and the meeting at the Royal Hotel with Mr Letts, which I have already quoted as having referred to the four individuals 'and the official candidate' – i.e. Mr Samra. However, I have found it was him – not them – who 'came forward on the eve of the election'. None of them suggest they did so before it. Cllr Washbrook then read 'Statement A' (now identified as that Mr Mehboob Matloob who did refer to being pressurised not to give evidence and of hearing the Claimant call Mr Samra racist, as well as hearing voters report he told them to vote Labour). Then Cllr Washbrook read 'Statement B' (now identified as that of Mr Ilyas Ahmed, which reported hearing voters rather than the Claimant himself saying he had called Mr Samra racist and to vote Labour). Then Cllr Washbrook read 'Statement C' (which I have found reflected what Mr Khan had told Mr Samra, but which he did not approve). Finally, Cllr Washbrook read 'Statement D' which was openly identified as being by Mr Samra, which both gave Mr Samra's account of the demands of the Claimant's friend Mr Chaudhry for the price of his support; and Mr Samra's own account of being told by voters (but not the Claimant) that he was campaigning against Mr Samra. Mr Samra also asserted that residents feared retribution so were not

willing to come forward. However, he did not explain that to me, beyond Cllr Washbrook's comment at the meeting after reading the statements that others had come forward anonymously (possibly he meant Mr Mahmood and Mr Rasab, although Mr Rasab did not suggest he had felt pressurised) and that Cllr Washbrook had spoken to a voter personally who said the Claimant and Mr Azam had encouraged him to vote Labour. Of course, I have expressed my concerns already about the reliability of these disciplinary statements, but in the Claimant's absence there was no challenge to or questioning of them before the decision-making panel at the meeting. Then Cllr Washbrook finally turned to his summing up, which I quote in full: "This situation has been totally created by Mohammad Arif and Mohammad Azam. All they had to do was stay silent and inactive until after the election. They have damaged the image of the Conservative Party in the community; by portraying the Party as being anti-Muslim and racist. By campaigning against the Conservative Candidate, they were instrumental in effecting our defeat in St Matthews and consequent loss of control of Walsall Council. Both members are clearly in breach of the Constitution and Rules of the Party and as a result of their activities their expulsion from the Conservative Party is warranted and necessary."

98. I have italicised 'the Party' to stress Cllr Washbrook did not say 'Mr Samra', rather: "They have damaged the image of the Conservative party in the community; by portraying the Party as being anti-Muslim and racist." Certainly, I accept the reference to 'they' (i.e. the Claimant and Mr Azam) 'damaging the image of the Conservative Party in the community' is a reference to the March 2016 election during which Cllr Washbrook alleged the Claimant and

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Arif v Baker Mr Azam called Mr Samra anti-Muslim and racist: the disciplinary charge was that they had campaigned against him and made derogatory comments about him. Yet here Cllr Washbrook suggests they 'portrayed the Party as anti-Muslim and racist', when it was not alleged the Claimant and Mr Azam had said that about the Walsall Party, only Mr Samra. Of course, one reading of this is simply that Cllr Washbrook was referring to the allegations that by alleging that Mr Samra was racist, the Claimant was 'portraying the Party' as racist. But what Cllr Washbrook said must be put in context. As I said, he disobeyed national Party instructions to pause the disciplinary only a fortnight earlier by saying to Lord Feldman, among other things: "You will recall your personal intervention on behalf of Arif, in directing a disciplinary investigation based on his false and uncorroborated accusations of religious discrimination by the local panel. This resulted in a prolonged, drawn out and totally unnecessary investigation which found no evidence of religious discrimination." As noted at paragraph 70, in February 2016, Cllr Washbrook objected to the national Party's actions implementing the Roberts-Booth Report, referring to: "a series of malicious and false accusation of religious discrimination made against the Officers of the Federation, orchestrated by Arif." As noted at paragraph 68, in December 2015, he had objected to that investigation: "Has [the Claimant]. submitted new evidence to support this new complaint or is it a rework of his unfounded allegations of prejudice and racial bias

which were addressed and rejected at his appeal? If the latter is the case, then his complaint is malicious and should not be allowed to proceed.” Therefore, another interpretation of what Cllr Washbrook meant by ‘portraying the Party as racist’ is a reference to the Claimant’s discrimination complaints. I leave out of account his further explicit references in 2017 to the Claimant’s allegations of discrimination on his appeal against the expulsion on 30th June 2016.

99. As Cllr Washbrook is sadly no longer with us to be asked, I should be cautious in differentiating what he thought and what he meant. There may also be a difference between what he meant and what the Panel understood him as meaning. I find on balance of probabilities that Cllr Washbrook was determined to expel the Claimant from the Walsall Party, not simply because of the disciplinary allegations, but also because of the Claimant’s past discrimination complaints to the national Party (and their consequences for the Walsall Party), which is why to Lord Feldman on 7th June, Cllr Washbrook had put the disciplinary allegations against the Claimant in the context of his previous discrimination complaints. Likewise, I find Cllr Washbrook in summing-up had partly in mind those complaints when referring to the Claimant ‘portraying the Party as being anti-Muslim and racist’. Nevertheless, he was primarily thinking of – and I accept on balance of probabilities would have been understood as referring only to – the allegations about calling Mr Samra racist.
100. In any event, the disciplinary panel on 30th June 2016 did not consist of the key Walsall Executive members involved throughout, except Mr Sohal; and there is no evidence any of the others knew of the Claimant’s discrimination complaints, at least until the reference was made to Cllr Washbrook’s June correspondence with the national Party where he mentioned it. Mr Livingston, the Chair of the meeting, discouraged consideration of any other factors than the evidence:

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Arif v Baker “[N]either Mr Arif or Mr Azam were present to answer the allegations made in the statements that a vote be taken on the evidence before the Executive. Mr Hancox expressed his dissatisfaction with the evidence as Mr Arif had helped in the recent election in wards in Walsall North. Mr Livingston stated that the meeting had to make its decision strictly on the evidence presented to it and other considerations could not be brought into the proceedings, both Mr Arif and Mr Azam had had opportunity to dispute the allegations made but had chosen not to do so.” Accordingly, a vote was taken and the panel confirmed they would expel the Claimant and Mr Azam. It is not recorded by what margin the decision was made or whether anyone dissented or abstained, though I assume Mr Hancox did so. One of the complaints the Claimant makes is that the letter confirming the decision gave no reasons. I do not have the letter, although the national Party Guidelines standard letter simply states the motion to expel had been upheld and there was a right of appeal and did not require reasons to be given. In any event, the Claimant appealed.

Topic 4: The Claimant’s Appeal: 2016 - 2018

101. Whilst this subject occupied not only two years in time, but 14 pages of the McColgan Report, the only pleaded allegation relating to the appeal is 15: 'Relying on fabricated evidence at the appeal hearings on 9 November 2017 and 13 September 2018'. As I have explained at paragraph 89, the complaint in para.51.12 about use of fabricated evidence at the June 2016 disciplinary was limited to 'Statement C' and Moz Khan. The effect of paras.51.15 and 36 Particulars of Claim and paragraphs 29 and 38.15 of the Defence and 11 of the Reply appears to be of similar effect – limited to Statement C, which I have found was not 'fabricated' by Mr Samra, but was used by him though not approved by Mr Khan. So, I can take my findings on Topic 4 much more shortly, bearing in mind the limited issue.
102. The Claimant issued his appeal on 23rd September 2016. It raised eight grounds. Firstly, that the expulsion was pre-determined and planned by Cllr Washbrook and Mr Samra. Secondly, that there was a breach of natural justice because of the redaction of the disciplinary statements. Thirdly, the hearing proceeded against national Party advice. Fourthly, the previous AGM had also been held against Party advice and so the Executive who voted on expulsion was unconstitutional. Fifthly, Cllr Bird had been instructed not to attend the hearing (in fact he told me he did not attend as there was no point). Sixthly, Cllr Washbrook only read out the statements, rather than providing copies for the panel to review. Seventhly, the Claimant alleged that Mr Matloob's statement was biased. Eighth, the Claimant contended that part of his team worked with Mr Samra in the election campaign and that he could easily have stopped them but did not (as I have found). The only aspect which raised race and/or religion were observations that: the Executive and St Matthews Branch were perceived by some Muslims to have an 'anti-Muslim agenda' (although he did not say that he shared that perception. Nevertheless, it was clearer in his conclusion: "I have been a loyal member of the Conservative Party for 25 years and will not be chased out by a bunch of Islamophobes, bullies and those who deny others natural justice. The continued lack of action by the Party Board could reasonably infer that it condones Islamophobia but as a Party we rightly condemned and were up in arms and wanted the Labour Party to take strong

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Arif v Baker action against Anti-Semitism...Are the Conservative Muslims in the Conservative Party not entitled to be treated equally?"

103. Nevertheless, the Claimant's allegation was put more squarely by his solicitors in a letter of 4th November 2016 to Cllr Washbrook who stated explicitly that: "On the advice of specialist counsel we are confident that our client would have excellent prospects of success should he pursue a claim in the County Court against the Federation, the Party and Lord Feldman for direct discrimination on grounds of his religion and/or his race contrary to ss. 13 and 101 of the Equality Act 2010 ("EqA") and for victimisation contrary to ss.27 and 101 EqA. We are instructed that Mr Suky Samra, Mr Peter Washbrook of the Federation and Mr Chris Richards of the Aldridge- Brownhills Conservative Association over a period of two years

acted together in a concerted and discriminatory campaign to remove our client from the Party, each acting on behalf of the Federation within s. 109(2) and/or s. 109(1) EqA.... In summary, the acts of discrimination and/or victimisation...pending disclosure....are as follows: 1. the conduct of the approval interview on 28 September 2015; 2. our client's non-approval as a candidate in September 2015; 3. the Federation's refusal to allow our client's appeal against his non-approval on 22 October 2015; 4. the arrangements made for the selection meeting on 31 March 2016; 5. the conduct of the selection meeting on 31 March 2016; 6. the accusation made on or around 29 April 2016 that our client was campaigning against the Party; 7. the failure to inform our client that he was under disciplinary investigation or to interview him in connection with the investigation.....; 8. the failure properly or at all to inform our client of the allegations against him in May June 2016; 9. the refusal in June 2016 to set aside the disciplinary investigation and hearing on the instructions of the national Party pending a review; 10. the failure to give our client a fair hearing at the disciplinary meeting on 30 June 2016; 11. the decision to expel our client from the Party on 30 June 2016 and the failure to give reasons for it .... We are of the clear view that these actions and omissions taken together form an act extending over a period within s. 118 EqA...”.

104. It appears this was re-sent on or around 3rd January 2017 and on 10th January 2017, Cllr Washbrook emailed Stephen Philips of the national Party saying: “His threat of legal action under the Equalities Act is without foundation and now spent.....[T]he Act requires a claimant to [claim] in the County Court within six months of the event; that time has now expired...Arif's accusations are having a detrimental effect on the morale and commitment of local Party members and is a financial drain on our local resources. His readmittance to the Party would be extremely prejudicial to the members of the Executive Council and fuel sectarian conflict within the local Party.” In an undated statement noted at p.162 of the McColgan Report, Cllr Washbrook said: “The Executive remains extremely concerned that [the Claimant] continues to articulate a sectarian polemic and slanderous narrative of Islamophobia and racism, against the Party and membership, which will bring the Party into disrepute....[It is] racist, inflammatory and provokes sectarian conflict

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Arif v Baker within...a multicultural community and must be stopped. Members of the Pakistani and Indian communities have observed [it] reflects Third World cultural politics [and] is both divisive and corrosive. If...unchallenged, it will undermine the cohesion of the Federation, which ...selects Council candidates on merit, from a wide variety of multi-cultural backgrounds...”

105. The appeal took over a year to come on for a hearing on 9th November 2017. In the meantime, the Claimant remained expelled and Mr Samra was appointed as Chairman of the Walsall Party at the end of Cllr Washbrook's three-year term in April 2017. According to a note of an Executive meeting in October 2017, there was a discussion with Cllr Bird about reducing the Claimant's expulsion to 2 years, which the Claimant refused. I find this was

simply because he wanted to clear his name. I need not go into the other details of that which are not pursued.

106. For that appeal in November 2017, Cllr Washbrook assembled statements, I find including the one he prepared quoted as it was in the McColgan Report. There were also new statements from Mr Samra, Mr Rasab, Mr Baker, Mr and Mrs Letts (which referred to previous complaints) and others. Most relevantly, it included 'Mr Khan's statement' unanonymised, with a new statement from Mr Ahmed in November 2017, which was similar to his original 'Statement B', except he added he felt intimidated (but he did not say so in evidence) and from Mr Matloob. But in his original 'Statement A', he had claimed he had a 'lengthy conversation' with the Claimant when the latter called Mr Samra a racist. But in his appeal statement, Mr Matloob said the Claimant had told him that 'on many occasions'. But I have found the Claimant did not meet Mr Matloob, only Mr Arshad Mahmood. So, I reject Mr Matloob's account, but again I cannot find on the balance of probabilities that Mr Samra knew Mr Matloob's account of meeting the Claimant was untrue. There are some WhatsApp messages between Mr Matloob and the Claimant from 11th May 2016 – after the election – although Mr Matloob accepts they did not meet at that time. Nevertheless, they would have lent some credibility to his contention that he did meet the Claimant, even though I have rejected it on all the evidence. Certainly, I cannot say that Mr Samra knew Mr Matloob's evidence was 'fabricated'. It is more likely Mr Matloob was telling Mr Samra what he wanted to hear to bolster the disciplinary case against the Claimant.
107. While the Claimant accepts he met Arshad Mahmood during the campaign to clear things up, he denies Mr Mahmood's appeal statement of 21st October 2017: "During the election campaign I was shocked to learn from local Muslim community members the Conservative Party's current Councillor Mohammed Arif, was campaigning against his own part[y's] selected candidate behind his back. I had a conversation with Sukhy Samra and enquired why the current Conservative Party Councillor was campaigning against his own party. Sukhy explained this was due to the fact he had lost his fight in the selection process. Myself and a colleague from Walsall Helping Hands, had meeting a with Mohammed Arif to establish why this was happening. This was also followed by a meeting with Sukhy Samra. We tried to resolve the issue between Ex-Councillor Mohammed Arif and Sukhy Samra. Sukhy Samra informed us he had no issues with the Ex- Councillor Mohammed Arif. He stated he was not clear as to why Mohammed Arif was campaigning against own party. Sukhy stated he was

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Arif v Baker more than willing to sit with Mr Arif to resolve any issues he had either against him. My colleague, Mehboob Matloob and I, personally contacted Ex-Councillor Mohammed Arif, in the second week of April 2016, on two separate occasions to discuss this matter with him and to try and resolve the issue. Instead of helping to resolve the matter, the Ex- Councillor Mohammed Arif, enquired as to why we were assisting Sukhy Samra, as he was a racist and against Muslims.

We informed the Ex-Councillor Mohammed Arif, that in our current relations with Mr Samra, we had not observed any such behaviours or attitudes. When we spoke with Sukhy Samra about the discontentment, he informed us he was willing to do anything in order to keep the party united. He asked us to inform Arif; if he stopped what he was doing he would stand shoulder to with him at the next election and support him as much as he could. My colleague and I, on two separate occasions tried to reason with Ex-Councillor Mohammed Arif. Unfortunately, this was to no avail as Ex-Councillor Mohammed Arif informed us he was not willing to work with Sukhy Samra at any price.”

108. I have explained why I reject Mr Mahmood’s evidence in Court and found him an entirely unreliable witness making up his account as he went along. I am also satisfied Mr Mahmood fabricated part of this account – in particular the alleged conversation with the Claimant where he called Mr Samra a racist in front of Mr Mahmood. Notably, he did not mention this in his trial statement and whilst he began rehearsing this story in evidence, it was riddled with inconsistencies and I reject it. Indeed, I only accept the Claimant even met Mr Mahmood in 2016 as the Claimant says that he did to ‘clear up misunderstandings’. However, given I accept Mr Mahmood did meet the Claimant and it is not suggested by anyone that Mr Samra was there, unreliable witness or not, Mr Samra cannot be expected to know what was and was not said. Therefore, I cannot find (especially given the seriousness of the allegation) that Mr Samra knowingly deployed fabricated evidence by Mr Mahmood. Again, I suspect Mr Mahmood was trying to tell Mr Samra what he wanted to hear and to bolster the case against the Claimant.
109. On 9th November 2017 the national Party panel heard the Claimant’s appeal and Cllr Washbrook’s response, but adjourned the appeal because of late submission of evidence (including from the Claimant) and encouraged the parties to resolve the situation amicably (despite the fact Cllr Bird had already tried and failed). Unfortunately, the death of the panel Chair in January 2018 and then Cllr Washbrook delayed the resumed hearing until September 2018. In the meantime, I accept Cllr Washbrook – who knew he was terminally ill - stood down as a Councillor in Paddock ward, encouraging Mr Rasab to stand. That explains why Mr Rasab did so despite previously saying that the appeal hearing he had no plans to do so. Far from being sinister as the Claimant and Ms Akhtar suggested, this illustrates the point that Cllr Washbrook was not simply an unreconstituted bigot and Islamophobe. However, that does not mean he was not influenced by the Claimant’s Muslim faith and Pakistani origin or his complaints of discrimination, and I reach conclusions about that below. Cllr Washbrook died in May 2018.
110. At the resumed hearing on 13th September 2018, Mr Samra who had taken over from Cllr Washbrook in April 2017 as Chairman of the Federation presented the case for it in response to the Claimant’s appeal. This no longer included ‘Mr

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Arif v Baker Khan's statement' who had objected to its inclusion in July 2018. But Mr Samra was taken by surprise by the new appeal panel taking a new point: "We pointed out to the parties that we could not find anywhere in the papers or evidence before us anything to show [the 14-day notice of evidence rule] had been complied with in terms of providing to Mr Arif by 16 June 2016 at the latest the written evidence relied on in support of the motion. We invited Mr Samra to point us to any relevant document but he was unable to do so. He asked for a further adjournment to give the Federation time to locate such a document, but we declined .... The four anonymous witness statements before the Executive on 30 June 2016 were dated either 27 or 28 June..... We therefore recommend to the Board that the appeal be allowed and the Executive Council's decision of 30 June 2016 be set aside, with the consequence that Mr Arif's membership of the Party be re-instated. We wish to make clear that we make no findings on the substantive cases of either the Federation or Mr Arif. It is not necessary for us to do so." This could be fairly described as allowing the Claimant's appeal on a technicality. Topic 5: The Claimant's 'Re-Expulsion' in October 2018

111. I turn to the last of the topics: the Claimant's 're-expulsion' from the Federation on 24th October 2018, confirmed by letter on 31st October 2018. The parties described it variously as a resolution to refuse or suspend membership. But its practical effect was unquestionably intended (I consider why in my conclusions) to pre-empt the national Party's resolution allowing the Claimant's appeal on a technicality and restoring his membership of the Federation and Party. Indeed, only a fortnight after the appeal hearing on 13th September at the Executive meeting on 3rd October, Cllr Samra (as he had become in May 2018) explained that the Appeal Panel had told them it would be recommending the Claimant's expulsion be set aside on the technicality about witness statements and added: "SS outlined that the Federation had been put in a difficult position once again by the [national Party] and now had two options 1. To wait for the above decision, or 2. To initiate proceedings against Mr Arif again and to ensure that Sch.7 is adhered to and documented for any future appeals. A long discussion took place and members agreed that we should proceed in issuing proceedings again as [he] still had serious allegations to answer, plus he has also been prolific on social media sharing and posting anti- conservatism. John Baker [said Mr] Arif had circumvented the Federation at every opportunity, contrary to the Constitution of the Conservative Party. Members all agreed that as we know what the Party is going to do, then we should proceed with serving Arif with the papers correctly this time to ensure the process is fully followed. The members of the Executive voted unanimously to initiate proceedings again, SS did not vote." So, the motion the Executive passed was not to 'refuse or suspend membership', but to 'initiate proceedings against Mr Arif again to ensure that Sch.7 is adhered to and documented': a reference to the requirement for suspension or expulsion. I shall refer to this in shorthand to avoid confusion as a 're-expulsion'.

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112. However, the invite to the disciplinary hearing sent by Mr Samra to the Claimant on 8th October 2018 framed the decision as to determine ‘the suspension of his membership of the Conservative Party’, which was a different proposal: “...[On] 13<sup>th</sup> September, the [Appeal] Committee advised your suspension from the Conservative Party was not carried out fully in accordance with the rules of the Conservative Party by the Walsall Conservative Federation. In particular, proper notice was not given in accordance with Schedule 7A, 3.6 (ii) Rules. Accordingly, the Executive Council of Walsall Conservative Federation hereby gives notice that it will consider the suspension of your Membership of the Conservative Party for the following reasons: Officers of the Association have carried out an investigation and determined that you Mohammad Arif actively campaigned against the Conservative Party candidate(s) in the May 2016 local Election in the constituency of Walsall South. A number of local residents have independently come forward to report that you made derogatory comments about the Official Conservative Candidate in St Matthews and you encouraged Conservative supporters to vote for the Labour candidate. Active support of another political party and acting against the interest and objectives of the Conservative party is incompatible with your continued membership of the Walsall Conservative Federation. More recently, postings on your personal 'Twitter' social media account go beyond being free speech view points and by their multiple nature are anti- Conservative, inconsistent with objects of the Walsall Conservative Federation and aimed to show the Conservative Party in a bad light and bring it into disrepute. You will have an opportunity to be heard at the next meeting of the Executive Council when evidence in support of your suspension as detailed in the attached 'Appendix' will be presented. The meeting will be held on 24th October 2018 at 1930 hrs at the County Hotel, 45 Birmingham Road, Walsall WS1 2NG and will be chaired by an independent person. If you would like to attend, please let me know in advance of the meeting by no later than the 16th October 2018 and kindly forward any supporting evidence that you will be relying on and any, up to 3 witnesses....”
113. I have italicised the disciplinary charge cut and pasted from the disciplinary invite letter in June 2016, but unlike the 2016 invite letter, the 2018 disciplinary invite enclosed the evidence against the Claimant relating to 2016 not anonymised and did not contain the original disciplinary statements (including ‘Statement C’). Instead, the letter enclosed the disciplinary statements prepared for the Claimant’s appeal which I have already discussed from Mr Matloob dated 21st October 2017 (which I have found misleading), Mr Mahmood dated 21st October 2017 (which I also found misleading) and the statements of Mr Ahmed (which I have not). It also included a peripheral statement from a colleague of the three other witnesses Mr Akheil Mehboob which discussed that group’s support for the Claimant in November 2015 and a comment that he heard him call Mr Samra a racist, which is entirely undated and unspecified and which I reject. Whilst I have found the Claimant privately expressed this to some close friends and colleagues, I find that he did not express it

to people who campaigned for Mr Samra.

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114. The other enclosure with the disciplinary invite, new in October 2018, were the Claimant's social media posts (in fact all 're-tweets' of others' posts) from May 2017 to August 2018. It suffices to quote the titles which I number and date:

- (1) 04/05/17 "Shambles as Tories fail to select candidate in Walsall South"
- (2) 10/06/17 "May's humiliation intensifies as two 'toxic' advisers quit."
- (3) 10/06/17 "5 Reasons Theresa May's gamble backfired so badly"
- (4) 11/06/17 "George Osborne says Theresa May is a 'dead woman walking'"
- (5) 10/07/17 "Listen as Tory MP recorded saying Brexit is a n\*\* in a woodpile"
- (6) 30/09/17 "Tory men who voted Leave more likely to be racially prejudiced"
- (7) 11/10/17 "Fury as one million illegal migrants 'set to remain in UK'"
- (8) 22/10/17 "Tories must be mad as they lurch to the left"
- (9) 03//11/17 "Priti Patel held undisclosed meetings in Israel"
- (10) 04/02/18 "About time Theresa May's plan to end intimidation in politics"
- (11) 04/06/18 "Tory Councillor suspended after posting Islamophobic comments about Sadiq Khan."
- (12) 10/06/18 "Pro Tory Facebook group filled with Islamophobic abuse"
- (13) 06/08/18 "Boris Johnson faces criticisms over burka 'letter box' jibe"
- (14) 08/08/18 "Drop Johnson for burka remarks Tory peer"
- (15) 08/08/18 "Boris Johnson is standing by his comments that Muslim women who wear niqabs look like 'letterboxes' or 'bankrobbers'."
- (16) 09/08/18 "May accused of staying silent on Islamophobia in Tory party"
- (17) 14/08/18 "Should Boris apologise for burka comments" It will be apparent that only (1) related to the Walsall Party: all the others related to the national Party. (2), (3) and (4) related to the 2017 General Election, (7), (8) and
- (9) were negative comments on Conservative policy (and (10) positive), whilst (5), (6), (11), (12), (13), (14), (15), (16) and (17) related to racial issues within the Conservative Party: (11)-(17) specifically relating to 'Islamophobia' in the Party, that Ms Reindorf contended were themselves 'protected acts' I consider below.

115. After the Claimant received the disciplinary invitation, on 12th October 2018, his solicitors sent to the Walsall Party a copy of their letter to the national Party: "Please now confirm as a matter of urgency that:
- The Party will direct the Federation not to hold the planned meeting to consider suspending our client's Party membership until the Board has considered the appeal panel's recommendation to set aside the initial decision to expel him; and In any event, the Board will refuse to confirm our client's expulsion as a member should such a decision be made by the Federation before the Board has convened and written to the Federation having considered the Panel's recommendation and given such directions as it subsequently sees fit. •

## Judgment

Arif v Baker We look forward to hearing from you by 17 October at the latest. In the meantime, all of our clients' rights are fully reserved, including his right to rely on the Federation's present actions, and any inadequate response by the Party, as further acts of discrimination and victimisation against him. Our client hopes that Party will strongly consider putting the Federation into assisted status and take action to remove officers from the Party."

116. The sense of déjà vu with the 2016 disciplinary process was heightened by an unsuccessful attempt by the national Party to dissuade the Walsall Party from proceeding with the disciplinary. On 16th October, Mr Philips wrote to Mr Samra: "You will have seen a copy of a letter dated 12th October from Mr Arif's solicitors to the Party solicitors. You will know that the Chairman of the Panel which heard Mr Arif's appeal explained at the hearing that he would present the report of the Panel in time for the next Board meeting which was to be held on Monday 29th October. It happens that Monday 29th October is Budget Day and therefore the next meeting of the Board has been put back one week to Monday 5th November. I have now received the Panel's report from the Chairman, Dr Stafford, and I intend to place this before members of the Board of the Conservative Party for consideration on Monday 5th November. You will understand that I cannot let you see a copy of this before it has been seen by the Board, but I think I can tell you that it is a five page document which sets out the background to this matter and the reasons for the Panel's decision... I am puzzled as to why the Federation has chosen to re-institute expulsion proceedings against Mr Arif without waiting to receive and consider the the Panel's report and decision of recommendations. Could you assist me please by providing me with an explanation? I would be most grateful to hear from you as soon as possible given the date which the Federation has chosen to consider Mr Arif's expulsion from membership again and the, understandably, urgent tone which his solicitors have adopted in their letter of 12th October. Whatever you think of Mr Arif's alleged conduct, may I respectfully suggest that it might be in the best of the interests of the Federation to await the outcome of the Board's consideration of the Panel report on 5th November and then take time to consider carefully the recommendations or directions of the Board, taking advice if necessary." the Board of

the Party on

117. However, like Cllr Washbrook in 2016, Cllr Samra declined on the same day, saying that the finding of the appeal panel on a technicality 'did not answer' the serious allegations that the Federation had made against the Claimant. He added: "If you recall I made it clear that if the panel decided not to hear the matter on the day then we may be possibly back here in a few months because of the nature of the allegations against Mr Arif.... In addition...Mr Arif has continued to paint the Federation and more importantly the Party in a bad light and has been publicly claiming that he has been exonerated of any charges and therefore will be seeking legal retribution and damages. In light of this the Executive have rightly decided that the Federation must protect its integrity and with the knowledge of the Board's decision need to act now before any legal proceedings are issued.

## Judgment

Arif v Baker The Walsall Conservative Federation earnestly believes that Mr Arif has serious questions to answer regarding conduct and support of the Conservative Party before he is accepted back into the Conservative Party. I am happy to send you the evidence that has been sent to him which, may I also add, also includes significant new evidence Mr Arif has the opportunity to present his case and call witnesses, (something that he had previously complained of), he has been served the evidence within the rules and 'Natural Justice' has been adhered to, he should do the honourable thing and attend the meeting on the 24th, and further, he should cease and desists in bringing every issue to CCHQ. Finally, as a result of the decision not to proceed on the 13th September, this is reluctantly, once more, a local matter for the Federation to deal with and I request that we are therefore allowed to do so." This email, the disciplinary letter and Executive meeting show Mr Samra was determined to have another hearing to correct the technical failing overturned on appeal. I must decide later whether this amounted to discrimination and/or victimisation. Whilst Mr Samra's response to Mr Phillips is more veiled than Cllr Washbrook's refusal to Lord Feldman to pause the original disciplinary in June 2016, similar themes are present. For example, Mr Samra stated the disciplinary should not await the formal appeal outcome, 'to protect its integrity and with the knowledge of the board's decision....act now before any legal proceedings are issued'. Mr Samra also had evident irritation with the Claimant 'bringing every issue to CCHQ'. Of course, many of the 'matters that the Claimant had brought to CCHQ' had been complaints of discrimination, in response to his non-approval in 2015 and in his appeal against expulsion in 2016; and indeed, the solicitors' letter threatening a discrimination claim in November 2016.

118. Likewise, the Claimant took the same stance as in 2016 and again declined to attend the hearing on 24th October 2018. It was chaired by Mr Sheath from Aldridge Brownhills and minuted once again by Mr Richards and the local panel comprised Cllr Rasab, Cllr Statham, Mr Baker (as President), Mr (Harry) Gandham, Mr Hancox, Mr Letts, Mrs Statham, Mr Sharpe, Mr Purewal, Mr Sohal and Mrs Flora. On this occasion, the only one who did not vote was Mr Samra who presented the disciplinary case. The first stage to the hearing was

once again to debate whether to proceed in the light of the national Party's request. Once again, it was Mr Hancox who raised concerns, referring specifically to the Claimant's solicitors' letter of 12th October, which was read out along with the disciplinary invitation letter. The panel (except Mr Hancox who warned them of legal action) voted against adjourning the disciplinary charge until the Claimant re-applied for membership. Mr Samra then proceeded to call the disciplinary witnesses to give live evidence (except Mr Ahmed who was absent). Mr Matloob, Mr Mahmood and Mr Mehboob all gave the accounts in their statements, albeit all confirmed they had not heard the Claimant suggesting to vote Labour (but had heard him say not to vote for Mr Samra). Notably, despite the apparent peripheral nature of Mr Mehboob's statement, Mr Gandham asked him whether he thought the Claimant was racist towards Mr Samra: not one of the disciplinary charges. Mr Baker and Mr Letts did not question the witnesses about 2016, but both voiced concerns about the social media allegations. Mr Letts agreed with Mr Hancox it was a 'separate issue' and the notes then record:

## Judgment

Arif v Baker "Mr Baker stated that one of the comments [i.e. post (1)] he himself had also made and had been quoted in the press. Members thought that odd items posted on social media may be regrettable but did not have a serious effect, however, several members spoke of the volume of negative stories in respect of the party, having an accumulative effect." As I said when reviewing Mr Samra's evidence towards the start of the judgment, it was these notes that he failed to disclose until the last day of evidence. I find that was not accidental as he claimed, but because of passages beneficial to the Claimant, such as Mr Baker's comments about the social media allegations; the disciplinary witnesses all confirming they had not heard the Claimant say to vote Labour (one of the disciplinary charges) and Mr Hancox's objections, particularly given the solicitor's letter threatening a claim for discrimination and victimisation.

119. Mr Sheath proposed separate votes, by a majority, the panel upheld both the original 2016 allegations and the social media ones. Mr Sheath recorded that was in line with the Party Constitution Sch.7[A] para 3.5 namely: "The Officers of the Federation may move before the Executive Council the suspension or termination of membership of the Federation of any member whose declared opinions or conduct shall, in their judgement, be inconsistent with the objects or financial well-being of the Federation or be likely to bring the Party into disrepute. Similarly, the Officers may move the refusal of membership of the Federation for the same reasons. Following such a motion, the Executive Council may by a majority vote suspend, terminate or refuse membership for the same reason." There followed a debate about the length of the Claimant's 'refusal of membership': Mr Baker proposing indefinitely, supported by Mr Sohal; whilst Mr Hancox pressed for a time-limited expulsion of 5 years for the 2016 campaign charge and 3 years concurrently for the social media, totalling 5 years, then adopted. I consider later whether that was either discrimination or victimisation.

120. However, in Mr Samra's letter to the Claimant of 31st October 2018 confirming the expulsion decision, he did not mention the length of the expulsion, saying that the panel had decided against deferring the charges until the Claimant re-applied: "The Executive Committee voted to refuse and/or suspend your membership of the Federation...in the belief that your declared opinions and conduct were, in their judgment, inconsistent with the objects of the Federation and were likely to bring the Party into disrepute." Mr Samra informed the Claimant that he had 14 days to appeal to the national Party. In fact the Claimant did not see that letter until after that had expired because he had been on holiday until 12th November 2018. In the meantime, the national Party Board had formally allowed the Claimant's appeal on 5th November and the national Party still consider the Claimant to be a member of it. However, the Walsall Party and the Defendants stand by their decision of 24th October 2018 that he was not a member of the Walsall Federation and remains excluded from the current Walsall Conservative Association. The Claimant argues that is a 'continuing act', albeit he did issue this claim on 30th April 2019.

## Judgment

Arif v Baker I have detailed the course of the proceedings already and that therefore concludes my findings of fact. I turn now to the law. Legal Principles Discrimination Claims against Political Parties

121. I am fortunate to have two Counsel with huge expertise in discrimination law - for the Claimant, Ms Reindorf and for the Defendants, Mr Beever - as this case, quite aside from its political sensitivity, raises some difficult questions of discrimination law, which I shall need to go into in some detail.
122. I start with one of Ms Reindorf's own cases *Watt v Ahsan* [2008] 2 WLR 17 (HL). The Lords held that in selecting local councillors, a political party selecting councillors was not a 'qualifying body' under s.12 Race Relations Act 1976 ('RRA'), replaced along with other discrimination legislation by the Equality Act 2010 ('EqA') and now s.53 EqA in Part 5: Work, within the jurisdiction of the Employment Tribunal. Instead, the Lords in *Watt* held a political party was an 'association' under s.25 RRA within the jurisdiction of the County Court (but the Labour Party had not appealed the jurisdiction decision, so was 'issue estopped').
123. s.25 RRA has been broadly repeated in s.101 within Part 7 EqA 'Associations': "101(1) An association (A) must not discriminate against a person (B) (a) in the arrangements A makes for deciding who to admit to membership; (b) as to the terms on which A is prepared to admit B to membership; (c) by not accepting B's application for membership.
- (2) An association (A) must not discriminate against a member (B) (a) in the way A affords B access, or by not affording B access, to a benefit, facility or service; (b) by depriving B of membership; (c) by varying B's terms of membership; (d) by subjecting B to any other detriment....

- (5) An association (A) must not victimise a person (B) (a) in the arrangements A makes for deciding who to admit to membership; (b) as to the terms on which A is prepared to admit B to membership; (c) by not accepting B's application for membership.
  - (6) An association (A) must not victimise a member (B) (a) in the way A affords B access, or by not affording B access, to a benefit, facility or service; (b) by depriving B of membership; (c) by varying B's terms of membership; (d) by subjecting B to any other detriment." For political parties, this is qualified by s.104 EqA: a 'positive discrimination' exception for 'selection arrangements' to reduce inequality in representation in elections (including local elections) by proportionate means and in the case of sex, by short-listing (until 2030 – s.105). However, the exception from the EqA for 'single protected characteristic associations' in p.1 Sch.16 does not apply to political parties. Save in those limited ways, ordinary discrimination law applies.
124. In this case, s.101 EqA raises five technical issues (only one of which remained contested in submissions) I briefly relate to the allegations which I repeat for ease:
1. The conduct of the approval interview on 28 September 2015.

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Arif v Baker

2. Declining to approve the Claimant as a candidate in September 2015.
3. Refusing to allow the appeal against non-approval on 22 October 2015.
4. Making arrangements prejudicial to the Claimant for the selection meeting on 31 March 2016.
5. Conducting the selection meeting on 31 March 2016 in a manner prejudicial to the Claimant.
6. Accusing the Claimant orally on or around 29 April 2016 and by letter dated 20 June 2016 of campaigning against the Party.
7. Failing to inform the Claimant he was under disciplinary investigation at any stage prior to the conclusion of the investigation.
8. Failing to interview the Claimant in the disciplinary investigation.
9. Failing properly or at all to inform the Claimant of the allegations against him in May-June 2016.
10. Refusing in June 2016 to suspend the disciplinary investigation and hearing on the instructions of the national Party pending an investigation.
11. Failing to give the Claimant a fair hearing at the disciplinary meeting on 30 June 2016.
12. Fabricating evidence for the disciplinary meeting on 30 June 2016.

13. Purporting to expel the Claimant from membership of the Federation and the Party on 30 June 2016.
14. Failing to give reasons for the Claimant's expulsion.
15. Relying on fabricated evidence at the appeal hearings on 9 November 2017 and 13 September 2018.
16. Convening a meeting on 24 October 2018 to consider suspending or refusing membership to the Claimant.
17. Persisting in holding the meeting on 24 October 2018 notwithstanding the outcome of the Claimant's appeal against his previous expulsion had not been circulated.
18. Relying at the meeting of 24 October 2018 on evidence which did not form a proper basis for suspending the Claimant or removal of membership.
19. Relying at the meeting on 24 October 2018 on evidence which had been improperly obtained.
20. Deciding on 24 October 2018 to suspend or refuse membership to the Claimant.
21. Purporting to suspend or refuse membership to the Claimant by letter of 31 October 2018.
22. Maintaining its refusal to readmit the Claimant into membership. As I also explained earlier, I have arranged those complaints into five 'Topics':
  - (1) Topic 1, 'Non-Approval' is allegations 1-3
  - (2) Topic 2, 'Non-Selection' is allegations 4-5
  - (3) Topic 3 'Disciplinary Expulsion' is allegations 6-14
  - (4) Topic 4: 'Appeal' is allegation 15 only

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- (5) Topic 5: 'Re-Expulsion' is allegations 16-22
125. The first technical issue is the relevant 'association' and whether the Defendants 'stand in the shoes' of the Federation dissolved in 2024. But Mr Beever accepted that internal constitutional change did not change any accrued liability to the Claimant under s.101 EqA. What I call 'the Walsall Party' is essentially the same group of people, albeit it changed legal nature in 2024 from a Federation to an 'unincorporated association'. Both are 'associations' under s.107(2) EqA: "An 'association' is an association of persons (a) which has at least 25 members, and (b) admission to membership of which is regulated by the association's rules and involves a process of selection." A political party is typically an 'unincorporated association' in law, as an association of people banded together by a contract for a non-

business purpose which is not ‘incorporated as a company’, but the national party may be separate from the local party: *Unionist Central Office v Burrell* [1982] 1 WLR 522 (CA). The rules of the national or local party form a contract between its members from time to time: *Evangelou v McNicol* [2016] EWCA Civ 817 (concerning the national Labour Party’s Rules). It is the members, rather than the association itself, which are liable for torts by their ‘agents’ under that association contract, including association officers (as discussed next): *Chitty on Contracts* (2025) p.13-065. Therefore, the 2024 constitutional changes from the ‘Federation’ (which was simply a more complex association spanning three previous local associations) to a simpler unincorporated association did not affect any (if there are any) accrued legal liabilities subsisting at the time of the claim in April 2019 under Part 7 EqA. Any liabilities did not evaporate simply because the internal constitutional arrangements changed. However, as the Walsall Party is an unincorporated association, it has no separate legal personality, so in litigation it needs ‘representative defendants’, which are here Mr Baker, Mr Letts and Mr Samra. In effect under CPR 19.8, they represent the interests of all the members of the association who may be liable (*Chitty* p.13-066). Accordingly, they and the other members from time to time are liable for any discrimination that ‘the association’ committed. As I summarised it in the list of issues at paragraph 10, the Defendants do ‘stand in the shoes’ of the Federation; as principals for any proved discrimination committed by their ‘agents’ under the EqA.

126. That leads on to the issue of agency: which human beings here are ‘agents’ ? In a case under Part 5 EqA, an employer will have employees for which it can be liable under s.109(1) EqA. Indeed, that would include (e.g. bar) staff employed by an unincorporated association. However, there will also be officers of the association who are not employees, like Mr Baker, Mr Letts and Cllr Samra and until 2018, Cllr Washbrook. It is not disputed an association is liable for the acts and omissions of its officers under the principles of agency under s.109(2) EqA, which differs from an employer’s liability for its employees under s.109(1) EqA: “(1) Anything done by a person (A) in the course of A’s employment must be treated as also done by the employer.
- (2) Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.

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- (3) It does not matter whether that thing is done with the employer's or principal's knowledge or approval.
- (4) In proceedings against A's employer (B) in respect of anything alleged to have been done by A in the course of A's employment it is a defence for B to show that B took all reasonable steps to prevent A (a) from doing that thing, or (b) from doing anything of that description.”  
An employer’s liability for discrimination by one employee to another (e.g. sexual

harassment) turns on whether it was ‘in the course of employment’ under s.109(1) EqA: a statutory form of vicarious liability, as held for its predecessor in *Waters v CPM* [1997] IRLR 589 (CA), but there is also a ‘reasonable steps’ defence under s.109(4) EqA. By contrast, there is no such defence for principals: their liability for its agents depends solely whether the agent’s act falls within their ‘authority’ under s.109(2), irrespective of the principal’s knowledge or approval under s.109(3) EqA. As Elias LJ said of the predecessor of s.109(2) EqA, s.32(2) RRA in *Ministry of Defence v Kemeh* [2014] IRLR 377 (CA): “11. [T]he principal will be liable wherever the agent discriminates in the course of carrying out the functions he is authorised to do. It is a moot point whether the common law would in any event impose liability in these circumstances. The scope of the principal’s liability for an agent at common law is not entirely clear, although it seems likely that he will be liable for certain tortious acts of the agent, such as misrepresentations, provided they are sufficiently closely related to the agent’s actual or apparent authority... Whether racial abuse would fall within that principle is problematic, but s.32(2) RRA removes the uncertainty which might otherwise exist.... 12.... It follows that the act itself may be – and no doubt usually will be – without the principal’s knowledge or approval... Indeed, in the Equality Act 2010 s.109(3) expressly states that... 37...s.32(2) uses terms which the law employs when defining the scope of common law agency [and] there is no readily available, consistently understood broader meaning in the public domain which Parliament can reasonably be taken to have intended. Furthermore, none of the subsequent discrimination legislation, including the Equality Act itself, has sought to reformulate the principle in the light of the case law.” Therefore, in *Kemeh*, the MoD was not liable for a racist comment to a soldier by the employee of the MoD’s independent contractor, who was not its ‘agent’ at common law and therefore was not its agent under s.32(2) RRA (but were liable for a racial remark by a fellow soldier as an employee). By contrast, the EAT in *Anderson v CAE* [2024] IRLR 465 held a Tribunal had confused ‘agency’ on *Kemeh* principles with ‘vicarious liability’ in holding medical examiners of employees were not their employer’s ‘agents’. EAT Judge Tayler said at [29]: “The editors of *Bowstead and Reynolds on Agency* suggest that agency may best be seen, not as a status, but as a description of a person while exercising the authority conferred by the principal to act on the principal’s behalf. Thus...an independent contractor may be an agent while exercising the authority conferred by the principal to act on behalf of the principal.” If the principal is liable for the agent’s act so is the agent personally s.110(1) EqA. Here it is not disputed all allegations save 12 and 15 (fabrication of evidence on

## Judgment

Arif v Baker the expulsion and the appeal, which I consider later), if discriminatory, were acts or omissions of the Walsall Party’s officers acting as its agents with its authority.

127. The third technical issue is whether the Claimant remained a ‘member’ of the association under s.101 EqA in respect of all the allegations. That is not disputed for allegations 1-14 (i.e. Topics 1-3) up to the Claimant’s purported expulsion in June 2016. There was an issue whether by the time of allegations 15-22 (i.e. Topics 4 and 5), from late 2016 to October 2018, the Claimant was no longer a ‘member’ under s.101 EqA. However, rightly Mr Beever did not press this issue:
- (1) Firstly, as I discussed at paragraphs 110-112 above, in September 2018, the national Party set aside the June 2016 expulsion and re-instated the Claimant. Moreover, in October 2018, the Walsall Party Executive resolved to initiate proceedings to ‘re-expel’ and indeed the invitation to the meeting for the Claimant spoke of a motion to ‘suspend his membership’ - assuming it existed. Therefore, even if the June 2016 ‘expulsion’ purported to ‘deprive the Claimant of membership’ under s.101(2)(b) or (6)(b) EqA, in reality, it did not do so and the Claimant remained a ‘member’ until October 2018.
  - (2) Secondly, even if the Claimant was technically excluded from June 2016 to October 2018, that affected the Claimant’s access to benefits of membership under s.101(2)(a), or varied the terms of membership under s.101(2)(c) EqA
  - (3) Thirdly, even if the relationship between the Claimant and Walsall Party ‘had ended’ in June 2016, s.108 EqA applies s.101 EqA to it, explicitly for direct discrimination claim on a purposive construction of s.108 EqA for victimisation too: *Deer v University of Oxford* [2015] IRLR 481 (CA) [30].
128. Fourthly, all the allegations are said to amount to have ‘subjected the Claimant to a detriment’ under s.101(2)(d) EqA. A ‘detriment’ in the employment context was described in *Shamoon v Chief Constable RUC* [2003] IRLR 285 (HL). At [33]-[35], Lord Hope said that ‘a detriment exists if a reasonable worker would or might take the view the treatment was in all the circumstances to his detriment or disadvantage’ and that whilst an unjustified sense of grievance is not enough, there need not be a physical or economic consequence to amount to a detriment. In the context of an association, I would read that as a ‘reasonable member’. It is not really disputed all the alleged acts would if proved constitute a ‘detriment’, but I shall briefly consider that point for each allegation as I consider them.
129. The final – and contested - issue is time limits, on which I give my conclusion later. As I said earlier, the time limit for a discrimination claim in the County Court is six months. The claim was presented on 30th April 2019, exactly six months after the ‘re-expulsion decision’ sent on 31st October 2018, which is the subject of allegation 21, so strictly all allegations before that from 28th September 2015 to 24th October 2018 are out of time. However, s.118 EqA states: “(1)..[P]roceedings on a claim within s.114 [i.e. to the County Court, as this is] may not be brought after the end of (a) the period of 6 months starting with the date of the act to which the claim relates, or (b) such other period as the County Court....thinks just and equitable....

- (6) For the purposes of this section (a) conduct extending over a period is to be treated as done at the end of the period...”

## Judgment

Arif v Baker As I said at paras 11-12, there is no application to extend time under s.118(1)(b), so the issue is (in jargon) whether all or any of allegations 1 – 20 form part of a ‘continuing act’ with allegation 21 under s.118(6) EqA.

130. Mr Beever accepts the whole of Topic 5 is one ‘continuing act’ so is in time, but he disputes Topics 1-4 are so. Ms Reindorf argues this was a ‘paradigm’ continuing act: one discriminatory campaign to force out the Claimant from Autumn 2015 to Autumn 2018. In *Hendricks v CPM* [2003] IRLR 96 (CA), Mummery LJ in an appeal against a preliminary decision on whether there was a ‘continuing act’ (as opposed to a ‘just and equitable’ extension) discouraged ‘continuing act’ cases being dealt with as a preliminary issue and observed they are better dealt with at trial (with robust case management to ensure the issues are kept within reasonable bounds, as I have tried to do) so that, as he said at [48]: “[T]he burden is on [the claimant] to prove, either by direct evidence or by inference from primary facts, that the numerous alleged incidents of discrimination are linked to one another and that they are evidence of a continuing discriminatory state of affairs covered by the concept of ‘an act extending over a period.’” This is why I decide whether there is a ‘continuing act’ at the end of the judgment.
131. In *Hendricks*, Mummery LJ also said at [51] ‘acts extending over a period’ were not limited to cases of a policy, rule, scheme, regime or practice, adding at [52]: “The concepts of policy, rule, practice, scheme or regime in the authorities were given as examples of when an act extends over a period. They should not be treated as a complete and constricting statement of the indicia of ‘an act extending over a period’...The question is whether th[ere] is ‘an act extending over a period’, as distinct from a succession of unconnected or isolated specific acts for which time....begin[s] to run from [each] date.” In *Anderson* at [41]-[42], EAT Judge Tayler re-iterated earlier comments that ‘conduct extending over a period’ can involve different types of prohibited conduct (e.g. a mixture of harassment and direct discrimination). However, it would be less likely if the acts relate to different protected characteristics and different prohibited conduct, although even then there is no absolute bar. In short, the more disparate the treatment, the more difficult to establish a ‘continuing act’. Protected Characteristics
132. As I have already said, the EqA in 2010 brought together the variety of equality legislation into one statute. Decided under the RRA, Watt was concerned with direct discrimination ‘on racial grounds’ as s.1(1)(a) RRA then stated. s.3(1) provided ‘racial grounds’ means colour, race, nationality, or ethnic or national origins. It obviously did not include religion. As I mention later, in *Watt*, Mr Ahsan was an aspiring councillor and like the Claimant here, a Muslim man of Pakistani origin. The Employment Tribunal found (and the Lords agreed) that, he had been discriminated against ‘on racial grounds’ by the Labour Party, who did not

select him due to concerns about councillors from the Pakistani-origin community in a ward in Birmingham. Echoing s.3(1) RRA, s.9 EqA now states: “(1) Race includes (a) colour; (b) nationality; (c) ethnic or national origins.

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- (2) In relation to the protected characteristic of race: (a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular racial group; (b) a reference to persons who share a protected characteristic is a reference to persons of the same racial group.
  - (3) A racial group is a group of persons defined by reference to race; and a reference to a person's racial group is a reference to a racial group into which the person falls.....” ‘Ethnic or national origins’ relates to descent from national or ethnic origins, as Lord Philips said in *R(E) v JFS* [2010] IRLR 136 (SC) at [33], in holding that ostensibly religious selection criteria in a Jewish Free School in fact adopted a definition of ‘Jewish’ that was based on ethnic descent through the maternal line.
133. This shows there may be overlap between ‘ethnic origins’ and ‘religion’, since as discussed in *R(E)*, Jews are an ethnic group as well as a religion, as are Sikhs, as decided in *Mandla v Dowell Lee* [1983] IRLR 209 (HL). This was critical at that time as discrimination on grounds of religion was not prohibited. This was why Watt – concerning events in the late 1990s - focussed on Mr Ahsan’s Pakistani ‘national origins’, not his Muslim faith, as Muslims are not a racial or ethnic group. Discrimination on grounds of religion and belief was addressed in the Employment Equality (Religion or Belief) Regulations 2003, but that was limited to the Employment field (so not relevant to the education discrimination claim in *R(E)*). That changed too with the Equality Act in 2010. s.10 EqA now states: “(1) Religion means any religion and a reference to religion includes a reference to a lack of religion.
- (2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief. (3)...(a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular religion or belief; (b) a reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief.” Being Muslim obviously falls within s.9(1) EqA, but there is debate about ‘belief’ in s.9(2). In *Higgs v Farmor’s School* [2025] IRLR 368 (CA) (another of Ms Reindorf’s cases), in upholding a claim of an employee dismissed for expressing her Christian ‘gender-critical’ views, Underhill LJ held discrimination based on belief itself could not be justified, but it could be if a proportionate response under Art.9 ECHR to its objectionable ‘manifestation’, observing at [54]-[55]: “54....[U]nlike Art.9...the [EqA] does not refer explicitly to discrimination on the grounds of the manifestation of a belief. However, ...‘because of the complainant’s religion or belief’ must be read as extending to [it]..... 55...There will be cases where treatment complained of by the employee was ostensibly on the ground of conduct

which manifested a religious or other belief but where it is found that the real reason was an animus against the belief in question. [T]he employer's account [may be] disbelieved; [or it may be] the particular case impossible to see any basis for the objection other than... to the belief ..it manifests.... Neither kind of case is in truth a manifestation case at all, because the employer is motivated simply by the fact that the employee holds the belief. In a manifestation case proper the

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Arif v Baker employer genuinely has no objection to the employee holding the belief and is motivated only by the conduct which constitutes its manifestation. Most claims of discrimination on the ground of religion or belief are likely to be genuine manifestation cases of this kind.”

134. Finally, given the Claimant focuses on Cllr Washbrook's belief he led a 'Pakistani Islamic clique', Ms Reindorf mentioned s.14 EqA, which is not yet in force, but I discuss it briefly as it is relevant to the approach I take to direct discrimination: “(1) A person (A) discriminates against another (B) if, because of a combination of two relevant protected characteristics [including race and religion or belief], A treats B less favourably than A treats or would treat a person who does not share either of those characteristics....
- (3) For the purposes of establishing a contravention of this Act by virtue of subs (1), B need not show that A's treatment of B is direct discrimination because of each of the characteristics in the combination (taken separately)” The purpose and context of s.14 was discussed in an interesting 2012 article by Allan Roberts of Guildhall Chambers 'Tricky Issues under the Equality Act 2010'. s.14 was a response to *Bahl v Law Society* [2004] IRLR 799 (CA) at [137] where the Court of Appeal criticised an Employment Tribunal for not dealing with sex and race discrimination separately, but simply focussing on discrimination as a 'black woman'. Mr Roberts noted preparatory materials for the Equality Bill distinguishing between 'Additive Discrimination' (when one person experiences discrimination in two unrelated ways) and 'Intersectional Discrimination': “..when the discrimination involves more than one protected characteristic and it is the unique combination of characteristics that results in discrimination, in such a way that they are completely inseparable. This often occurs as a result of stereotyped attitudes or prejudice relating to particular combinations of protected characteristics” s.14 EqA was clearly intended to adopt a model of 'intersectional discrimination' which is the academic phrase, though the section heading is simpler: 'Combined discrimination: dual characteristics'. The Explanatory Note to s.14 says: “Previous legislation only allowed for claims alleging discrimination because of a single protected characteristic. This section allows those who have experienced less favourable treatment because of a combination of two relevant protected characteristics to bring a direct discrimination claim, such as where the single-strand approach may not succeed.” It gave an example of a black woman passed over for promotion because of a discriminatory stereotype about black women held by the employer who instead promoted both a white woman and black man. But as Mr Roberts says, the next Government announced that s.14

would not be implemented and it remains so. Indeed, EU Law also takes a cautious approach to ‘intersectional discrimination’: the CJEU in *Parris v Trinity College* [2017] IRLR 173 said at [81]-[82] that discrimination can be based on multiple characteristics, but where there was no discrimination on either characteristic separately, there was no discrimination based on them in combination. Instead, the CJEU is starting to recognise discrimination within protected groups eg. between different Christian Churches (*Cresco v Achatzi* [2019] IRLR 380); or between different disabled employees

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*Arif v Baker* (VL v Zspital [2021] IRLR 330), although discrimination by political parties is not within the Employment field (Watt) so not EU Law either. As Ms Reindorf accepted the direct discrimination claims here must be analysed distinctly as said in *Bahl*: as race discrimination claims and separate religious discrimination claims (but both could succeed on the same point), not under s.14, but s.13 EqA. Direct Discrimination

135. ‘Single-characteristic direct discrimination’ is governed by s.13(1) EqA: “A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others” The simplicity of expression of this provision belies complexity in its application. There can be complexity about into which Part of the EqA a claim falls as in *Watt*, or about the scope of ‘protected characteristics’ as in *R(E)* and *Bahl*. However, much of the complexity in direct discrimination derives from its comparisons. ‘Less favourable treatment’ is not the same as unreasonable treatment as Lord Browne-Wilkinson said in *Zafar v Glasgow CC* [1998] IRLR 36 (HL) at [11]: “[The RRA] requires it to be shown that the claimant has been treated by the person against whom the discrimination is alleged less favourably than that person treats or would have treated another. In deciding that issue, the conduct of a hypothetical reasonable employer is irrelevant. The alleged discriminator may or may not be a reasonable employer. If he is not a reasonable employer, he might well have treated another employee in just the same unsatisfactory way as he treated the complainant, in which case he would not have treated the complainant ‘less favourably’...” But likewise, ‘more favourable treatment’ of ‘the others’ need not mean treating them reasonably. In *Balgobin v THLBC* [1987] IRLR 401 (EAT), women harassed by a man continued working with him as their employer’s investigation was inconclusive. But this was not ‘on the ground of their sex’ under s.1 Sex Discrimination Act 1975 (‘SDA’) (before sexual harassment was a distinct claim). Moreover, the comparator man was not one treated well but one harassed.
136. The comparative exercise required by s.13(1) EqA is elaborated by s.23(1) EqA: “On a comparison of cases for the purposes of section 13...there must be no material difference between the circumstances relating to each case.” In *Shamoon v Chief Constable RUC* [2003] IRLR 285 (HL), Lord Rodger said: “134. [T]he relevant circumstances...are those...the alleged discriminator takes into account when deciding to treat the [complainant] as he does or when deciding to treat the [comparator] as he treats, or would treat, him... 136 The relevant

circumstances....cannot be confined, however, to those.. That would exclude many cases of discrimination from protection... The comparison runs....in both directions. So, circumstances which the alleged discriminator takes into account or would take into account in the case of the...comparator are relevant if they were also present, though not taken into account, in the case of the [complainant].” Lord Rodger gave examples of disciplining a woman but not a man in similar circumstances, but also allowing mitigation for him not her. However, at [132],

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Arif v Baker he said ‘circumstances’ were not what a reasonable person (or the Court) thought relevant, as that would fall into the fallacy corrected in Zafar. At [140], he said the ‘comparator’ is the person in the same circumstances save the protected characteristic – actual, or if that is not an actual comparator, a hypothetical one. This distinction was explained by Lord Hoffmann at [36]-[37] of Watt: “36...(1) The test for discrimination involves a comparison between the treatment of the complainant and another person (the ‘statutory comparator’) actual or hypothetical, who is not of the same sex or racial group, as the case may be. (2) The comparison requires that whether the statutory comparator is actual or hypothetical, the relevant circumstances in either case should be (or be assumed to be) the same as, or not materially different from, those of the complainant: s.3(4). (3) The treatment of a person who does not qualify as a statutory comparator (because the circumstances are in some material respect different) may nevertheless be evidence from which a tribunal may infer how a hypothetical statutory comparator would have been treated... This is an ordinary question of relevance, which depends upon degree of the circumstances of the person in question (the ‘evidential comparator’) to those of the complainant and all the other evidence in the case. the similarity of 37 It is probably uncommon to find a real person who qualifies..as a statutory comparator....[T]he question of whether the differences between the circumstances of the complainant and those of the putative statutory comparator are ‘materially different’ is often likely to be disputed. In most cases, however, it will be unnecessary for the tribunal to resolve this dispute because it should be able, by treating the putative comparator as an evidential comparator and having due regard to the alleged differences in circumstances and other evidence, to form a view on how the employer would have treated a hypothetical person who was a true statutory comparator. If the tribunal is able to conclude the respondent would have treated [them] more favourably on racial grounds, it would be well advised to avoid deciding whether any actual person was a statutory comparator.” The same applies under s.13 EqA: Leicester CC v Parmar [2025] IRLR 782 (CA) at [87], where Laing LJ said the comparison exercise is a matter of fact and degree: see also Hewage v Grampian Health [2012] IRLR 870 (SC) at [22].

137. In Shamoon at [7]-[10] Lord Nicholls discussed s.1(1) SDA and s.1(1)(a) RRA as a matter of language naturally broke down into two stages: (i) whether there was less favourable treatment’ than a statutory comparator; and (ii) whether that was ‘on the ground of her sex’ or ‘on racial grounds’, that he called ‘the reason why question’. However, famously (to discrimination lawyers, at least), he also said at [11]-[12] that depending on the

circumstances of the case, that judges: “11...may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the claimant was treated as she was. Was it on the proscribed ground [alleged] in the application. That will call for an examination of all the facts of the case. Or was it for some other reason? If the latter, the application fails. If the former, there will be usually be no difficulty in deciding whether

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Arif v Baker the treatment, afforded to the claimant on the proscribed ground, was less favourable than was or would have been afforded to others. 12...There will be cases where it is convenient to decide the less-favourable treatment issue first. But...tribunals may find it helpful to consider whether they should postpone determining the less favourable treatment issue until after they have decided why the treatment was afforded....”

138. Lord Nicholls had previously also pellucidly explained the ‘reason why question’ in *Nagarajan v London Regional Transport* [1999] IRLR 572 (HL), to which I shall return, as it was actually a case about victimisation under s.2(1) RRA. However, in finding that victimisation did not require conscious motivation to respond to a ‘protected act’, Lord Nicholls explained the meaning of ‘on racial grounds’ in the context of direct discrimination under s.1(1)(a) RRA at [13]-[19]: “13. Section 1(1)(a) is concerned with direct discrimination, to use the accepted terminology. To be within section 1(1)(a) the less favourable treatment must be on racial grounds. Thus, in every case it is necessary to inquire why the complainant received less favourable treatment. This is the crucial question. Was it on grounds of race ? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job ? Save in obvious cases, answering the crucial question will call for some consideration of the mental processes of the alleged discriminator. Treatment, favourable or unfavourable, is a consequence which follows from a decision. Direct evidence of a decision to discriminate on racial grounds will seldom be forthcoming. Usually, the grounds of the decision will have to be deduced, or inferred, from the surrounding circumstances.
14. The crucial question just mentioned is to be distinguished sharply from a second and different question: if the discriminator treated the complainant less favourably on racial grounds, why did he do so ? The latter question is strictly beside the point when deciding whether an act of racial discrimination occurred. For the purposes of direct discrimination under s.1(1)(a)... the reason why the alleged discriminator acted on racial grounds is irrelevant. Racial discrimination is not negated by the discriminator's motive or intention or reason or purpose (the words are interchangeable in this context) in treating another person less favourably on racial grounds....
17. I turn to the question of subconscious motivation. All human beings have preconceptions, beliefs, attitudes and prejudices on many subjects. It is part of our make-up. Moreover, we do not always recognise our own prejudices. Many people are unable, or unwilling, to admit

even to themselves that actions of theirs may be racially motivated. An employer may genuinely believe that the reason why he rejected an applicant had nothing to do with the applicant's race. After careful and thorough investigation of a claim members of an employment tribunal may decide that the proper inference to be drawn from the evidence is that, whether the employer realised it at the time or not, race was the reason why he acted as he did. It goes without saying that in order to justify such an inference the tribunal must first make findings of primary fact from which the inference may properly be drawn...[t]he employer treated the complainant less favourably on racial grounds. Such conduct... falls within the purpose of

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Arif v Baker the legislation. Members of racial groups need protection from conduct driven by unrecognised prejudice as much as from conscious and deliberate discrimination. Balcombe L. J. adverted to an instance of this in *WMPTE v Singh* [1988] 1 W. L. R. 730, 736. He said that a high rate of failure to achieve promotion by members of a particular racial group may indicate that 'the real reason for refusal is a conscious or unconscious racial attitude which involves stereotyped assumptions' about members of the group.

19. Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds even though it is not the sole ground for the decision. A variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others, although ...legalistic phrases, as well as subtle distinctions, are better avoided so far as possible. If racial grounds or protected acts had a significant influence on the outcome, discrimination is made out." In *Higgs* at [46], Underhill LJ said that *Nagarajan* was the start of a line of cases, including *R(E)*, which explored the 'causative link' in the statutory phrases 'on the ground of her sex', 'on racial grounds' etc; and now in the EqA 'because', which had been interpreted similarly. Indeed, the Explanatory Note to s.13 stated that having 'because' rather than 'ground' 'did not change the legal meaning..but is designed to make it more accessible to the ordinary user'. Rather than the noun 'cause' I will use Lord Nicholls' noun in *Shamoon*: 'reason'. This discriminatory 'reason' has been explored in various ways, five of which are relevant to this case.
139. Firstly, as Underhill LJ added in *Higgs* at [46] in some cases that reason is inherent in the act complained of, which he called 'criterion cases' citing *R(E)*. In that case Lady Hale said at [62]-[65] it was what Lord Nicholls in *Nagarajan* at [13] called an 'obvious case' not requiring analysis of mental processes, since in *R(E)* the selection criteria applied were clear, the only issue was whether they were 'religious' (so not unlawful under the RRA) or 'racial' (as held they were): "64. There are obvious cases, where there is no dispute at all about why the complainant received the less favourable treatment. The criterion applied was not in doubt. If it was based on a prohibited ground, that is the end of the matter. There are other cases in

which the ostensible criterion is something else - usually, in job applications, that elusive quality known as 'merit'. But nevertheless, the discriminator may consciously or unconsciously be making his selections on the basis of race or sex. He may not realise that he is doing so, but that is what he is in fact doing

65. [But] There is absolutely no doubt about why the school acted as it did. We do not have to ask whether they were consciously or unconsciously treating some people who saw themselves as Jewish less favourably than others... If the criterion adopted was in reality ethnicity-based, it matters not whether [it] was adopt[ed] because of a sincerely held religious belief." In *For Women v Scottish Ministers* [2025] IRLR 537 (SC), the Court said at [257] "[W]here a policy or rule is applied which applies a criterion that is indissociable from sex to determine entitlement to some benefit, that will

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*Arif v Baker* necessarily constitute unlawful direct discrimination that cannot be justified. A clear example is the policy adopted by the council in *James v Eastleigh BC* [1990] 2 AC 751 (HL)... regarding free admission to the swimming pool for those of pension age at a time when pension ages for men and women were different. For this principle to apply, there must be an 'exact correspondence' between the protected characteristic and the criterion in question (*Preddy v Bull* [2013] 1 WLR 3741 (SC) at para 21)."

140. Secondly, even in the more common case where the real issue is the alleged discriminator's 'mental processes', as Lord Nicholls put it in *Nagarajan*, it may be their 'mental processes' explicitly related to a protected characteristic in some way. This could be a perception about it, or a factor associated with it, as *Ladies Rose and Simler* and Lord Hodge for the Court said in *For Women* at [249]: "[D]irect discrimination because of a protected characteristic (s.13 EA
- 2010) encompasses not only cases where the complainant affected by discrimination has the protected characteristic in question, but also where the discriminator perceives the complainant has the characteristic, or in some other way associates the complainant with the...characteristic. This can occur, for example, where a complainant is discriminated against because of caring responsibility for a person with a protected characteristic such as disability (as happened in.... *EBR Attridge LLP v Coleman* [2010] ICR 242), or where the complainant is treated detrimentally because it is thought that she or he has a particular protected characteristic even if they do not (*English v Thomas Sanderson Blinds Ltd* [2009] IRLR 206 (CA). What is required is that the protected characteristic is a ground for the treatment in question. Terms such as 'associative discrimination' and 'discrimination by perception' are not a critical part of the analysis. What matters in the former is whether the treatment of the complainant was done because of the protected characteristic of the other person. In a case of perceived discrimination, the correct comparator is someone who is not perceived to have that protected characteristic: *Chief Constable of Norfolk Constabulary v Coffey* [2020] ICR 145. In *Coffey* the EAT held that where a claimant is

treated less favourably on the basis of a mistaken perception that she was disabled, the correct hypothetical comparator was a person who was not perceived to be disabled and who had the same abilities as the claimant. On appeal, Underhill LJ (...with whom the other members agreed) upheld the decision and expressly endorsed this comparator...The perception-based approach was approved by Lord Mance JSC in R(E)...” For example, in English, the majority of the Court of Appeal held it was also harassment ‘on the ground of sexual orientation’ where someone was tormented with ‘homophobic mockery’ even though it was known that he was not gay.

141. Thirdly, the factor in the discriminator’s mental processes related to someone’s protected characteristic could be more insidious, like a subconscious stereotype, (c.f. Nagarajan at [17]). In Higgs at [172], Underhill LJ endorsed submissions that stereotypes can be discriminatory even if likely to be true (citing R(European Roma Rights) v Prague Immigration Officer [2005] IRLR 115 (HL)), the example being assuming those who believe homosexuality is a religious sin must have an animus towards gay people: it may well be true, but it is a stereotype to assume

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Arif v Baker all do. As Lord Nicholls said in Nagarajan at [14], if someone discriminates on the grounds of (what is now called) a protected characteristic, it does not matter why they do so, or even that their intention may be benign. Similarly, it can also be discriminatory to be influenced by others’ stereotypes, as Lord Hoffmann said in Watt. He disagreed with the view that the Labour Party’s decision not to select Mr Ahsan because he was of Pakistani origin (due to the risk voters would associate him with other Pakistani-origin councillors accused of fraud) could be a ‘legitimate rather than an illegitimate perception’. Lord Hoffmann observed: “46...I have great difficulty in understanding the distinction. How can one form a view that a problem is ‘associated with the Pakistani community’ but reach that view uninfluenced by ‘the racial makeup of that community’? Its racial make-up is what enables it to be described as a Pakistani community. The only meaning which I can ascribe to the distinction is that it would be acceptable for the Labour Party to discriminate against a Pakistani candidate if they held no racist views about Pakistanis but thought that it was better not to have a Pakistani candidate because the electorate would identify ‘the problem’ with the Pakistani community. 47 If that is what the distinction means, it seems to me unacceptable. It is nothing more than the old plea that you have nothing against employing a black person but the customers would not like it. In essence it is a defence of justification based on political expediency. It may salvage the purity of the personal motives...but it does not in my opinion satisfy the terms of the [RRA] which does not allow any justification for ‘direct’ discrimination. It simply says that one shall not discriminate on racial grounds.”

142. Fourthly, as Underhill LJ said in CLFIS v Reynolds [2015] IRLR 562 (CA), ‘the reason’ for treatment may not all be within mental processes of one person. He first summarised the usual Nagarajan approach at [11]: “As regards direct discrimination, it is now well-established that a person may be less favourably treated ‘on the grounds of’ a protected

characteristic either if the act complained of is inherently discriminatory (eg the imposition of an age limit) or if the characteristic in question influenced the ‘mental processes’ of the putative discriminator, whether consciously or unconsciously, to any significant extent.....” Applying that to cases where multiple people are involved, Underhill LJ referred to a less-cited part of Nagarajan: where at [20]-[24], Lord Nicholls had discussed s.4(1) RRA - ‘the arrangements he makes for the purposes of who should be offered employment’ (similar to s.101(1)(a) EqA). Lord Nicholls had found the person who ‘makes the arrangements’ (e.g. arranges interviews) does not have to be the same as the person who discriminates (eg. not selecting someone): “[O]n a complaint against an employer under s.4(1)(a) it matters not that different employees were involved at different stages, one employee acting in a racially discriminatory or victimising fashion and the other not. The acts of both are treated as done by the respondent employer. So, if the employee who operated the employer's interviewing arrangements did so in a discriminatory manner...s.4(1)(a) is satisfied even though the employee who set up the arrangements acted in a wholly non-discriminatory fashion.”

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Arif v Baker Conversely, in Reynolds, as a result of representations made by X and Y (which were covertly age discriminatory), Z who was not personally significantly influenced by the claimant's age, dismissed her. Underhill LJ found it was not a ‘joint decision-making case’ at [33] but was a ‘tainted information’ case at [34]: “33. Supplying information or opinions which are used for the purpose of a decision by someone else does not constitute participation in that decision. There may be cases where it is difficult to distinguish between the two situations, but the tribunal was fully entitled to treat this case as one where Mr G did indeed make the relevant decision on his own.

34. We are accordingly concerned not with joint decision-making but with a different situation, namely one where an act which is detrimental to a claimant is done by an employee who is innocent of any discriminatory motivation but who has been influenced by information supplied, or views expressed, by another employee whose motivation is, or is said to have been, discriminatory. I will refer to this as a case of ‘tainted information’ (treating ‘information’ widely so as to cover also the expression of views).” Underhill LJ explained at [39] that the discrimination lay with Y in the initial act: “(1) By making an adverse report about C, Y subjects her to a detriment...
- (2) If in making the report Y was motivated by C's age his act constitutes [direct] discrimination...(3) If that discriminatory act was done in the course of Y's employment... then by virtue of [equivalent of s.109(1) EqA] it would be treated as E's act; and accordingly E would be liable (unless he could rely on the ‘reasonable steps’ defence). (4) Y would also be liable for his own act by virtue of [the equivalent of s.110 EqA]; (5) The losses caused to C by her dismissal could be claimed for as part of the compensation for Y's discriminatory act, as they would have been caused or contributed to by that act and would not (at least normally) be too remote.” As I have said, s.13 EqA applies to ‘detriments’ which is broader than simply

a dismissal. A similar approach is taken to ‘detriment’ ‘on the ground of’ making a protected disclosure’ under s.47B Employment Rights Act 1996 (‘ERA’) by Underhill LJ again in *Royal Mail v Jhuti* [2018] IRLR 251 (CA), where he noted it is similar to victimisation. However, whilst he applied a similar approach to ‘the reason (or if more than one, the principal reason) for dismissal being a protected disclosure under s.103A ERA, in *Royal Mail v Jhuti* [2020] IRLR 129, the Supreme Court disagreed. Lord Wilson pointed out s.103A was a different cause of action for (automatic) unfair dismissal justifying a different approach to ‘detriments’ under s.47B (where he did not criticise Underhill LJ’s analysis). Lord Wilson held ‘the principal reason’ could include a ‘real reason’ which one manager ‘hid’ within a ‘pretext reason’ on which another manager dismissed. However, the Court did not even cite *Reynolds*, let alone say it was wrong on the different provisions of the EqA: see *Henderson v GCRM* [2026] IRLR 1 (EAT).

143. Finally, ‘the reason for treatment’ may not be a protected characteristic, but some legitimately separable feature. It was discussed by Underhill LJ in *Higgs* at [57]: “In a case where the 2010 Act (or its predecessors), and other analogous legislation, affords protection to particular kinds of conduct by an employee, for example, in victimisation or whistleblowing cases, for making complaints of discrimination or making protected disclosures, the

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*Arif v Baker* case law recognises that it may be necessary to decide whether the real cause of the treatment is the conduct itself or is some properly separable feature of it. This is sometimes referred to as ‘the separability principle’. This line of authority is potentially applicable in a (true) manifestation case, since in such a case the court is concerned (untypically for a direct discrimination claim) with a motivation based not on the possession of the protected characteristic but particular conduct on the part of the employee..” I will come back to this principle on victimisation, to which I now turn. Victimisation

144. Victimisation is actionable under s.101(5) and (6) EqA and defined by s.27 EqA:
- (1) A person (A) victimises another person (B) if A subjects B to a detriment because (a) B does a protected act, or (b) A believes that B has done, or may do, a protected act.
  - (2) Each of the following is a protected act (a) bringing proceedings under this Act; (b) giving evidence or information in connection with proceedings under this Act; (c) doing any other thing for the purposes of or in connection with this Act; (d) making an allegation (whether or not express) that A or another person has contravened this Act.
  - (3) Giving false evidence or information, or making a false allegation, is not a protected act if... given, or the allegation is made, in bad faith.” The Explanatory Note to s.27 EqA states that unlike victimisation under s.2 RRA or s.4 SDA, there is no longer a need to compare treatment of an alleged victim with that of ‘a person who has not made or supported a complaint under the Act’. That was the simpler comparator than for direct discrimination

adopted for cases of victimisation in *West Yorkshire Police v Khan* [2001] IRLR 830 (HL). But Elias LJ said in *Deer v Oxford University* [2015] IRLR 481 (CA) at [28] a detriment ‘because’ of a protected act implicitly entails less favourable treatment than someone who had not done one. Victimisation still requires: (i) a A subjecting B to a ‘detriment’, (ii) ‘because’ (in the sense of the reason for it); (iii) B had done (or A believes B had or may do) a ‘protected act’.

145. A ‘protected act’ under s.27(2) EqA makes victimisation rather different from direct discrimination. Its focus is not the complainant’s protected characteristics, but what they say or do (provided under s.27(3) it is honestly said or done and not for an ulterior motive: *Saad v Southampton NHS* [2018] IRLR 1007 (EAT)). But only certain things which are said or done are ‘protected’ under s.27(2), as explained by EAT Judge Clark in *National Probation v Kirby* [2006] IRLR 508: “33. The four separate sets of circumstances set out in...(a)–(d) must be looked at as a whole. (a) is concerned with a claimant (A) who has brought proceedings against the discriminator (‘victimiser’) or any other person under the Act and is then victimised for doing so..... Equally, a person who gives evidence or information in connection with tribunal proceedings brought by A against their employer who is himself then victimised by the employer by reason that he has given evidence or information in connection with those proceedings has a claim under s.2(1)(b)..[I]t is unnecessary that that person gives evidence or information in support of A’s case. It is

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Arif v Baker enough that it is ‘in connection with A’s proceedings. However, ...proceedings means tribunal [not internal] proceedings...(d) logically comes next. It covers an allegation the discriminator has committed a contravention of the act....(c) is a ‘catchall’....” 35....(c)...is necessarily wider than the more restricted circumstances set out in...(a), (b) and (d). Although Ms Kirby had not [done (a), (b) or (d)... it was not necessary for her to show any of those things for the purposes of (c). She had given information in connection with a complaint of discrimination raised in internal grievance...by [another employee] .... That was otherwise doing something by reference to the Act in relation to another person construing..(c) generically with...(a), (b) and (d)” The main ‘protected act’ raised in this case (as in most cases) is (d) ‘making an allegation (whether or not express) A or another person has contravened this Act’. s.4(1)(d) SDA was very similar and in *Waters v CPM* (where a female police officer reported she was raped by an off-duty colleague), Waite LJ said at [86]: “The allegation relied on need not state explicitly that an act of discrimination has occurred...[but] should have asserted facts capable of amounting in law to an act of discrimination by an employer...The facts alleged by the complaint...were incapable in law of amounting to an act of discrimination by the commissioner.. because the alleged perpetrator was not acting in the course of his employment....” In *Durrani v Ealing LBC* (2013), EAT President Langstaff said an allegation of ‘discrimination’ an employee had clarified simply meant ‘unfair treatment’ did not fall within (d). He explained the scope of (d) at [22]: “The complaint must be of conduct which interferes with a characteristic protected by the Act, such as race, not to a matter not protected by the Act, such as public interest disclosure. The only relevant [one] asserted here was ...race....[I]t is not necessary that the complaint referred to race using that very word. But

there must be something sufficient about the complaint to show that it is a complaint to which at least potentially the Act applies.” Applying that test, the complaint should be read in context as it would be understood by the recipient: *Kokomane v Boots* [2025] UKEAT 38 at [23]-[24].

146. The word ‘because’ for victimisation in s.27(1) EqA has a similar meaning as for direct discrimination in s.13 EqA. Indeed, *Nagarajan I* quoted at length, was a victimisation case where an interviewer victimised a job applicant who claimed discrimination because they were ‘consciously or subconsciously influenced’ by that. Lord Nicholls endorsed that approach for direct discrimination as well as victimisation, stressing the test at [19] focussed on whether the prohibited ground had a ‘significant influence on the outcome’. Lord Nicholls therefore held ‘victimisation’ could be subconscious not just conscious, as he explained at [18]: “Although victimisation has a ring of conscious targeting, this is an insufficient basis for excluding cases of unrecognised prejudice from the scope of s.2. Such an exclusion would partially undermine the protection s.2 seeks to give those who have sought to rely on the Act or been involved in the operation of the Act in other ways.”

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*Arif v Baker In Khan* at [29] Lord Nicholls explained why his approach in *Nagarajan* was subjective and not the same as traditional objective ‘but for’ causation: “...[B]y reason that’ does not raise...causation as that expression is usually understood....[I explained] in *Nagarajan*....the phrases ‘on racial grounds’ and ‘by reason that’ denote a different exercise: why did the alleged discriminator act as he did? What, consciously or unconsciously, was his reason? Unlike causation, this is a subjective test. Causation is a legal conclusion. The reason why a person acted as he did is a question of fact.” *Nagarajan*, *Khan* and *Deer* ([12]) assume a ‘reason’ requires either knowledge of or belief in the protected act. Two other aspects of ‘because’ have been debated.

147. Firstly, sometimes a defendant subjects someone who had done a protected act not ‘because’ of the ‘protected act’ itself, but ‘some feature of it which can properly be treated as separable’, as *Underhill J* (when EAT President) put it in *Martin v Devonshires Solicitors* [2011] ICR 352 at [22]. In *Martin* an employee made a series of good faith but baseless allegations of sex discrimination when suffering from a psychotic illness and was dismissed. But it was held this was not because of the complaints as such, but because she would continue make baseless complaints and it would be impossible to work with her. *Underhill P* said at [22]: “Employees who bring complaints often do so in ways that are, viewed objectively, unreasonable. It would certainly be contrary to the policy of the anti-victimisation provisions if employers were able to take steps against employees simply because in making a complaint they had, say, used intemperate language or made inaccurate statements. An employer who purports to object to ‘ordinary’ unreasonable behaviour of that kind should be treated as objecting to the complaint itself, and we expect tribunals to be slow to recognise a distinction between the complaint and the way it is made save in clear cases. But the fact that the distinction may be illegitimately made in some cases does not mean that it is wrong in principle...” In *Page v Lord Chancellor* [2021] IRLR 377

(CA), Underhill LJ (as he had become) similarly held where a Magistrate had in a television interview alleged his Christian views against same-sex adoption had led to his being sanctioned and this interview led to a further sanction, whilst the interview was a protected act, the second sanction was not 'because' of that protected act as such, but rather his public expression of it in an unsanctioned interview. Underhill LJ repeated at [55]: "[A]ny... detrimental act...in response to a complaint of discrimination does not constitute victimisation if the reason for it was not the complaint as such but some feature of it which can properly be treated as separable." Whilst not analysed in these terms, a related example is an employee dismissed because her complaint the managers were a 'little Sikh club that only looked after Sikhs' that they interpreted as itself racist: *Woods v Pasab* [2013] IRLR 305 (CA). The 'separability principle' has been applied in other areas such as manifestation of belief in *Higgs* at [57] quoted above; and closely-related to victimisation, in whistleblowing. In *Kong v Gulf Bank* [2022] IRLR 854 (CA), it was held an employee had been dismissed not for making protected disclosures, but because she raised issues in a challenging way. Simler LJ (as she then was) said at [57]:

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*Arif v Baker* "[T]he 'separability principle' is not a rule of law or a basis for deeming an employer's reason to be anything other than the facts disclose it to be. It is simply a label that identifies what may in a particular case be a necessary step in the process of determining what as a matter of fact was the real reason for impugned treatment. Once the reasons for particular treatment have been identified by the fact-finding tribunal, it must evaluate whether the reasons so identified are separate from the protected disclosure, or whether they are so closely connected with it that a distinction cannot fairly and sensibly be drawn. Were this exercise not permissible, the effect would be that whistle-blowers would have immunity for behaviour or conduct related to the making of a protected disclosure no matter how bad, and employers would be obliged to ensure that they are not adversely treated, again no matter how bad the associated behaviour or conduct."

148. Secondly though, another judicial attempt to keep victimisation within reasonable bounds using 'because' did not persist. In *Khan*, the employer refused to give a reference to an employee who was bringing a race discrimination claim explicitly to protect its position in those proceedings, which put them in a dilemma if it was victimisation. Lord Hoffmann's solution at [60], anticipating the 'separability principle', was the 'reason' for the refusal was not 'bringing proceedings' within s.4(1) SDA (basically the same as s.27(2)(a) EqA), but 'continuing' them. But the other Lords preferred to adopt an earlier case holding such a refusal was not 'by reason' of the protected act, at least if 'honest and reasonable'. The difficulties were discussed in *St Helens MBC v Derbyshire* [2007] IRLR 540 (HL), where the Court of Appeal had applied *Khan* to hold a letter to other employees warning of wider consequences of an Equal Pay claim to pressure those who had refused to settle it, was not 'by reason' of the claim because it was 'honest and reasonable'. The Lords disagreed with that on the facts, but also disagreed that *Khan* had articulated any 'honest and reasonable

defence'. As Lord Neuberger said at [65]: "[What] has been called the 'honest and reasonable employer' defence is not found in the legislation itself" [and]...seems to place a somewhat uncomfortable and unclear meaning on the words 'by reason that'."

149. However, in *Derbyshire*, Lord Neuberger at [68] found a solution in the approach to 'detriment' taken by Lord Hope for direct discrimination in *Shamoon*. Indeed, in *Derbyshire* itself Lord Hope himself said at [27]: "The employer should reflect on how the way he wishes to conduct himself will be seen through the eyes of the employee – how would she be likely to react if she were to be treated in that way? He is entitled to bear in mind that an unjustified sense of grievance cannot amount to 'detriment'... But he ...must avoid doing anything that might make a reasonable employee feel that she is being unduly pressurised to concede her claim." There was a 'detriment' on this basis in the 'pressure letter' in *Derbyshire*. But there was not in one of the series of victimisation claims in *Deer*, where the former employer facing them refused on legal advice to provide documents under the Data Protection Act 1998, which Elias LJ accepted at [52] was honest and reasonable and so not a detriment. However, for the earlier claims, he held whilst 'an unjustified sense of grievance' cannot itself amount to a detriment, inadequate

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*Arif v Baker* investigation of a protected act allegation can do, even if it does not affect the result. Elias LJ accepted submissions at [41] and [48] that: "41..[I]n circumstances where there was...no established procedure, the appellant would have to demonstrate that there was something unreasonable or unfair about the process before the claim could possibly succeed... 48 [But]..if the appellant were able to establish that she had been treated less favourably in the way in which...procedures were applied and the reason was [she had]...lodged a sex discrimination claim, she would have a legitimate sense of injustice which would in principle sound in damages. The fact that the outcome of the procedure would not have changed will be relevant to any assessment of any compensation, but it does not of itself defeat the substantive victimisation discrimination claim." So, a 'detriment' can be the process that was followed because of a protected act, not just the 'outcome' of that process. That is an important distinction in this case.

Burden of Proof

150. s.136 EqA states the burden of proof for all claims under the Act including victimisation (although I will focus on the cases relating to direct discrimination): "(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. (3)...(2) does not apply if A shows that A did not contravene the provision." To understand how s.136 EqA works, it is necessary to understand its legislative history. It is the third version of a shifting burden of proof Employment Tribunals developed for direct discrimination under the individual-characteristic legislation like the SDA and RRA, as Lord Browne-Wilkinson (like Lady Simler, Elias LJ and Underhill LJ, a former EAT President) explained in *Zafar* at [16]: "[Discrimination]..presents special problems of proof for

complainants as those who discriminate on the grounds of race or gender do not in general advertise their prejudices: indeed, they may not even be aware of them.”

- (1) The first iteration was not a shifting burden of proof at all, but inference from a *prima facie* case. In *Zafar*, Lord Browne-Wilkinson endorsed the guidelines of Neill LJ in *King v GB China Centre* [1991] IRR 513 (CA) which stressed, that if there was a difference of treatment and a difference of race or sex, the tribunal would look to the employer for an explanation, which if unforthcoming or inadequate would mean the tribunal ‘could’ infer discrimination. Lord Browne-Wilkinson said that was preferable to his own earlier formulation in the EAT the tribunal ‘should’ infer discrimination.
- (2) Shortly afterwards due to EU Directives, in 2001 the SDA and in 2003 the RRA (and new other equality legislation e.g. religion and belief) included: “Where, on the hearing of the complaint, the complainant proves facts from which the tribunal could, apart from this section, conclude in the absence of an adequate explanation that the respondent...has committed an act of discrimination against the complainant....the

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Arif v Baker tribunal shall uphold the complaint unless the respondent proves that he did not [or] is not to be treated as having committed, that act.” The new provision echoed Lord Browne-Wilkinson’s earlier EAT approach so that when an inference of discrimination could be drawn in the absence of an adequate explanation and the respondent did not provide one, the claim succeeded, although that was formalised into a shifting burden of proof, rather than just a rule about drawing inferences. The EAT gave guidance which was adjusted and approved in *Igen v Wong* [2005] IRLR 258 (CA), that was explained in *Madarassy v Nomura* [2007] IRLR 246 (CA) which were both approved in *Hewage v Grampian Health* [2012] IRLR 879 (SC).

- (3) s.136 EqA was introduced and as its Explanatory Note said, applied the same rule to all discrimination and victimisation claims, reversing the burden once a case is ‘established to an initial level’. Lord Leggatt held in *Efobi v Royal Mail* [2021] IRLR 811 (SC) at [24]-[34], the simpler language in s.136 EqA was not intended substantively to change the law so, as clarified in *Efobi*, the guidance in *Igen*, *Madarassy* and *Hewage* is still valid.
151. The still-relevant *Igen* guidelines (incorporating elements of *King*) state: “(1)...[I]t is for the claimant...to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful...is to be treated as having been committed against the claimant. These are referred to below as ‘such facts’.

- (2) If the claimant does not prove such facts he or she will fail. (3)...[I]n deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases, the discrimination will not be an intention but merely based on the assumption that 'he or she would not have fitted in'.
- (4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.
- (5) It is important to note the word 'could'.... At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.
- (6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts....
- (9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.
- (10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

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Arif v Baker

- (11) To discharge that burden, it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since 'no discrimination whatsoever' is compatible with the [EU] Burden of Proof Directive.
- (12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment...
- (13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof...." So, Guidelines (1)-(9) relate to 'the first stage' with the burden of proof on the claimant, while Guidelines (10)-(13) relate to the 'second stage' on the defendant. However, in Igen at [24] the Court said it was permissible at the first stage to take into account evidence from the defendant, which was clarified in Madarassy at [57] to mean all evidence save the statutorily-excluded 'explanation'.

152. At the first stage, Courts have rejected several arguments that statutory changes lowered claimants' burden of proof. In *Igen* at [28], the Court held 'facts from which the tribunal could conclude, in the absence of an adequate explanation that the respondent has committed...discrimination' did not mean 'could have committed'. In *Madarassy* at [52]-[56] (endorsed in *Efobi* at [46]) Mummery LJ (another former EAT President) said a claimant need not prove a 'conclusive case' but still had to prove a *prima facie* case to shift the burden of proof, so a difference in treatment and a difference in characteristic without more were not enough for direct discrimination (or victimisation: *Manchester Police v Bailey* [2017] EWCA Civ 425 at [14]). In *Madarassy*, Mummery LJ added at [71]: "s.63A SDA does not expressly or impliedly prevent the tribunal at the first stage from hearing, accepting or drawing inferences from evidence by the respondent disputing and rebutting the complainant's evidence of discrimination. The respondent may adduce evidence at the first stage to show the acts which are alleged to be discriminatory never happened; or that, if they did, they were not less favourable treatment of the complainant; or that the comparators chosen by the complainant or the situations with which comparisons are made are not truly like the complainant or the situation of the complainant; or that, even if there has been less favourable treatment of the complainant, it was not on the ground of her sex.." In *Efobi* at [23], Lord Leggatt clarified the last part I have italicised meant the first stage could include facts indicating treatment was not on a prohibited ground, as the employer's explanation is statutorily-excluded at the first stage. Lord Leggatt did not give an example, but the fact (as opposed to the explanation) that someone of the same protected characteristics was more favourably treated seems an important fact which should be taken into account at the first stage.
153. The main focus of debate at the first stage has been the meaning of 'in the absence of an adequate explanation' under the previous provisions and 'in the absence of any other explanation' in s.136 EqA. In *Igen* at [22]-[23], the Court articulated the position they summarised in Guideline (6). However, in *Madarassy* at [77],

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*Arif v Baker* Mummery LJ explained this should not be misunderstood as requiring a presumption at the first stage that there was an 'inadequate explanation' which formed part of the 'prima facie case' itself. As Lord Hope said in *Hewage* at [31]: "The assumption at th[e first] stage... is simply that there is no adequate explanation. There is no assumption as to whether or not a prima facie case has been established...[T]he prima facie case must be proved, and it is for the claimant to discharge that burden." For example, in *Efobi* at [39]-[47], Lord Leggatt agreed with Elias LJ in the Court of Appeal that a defendant's failure to call decision-makers could in principle be the subject of an adverse inference, but not at the first stage, because it was 'the absence of an explanation': it would be relevant to the defendant's ability to discharge the burden at the second stage. In *Efobi* at [28]-[29] Lord Leggatt explained it was misunderstandings of these principles that led to the simpler language of 'any other explanation' in s.136 EqA but it did not change the

law substantively and still required the claimant to prove a prima facie case. At [22], he also endorsed the analysis of ‘explanation’ by Elias J (as he then was, when President of the EAT) in *Laing v Manchester CC* [2006] IRLR 748 at [60]: “... The obligation for the employer to provide an explanation once the prima facie case has been established, strongly suggests that he is expected to provide a reason for the treatment. An explanation is just that; the employer must explain. Why has he done what could be considered to be a racially discriminatory act? It is not the language one would expect to describe facts that he may adduce to counter or put into context the evidence adduced by the claimant.” (Emphasis in original) In short, s.136(2) EqA still means what the previous provisions meant at the first stage. As confirmed by Laing LJ in *Parmar* at [101] endorsing *Madarassy* at [56], the burden only shifts if an inference of discrimination ‘could properly be drawn’, not just the inferences that ‘might be drawn’. There must be a prima facie case.

154. More significant changes from *King* have been noted at the second stage if the burden of proof shifts to the defendant. As explained, under the *King* guidelines approved in *Zafar*, this was a rule of inferences. However, that unquestionably changed to a formal ‘shifting legal burden of proof’ with the amendments to the SDA and RRA, as Mummery LJ emphasised in *Madarassy* at [60]: “If and when [the burden of proof shifts], the tribunal has to decide whether or not the respondent has proved that he has not committed...discrimination. If the tribunal accepts the respondent’s evidence of a non-discriminatory reason for his treatment of the complainant as an adequate explanation, the respondent will have discharged the burden of proof. If the respondent does not discharge the burden of proof, the complainant ‘shall’ succeed.” Mummery LJ in *Madarassy* at [80]-[84] noted that in *Laing* at [74], Elias P had suggested with hypothetical comparators, it may be helpful to go straight to the second stage, but it was not an error of law to follow the usual two stages. *Igen* Guidelines (10)-(13) on the nature of the defendant’s burden have not been the subject of much debate and speak for themselves, save for the Court of Appeal’s observation in *Igen* that its adjustment at [36] from a defendant proving ‘no significant influence’ of a protected characteristic to ‘no discrimination whatsoever’ was not itself a significant change, as the Court said at [37]:

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*Arif v Baker* “We doubt if Lord Nicholls’ wording [in *Nagarajan* of ‘significant influence’ is in substance different from the [EU] ‘no discrimination whatsoever’ formula. A ‘significant’ influence is an influence which is more than trivial. We find it hard to believe that the principle of equal treatment would be breached by the merely trivial.”

155. Finally, in this case there is particular relevance in this observation by Lord Hope in *Hewage* (re-iterated by Lord Leggatt in *Efobi* at [38]): “It is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.” I also bear in mind the guidance in *Talbot v Costain* [2017] ICR D11 (EAT) by

HHJ Shanks, including that in my findings of fact and inferences I may properly draw, I should take into account all the evidence in particular relating to alleged discriminators (and the reliability and credibility of the evidence if they give it). Conclusions

156. I turn finally to my conclusions, which will incorporate the expert submissions of Ms Reindorf and Mr Beever. I will consider first the legal relevance of the Petition Controversy, as Ms Reindorf submits it influenced everything that then followed. I then turn to my conclusions on direct discrimination and victimisation topic-by- topic and finally to remedies. I stress that all my conclusions take into account all relevant evidence and findings of fact, even if not specifically referenced in my conclusions, given this judgment is already very (and doubtless over-) long. The Petition Controversy
157. I have made findings of fact about the Petition Controversy at paragraphs 47-59. There is no direct discrimination or victimisation complaint about it as such, but the Claimant contends that his evidence to the Mort Report investigation in June- July 2015 is a ‘protected act’. I certainly accept if the Claimant supported allegations of discrimination made by the expelled members, that would be a protected act under s.27(2)(b)-(d) EqA, as in Kirby. But this case is more like Durrani: there was no protected act at this stage. As I said at paragraph 57, I have no evidence the petitioners complained of Islamophobia or the Claimant did so for them. He has pleaded that his information to the Mort Report was a protected act in his Particulars at para 61.1, but he did not say how in his evidence. Indeed, I have also considered whether Cllr Washbrook believed the Claimant had made a protected act under s.27(1)(b) EqA, but I cannot infer that either. Unlike Cllr Washbrook’s later letters to the national Party on 16th December 2015 (quoted at paragraph 68 above), 19th February 2016 (quoted at paragraph 70 above), 10th January 2017 and his undated statement for the Claimant’s appeal against expulsion in 2017 both quoted at paragraph 97), in Cllr Washbrook’s letter to the national Party of 13th August 2015, he does not suggest he understood or believed the Claimant had alleged discrimination (or supported the petitioners’ allegation of it) to the Mort Report. Rather than referring to a complaint of discrimination,

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Arif v Baker Cllr Washbrook alleged the Claimant was the leader of a ‘sectarian Trojan Horse’ ‘Pakistani Islamic group’ which had ‘attempted to take control of the Executive’: “The [Mort Report] Panel accepted the evidence from Councillor Arif on behalf of the 77. He was the leader of this special interest group, financed the new members and was instrumental in composing the Petition letter. Arif [was not a witness at the expulsion hearing] and actively attempted to conceal his involvement from the Executive.... Although being of Pakistani Islamic heritage or a member of a mosque, was not in itself a factor in the decision process, it added to the evidence of affiliation between members of the group...Arif was not charged as he did not sign the petition and the members of his group were not prepared to...implicate him. Although he gave evidence to the Panel as one of the principal witnesses, the report is silent on his.. involvement... There

can be no doubt that this was a sectarian Trojan horse attempt to take control of the Executive.”

158. As Ms Reindorf said, this must be read in the context of other things Cllr Washbrook had already said in letters to the national Party, for example as quoted at paragraph 51, in response to the petition on 28th August 2014, Cllr Washbrook wrote to Mr Mabbutt in the national Party on 31st August 2014 saying (my italics) from “We have identified a Pakistani Islamic group who are attempting to remove the Executive and take control of the Association.... In Jan 2014 when we were advised that the Association was coming out of assisted status a small group of Muslim councillors started to aggressively sign-up compliant members their Islamic community. Members of the Islamic community alerted us to this process having been approached to join the party for this purpose. However, they were not prepared to speak out publicly in fear of intimidation or being vilified by their peers. We monitored this...and noted a number of irregularities; new members shared a common contact E-mail address, a number were not on the electoral register or shared addresses and were of Pakistani heritage.... With the possible exception of 3 people, all of the petitioners are of Pakistani Islamic heritage. This attempt to take control of the Association by gerrymandering membership provides irrefutable evidence as to the purpose of this group... Walsall was identified as...prone to electoral fraud; vote harvesting, postal vote abuse and fraudulent registration. These practices are prevalent in Pakistan and regrettably there are members of our community who derive from this heritage that believe they can emulate those practices here in UK. I am concerned in identifying this group in terms of racial or religious profile for fear of being labelled as racist or not being PC. However, I would be negligent in my duty as Chairman of the Association to ignore the evidence and where it leads. ...UKIP have only one policy 'Immigration'. It would be electorally disastrous in Walsall to allow the Association to be taken over and dominated by a Pakistani Islamic clique.” Likewise, to the national Party on 12th October after the expulsions, he wrote:

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Arif v Baker “In August 2014 we identified an Islamic group of Pakistani heritage who attempted to remove the Executive and take control of the Association.... The Association Council averted this Trojan Horse attempt to subvert the legitimate procedures of the party....” I must be cautious as Cllr Washbrook is sadly no longer with us to explain what he meant. For example, Ms Reindorf seized on something Mr Letts said in evidence about the Muslim membership, but in context it is clear he meant no more than that. However, I do not have that context with Cllr Washbrook. I remind myself that he had worked previously in his military career with Muslim colleagues and had good relations with some Muslim colleagues in the Federation, in particular Cllr Rasab. Moreover, of course Cllr Washbrook and his colleagues approved four Muslim candidates of Pakistani origin on 28th September 2015. I entirely accept Cllr Washbrook was not ‘Islamophobic’ in a simplistic sense. But these Muslim colleagues were not part of what he called a ‘Pakistani Muslim Group’. This was not an isolated phrase but one he used repeatedly, along with ‘Trojan Horse’. As I said at paragraph 48, that was not an allusion to Homer as Mr Samra disingenuously suggested, but to the 2014-15 ‘Trojan Horse Controversy’ about Salafist Muslim groups in schools:

then unquestionably a faith-related issue.

159. So, with due caution given Cllr Washbrook is not here to explain, not just from his isolated words but I find his consistent views, rather than relying on the burden of proof which he is not here to rebut, I find positively on balance of probabilities that:
- (1) Cllr Washbrook was not 'anti-Muslim' or indeed 'anti-Pakistani'. He was friends with Muslims of Pakistani heritage like Cllr Wasab. However, as I raised in submissions, from Cllr Washbrook's perspective, there appeared to be 'Good Pakistani-origin Muslims' like Cllr Rasab; and 'Bad Pakistani- origin Muslims', e.g. when claiming that electoral fraud was 'prevalent in Pakistan and regrettably there are members of our community who derive from this heritage that believe they can emulate those practices here in UK'. Cllr Washbrook also framed the petition group as 'a small group of Muslim councillors [who] started to aggressively sign-up compliant members from their Islamic community' and called them a 'Pakistani Islamic clique'. Yet he contrasted these 'Bad Muslims' with 'Good Muslim' 'whistleblowers': 'Members of the Islamic community alerted us to this process....'
  - (2) Cllr Washbrook did not have to articulate the issue in faith and race terms in his correspondence to the national Party. He could simply have said there was an attempted takeover (or 'entryism' as Carys Parry from the Regional Party said to Ms McColgan KC). But Cllr Washbrook chose to describe it repeatedly as a 'Pakistani Islamic group' (or 'clique') and a 'Trojan Horse'. Indeed, I find he chose to frame the issue in 'Trojan Horse' terms in 2014 and 2015 because he linked it to that wider controversy at that time. It is true that Cllr Washbrook said in August 2015 of the expulsions 'Although being of Pakistani Islamic heritage or a member of a mosque, was not in itself a factor in the decision process', but even then, he immediately added 'it added to the evidence of affiliation between members of the group'. He earlier chose to say 'with the possible exception of 3 people, all of the petitioners are of Pakistani Islamic heritage', which according to Mr Samra was based only on their names and therefore may well have been inaccurate.

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Arif v Baker Cllr Washbrook chose to say: it 'would be electorally disastrous in Walsall to allow the Association to be taken over and dominated by a Pakistani Islamic clique'. In short, Cllr Washbrook chose to make faith and race 'factors in the decision-making process' when they did not need to be. Cllr Washbrook even confronted squarely that he could be discriminating: 'I am concerned in identifying this group in terms of racial or religious profile for fear of being labelled as racist or not being PC. However, I would be negligent in my duty as Chairman of the Association to ignore the evidence'.

- (3) Moreover, Cllr Washbrook believed (as I found, wrongly), the Claimant was 'the leader of [this] special interest group, financed the new members and was instrumental in composing the Petition letter'. So, he believed the Claimant led a 'Pakistani Islamic Group' that was a 'sectarian Trojan horse attempt to take control of the Executive'. But he was 'not charged as

he did not sign the petition and the members of his group were not prepared to come forward'. To make matters worse for Cllr Washbrook, after the Trojan Horse attempt was 'averted' by the Executive by the mass expulsions, the Claimant was one of the principal witnesses on behalf of those expelled to the Mort Report which overturned the expulsions (and removed Mr Samra), but it was 'silent as to his testimony or involvement'. Cllr Washbrook had come to see the Claimant as 'leader of the Bad Muslims' in the Federation.

160. As I say, there is no complaint relating to the Petition Controversy of direct discrimination (or victimisation as opposed to a protected act that I reject). However, as Cllr Washbrook's letter of 13th August 2015 was only two months before the Approval Meeting in September, it is instructive to analyse those findings about Cllr Washbrook's views about the Claimant to see whether they were 'because of' the Claimant's Pakistani national origins, or his Muslim faith, or both. If so, as Ms Reindorf says, the question then is the extent to which they 'significantly influenced' (Nagarajan) the decisions that are subject of complaint, (although they do not answer whether those were 'less favourable treatment'):
- (1) Firstly, most obviously in framing the group he believed the Claimant led as a 'Pakistani Islamic group': just as Lady Hale said in R(E) at [64]-[65] of the school selection criteria, Cllr Washbrook explicitly framed the group with 'exact correspondence' to faith and race criteria (For Women at [257]). Whilst his underlying concern was an 'attempt to take control of the executive', it was no more than supposed 'justification' for direct discrimination which is immaterial: Nagarajan and Watt.
  - (2) Secondly, even if there were not 'exact correspondence' with either protected characteristic (which have to be approached distinctly: Bahl), Cllr Washbrook's 'mental processes' and 'reasons', can be 'mixed motives' (Nagarajan). The Claimant's Muslim faith and his Pakistani national origin, along with belief he was 'attempting to take control of the Executive' each had a 'significant influence' on Cllr Washbrook's 'mental processes' about the Claimant. It does not matter he was partly mistaken about the Claimant's involvement in the petition. If anything, Cllr Washbrook's perception that he was appears to have been based not only on the Claimant's support of the appeals, but also – again – on his own Muslim faith and Pakistani heritage.

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- (3) Cllr Washbrook's views were also significantly influenced by stereotypes: a 'faith-based stereotype' (e.g. 'Trojan Horse') about some – but not all – Muslims; and a 'race-based stereotype' about some – but not all – people of Pakistani-origin (namely electoral fraud was 'prevalent in Pakistan and regrettably there are members of our community who derive from this heritage that believe they can emulate those practices here in UK'). He gave no evidential basis for either stereotype, but whether or not true, they were still stereotypes applied to an individual in those groups to whom (in the Claimant's case) they did not apply

(see Higgs at [172]). Cllr Washbrook may have drawn a distinction between (my phrases, not his) ‘Good Muslims’ and ‘Bad Muslims’ (or each of Pakistani-origin), but each are still defined by their faith or race; and this is no more justifiable than distinctions between ‘legitimate and the Pakistani community’ in Watt. Whilst Cllr Washbrook was concerned about voter reaction, as Lord Hoffmann also said in Watt, that is ‘nothing more than the old plea that you have nothing against employing a black person, but the customers would not like it’, when direct discrimination cannot be justified. To the extent that has been qualified in ‘manifestation of belief’ cases in Higgs, there can be no justification here when Cllr Washbrook’s views were based on stereotypes and mistakes (and in any event, that is not suggested). illegitimate perceptions of So, I find Cllr Washbrook held both racial and religious discriminatory views about the Claimant and his perceived ‘Pakistani Islamic Group’ in August 2015. Topic 1: ‘Non-Approval’ in September-October 2015

161. I made my findings of fact on this issue at paragraphs 60-70. But it really starts at paragraph 59, where I discussed Mr Samra’s reaction to the Mort Report. Because this was not simply about Cllr Washbrook’s reaction to it and his views of the Claimant, but also Mr Samra’s at that time as well. After all, unlike Cllr Washbrook, Cllr Samra had been the subject of a recommendation in the Mort Report: not only his removal from office as Deputy Chairman (Membership) but the responsibility for that to be transferred to the regional Party. As I noted at paragraph 59, Mr Samra reacted by emailing the national Party in August 2015 saying: “[The Claimant] sponsored a meeting at Walsall Council to co-ordinate a campaign and march in London in support of Kashmir. As a Councillor and Cabinet member...these issues are perceived as Conservative policy, supporting a narrow section of the Pakistani population. Although the[y] resonate in predominately Muslim Labour areas of the community, they are counterproductive and have driven many local Conservatives into supporting UKIP. [So,] I have decided that I will be standing against him in the upcoming St Mathews ward selection.” (my italics)
162. As I went on to find at paragraph 63, this story about Kashmir was one of the three issues which were deliberately ‘sprung’ on the Claimant at the Approval Meeting on 28th September 2015, where I found - importantly - at paragraph 62 that of the five other candidates approved – on merit - four were Muslims of Pakistani origin like the Claimant. I repeat my finding at paragraph 64 for ease:

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Arif v Baker “I find on the balance of probabilities that (unbeknownst to the rest of the Approvals Committee, including Mr Baker, Mr Letts and Mr Sohal), this was precisely what Cllr Washbrook wanted to achieve. Whilst he clearly had an animus against the Claimant because he perceived him to be the leader of the ‘Pakistani Islamic clique’ that tried to oust the Executive, as he said in August 2015, the Claimant was not ‘charged’ as he did not sign the petition and ‘members of his group’ (as Cllr Washbrook put it) did not implicate him. So, Cllr Washbrook knew he could not confront the Claimant about the petition itself. Instead, I find on the balance of probabilities that

in seeking to discredit him, Cllr Washbrook not only asked ‘the Cannabis question’ which he knew was ‘old news’. He also asked questions intended to ‘frame’ (in many senses of the word) the Claimant as having a ‘sectarian political agenda’. ‘The Gaza question’ deliberately challenged the Claimant’s publicly-quoted stance that issue ‘crossed party and religious lines’. Moreover, ‘the Kashmir question’ presented the Claimant as sectarian in a ‘Pakistan vs India’ sense, just as Mr Samra had presented him in August as ‘supporting a narrow section of the Pakistani population’ in his email he deliberately failed to disclose. I do not go so far as to say the two of them ‘hatched a plan’ together, but Mr Samra’s view of the Claimant clearly aligned with that of Cllr Washbrook and it is notable Mr Sohal thought Mr Samra was not present at the approval meeting as he and the Claimant had ‘bad blood’. Yet I accept Mr Sohal, Mr Baker and Mr Letts did not share the same animus as Cllr Washbrook and Mr Samra. These factual findings are important to the discrimination claim as I discuss later.”

163. Mr Beever’s primary submission on the law (as opposed to on the evidence, which I have already addressed) is the panel’s approval of the four Muslim applicants of Pakistani origin is fatal to the Claimant’s allegation that he was less favourably treated than them (and the white candidate) because of faith or race. As Mr Beever put it, the panel ‘treated other Pakistani Muslims better’, so there cannot have been ‘less favourable treatment’ because of faith or race within s.13 and 23. This is an interesting legal point. It is not the same as ‘combined discrimination’ under s.14 EqA which is not argued as that section is not in force. Ms Reindorf accepts she must either establish race discrimination or religious discrimination or both, she cannot mix race and religion together to make combined discrimination under s.14. But the issue here is not whether it is discriminatory to treat someone less favourably because of a combination of protected characteristics, but to treat less favourably some but not others sharing one protected characteristic because of it. Nevertheless, even under s.13 and 23 EqA, Mr Beever’s submission raises the question of whether there can be discriminatory treatment within a protected group.
164. Neither Counsel nor I could find any authority – in the employment or any other field – on whether it could be discriminatory to treat less favourably some but not others sharing a protected characteristic because of it. Mr Beever submitted there was no authority as the answer was clearly not. But I disagree and consider the answer is to be found in application of orthodox principles. I repeat s.13(1) EqA: “A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others”

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Arif v Baker As is clear from s.13, it focusses on the treatment of B as an individual, not the group with whom he shares his protected characteristic. This is quite different from s.19(2) EqA which defines indirect discrimination as applying a ‘PCP’: “(a) A applies, or would apply, it to persons with whom B does not share the characteristic, (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B

does not share it, (c) it puts...B at that disadvantage, and (d) [is not] a proportionate means of achieving a legitimate aim.” (my italics) As *Ladies Rose and Simler* and Lord Hodge said in *For Women* at [130]-[150], s.13 EqA protects all individuals sharing a protected characteristic, while s.19 protects a group from disadvantage due to it. s.13 EqA does not say ‘A discriminates against B if, he treats or would treat B and persons with whom B shares the characteristic less favourably when compared with persons whom do not share it’. s.24(1) EqA provides with s.13 EqA, ‘it does not matter whether A’ (the alleged discriminator) ‘has the protected characteristic’ (i.e. the same as B). If true of the alleged discriminator, it must be all the more true of ‘comparators’. Indeed, s.13 EqA requires an actual or hypothetical comparator who does not share B’s protected characteristic. So, if a complainant is less favourably treated than others sharing their protected characteristic, it is not analytically decisive of direct discrimination, as it does not answer the statutory comparison required by s.13 and 23. But it is (highly) evidentially relevant, as in most cases it illustrates that the less favourable treatment of a complainant was not because of a protected characteristic but because of the non-discriminatory differences between them and those sharing their protected characteristic who were more favourably treated – for example recruitment of a fellow woman with more experience for the job.

165. However, I say most but not all cases, because sometimes the reasons for the less favourable treatment of complainants than those sharing a protected characteristic are themselves discriminatory. Discrimination against Muslim people is not always as simple as the popular term ‘Islamophobia’ suggests. This is shown by manifestation of religious belief, protected along with faith itself. In *Higgs* at [54] Underhill LJ cited for that point *Bougnaoui v Micropole* [2017] IRLR 447 where an employee wearing an Islamic headscarf was dismissed when a customer where she was placed complained. The CJEU held that was not a ‘general occupational requirement’ defence to direct discrimination (but if the customer’s rule had been a neutral one against all religious, political and philosophical symbols, that would have been indirectly discriminatory and potentially justifiable). However, if we assume there was ‘exact correspondence’ (Preddy) between the customer’s complaint being that Ms Bougnaoui’s headscarf was Islamic, without the benefit of argument, that would seem likely to be direct religious discrimination, even if the customer did not complain about another openly-Muslim ‘assimilated’ female Micropole employee on placement with them who did not wear a headscarf.
166. Similarly, some racial stereotypes may disadvantage some members of a racial group but not others. As Lord Nicholls explained in *Nagarajan* at [13]-[19], we may discriminate without realising we do so with a racial stereotype if it is a ‘significant influence’ on a decision even if there are mixed motives. Yet not all racial stereotypes affect the whole racial group. The Explanatory Notes to s.14 EqA give the example of a black woman treated less favourably due to a

## Judgment

Arif v Baker stereotype about black women than a promoted black man and a white woman. However, as s.14 is not in force, it is better to use a different ‘partial racial stereotype’. In Higgs at [172] Underhill LJ endorsed submissions noting R(Roma Rights) had held that immigration officers ‘pre-screening’ Roma applicants in the Czech Republic for UK visitor visas as more likely to claim asylum was race discrimination. At [82], Lady Hale said stereotypes could be discriminatory even if likely to be true and added: “The object of the [RRA] is to ensure that each person is treated as an individual and not assumed to be like other members of the group.” On a similar point, in R(European Roma Rights) at [113], Lord Carswell said: “As Hartmann J said in the High Court of Hong Kong in a regularly quoted sentence in EOC v Director of Education [2001] 2 HKLRD 690 , para 86, ‘what may be true of a group may not be true of a significant number of individuals within that group’. It is not legitimate to apply a stereotype and [assume] Roma may be making false claims and that for that reason their claims require more intensive investigation. An officer who does so has ...‘applied a stereotype; though one which may very likely be true’. The point is that it may not be true, and it is in law discriminatory to subject all applicants from Roma to longer and more intensive questioning because so many of them have been known in the past to merit such treatment.” So, in the Roma Rights case, a racial stereotype that all Roma coming to the UK would seek asylum was discriminatory, even though the stereotype was only inaccurate of Roma who did not seek asylum, but accurate of Roma who did. Yet that stereotype was obviously only applicable to Roma applying to visit the UK, not all Roma (e.g. those not coming to the UK). Therefore, a stereotype attaching only to part of a racial group can still discriminate against an individual within it.

167. Turning back to this case, I start with the Claimant’s first complaint in paragraph 51.1 of the Particulars of Claim: that because of his race and/or religion, he was treated less favourably than others of a different race and/or religion in the conduct of the approval interview as opposed to the outcome of the interview (paragraph 51.2). That is that Cllr Washbrook asked the Claimant questions not asked of other candidates to discredit him, significantly influenced by his Muslim faith and/or Pakistani national origins. Given the complexity of a comparison based on one evidential comparator of a different faith and national origin (Glyn Marston) and four of the same faith and national origin (Mushtaq Ahmed, Zulfiqar Ali, Yasin Mohammed and Akbar Ali), I prefer to follow Lord Nicholls’ advice in Shamoon and to start with Cllr Washbrook’s reasons for his conduct before examining ‘less favourable treatment’.
168. In this unusual case, I do not find it necessary to rely on the burden of proof (Hewage). This is because I have found as a fact at paragraph 64 (re-quoted above) that Cllr Washbrook used his questions at the Approval Meeting intending to discredit the Claimant, not just with ‘the Cannabis question’ which was ‘old news’, but also with the ‘Gaza’ and ‘Kashmir questions’. I have found as a fact Cllr Washbrook intended to ‘frame’ (in many senses of the word) the Claimant as having a ‘sectarian political agenda’. Cllr Washbrook (wrongly) believed, but knew he could not prove, that the Claimant was the leader of what he had called in 2014 the

‘Pakistani Islamic clique’ and had as recently as two months before

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Arif v Baker the Approval Meeting, in August 2015 also called a ‘sectarian Trojan Horse attempt to take control of the Executive’. As Mr Beever rightly reminded me, unreasonable treatment is not necessarily discriminatory (Zafar), but of course it can be discriminatory. The question I must now address is whether Cllr the Claimant was directly Washbrook’s unreasonable questioning of discriminatory (Zafar) because of religion and national origin separately under s.13 EqA, rather than as an impermissible claim of ‘combined discrimination’ under s.14 EqA.

169. However, since Mr Beever places weight in both claims on the more favourable treatment of the four Muslim candidates of Pakistani origin, it is important to identify clearly to start the relevant differences between them and the Claimant:

- (1) Firstly, I have not been given much information about the other candidates, but have described them as best I can on the evidence I have (c.f. Parmar). I found all were approved on merit. None were sitting Councillors (Mr Ahmed had previously been). But as Cllrs Murray and Bird said, that should have been advantageous to the Claimant. Indeed, as he said on appeal, he was entitled to ‘preferential treatment’, but instead he got ‘less favourable treatment’, but unreasonableness is not necessarily discriminatory (Zafar).
- (2) Secondly, none of the four Muslim Pakistani-origin candidates (or indeed Mr Marston) were asked any ‘embarrassment questions’ at all. I have accepted none of them had anything ‘embarrassing’ to be questioned about. But that focuses scrutiny on why the Claimant was asked the questions he was. As I say, I have found Cllr Washbrook’s intention was to discredit the Claimant. That can be seen with the Cannabis question, which I have accepted was ‘old news’ from 2010, well before the Claimant had since been approved and successfully stood as a Councillor, as he had been since 2012. But the ‘Kashmir’ and ‘Gaza’ questions are crucial, since as Mr Letts accepted and I shall explain, each were connected to the Claimant’s national origins or faith, but did not apply the same way to the four candidates sharing them.
- (3) Thirdly and most importantly, none of the other candidates were in any way associated with the Petition by the group Cllr Washbrook called a ‘Pakistani Islamic clique’, whereas he (in fact wrongly) saw the Claimant as its leader. I find on the balance of probabilities that Cllr Washbrook saw the four other Muslim candidates of Pakistani origin, like Mr Rasab and the ‘community whistleblowers’, as ‘Good Muslims of Pakistani origin’, whilst he saw the Claimant as leader of the ‘Bad Muslims of Pakistani origin’, as discussed. Moreover, it is key to bear in mind this was an approval process not a selection process. It was not a competition between the Claimant and the other candidates. All could have been approved. The question is why the Claimant was not.

170. I turn first to the ‘Pakistani national origins’ (i.e. race) claim. In my judgement, notwithstanding the four approved Pakistani-origin candidates, Cllr Washbrook’s questioning of the Claimant was clearly significantly influenced (Nagarajan) by the Claimant’s own Pakistani national origins in three distinct ways:
- (1) Firstly, as I explained at paragraph 145 above, Cllr Washbrook saw the Claimant (wrongly) as leader of what Cllr Washbrook chose to characterise

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Arif v Baker as a ‘Pakistani Islamic group’ or ‘Pakistani Islamic clique’. As Cllr Washbrook said in August 2014, ‘with the possible exception of 3 people, all of the petitioners are of Pakistani Islamic heritage’ and he noted sharing of email or postal addresses of those ‘of Pakistani heritage’. In the sense discussed at paragraph 139 of this judgment above, there was an ‘exact correspondence’ (Preddy/Higgs at [46]) between the adjective ‘Pakistani’ and the national origin. Ms Reindorf also argued it was also ‘perception discrimination’ (e.g. like Coffey where someone was perceived as disabled when they were not); and/or ‘associative discrimination’ because of someone else’s protected characteristic. She argued the Claimant was perceived to be or associated with leader(ship) of the petitioner group when he was not. As Mr Beever says, it is not classic ‘perception’ or ‘associative’ discrimination because the Claimant is in fact of Pakistani origin himself. I prefer to say simply that Cllr Washbrook’s perception of him as leading the ‘Pakistani Islamic group’ was clearly significantly influenced by the Claimant’s Pakistani origin and his perceived ‘leadership’ of it was key to Cllr Washbrook’s determination to discredit the Claimant. That is not undermined by Cllr Washbrook’s different attitude to others of Pakistani-origin like Mr Rasab and the four candidates, as they were not perceived to be part of ‘the Claimant’s Pakistani Islamic clique’.

- (2) Secondly, key to Cllr Washbrook’s ‘framing’ of that Pakistani Islamic group was application of a ‘partial-Pakistani stereotype’ he held, again differentiating between some and others each of Pakistani-origin: “Electoral fraud...is prevalent in Pakistan and regrettably there are members of our community who derive from this heritage that believe they can emulate those practices here in UK”. (my italics) Cllr Washbrook did not say this of all Pakistani-origin people in the UK – he plainly thought it only applied to some, but it is still a racial stereotype (Higgs/Roma Rights). He admitted in writing an unevidenced sweeping stereotype about Pakistan which I find reinforced his ‘racial framing’ of what he thought was the Claimant’s ‘Pakistani Islamic clique’ as ‘Bad Pakistanis, rather than ‘Good Pakistanis’ like the other Pakistani-origin candidates.
- (3) Thirdly, whilst there was not ‘exact correspondence’ (Preddy) between the questions Cllr Washbrook asked and the Claimant’s Pakistani national origin, it is clear his ‘Kashmir question’ was connected: “As a Councillor and cabinet member, you organised a meeting about Kashmir at Town Hall....to organise [a] march for Kashmir ..outside Indian High Commission in London to raise concerns about Indian soldiers killing innocent Kashmiri men and women in occupied Kashmir by India.. Can you comment on how this activity

might be perceived and interpreted by the electorate locally and nationally ?” I accept that for the Claimant, his Kashmir stance was a humanitarian political one, not because of his Pakistani-origins or prejudice against India. Indeed, Cllr Bird said in a significant Muslim Pakistani-origin ward like St Matthews, all candidates took that stance. But Cllr Washbrook’s question framed it as a sectarian ‘Pakistan vs India’ issue. As I said with the petition, Cllr Washbrook ‘made it about race’ when he could simply have queried

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Arif v Baker the relevance of any international issue to the Claimant’s job as local councillor. But, as Mr Samra had admitted in his email to the national Party two months earlier, the Claimant’s stance on Kashmir as electorally popular in Labour wards which he saw as ‘supporting a narrow section of the Pakistani population’: warning it drove local Conservatives towards UKIP. Similarly, Cllr Washbrook had said in August 2014 growing support for UKIP would mean it would be ‘electorally disastrous’ for the Walsall Party to be ‘taken over and dominated by a Pakistani Islamic clique’. Clearly, Cllr Washbrook did not see the four other Pakistani origin candidates as part of the same ‘narrow section of the Pakistani population’ as Mr Samra put it, which Cllr Washbrook associated with the members of ‘the Pakistani Islamic clique’ which he believed the Claimant led. Even if this concern was how his stance on Kashmir would ‘play politically’, given it was clearly seen by Mr Samra and Cllr Washbrook as only appealing to ‘a narrow section of the Pakistani population’ and alienating other voters, by framing it unnecessarily in national-origin terms, it was similar to Watt at [37]-[38]: “[If what is meant is] it would be acceptable...to discriminate against a Pakistani candidate if they held no racist views about Pakistanis, but thought that it was better not to have a Pakistani candidate because the electorate would identify ‘the problem’ with the Pakistani community ...[that] seems to me unacceptable. It is nothing more than the old plea that you have nothing against employing a black person, but the customers would not like it. In essence it is a defence of justification based on political expediency. It may salvage the purity of..personal motives...but it does not...satisfy the terms of the justification for ‘direct’ [RRA] which does not allow any discrimination. It simply says that one shall not discriminate on racial grounds.” Finally, on the ‘separability principle’, Cllr Washbrook’s belief that the Claimant had led an attempted take-over of the Executive and his political stance on Kashmir, cannot be seen as ‘properly separable’ from the Claimant’s Pakistani origins (Higgs at [57]). On the contrary, Cllr Washbrook did not need to - but actively chose to - question the Claimant at the approval meeting about those issues to frame him as a Pakistani sectarian: far from being separate from the Claimant’s Pakistani national origins, it was clearly connected to them. The ‘separability principle’ cannot apply on this issue.

171. Therefore, I have no hesitation in concluding, without recourse to the burden of proof (Hewage), that Cllr Washbrook’s questioning of the Claimant in the approval meeting was not only intended to discredit him, but was also influenced significantly – indeed consciously – by the Claimant’s Pakistani origin, despite the more favourable treatment of others of that origin, because they were perceived by Cllr Washbrook as ‘good Pakistanis’ not ‘Bad Pakistanis’. As Lord Nicholls said in Shamoon that it often would, the ‘less favourable

treatment' issue resolves itself relatively simply as a result. Not only was Mr Marston not in a comparable position to the Claimant in the approval meeting, nor were Mr Ahmed, Mr Mohammed, Mr Zulfiqar Ali and Mr Akbar Ali either. None were sitting councillors entitled to preferential treatment (which Cllr Washbrook left out of account for the Claimant: Shamoon). More importantly, they were not seen

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Arif v Baker by Cllr Washbrook to be part of, let alone leaders of, the 'Pakistani Islamic clique' trying 'to take over the Federation' and 'prepared to use corrupt methods to promote their own self-interest' as Cllr Washbrook had recently said in August 2015, echoing what he had said more directly in August 2014 about 'electoral fraud' by 'some members' of the UK Pakistani community. Nevertheless, those other candidates' circumstances and treatment feed into the construction of a hypothetical comparator, in materially the same circumstances as the Claimant save the relevant protected characteristic: i.e. Pakistani origins. Bearing in mind the treatment and circumstances of the other candidates, it is not enough simply to say the hypothetical comparator is a non-Pakistani candidate like Mr Marston, or even a Muslim non-Pakistani candidate, because he would not be in the same 'relevant circumstances' as the Claimant in terms of what Cllr Washbrook did and did not take into account (Shamoon), as evidenced by the four Muslim candidates' different circumstances and treatment. Instead, the hypothetical comparator for the race claim is a non-Pakistani Muslim sitting councillor perceived to be the leader of a Muslim group attempting to take over the Executive who supported appeals of mass expulsions from it which succeeded and who also would also have done what was asked about in Cllr Washbrook's 'Kashmir', 'Gaza' and 'Cannabis' questions and whose approval Cllr Washbrook would have wished to prevent (although this complaint focusses only on the questioning, not non-approval). For ease I refer to this comparator as 'the non- Pakistani-origin Muslim statutory comparator'.

172. However, it follows from my findings as to the significant influence of Pakistani- racial considerations on Cllr Washbrook's questioning of the Claimant that the 'non-Pakistani-origin Muslim statutory comparator' would have been treated more favourably in Cllr Washbrook's questioning than the Claimant, because:

- (1) Firstly, the group which he was perceived to lead would only have been framed in religious-political terms, not in 'racially-framed' terms, just as a group seen as Scottish (which is also a 'national origin': BBC v Souster

[2001] IRLR 150 (CS)) would not have been 'racially-framed' by Cllr Washbrook, as ventilated in submissions with Mr Beever and Ms Reindorf.

- (2) Secondly, this ‘non-Pakistani-origin Muslim statutory comparator’ would not have been associated in Cllr Washbrook’s mental processes with the stereotype about ‘Pakistani political corruption’ which Cllr Washbrook must have thought important as he had relied on it in 2014 in writing to the national Party. He had also recently said what he thought was the Claimant’s group was ‘prepared to use corrupt methods’. That ‘Pakistani corruption’ partial-stereotype would not have applied to the ‘non-Pakistani-origin Muslim comparator’.
- (3) Thirdly, even if Cllr Washbrook had still asked the same ‘Cannabis’ and ‘Gaza’ questions of the ‘non-Pakistani Muslim statutory comparator’ and even if he had organised the same Kashmir march as the Claimant, I find on balance of probabilities that Cllr Washbrook would not have asked him ‘the Kashmir question’ or at least framed it as a sectarian issue, especially as Cllr Bird said it was a common ‘humanitarian stance’ in St Matthews ward. After all, asking (say) an Indonesian or Egyptian-origin Muslim about their organisation of a Kashmir protest could not realistically be presented as sectarian in the same ‘Pakistan vs India’ way falling within what Mr Samra had called - and I find Cllr Washbrook agreed was - ‘a narrow section of the

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Arif v Baker Pakistani population’. I find ‘the Kashmir question’ would not have been asked of the ‘non-Pakistani-origin Muslim statutory comparator’, or at least would not have been asked so confrontationally by Cllr Washbrook in order to frame the comparator as a sectarian. I accept the questioning of a ‘non-Pakistani-origin Muslim statutory comparator’ would probably still have been unfavourable and indeed less favourable than the absence of questioning of the other candidates, including the Muslim Pakistani- origin ones. Nevertheless, it still would have been more favourable treatment (i.e. one fewer hostile questions, or at the very least a less hostile Kashmir question) than the Claimant received from Cllr Washbrook because of his Pakistani origins. The ‘non-Pakistani-origin Muslim statutory comparator’ would have been treated (rather) better, even if not entirely reasonably, which is all that is required. Of course, the Claimant still has to prove his own actual ‘less favourable treatment’ was also a ‘detriment’ on the ‘reasonable person might think it disadvantageous’ test of Lord Hope in *Shamoon* at [33]-[35]. However, even the additional Kashmir question was itself a detriment in framing him as a Pakistani-sectarian and the whole questioning plainly so. Therefore, I uphold this race discrimination complaint.

173. I can deal much more briefly with the Claimant’s complementary religious discrimination claim about Cllr Washbrook’s questioning, which I uphold as well for similar reasons whether or not I am right about race:
- (1) As with race discrimination, Cllr Washbrook’s questioning intended to discredit the Claimant was also significantly influenced by the Claimant’s Muslim faith: specifically, how Cllr Washbrook perceived the Claimant as ‘manifesting it’ (Higgs). As is clear from Higgs at [57], there is room for the ‘separability principle’ in ‘manifestation of belief’ cases. However, again, I do not accept the Claimant’s faith was ‘properly separable’ from how Cllr Washbrook perceived he manifested it. As I said Cllr Washbrook chose to frame what he in August 2015

described as the Claimant's group back in 2014 in explicitly religious terms as a Pakistani Islamic group. In 2014 he alleged a 'small group of Muslim councillors aggressively signed up compliant members from their Islamic community'. Again, he applied to that group a Muslim (partial) stereotype of the 'sectarian Trojan Horse' (i.e. related to alleged 'Salafist Muslim takeovers of schools' at the time). This stereotype was widely perceived to be true in 2014 (Roma Rights), as it still was in August 2015 when Cllr Washbrook referred to a 'sectarian Trojan Horse'. I accept the link was thinner between Islam and 'the Gaza question' than between 'the Kashmir question' and Pakistan. But I find the Claimant's Muslim faith still significantly influenced the asking of the Gaza question, which challenged the Claimant saying the issue crossed party and religious lines. The question was not focussed on an issue 'properly separable' from the Claimant's Muslim faith but his perceived manifestation of his faith.

- (2) Consequently, again I find a hypothetical non-Muslim Pakistani-origin statutory comparator in materially the same circumstances as the Claimant save his Muslim faith (i.e. those listed above for the non-Pakistani-origin Muslim statutory comparator) would have been treated more favourably. If say, the leader of the group trying to unseat the Executive had been a Pakistani Christian, he may well have still been asked the 'Cannabis' and

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Arif v Baker 'Kashmir' questions, but would not have been asked 'the Gaza question', or at least slanted as an 'Islamic issue'. Once again, Cllr Washbrook was 'making it about faith'. He treated the Claimant less favourably than he would have treated the 'non-Muslim Pakistani statutory comparator' because of the Claimant's Muslim faith, which Cllr Washbrook sought to 'weaponise' with 'Trojan Horse' tropes which may feel distant in late 2025, but that in 2014-2015 were religiously divisive. Once again, the Claimant's actual treatment was a detriment and again, I uphold his religious discrimination claim.

- (3) Indeed, it may be objected that in separating out the race from the religious direct discrimination complaints about Cllr Washbrook's questions, I am ignoring that Cllr Washbrook explicitly chose to focus on both. But in the absence of s.14 EqA, I must consider the race and religious discrimination claims separately (Bahl). In any event, it was not 'combined discrimination' but in truth 'double discrimination' by Cllr Washbrook. Indeed, he actually said he was 'concerned in identifying this group in terms of racial or religious profile for fear of being labelled as racist or not being PC. However, I would be negligent in my duty as Chairman to ignore the evidence'. So, Cllr Washbrook acknowledged that he was framing the issue in explicitly 'racial or religious' ways, but sought to justify doing so out of his 'sense of duty'. Even if he had been correct in his suspicion, that was an impermissible attempt to justify direct discrimination (Watt). In any event, he was not merely mistaken but discriminatory in distorting evidence, then weaponising it with racially and religiously-slanted questions to discredit the Claimant. Cllr Washbrook deliberately used the Claimant's race and faith in questions to try to ensure he was not approved, which succeeded.

174. Therefore, I uphold the Claimant's race and religious discrimination complaints about Cllr Washbrook's questioning on 28th September 2015 without reliance on the burden of proof (Hewage). However, I would have reached the same result under s.136 EqA. As said in Madarassy – and as endorsed in Hewage and Efobi:
- (i) the burden of proof at the first stage is on the Claimant and I must consider facts he has proved (i.e. Cllr Washbrook's intention to discredit him as perceived leader of the 'Pakistani Islamic Clique') and facts the Defendants have proved (e.g. the merit of the comparators), but (ii) leave aside any explanation, as opposed to presuming an inadequate explanation; and (iii) remind myself that a difference in treatment and difference in characteristics (still less similarity) is not enough. But here Cllr Washbrook had recently expressed specifically racial and religious views about the Claimant and at the meeting asked (clearly) Pakistani-slanted and (to a lesser extent) Islam-slanted questions. That is more than enough to reverse the burden of proof on both claims independently. That burden of proof is not discharged in either claim, as the Defendants cannot prove there was no discrimination whatsoever' or no 'significant influence' of it on the outcome (Igen) in Cllr Washbrook's questions when he is sadly not here to explain himself (which is why I prefer positive findings without recourse to the burden of proof). But I find victimisation does not succeed, as there was no prior protected act.
175. I now turn to the Claimant's related twin complaints in paragraph 51.2 of the Particulars of Claim: that the panel on 28th September 2015 failed to approve him as a candidate because of his Pakistani national origins and/or Muslim faith. I can

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Arif v Baker deal with this far more briefly because I accept it stands or falls with my conclusion on Cllr Washbrook's questioning, in fairness to Mr Letts, Mr Baker and Mr Sohal who sat on that panel:

- (1) Firstly, whilst I accept that all three of them were aware of Cllr Washbrook's views about the 'Pakistani Islamic clique' and the Claimant's leadership of it, I also specifically found at paragraph 64 above that they were not aware that Cllr Washbrook intended to discredit the Claimant by the questions. Nor do I find there was a pre-planned decision not to approve the Claimant.
- (2) Secondly, I find there was also no pre-arranged plan to approve the other candidates, including the four Muslim Pakistani-origin candidates. I said earlier that their approval was not analytically fatal to the Claimant's claims, but evidentially highly relevant, albeit I went on to find Cllr Washbrook's questioning was still significantly influenced by racial and religious factors. However, for the other members of the panel, their approval of the four candidates was on merit and uninfluenced by issues of faith and national- origin. I accept, for the rest of the panel, the approval of the four other candidates demonstrates an absence of racial and religious mental processes.

- (3) Thirdly, whilst I do not doubt Cllr Washbrook was at least as strident in his views to his colleagues in person as he was in writing to the national Party, they were not simply his 'puppets' and each had their own nuanced views. For example, Mr Sohal said he felt that local councillors should not enter the fray on international issues, giving the example of his own personal support for a Sikh homeland 'Khalistan', which he said he would never campaign publicly for in Walsall as it was irrelevant. Of course, as Cllr Bird explained, the Kashmir issue was highly electorally-relevant in Walsall Labour-led wards with a large Pakistani-origin population, which Mr Samra dismissively called 'a narrow section of the Pakistani population'. However, the point is not whether Mr Sohal is electorally astute, but whether his view was genuine, which I accept it was. Rightly or wrongly, but I accept, not discriminatorily, he genuinely disapproved of the Claimant's campaigns – and answers – on Kashmir and Gaza. Mr Letts accepted those questions were linked to the Claimant's faith and race but they were legitimate as his stances might put off voters. He was also unimpressed by the Claimant's 'hostility' in response to the questions (ironic given it was Cllr Washbrook's intention for his questions to illicit reaction, but I accept Mr Letts did not know that). Mr Baker was not asked about this issue and whilst he was asked his views about the petition, he said he did not know what Cllr Washbrook thought, but that for himself 'race and religion were immaterial', which I accept. However, whilst I accept Mr Baker, Mr Letts and Mr Sohal were not influenced (still less 'significantly') by racial or religious considerations themselves, I find on balance of probabilities – and indeed Mr Letts and Mr Sohal effectively admitted in evidence – they were strongly influenced by Cllr Washbrook generally and 'followed his lead'. This is what genuinely appeared to Cllr Murray as group pre-determination (although he was wary of alleging it at the time). In short, this is a case where Mr Baker, Mr Letts and Mr Sohal were not personally influenced by race or religion, but were strongly influenced by Cllr Washbrook who was.

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### Arif v Baker

176. Again, I need not resort to the burden of proof (Hewage), as I have already found that Cllr Washbrook's questioning of the Claimant was significantly influenced by his Pakistani-origins and Muslim faith. I have found he chose at the approval meeting in questioning the Claimant to 'frame' him as a sectarian on 'Pakistani and Muslim issues' by asking him the 'Kashmir question' and 'Gaza question', as he knew he could not directly accuse him of leading a 'Pakistani Islamic clique'. These factors just did not apply to the other four Muslim and Pakistani- origin candidates, which explains why the Claimant was treated less favourably than them because of his race and religion when they shared those characteristics. If this had been a case like Reynolds where, as Underhill LJ stressed at [33]-[34], the person with the discriminatory motivation only supplied 'tainted information' but did not participate in the decision, then my conclusion would have been, as it was in Reynolds, that the discriminatory detriment lay in the prior act of the individual discriminator (Cllr Washbrook's questioning) and not the innocently- influenced subsequent

decision (the panel's non-approval decision). However, the difference between this case and Reynolds is that Cllr Washbrook did not just give 'tainted information to the decision-maker as in Reynolds, he was a joint decision-maker and so Cllr Washbrook tainted the decision itself. He was on the decision-making panel and his Walsall Party colleagues Mr Letts and Mr Sohal (and to a lesser extent, Mr Baker) were influenced by his antipathy to the Claimant (even if not influenced into discriminating with him), so their joint decision was 'significantly influenced' by Cllr Washbrook's conduct and he in turn was 'significantly influenced' by both the Claimant's Pakistani origins and his Muslim faith.

177. Indeed, that is illustrated by following through the hypothetical comparisons. Again, I bear in mind in each case this was an approval not a selection process – it was not competitive; and Cllr Washbrook's questions provoked (as he intended) protest from the Claimant, which the panel held against him in refusing approval:
- (1) In relation to the 'Pakistani-origins' claim, I have found the 'Kashmir question' would not have been asked (at least in the same way) of the non- Pakistani origin Muslim statutory comparator and Cllr Washbrook would not have been mentally applying Pakistani stereotypes. Even though he still would have intended to discredit that comparator, that would have been more difficult, especially as the others on the panel were not 'in on his plan' and the comparator was a sitting councillor. Therefore, the comparator would have protested less and I find on balance would have been approved.
  - (2) Similarly with the religious claim, I found 'the Gaza question' would not have been asked of the non-Muslim Pakistani-origin statutory comparator with similarly less antagonism from Cllr Washbrook who would not have been framing the group in 'sectarian Trojan Horse' terms. Again, for similar consequential reasons, I find this comparator would have been approved. Even if I am wrong about this on a 'but for basis', it suffices the discrimination had a 'significant influence on the outcome' (Nagarajan). I find that it did, because the Claimant had an (even) 'tougher ride' than either the 'non- Pakistani-origin Muslim comparator' or 'Pakistani-origin non-Muslim comparator' would have had in the questioning and consequently in their chances of approval by the panel. The Claimant's 'non-approval' was a detriment on the Shamoon test under s.101(2)(d) EqA, so, I uphold both the

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Arif v Baker Claimant's race and religious direct discrimination complaints about his non-approval itself, as well as both direct discrimination complaints about his questioning at the meeting on 28th September 2015, but again not victimisation as there was no prior protected act.

178. Similarly, I would reach the same conclusion by applying the burden of proof under s.136 EqA. The Claimant has proved that Cllr Washbrook's intention was to discredit him in his questioning as he perceived him as the leader of a 'Pakistani Islamic clique'. The Defendants have proved the merit of the actual other candidates. Again, I must leave aside the Defendants' explanations at the first stage and as a difference in status and a difference in

treatment is not enough (Madarassy), indeed similarity in status but difference in treatment normally disproves discrimination, as I said. However, given what I have found about the influence of the Claimant's race and religion on Cllr Washbrook's questioning, it is his participation in the decision and influence on his Walsall colleagues which shifts the burden of proof. I accept Mr Letts and Mr Baker and Mr Sohal have proved they were uninfluenced personally by the Claimant's race or faith. But they have not (indeed realistically cannot) prove that Cllr Washbrook was uninfluenced by race or faith. Given his personal influence on them, the Defendants cannot prove on cogent evidence the collective decision not to approve the Claimant was not significantly influenced by Cllr Washbrook's racially and religiously-discriminatory mental processes (Igen). Therefore, for similar reasons, I find the burden of proof has not only shifted on the complaints of both race and religious discrimination in the decision not to approve the Claimant on 28th September 2015, but the Defendants fail to discharge that burden. So, I uphold the claims in paragraph 51.2 of the Particulars of Claim.

179. I deal with paragraph 51.3 of the Particulars of Claim about the dismissal of the appeal on 22nd October 2015 almost as briefly (and again need not rely on the burden of proof), as again it stands or falls with my conclusions about Cllr Washbrook's discriminatory questioning in September 2015. This is because he did not simply as Chairman respond to the appeal. Surprisingly, he (and Mr Letts and Mr Baker) were joint decision-makers in the appeal decision itself, despite the fact it was his own conduct in the meeting on 28th September 2015 that was in issue. Yet again, I remind myself an unreasonable process (as this obviously was) is not necessarily discriminatory (Zafar). After all, the Chair of the meeting Mrs Boulter (who was so pedantically-focused on technicalities that she failed to address fundamental unfairness) was from a different branch and I find she was personally uninfluenced by the Claimant's Pakistani national origins or Muslim faith. I also accept that of Mr Letts and Mr Baker (and of Mr Sohal but he was absent) and Mr Gandham who joined them from the Executive. However, it was also surprising (if not to the same degree) that Mr Samra sat on the panel, but I will deal with his mental processes separately from Cllr Washbrook's in a moment.
180. Whilst the influence of Cllr Washbrook's views was diluted by comparison to the original approvals panel, I find on balance of probabilities it was still significant and consequently so were Cllr Washbrook's racial and religious discriminatory mental processes which had lain behind his questioning on 28th September 2015. (Namely, his belief the Claimant was the leader of what Cllr Washbrook framed

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Arif v Baker as a 'Pakistani Islamic Group' and his application of stereotypes related to Pakistani-origin people and the 'Trojan Horse' trope which was related to Islam):

- (1) Firstly, there is no reason to believe Cllr Washbrook's views of the Claimant had changed in the month since the approval meeting. On the contrary, his plan to discredit and stop approval of the Claimant had worked; and for good measure those I find he saw as 'Good' Pakistani-origin Muslims had been approved, which I find re-affirmed Cllr Washbrook's perspective.
  - (2) Secondly, Cllr Washbrook's plan to discredit the Claimant (he doubtless would have seen it as 'flushing out the Claimant's true colours') had not only succeeded in the result, but had provoked conflict at the meeting, which I find more likely than not reinforced Cllr Washbrook's 'racial and religious framing' of the Claimant, especially his objection to the 'Kashmir' and 'Gaza' questions which had themselves been racially and religiously- framed.
  - (3) Thirdly, despite approval of other Pakistani-origin Muslims, the Claimant had appealed on 14th October 2015 alleging that Cllr Washbrook's questions 'were deliberately unfair and designed to prejudice the vote against me', but also that he did not believe questions of other candidates (in fact there were none) 'contained elements of race and religion as mine did'. I come back to that in a moment on the issue of victimisation, but aside from that, I find the Claimant's reference to race and faith would have amplified the significance of those factors in Cllr Washbrook's mind that I have found he already had.
181. Moreover, Cllr Washbrook was now joined on the appeal panel by Mr Samra, despite the latter's 'bad blood' with the Claimant as Mr Sohal honestly accepted. Despite implausible denials in evidence, I found at paragraph 66 above he deliberately ignored his plain conflict of interest in the interest of ensuring the Claimant was not approved so Mr Samra could stand instead. Cllr Washbrook's agenda was to oust the Claimant, whom he saw as an existential threat to his and the Executive's authority and leader of a 'sectarian' 'Pakistani Islamic clique'. I find Mr Samra also had expressed this view as well as seeing the Claimant as a rival. After all, as noted at paragraph 59, on 25th August 2015, in the email Mr Samra failed to disclose in these proceedings, but which was noted in the McColgan Report (which obtained documents from the national Party), he had declared to the national Party his own plan to stand against the Claimant in St Matthews. In it, Mr Samra not only criticised the Claimant's stance on Kashmir as supportive of a 'narrow section of the Pakistani population', he also said this: "[The Claimant]...was openly critical of the police for not distinguishing between those who wish to go to Syria on Humanitarian grounds and those who are radicals. Walsall has been a hotspot of terrorist activity lately and a number of high-profile arrests have been made..." (my italics) So, how Mr Samra was presenting the Claimant to the national Party in August 2015 was similar to how Cllr Washbrook was doing so at the time. Firstly, he was framing the Claimant as pursuing an agenda 'supportive of a narrow section of the Pakistani population'. Secondly, Mr Samra linked the Claimant's criticism of Police policy over people (i.e. Muslims) going to Syria (at the height of ISIS/Daesh) to terrorism in Walsall: an even more blatant 'Muslim extremist' stereotype than Cllr Washbrook's (Muslim) 'sectarian Trojan Horse'. It is no

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Arif v Baker coincidence that Mr Samra's point about Kashmir in his August 2015 email appeared as one of the discrediting questions Cllr Washbrook asked a month later. As I said at paragraph 64, I do not find the two of them 'hatched a plan', but it is clear Mr Samra 'aligned himself' with Cllr Washbrook against their common enemy, the Claimant. Indeed, Mr Samra 'made himself the solution to the Arif problem' for Cllr Washbrook. I find on the balance of probabilities that Mr Samra's views that the Claimant's appeal should be rejected were significantly influenced by the racially and religiously-framed image of the Claimant that it suited Mr Samra to align himself with Cllr Washbrook's perspective.

182. Of course, this does not mean Mr Samra was a simplistic 'Islamophobe' or 'racist' – Mr Samra's closest colleague when he campaigned in the May 2016 election was Mr Rasab, a Muslim of Pakistani origins who had grown up with Mr Samra, who also had many other Muslim associates of Pakistani origin, such as his campaigners. I find on the balance of probabilities Mr Samra personally has no ill-will against Muslims or those of Pakistani origin. I find instead that in August 2015, it suited Mr Samra cynically to exploit and to distort the Claimant's Muslim faith and Pakistani-origins in alliance with Cllr Washbrook, whose views were more genuinely – albeit partially - stereotyped, despite his own misguided self- narrative of a 'sense of duty'. Mr Samra is not the first or last person with political ambition to exploit faith and race for his own interests. However, even if he had a political not discriminatory motive, if he committed discrimination, that does not matter (Nagarajan and Watt). I also find that no other member of the appeal panel themselves discriminated: not just Mrs Boulter, but also Mr Letts, Mr Baker, Mr Gandham and others. Nevertheless, as a 'joint decision-making' not 'tainted information' case (Reynolds), racial and religious factors with Cllr Washbrook and Mr Samra had a significant influence on the joint decision to refuse the appeal. So, I disagree with the Roberts-Booth Report's conclusion.
183. Once again, as Lord Nicholls said in Shamoon, when the reason is discriminatory the 'less favourable treatment' issue often answers itself. The same is true here (especially without more favourable treatment of similar candidates). The statutory comparators for each of the claims are the same as before, save they would be appealing non-approval. My criticisms of the fairness of the process are immaterial, as the hypothetical comparators would have been at a similarly unreasonably-constituted appeal hearing, with Mrs Boulter equally focused on technical rules Cllr Murray would have admitted were not breached. However:
- (1) In relation to the 'Pakistani-origins' claim, the non-Pakistani origin Muslim statutory comparator would not have had racially-influenced antipathy from two of the panel, including one who spoke justifying the decision under appeal - Cllr Washbrook. The absence of such racially-influenced (even if still religiously-influenced) resistance to the appeal was 'more favourable treatment' than the Claimant received, as he had that extra 'racial hurdle' which can reasonably be seen as disadvantageous to his appeal (Shamoon).

- (2) Similarly, in relation to the ‘Muslim faith’ claim, the non-Muslim Pakistani- origin statutory comparator would not have had religiously-influenced antipathy from two of the panel, in itself more favourable treatment. Refusal of the Claimant’s appeal was plainly a detriment on the Shamoon test.

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Arif v Baker

184. However, if I am wrong about that and it is necessary to resort to the burden of proof under s.136 EqA, whilst unreasonable conduct such as the biased panel and Mr Samra’s self-interest does not itself shift the burden of proof (Zafar and Bahl), it can do so with other evidence that had related racial or religious motivation (as the Court of Appeal discussed in Igen at [5]). Here that is present in Mr Samra and Cllr Washbrook’s racially- and religiously-framed criticisms of the Claimant in their August 2015 correspondence to the national Party, at least in the absence of the explanation at the first stage (Madarassy). So, the burden shifts, but I find once again the Defendants cannot discharge it in relation to Cllr Washbrook’s motive. Equally Cllr Samra fails to do so as I reject his explanation on this issue, especially given his August 2015 email about the Claimant he failed to disclose. He had the chance to explain or disavow those views, but he failed to take it.
185. I turn to the victimisation claim in relation to the approval appeal. As I explained, s.27 EqA requires proof that (i) A subjected B to a ‘detriment’, (ii) ‘because’; (iii) B had done (or A believes B had or may do) a ‘protected act’. On (i) clearly, for the reasons just discussed, the refusal of the Claimant’s appeal was unquestionably a ‘detriment’ on the Shamoon test that a reasonable member (or candidate) would reasonably consider themselves disadvantaged by it. There was no complication of any ‘honest or reasonable’ protection of the association’s position as in Khan or Deer but not in Derbyshire.
186. Likewise, on (iii) ‘protected act’, unlike the original approval interview where I found there was no prior protected act under s.27 EqA (because the Claimant’s evidence to the Mort Report was not a ‘protected act’), before the appeal, I find the Claimant’s appeal of 14th October was a clear protected act under s.27(2)(d): “I believe that the questions I was asked by the selection committee were deliberately unfair and designed to prejudice the vote against me. I do not believe that the questions selected for other candidates were similar in nature or contained elements of race and religion as mine did. I would therefore question the objectivity and fairness of the author of the questions and would like disclosure of the questions put to other candidates....” As stated in Waters, the allegation need not state that discrimination has occurred but must have asserted facts capable of amounting to discrimination; and as said in Durrani, ‘something sufficient about the complaint to show it is a complaint to which the Act applies. Both requirements were met here, the Claimant’s appeal plainly fell within s.27(2)(d) EqA: ‘making an allegation (whether or not express) that A has contravened the Act’. He alleged ‘racial/religious’ questioning.

187. Moreover, that is how Cllr Washbrook saw it too as the recipient of that appeal letter (and indeed, its target). As he said on 16th December 2015, objecting to the Roberts-Booth investigation into the Claimant's (undisputed) later protected act: "Has [the Claimant] made his accusations in writing and identified those he is complaining about ? Has he submitted new evidence to support this new complaint or is it a rework of his unfounded allegations of prejudice and racial bias which were addressed and rejected at his appeal ? If the latter is the case, then his complaint is malicious and should not be allowed to proceed. With respect he cannot continue to regurgitate the same issue

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Arif v Baker because he does not like the final decision of an exhaustive process and independent review." (my italics) In this letter Cllr Washbrook effectively asserts that the approval appeal has already 'addressed and rejected' the Claimant's 'unfounded allegations of prejudice and racial bias'. Of course, the approval panel did no such thing – Mrs Boulter did her best to shut down any enquiry other than technical procedure. However, the point is that Cllr Washbrook saw the Claimant's appeal as alleging 'racial bias'. Therefore, even if it was not a 'protected act' under s.27(2)(d) EqA, which I find it was, he clearly 'believed' that it was a protected act under s.27(1)(a). Whilst Cllr Washbrook asserted it was 'unfounded' and 'malicious', a mere assertion of that does not bring a protected act within the 'bad faith exclusion' in s.27(3) EqA, which was not argued in any event. Indeed, not only would I find the Claimant's complaint of racial (and religious) discrimination was in good faith, I have just upheld that complaint for the reasons I have given.

188. The real issue here is whether the 'detriment' of the refusal of the appeal was under s.27(1) EqA on the Nagarajan test 'because' the Claimant had done a 'protected act' by alleging racial and religious discrimination in his appeal itself. Even if I was wrong to uphold the direct discrimination claim about the appeal at paragraphs 179-184, I would find there was plainly victimisation. However, as discussed earlier, there is a distinction in the motivations of Cllr Washbrook, Mr Samra and the rest of the appeals panel. I will look at them in that order:

- (1) In relation to Cllr Washbrook, as I found at paragraph 180, his racial and religiously discriminatory mental processes were still present at the appeal. However, as Lord Nicholls said in Nagarajan at [19], 'decisions are frequently reached for more than one reason', as indeed I found of Cllr Washbrook at paragraph 180, including the discrimination complaint at 180(3). I find on balance of probabilities his view the appeal should be dismissed was 'significantly influenced' not only by his continuing racially and religiously-framed antipathy to the Claimant, but also by his negative response to the complaint of race and religious discrimination in the appeal. After all, in his December 2015 letter I have just quoted, he called that complaint 'unfounded' (although it was its later repetition to the national Party he called 'malicious'), which he claimed had been 'addressed and rejected'. Whilst I do not accept the panel did that, I find Cllr Washbrook received the Claimant's complaint which he considered 'unfounded' and rejected it, along with the appeal as he had always planned to do. Of course, Cllr Washbrook did say the complaint was 'unfounded', which could

theoretically raise ‘the separability principle’ as in Martin, Page and Kong. However, the fact Cllr Washbrook rejected an accusation of discrimination (whether or not it was well-founded as I have found it was) cannot possibly be construed as a ‘separable feature’ of the protected act, like the risk of repeated irrational complaints in Martin or making allegations on television in Page. It is a straightforward response to the complaint itself and it was, in my judgement, clear victimisation, to add to the discriminatory reasons. Since Cllr Washbrook spoke at the appeal in defence of the non-approval decision and then sat on the appeal panel about his own conduct, his views (whether or not expressly articulated) clearly had a significant influence on others and on the refusal of the appeal as I said at paragraph 176 and repeat.

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Arif v Baker That in itself is enough to uphold the victimisation claim on this issue, even if I am wrong to uphold the discrimination complaints about it.

- (2) Mr Samra’s position is not so clear. Whilst I found at paragraph 181 that his decision to refuse the appeal was significantly influenced by the Claimant’s race and religion, that is obviously not the same as victimisation. But I find he clearly knew about the protected act, as it was the very appeal they were hearing and Cllr Washbrook himself asserted it was ‘addressed and rejected’ and even though that is plainly wrong, as Mrs Boulter shut down any discussion other than about procedure, I infer the whole panel must have known the Claimant had alleged discrimination in his appeal. However, his complaint was not (this time) targeted at Mr Samra, who had not been at the approval meeting. Nevertheless, as I have found, Mr Samra was determined to ensure the Claimant remained unapproved for a host of reasons: personal ambition, long-standing rivalry and racial and religious factors and I find on balance of probabilities he was also motivated by the protected act itself.
- (3) Since I have found two of the panel were significantly influenced by the Claimant’s protected discrimination allegation in his appeal, I am also satisfied the dismissal of the appeal itself was, irrespective of motivations of the other panel members, given Cllr Washbrook spoke at the meeting and Mr Samra asked the crucial question getting Cllr Murray to admit no technical procedural breach. Moreover, I have already acquitted the rest of the appeals panel, most relevantly here Mr Letts, Mr Baker and Mr Gandham (but also Mrs Boulter and Mr Ali) of being influenced on racial and religious grounds. Nevertheless, as I have also said, victimisation is different. Again, they must have known about the protected act because it was the very appeal they were dealing with. However, this was not squarely put to Mr Baker or Mr Gandham and it seems clear Mrs Boulter made her decision based on the absence of technical fault, not a complaint. But Mr Letts was asked about the approval appeal that alleged discrimination (if not by himself) in the non-approval meeting in which he participated. Since I found he did not do so on a discriminatory basis, it would be natural for him to resent the accusation that it was. He accepted he was influenced by his respect for Cllr Washbrook and I find like Cllr Washbrook, Mr Letts thought the discrimination

complaint ‘unfounded’ which was part of his own reasons for refusing the appeal. This is not ‘properly separable’ from the protected act itself, especially as it was part of the appeal he was refusing. He may ruefully reflect that it would have been better if he had absented himself from the appeal decision, as he rightly did with the disciplinary process later. Therefore, I find Cllr Washbrook, Mr Samra and Mr Letts were influenced by the Claimant’s discrimination complaint, but it is enough, as I said at paragraphs 182- 183 of the first two alone and here there were three. That had a significant influence on the outcome which was to dismiss the appeal: a detriment.

189. Even if I am wrong about that, I would reach the same conclusion applying the burden of proof under s.136 EqA. Leaving aside the Defendants’ explanations, the Claimant has proved that his appeal was refused in an unfair process by a panel including three members of the panel whose decision was under appeal, including Cllr Washbrook whose questioning he had alleged was discriminatory. Yet the Claimant’s attempts to explore that were shut down by Mrs Boulter. I find

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Arif v Baker that is enough to shift the burden of proof because it is not just a protected act and a detriment (c.f. Bailey and Madarassy), but some linkage between the two in the panel’s conduct. Whilst I accept Mrs Boulter was not herself influenced by the complaint (which would be unfair to find in her absence anyway), whilst the matter was not put to Mr Baker and Mr Gandham, nor did they prove that they were not significantly influenced by the complaint. In any event, even if I was wrong to find Mr Letts was significantly influenced by the complaint, he certainly has not proved on balance of probabilities that he was not, even applying that test rather than ‘no discrimination whatsoever in Igen. Nor has Mr Samra, whose evidence on this I have rejected in its entirety. Moreover, it is clear from Cllr Washbrook’s own words in December 2015 that he was motivated by it. Therefore, whether or not I am right to uphold the direct discrimination complaints at paragraph 51.3 of the Particulars of Claim, I uphold the victimisation one.

190. That completes my analysis and conclusions about Topic 1: upholding direct discrimination on paragraphs 51.1, 51.2 and 51.3 of the Particulars of Claim and also victimisation on the last only. Topic 2: The Selection Meeting in March 2016
191. I can deal with Topic 2 far more briefly because I have already made findings of fact at paragraphs 71 – 75 which in my judgment are fatal to the two complaints of direct race and religious discrimination in this Topic: paragraph 51.4 of the Particulars of Claim ‘Making arrangements prejudicial to the Claimant for the selection meeting on 31 March 2016’ (which effectively has narrowed to selecting the Samra Club); and paragraph 51.5: ‘Conducting the selection meeting on 31 March 2016 in a manner prejudicial to the Claimant’ (which effectively has narrowed to allowing voting irregularities such as Diane Walker). I will deal with these complaints distinctly, but I address the three causes of action on each one.

192. However, before turning to each complaint, it is worth briefly ‘setting the scene’ by summarising my factual findings at paragraphs 67-70. Shortly after the appeal meeting on 9th November 2015, the Claimant raised a complaint of discrimination on religious grounds (I note not race, although I found both, as indeed the Claimant had alleged in his appeal of 14th October). This prompted the national Party to set up the Roberts-Booth investigation, to which Cllr Washbrook reacted negatively on 14th December 2015 as I just quoted. He then ignored instructions to defer the Walsall Party AGM on 20th January 2016, where he was re-appointed as Chairman and Mr Samra as Deputy Chairman (Political), with Mr Gandham Deputy Chairman (Membership), which meant he was responsible for the later selection process. Their joint hopes (for different reasons: Cllr Washbrook to be rid of the Claimant, Mr Samra to replace him and Mr Gandham simply for a quiet life) that would be a smooth ‘coronation’ for Mr Samra to stand in the Claimant’s St Matthews’s seat in his place were however thrown into disarray. On 25th January 2016 the national Party adopted the recommendation of the Roberts- Booth Report of 18th January 2016 that the Claimant’s application for re-approval should be re-determined outside the Walsall Party. As I also said, the Roberts- Booth Report did not uphold the Claimant’s religious discrimination complaint, although it did not have some of the critical evidence I have about Cllr Washbrook’s animus against the Claimant. Despite that, they still said ‘the open

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Arif v Baker wording of the questions presented was such that they could potentially have been perceived to have been asked with a religious agenda in mind (although they did not believe religion was the motivation)’. I have reached a different conclusion.

193. However, by the time of the national Party’s recommendation on 25th January 2016, the deadline for party candidate selection and standing in the May election was coming up fast in early April. Yet as I said at paragraph 71, it was not until over a month after the national Party resolution to re-consider approval it finally decided to re-approve the Claimant on 1st March 2016. That left Mr Gandham only just over a month to arrange what would now be a (doubtless bitterly) contested selection between the Claimant and Mr Samra at the St Matthews ward meeting, which unlike the AGM had been postponed as the national Party had requested in January. As I said at paragraph 72, Mr Gandham objected to the national Party on 16th March and repeated his request to arrange a postal vote which the national Party refused and arranged for the selection meeting to be supervised by the region. I went on to find at paragraph 73 that the only venue Mr Gandham was able to find that was ‘free’ in the sense of ‘available’ as opposed to ‘without charge’, was the Samra Club that was owned by Mr Samra’s father.
194. For ease, I repeat the key part of my finding of fact at paragraph 73: “The crucial point is that Mr Gandham’s contemporaneous email, even after he had found the Samra Club, still pressed for a postal vote; and despite the Claimant’s suspicions I do not accept that Mr Gandham did so to fix the vote in some way. If Mr Gandham had chosen The Samra Club

simply to favour Mr Samra, he would not have continued to press for a postal vote which would have been more neutral. I therefore find on the balance of probabilities that Mr Gandham chose the Samra Club principally because he was instructed to arrange an attended meeting – against his better judgment – and The Samra Club was the only available venue. In short, I accept Mr Gandham’s evidence that he had to organise a contentious meeting in a large venue with very little notice by the end of March, had tried to find a different venue than the Samra Club but none were available, but expected the regional Party staff to run the meeting properly.”

195. I readily accept Mr Gandham arranging the contested selection meeting at a club owned by the father of one of the candidates, who had (alongside Mr Gandham) refused the Claimant’s appeal against non-approval, later overturned by the national Party, cries out for an explanation. I am satisfied under s.136 EqA the burden of proof shifts to the Defendants - in effect Mr Gandham – for all claims:
- (1) For direct religious discrimination, in a head-to-head selection competition, even if Mr Samra as a Sikh was not an ‘actual comparator’ to the Claimant as a Muslim because of their different national origins (Mr Samra is not of Pakistani origin), he is a strong evidential comparator (Watt p.36). Moreover, the Claimant was plainly ‘less favourably treated’ than Mr Samra in the arrangements, which were plainly an objective ‘detriment’ to the Claimant. More than that, the arrangements had the clear appearance of bias in favour of Mr Samra, especially given Mr Gandham is also Sikh. (Whilst s.24 EqA says it does not matter if an alleged discriminator shares the complainant’s protected characteristic, it is plainly important if he shares the comparator’s). Whilst an inference of discrimination cannot be drawn

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Arif v Baker simply from unreasonableness such as apparent bias (Zafar and Bahl), it does materially add something to a difference in characteristic and difference in treatment (Madarassy), especially in combination with other religious-linked factors, such as Mr Samra’s shared religion with Mr Gandham. Therefore, in the absence of an adequate explanation (as opposed to the presumption of an inadequate one (Madarassy, Hewage, Efobi), I consider I could ‘properly conclude’ the real reason for what appears to be clear favouritism towards Mr Samra was because of the Claimant’s Muslim faith.

- (2) Likewise, for direct national-origins discrimination, while I do not have evidence of the same direct connection between Mr Samra and Mr Gandham’s shared national heritage, of course Sikhism is an ethnicity as well as a faith: Mandla. Moreover for similar reasons as just explained, in the absence of an adequate explanation, I could properly conclude the reason for the apparent favouritism towards Mr Samra may be the Claimant’s Pakistani national origins and the fact he is not Sikh. (I stress that is in the absence of an adequate explanation: I am far from insinuating a ‘Sikh Club’ as alleged in Woods). So, again I could properly conclude without an explanation the favouritism was because of the Claimant’s Pakistani

origins.

- (3) For victimisation, the unfairness of the arrangements for the Samra Club favouring Mr Samra over the Claimant were plainly a 'detriment' in the sense of an objective disadvantage irrespective of the eventual outcome (Deer). Moreover, Mr Gandham was plainly aware of at least two protected acts by the Claimant: firstly his appeal of 14th October 2015 (Mr Gandham sat on the appeal panel); and secondly the Claimant's complaint of 9th November 2015 to the national Party of religious discrimination, which led to the Roberts-Booth Report. That is accepted to be a protected act. Not only was Mr Gandham aware of those protected acts, he had reasons to resent them both: his joint decision on the appeal panel had effectively been set aside by the Roberts-Booth Report; and its recommendation put pressure on him to make difficult arrangements on very short notice. I am satisfied that in the absence of an adequate explanation, I could properly conclude Mr Gandham actively resented the Claimant's protected acts and could properly conclude this was the reason for his apparent favouritism to Mr Samra.
196. Therefore, the burden of proof on all three complaints effectively shifts onto Mr Gandham (the only one of the Defendants' witnesses directly involved). I therefore, remind myself of Igen Guidelines (10)-(13): "(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.
- (11) To discharge that burden, it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since 'no discrimination whatsoever' is compatible with the [EU] Burden of Proof Directive.
- (12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities [race/religion] was not a ground for the treatment...

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- (13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof...."
197. However, for the reasons in my finding of fact at paragraph 73 I have partly re-quoted, I find Mr Gandham (so the Defendants) have discharged that burden on the balance of probabilities with cogent evidence: not only Mr Gandham's oral evidence but his contemporary email of 16th March 2016. I find on the balance of probabilities not merely that there was an 'adequate explanation', but that neither religion (whether Sikhism or Islam), nor race (whether Sikhism again or the Claimant's Pakistani national-origins), nor the Claimant's protected acts were grounds for any of the selection arrangements which Mr

Gandham made, including the Samra Club. Specifically, I have found that Mr Gandham was under time pressure through no fault of his own personally, had suggested a postal vote, that was refused, he had looked for different venues but the only available one in the tight schedule was the Samra Club and even then he had still pushed for a postal vote to the national Party but they refused and arranged regional oversight. I have made no other findings that at that stage Mr Gandham had a personal animus against the Claimant on discriminatory grounds and it appears he blamed the national Party for forcing him to arrange a meeting more than the Claimant.

198. The only other complaint in Topic 2 is the conduct of the selection meeting itself on 30th March 2016. At paragraph 74 I accepted the contemporaneous account of the Regional Party official Mr Ashman, who told the national Party in April 2016: “On the night anyone who was on the list and confirmed their name and address was allowed in. Members who had a valid official membership card but weren’t on the list were checked against the electoral register and if they were registered in the Ward they were allowed in. Anyone who was not on the membership list and no membership card were not permitted to enter. Some members did go home and return with their cards. It is incredibly difficult to check out these members as a number have names that appear differently on the register to their membership cards and driving licence / passports. Suki Samra’s mother was not permitted to enter because she had no membership card and wasn’t on the list. When she returned with her card it was noted her name appears differently on the membership list and the electoral roll. I worked on the premise that wherever possible we would allow people to attend if they were able to prove that they were valid members of the Association. We did our best in very trying circumstances to ensure the signing in of members was done in accordance with the rules.” I understand Mr Gandham bridled in evidence when it was suggested the selection meeting was ‘a shambles’. I accept he, Mr Ashman and Ms Parry did their best. But it does seem to have been rather chaotic and it is telling that Mr Samra’s own mother was initially turned away, which is not promising for the Claimant’s contention the whole event was stage-managed for Mr Samra.
199. The truth is that this complaint does not even shift the burden of proof on any of the three claims. I could not even draw the inference that anyone in particular was in control, let alone that the reason why the Claimant was not selected was because of his Muslim faith, Pakistani national origins, or protected acts. In such a chaotic environment, the alleged ‘voter impersonation’ of Ms Walker, to which

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Arif v Baker this complaint came down, goes nowhere. Even if she was recorded as voting when she was absent, that is far more likely to be a simple error than a grand vote- rigging conspiracy: precisely the sort of unevidenced accusation Cllr Washbrook made in 2014. As stressed in Igen at [28], the burden does not shift simply because someone ‘could have committed’ discrimination: I could not possibly properly draw any inference of either discrimination or victimisation here: especially the latter: there is no evidence any voter even knew of protected acts.

200. Indeed, this is the fundamental problem with this complaint: the Walsall Party members, not its officers, selected Mr Samra. If this claim succeeded Ms Reindorf pointed to the remedy sequel to Watt: Ahsan v Labour Party (2011) (EAT), where Mr Ahsan recovered lost councillor allowances until he left the Labour Party. But it appears at [15] they were largely conceded by the Party. The point does not seem to have been taken – which Mr Beever rightly takes – this is a loss of a chance claim: Shittu v South London NHS [2022] IRLR 382 (EAT). As Mr Beever also says, it is a ‘double chance claim’ where I would have to assess the sequential chances of (i) selection at the March meeting; then (ii) success in the May election: both democratic votes. How I would have assessed that is entirely unclear, but in the event, academic. Ms Reindorf accepts the Claimant’s financial loss claim stood or fell on the success of this claim and given my decision, it falls. Topic 3: The Election and Expulsion of the Claimant in April-June 2016 Issues and Submissions
201. As I said when making my findings of fact on this Topic at paragraphs 76-100, this is perhaps the most contentious topic, certainly the most complex factually. It covers race and religious discrimination and victimisation on issues 6-14:
6. Accusing the Claimant orally on or around 29 April 2016 and by letter dated 20 June 2016 of campaigning against the Party.
  7. Failing to inform the Claimant he was under disciplinary investigation at any stage prior to the conclusion of the investigation.
  8. Failing to interview the Claimant in..the disciplinary investigation.
  9. Failing properly or at all to inform the Claimant of the allegations against him in May-June 2016.
  10. Refusing in June 2016 to suspend the disciplinary investigation and hearing on the instructions of the national Party pending an investigation.
  11. Failing to give the Claimant a fair...disciplinary meeting on 30 June 2016.
  12. Fabricating evidence for the disciplinary meeting on 30 June 2016.
  13. Purporting to expel the Claimant from membership of the Federation and the Party on 30 June 2016.

14. Failing to give reasons for the Claimant's expulsion.
202. However, due to my findings of fact, some of the more complex legal issues have narrowed and simplified. For example, at paragraphs 79-95 above, whilst I accepted Mr Beever's submissions there was a 'shadow campaign' against Mr Samra accusing him of racism and encouraging a vote for Labour, I also accepted

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Arif v Baker Ms Reindorf's submissions that the Claimant was not responsible for it. Similarly, I accepted her submissions that the disciplinary statements were inaccurate and Mr Matloob's statement was unreliable insofar as he alleged he heard the Claimant personally say Mr Samra was racist. Indeed, I found Mr Matloob was not even present at the meeting between the Claimant and Mr Mahmood (whose evidence was totally unreliable, but who did not provide a statement in 2016). However, I accepted Mr Beever's submissions that Mr Samra was unaware of it and indeed that he did not fabricate 'Statement C' (which is the only statement pleaded to fall within allegation 12 in the Claimant's Reply to the Defence). I found Mr Samra obtained and tendered a statement from Mr Khan without his knowledge and approval, but its contents broadly reflected what Mr Khan said.

203. In my conclusions on Topic 3, I first record Counsels' overarching submissions:
- (1) Ms Reindorf's overarching submissions were that the disciplinary process and investigation was driven by Cllr Washbrook and Mr Samra's campaign to expel the Claimant from the Walsall Party, because of their antipathy to his Muslim faith and Pakistani-origins and his discrimination complaints. Ms Reindorf recognised that whilst Cllr Washbrook (and she said also Mr Samra) were in control of the disciplinary process (issues 6-10 and 12), the decision at the disciplinary hearing (issues 11, 13 and 14) was ultimately a decision of a panel on which neither Cllr Washbrook nor Mr Samra sat. But she contended the panel was essentially manipulated by Cllr Washbrook.
  - (2) Mr Beever's overarching submissions were that there was no discriminatory campaign by Cllr Washbrook and Mr Samra; and in any event, there was plainly a disciplinary case to answer on the alleged 'shadow campaigning' during the election and the Claimant did not attend the hearing to answer it, so the result was hardly surprising. Moreover, on the disciplinary process, Mr Samra was not central and whilst Cllr Washbrook was present at the hearing, he was not on the panel and did not manipulate it, he simply presented the evidence. Moreover, that panel was primarily made up of those outside the Executive and even the branch (of the Court witnesses, only Mr Sohal).
204. However, as with my factual findings, my legal conclusions will be between these two poles. I will first briefly cross-refer to my key factual findings earlier, then make further inferential findings on the evidence about the mental processes of Cllr Washbrook, Mr Samra and (to a far lesser extent) Mr Letts. Then, given the considerable overlap between issues 6-14, I will address them under three sub-headings: (i) the disciplinary accusation/evidence (issues 6

and 12); (ii) the disciplinary procedure (issues 7-10); and (iii) the hearing (issues 11, 13 and 14). Key Factual and Inferential Findings

205. I first stand back from the detail by linking my factual findings into a chronology:

- (1) On 30th March 2016, Mr Samra was selected instead of the Claimant (para.74)
- (2) In April, Mr Samra was nominated as St Matthews Conservative candidate.

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- (3) On 4th April, the Claimant alleged his non-selection was discriminatory to Lord Feldman in the national Party (paragraph 81)
- (4) On 10th April, the Claimant published a ward newsletter explaining he was not selected, did not mention Mr Samra, but criticised Labour (paragraph 80)
- (5) Throughout April, the Claimant campaigned for Conservative candidates in other wards and did not campaign against Mr Samra at all (paragraph 80). He only accused Mr Samra of racism to close friends and colleagues (paragraph 81).
- (6) Indeed, colleagues of the Claimant Mr Munir and Mr Chaudry spoke to Mr Rasab and Mr Mahmood about supporting Mr Samra that came to nothing. But on 22nd April, Mr Samra spoke in the Claimant's mosque (paragraph 82).
- (7) But also throughout April, there was a 'whispering campaign' by others alleging Mr Samra was racist and telling people to vote Labour. This was nothing to do with the Claimant, but rumours spread it was (paras.83-4).
- (8) Throughout April, Mr Samra and those campaigning for him in the local Muslim community like Ilyas Ahmed, Arshad Mahmood and Mehboob Matloob when out canvassing heard these rumours about the Claimant and Mr Mohammed Azam (paragraph 84), as did Mr Khan (paragraph 89). But Mr Matloob and Mr Mahmood never heard the Claimant personally accuse Mr Samra of racism or tell them to vote Labour as they have at times alleged (paragraph 88).
- (9) Mr Samra complained to Cllr Washbrook (paragraph 86), who asked Cllr Bird to speak to the Claimant about it, which he did on 29th April, which prompted the Claimant to email the national Party again, enter a postal vote for Mr Samra witnessed by Cllr Bird and speak to Mr Mahmood about it (paragraph 85)
- (10) On 5th May 2016 Mr Samra lost the election in St Matthews Ward (paragraph 85)

- (11) In early May, Mr Samra spoke to Mr Ahmed, Mr Mahmood, Mr Matloob, Mr Khan and Mr Rasab whom he encouraged to come forward and put them in touch with Cllr Washbrook (paragraph 87). He also obtained a statement in Mr Khan's name, which he did not fabricate, but Mr Khan did not know of or approve (paras 89-90). So, Mr Samra instigated the disciplinary process.
- (12) Towards the end of May, there was a meeting at the Royal Hotel in Walsall between Cllr Washbrook and Mr Letts with (i) Mr Ahmed, (ii) Mr Mahmood (iii) Mr Metloob; and (iv) (probably) Mr Rasab. Mr Samra was also involved in this meeting, even if not present at the same time. The rumours about the Claimant were repeated to Cllr Washbrook and Mr Letts (paragraph 91).
- (13) Following that meeting, on 2nd June, Cllr Washbrook sent the Claimant and Mohammed Azam the charge notifying a hearing on 30th June alleging they actively campaigned against Mr Samra, made derogatory comments about him and encouraged voting Labour. No evidence was attached (paragraph 92).

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- (14) On 6th June, the Claimant emailed Lord Feldman, Chair of the national Party, again to complain about the disciplinary charge. Lord Feldman emailed Cllr Washbrook to ask him pause the disciplinary process (paragraph 93).
- (15) On 7th June, Cllr Washbrook emailed Lord Feldman refusing to pause the disciplinary process, complaining about the Roberts-Booth Report and being required to hold a selection meeting; and referring to the Claimant's 'false and uncorroborated accusations of religious discrimination' which led to it. He did not refer to the Claimant's faith or national origins (paragraph 93). The Claimant also complained again that day to Lord Feldman about being victimised. It does not appear Lord Feldman replied to either (paragraph 94).
- (16) On 15th June, Mr Philips from the national Party emailed to say the external Panel would consider the exchange of emails from the national Party asking for the disciplinary to pause and from Cllr Washbrook refusing (paragraph 95).
- (17) On 17th June, the Claimant replied to the charge by saying he would attend on 30th June, but alleged predetermination (paragraph 94). He later sent statements from Mr Zulfiqar Ali about supporting him in Pleck and Mr Munir and Mr Chaudry about the Claimant agreeing to them talking to Mr Samra (paragraph 80)
- (18) Around 27th June (the date the last statement was signed), Cllr Washbrook and Mr Letts anonymised the statements obtained from Mr Matloob ('Statement A'), Mr Ahmed ('Statement B'), from Mr Khan which they had obtained though Mr Samra ('Statement C') but did not anonymise the statement of Mr Samra himself (paragraphs 88, 91 and 94).

- (19) Not before 27th June, only three days before the disciplinary hearing, Cllr Washbrook and Mr Letts told the Claimant he could come to inspect those statements but not have a copy of them. In consultation with his solicitor, the Claimant declined to do so, or to attend the hearing (paragraph 94)
- (20) The hearing proceeded on 30th June in the Claimant's and Mr Azam's absence, where Cllr Washbrook presented the charge to the panel chaired by Mr Livingstone, with Mr Richards, both from outside Walsall, along with Mr Sohal and Mr Ali, but not Mr Baker, Mr Letts (but his wife was on the panel), nor Mr Gandham, who stood down at the suggestion of Mr Hancox. Despite Mr Hancox' dissent, the panel decided to proceed despite the national Party's request, although there was no discussion of the Claimants' discrimination complaints. Cllr Washbrook read the anonymised and Mr Samra's statements. He summed-up saying the Claimant and Mr Azam 'portraying the Party as being anti-Muslim and racist' and responsible for Mr Samra's defeat. Whilst Mr Hancox tried to query the evidence given the Claimant had supported other Conservative candidates, Mr Livingston insisted they focus only on the evidence before them and pointed out the Claimant and Mr Azam had not attended to explain themselves. Accordingly the panel upheld the allegations and expelled them (paras.95-100).
206. I turn first to the inferences I would draw from those and my other factual findings and all the other evidence (Costain) about Mr Letts' mental processes. This is not

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Arif v Baker because he played a central role – on the contrary, he was only a 'witness' to the disciplinary process conducted by Cllr Washbrook and instigated by Mr Samra. However, that makes Mr Letts ideal as a different kind of 'comparator' - to their and others' mental processes, especially given I have found he was not influenced by the Claimant's race or faith in the approval process. I focus on Mr Letts's thoughts about (i) whether the Claimant had done what was alleged; (ii) if so, why he had done it; and (iii) why he thought the Claimant should be expelled:

- (1) I accept Mr Letts genuinely believed the Claimant had actively campaigned against Mr Samra, accused him of racism to voters and encouraged them to vote Labour. Whilst I have found none of that happened, from Mr Letts' perspective at the time – unaware of the difficulties and contradictions in the witnesses' accounts - this was being said not just by Mr Samra (whose role in instigating the process also may not have been apparent to Mr Letts), but also by his four supporters of the same heritage as the Claimant. They all said multiple voters reported this and some said they heard him say so.
- (2) Mr Letts would not have been surprised to be told the Claimant had called Mr Samra a racist. He knew the Claimant had already made (what Mr Letts thought) were unfounded discrimination complaints in the approval appeal (which I found significantly influenced Mr Letts' joint decision to refuse it). Mr Letts also knew the Claimant alleged discrimination about that too which led to the Roberts-Booth Report. For Mr Letts, to accuse Mr Samra of

racism (if not to campaign against him and for Labour) would be ‘just the sort of thing the Claimant would say’ given his previous complaints. For Mr Letts, that ‘misguided belief in Mr Samra’s racism’ gave the Claimant a motive.

- (3) Therefore, I find there was some ‘confirmation bias’ in Mr Letts accepting the allegations against the Claimant. I accept Mr Letts believed the witnesses. Yet that was because at least the allegation the Claimant had accused Mr Samra of racism was ‘just the sort of thing the Claimant would say’ given his previous complaints. For Mr Letts, that gave the Claimant a (misguided) motive to campaign against Mr Samra and for Labour – and so made plausible what would otherwise have been totally implausible for a long-standing Conservative Councillor. Moreover, for Mr Letts, it was not as if the Claimant had a ‘clean record’. He had been causing trouble in the Federation for a while, including the Petition (Mr Letts thought) and the complaints to the national Party. For Mr Letts, the combination of that past conduct and the election campaign meant the Claimant had to go.

207. Whilst Mr Samra tried to suggest that he had no involvement in the disciplinary process other than providing a statement, I found on the balance of probabilities he had effectively instigated the disciplinary investigation. Indeed, the Claimant accuses Mr Samra of fabricating evidence, but I have rejected that allegation as I explained. I turn to my findings on Mr Samra’s mental processes:

- (1) I accept Mr Samra genuinely believed the Claimant actively campaigned against him, had accused him of racism to voters and encouraged them to vote Labour. Indeed, I accept Mr Samra had heard the rumours himself – on the doorstep and from his campaigners: Mr Rasab, Mr Matloob, Mr Hussain and Mr Ahmed. For Mr Samra his belief in the Claimant’s ‘treachery’ (my word, not his) explained why he lost the election despite his campaigning.

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Arif v Baker Moreover, for Mr Samra the Claimant had also recruited Mohammed Azam, who was related to Cllr Azam who had been de-selected in November 2013, around the same time as the cemetery issue (paragraphs 45-46), who had also signed the petition seeking to oust the Executive (paragraph 50). Therefore, Mr Samra felt there had been an ‘anti-Samra’ alliance. incident the cemetery

- (2) Mr Samra was not just aware of the Claimant’s previous allegations of discrimination, I find for him, they showed the Claimant’s propensity to make accusations of discrimination, as Mr Samra believed he had done during the campaign: again it was ‘just the sort of thing the Claimant would say’. As summarised at paragraph 91 following 46, 56, 59, 66, 69-70 and 74, the Claimant and Mr Samra’s relationship had progressively worsened through the ‘Petition Controversy’, the Mort Report, the approval appeal, the Claimant’s November 2015 discrimination complaint which led to the Roberts-Booth Report, the selection meeting, then finally the election campaign which Mr Samra believed he had lost due to the Claimant. As I noted at paragraphs 59 and 181-182, in August and October 2015, it had suited Mr Samra

privately to stereotype the Claimant as a Muslim sectarian with political stances ‘supportive of a narrow section of the Pakistani population’. But the irony was that argument had backfired spectacularly, as people in the Pakistani- origin and Muslim community, whom Mr Samra had worked so hard to canvas, told him the Claimant had retaliated by calling Mr Samra racist. in 2013-2014, then

- (3) Therefore, I find Mr Samra’s determination to have the Claimant expelled from the Walsall Party was not limited to his genuine belief the Claimant had called him racist and campaigned against him and for Labour. That was simply the last – and heaviest – ‘straw’ in their progressively worse relationship, including the Claimant’s previous complaints of discrimination leading to the Roberts-Booth Report which had complicated Mr Samra’s election campaign as Cllr Washbrook said on 7th June. However, whilst Mr Samra in Autumn 2015 stereotyped the Claimant on racial and religious grounds, I found at paragraphs 181-2 he had cynically espoused those views to align with Cllr Washbrook’s more genuine (if partial) stereotyping to clear the way to stand as a Councillor. By May-June 2015, Mr Samra had done so but lost – he thought because of the Claimant’s campaigning and accusations of discrimination that he had previously made and was continuing to make. I find on balance of probabilities that is why Mr Samra wanted the Claimant expelled, not because of racial or religious stereotypes, he had been prepared cynically to adopt but had never genuinely believed.
208. However, ultimately Cllr Washbrook not Mr Samra prosecuted the disciplinary. As I have explained, rather than the burden of proof, I prefer to make factual findings about his mental processes, primarily based on Cllr Washbrook’s own words. Those from the disciplinary process can be collected from his long email to Lord Feldman of 7th June 2016 justifying continuing the process (paragraph 94), but also the minutes of what he said at the 30th June hearing (paragraphs 96- 97). On all the evidence (Costain), I find Cllr Washbrook’s mental processes on
- (i) whether the Claimant had done what was alleged; (ii) if so, why he had done it; and (iii) why he thought the Claimant should be expelled, were:

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- (1) Again, I accept Cllr Washbrook genuinely believed the Claimant actively campaigned against Mr Samra, had accused him of racism to voters and encouraged them to vote Labour. Whilst Cllr Washbrook knew Mr Samra’s involvement better than Mr Letts, I find he similarly accepted the witnesses’ reports, indeed in his 7th June email he called the evidence ‘overwhelming’. I leave aside my finding it was anything but, though I accept Cllr Washbrook thought so. Yet for him, the Claimant did not have a ‘clean record’.

- (2) Cllr Washbrook thought the Claimant had retaliated for his de-selection: “I attended [the selection]. It was clear from the outset that voters on the losing side, would not be voting in the election for the [winner].” Yet in his summing-up at the meeting, Cllr Washbrook also said: “They have damaged the image of the Conservative Party in the community by portraying the Party as being anti-Muslim and racist.” As I discussed at paragraphs 98-99, this could be understood in two ways: in isolation it simply refers to the alleged accusations by the Claimant and Mr Azam in the local community that Mr Samra was racist and anti-Muslim. But on 7th June, Cllr Washbrook also referred to the Roberts-Booth Report: “[A] disciplinary investigation [of the Claimant’s] false and uncorroborated accusations of religious discrimination by the local panel. This resulted in a prolonged, drawn out and totally unnecessary investigation which found no evidence of religious discrimination...” Therefore, it was clearly also Cllr Washbrook’s view that the Claimant had accused the Party, not just Mr Samra of racism. The latter was once again ‘just the sort of thing the Claimant would say’. So Cllr Washbrook accepted the Claimant’s guilt of the allegations, like Mr Letts, in part because he felt it was consistent with the Claimant’s past behaviour – i.e. his complaints.
- (3) Accordingly, like Mr Samra and Mr Letts, I do not accept the only reason Cllr Washbrook wanted the Claimant expelled was because he genuinely believed (as I accept that he did) the Claimant actively campaigned against Mr Samra, had accused him of racism to voters and encouraged them to vote Labour. Indeed, that belief was influenced by the perceived consistency of that conduct with the Claimant’s past complaints, but also separately because of the complaints themselves – for Cllr Washbrook, the Claimant was the main ‘troublemaker’ in the Federation and needed to go. However, it was not just one or two past complaints that concerned Cllr Washbrook. In his 2017 appeal statement (see paragraph 86), he added the Claimant: “...wrote directly to the Party Chairman with an inaccurate version of events and an uncorroborated accusation of Islamophobia.” This appears to be a reference to an additional protected act – the Claimant’s email to Lord Feldman on 6th June saying ‘the Party had condoned Islamophobia in Walsall’ noted at paragraph 94. Whilst Cllr Washbrook said the Claimant had not copied in the Federation, his appeal statement suggests he was aware of it by 7th June. He was certainly aware of the Claimant’s discrimination complaint in November 2015 which led to the Roberts-Booth Report, as he referred to it when refusing Lord Feldman’s request on 7th June as quoted above and Cllr Washbrook also said this (my italics):

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Arif v Baker “I see no merit in allowing the current unresolved accusations to fester for another year without resolution. These last 8 months have shown it will only encourage further email complaints, lobbying and infighting. The longer we leave it the harder it will be to resolve.” Therefore, Cllr Washbrook was not only concerned with the Claimant’s past (believed) conduct, or even also his past complaints (which he had in the same email called ‘false and uncorroborated accusations of religious discrimination’), but also the risk the Claimant if not

expelled would make ‘further complaints’. So, both past and potential future discrimination complaints had a ‘significant influence’ on Cllr Washbrook’s determination to proceed with the disciplinary. But was he influenced by race and faith as such as I found he was in Autumn 2015 ? On one hand, those racial and religious factors were not something he exploited cynically like Mr Samra, but were genuinely-held, albeit not consciously discriminatory. Indeed, he felt vindicated (in part) by the Roberts-Booth Report finding ‘no evidence of religious discrimination’. Yet whilst quite prepared in the 7th June email to blame the national Party, it is striking that Cllr Washbrook did not repeat his dire warnings in 2014-2015 about the Claimant being a leader of a ‘sectarian Trojan Horse’ or ‘adopting corrupt practices’ Cllr Washbrook stereotyped as favoured by some with British Pakistani-origin heritage. Of course, as Lord Browne-Wilkinson said in *Zafar* at [16], ‘discriminators do not generally advertise their prejudices’. However, Cllr Washbrook had previously ‘advertised his prejudices’, yet he did not do so during the disciplinary process in May-June 2016. Of course, he may well still have held them, but there is no direct evidence they had any influence on him during the disciplinary process. What did influence him was his belief in the Claimant’s guilt and what he saw as repeated false discrimination complaints in the past and the risk of more in the future if the disciplinary process did not proceed. I find on balance of probabilities Cllr Washbrook was not significantly influenced during the May-June 2016 disciplinary process by race or faith considerations but was by faith and race complaints. The Disciplinary Accusations and Evidence

209. The complaints of direct race and religious discrimination and victimisation relating to the disciplinary accusations and evidence are allegations 6 and 12:

6. Accusing the Claimant orally on or around 29 April 2016 and by letter dated 2 June 2016 of campaigning against the Party.

12. Fabricating evidence for the disciplinary meeting on 30 June 2016. The ‘evidence’ is intertwined with the accusations, so I consider them together.

210. I do not accept there was an ‘accusation’ against the Claimant on 29th April 2016 – before the election. This reflects the Claimant’s belief - that he reported to the national Party on that date - that ‘moves are afoot to try and blame the defeat (which I interpose had not happened yet) on certain people, including me, to try to get me expelled’. Over time, in the Claimant’s mind that has grown into a narrative that the disciplinary accusations were ‘trumped up’ in bad faith. However, I have found as a fact at paragraphs 83-84 that some within the Walsall Party did actively campaign against Mr Samra and call him racist, but I found that was nothing to do with the Claimant. After all, as Cllr Washbrook himself

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Arif v Baker remarked on 7th June of the March selection meeting: ‘It was clear from the outset that voters on the losing side, would not be voting in the election for the [winner]’. In other words, this was a ‘grass-roots’ reaction against Mr Samra ‘ousting’ a popular and long-standing Councillor, the Claimant, fuelled by others who considered Mr Samra a racist and anti-Muslim,

but not by the Claimant. The ‘accusation’ on 29th April was a ‘private word’ by a Councillor in Mr Samra’s ‘camp’ Cllr Washbrook, to one in the Claimant’s, Cllr Bird, which prompted the Claimant not only to have the latter witness his postal vote for Mr Samra, but also to speak to Mr Mahmood to seek to quash the rumours. In my judgment, it was advantageous in drawing concerning actual rumours to the Claimant’s attention, it was not a ‘detriment’ on the Shamoon test and so cannot have been direct discrimination or victimisation. In any event, I would adopt the approach suggested by Elias P in Laing and endorsed in Madarassy at [80]-[84] of going straight to the second stage of the burden of proof and finding the Defendants have proved ‘no discrimination or victimisation whatsoever’ on 29th April 2016.

211. Before turning to the second part of complaint at paragraph 51.6 of the Particulars of Claim, I focus on ‘the fabrication of evidence for the disciplinary meeting on 30th June’. This was one of the most hotly-contested allegations. However, I can deal with it briefly, as I have already made detailed findings of fact at paragraphs 89-90 that Mr Samra did not ‘fabricate’ Mr Khan’s statement – the pleaded allegation against him. Whilst I could have simply left it there, given the seriousness of the allegation, I made a positive finding of what I believe happened on balance of probabilities that Mr Khan spoke to Mr Samra in similar terms to ‘Statement C’, but it was produced (possibly by Mr Khan’s daughter) without Mr Khan’s knowledge or approval, which Mr Samra tendered to Cllr Washbrook. However, that it is not ‘fabrication’ of evidence in the sense of concocting false evidence. It is tendering evidence of what someone has actually told you without their knowledge and approval. It is true that the Claimant’s Reply to Defence states at paragraph 9 that ‘Mr Khan said he had never given a statement in relation to this matter and that he wished to withdraw the statement given in his name’. However, that is not the pleaded complaint itself, which was that the statement was fabricated. It was not. The County Court has a statutory jurisdiction under the EqA (s.114 EqA), so like the Employment Tribunal, it only has jurisdiction to determine complaints which have been pleaded: *Chapman v Simon* [1994] IRLR 124 (CA). In that case, a Tribunal’s finding of discrimination related to a pleaded complaint but not itself pleaded was set aside. Therefore, at least without an amendment, I cannot uphold a complaint of discrimination on a far less serious factual basis than that squarely pleaded. Nor can it form part of a ‘continuing act’ under s.118 EqA unless unlawful: *Oxfordshire CC v Meade* [2015] All ER (D) 299 (EAT). Therefore, I cannot properly uphold the complaint at paragraph 51.12 of the Particulars of Claim.
212. In any event, even if I am wrong and Mr Samra tendering Mr Khan’s statement without his knowledge or approval was ‘fabrication’, I am satisfied it was not direct discrimination or victimisation. As I have already explained at paragraph 207(3), I find that Mr Samra’s cynical exploitation of the Claimant’s race and faith in Autumn 2015 did not reflect his genuine views and did not influence his instigation of the disciplinary process in May-June 2016. Therefore, even if the burden of proof shifts on this complaint, I find it has been discharged. However,

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Arif v Baker of course, I did find that Mr Samra was influenced by the Claimant's previous complaints of discrimination in instigating the disciplinary process. Nevertheless, I must consider his mental processes in doing what I have found he did in this specific complaint – i.e. tendering Mr Khan's statement without his knowledge and approval. As I found at paragraph 90(2), the contents of Statement C were consistent with what Mr Khan had actually told Mr Samra – tellingly Mr Khan's complaint in 2018 was he 'had never given any statement and wish to withdraw the statement in my name' not that he had never said what was in it. Mr Samra did not falsify or distort what Mr Khan had said, he simply did not ask him if it could be used in a statement. Given my other findings about Mr Samra's attitude towards the Claimant's complaints, I accept the burden of proof has shifted on this victimisation complaint. However, despite the difficulties with Mr Samra's evidence generally, something closer to the truth about Mr Khan's statement emerged in his evidence (including the detail about his daughter drafting it) and I find he supplied the statement because it was further support for what Mr Samra had already heard others say on the doorstep, not consciously or unconsciously influenced by the Claimant's protected acts (which do not include the supposed 'doorstep racism accusation'). Mr Samra's use of Mr Khan's statement was inappropriate but not victimisation, so I dismiss this complaint on the merits too.

213. Similarly, I cannot stray beyond the pleaded case and find the inaccurate contents of Mr Matloob's 'Statement A' were 'fabricated' because again the pleaded case is limited to Statement C in the Claimant's Reply. The Defendants were only 'put to proof as to the veracity' of Statements A, B and D (Reply paragraph 9) and there was debate at the start of trial about Mr Matloob and it was not suggested the 'fabrication' complaint covered his statement. In short, the Claimant put his case too high as part of his perspective that Mr Samra was 'behind everything'. He did not run an alternative on this complaint. Nor was there an application to amend after Mr Samra's evidence. Instead, the Claimant's case remained fully that Mr Samra 'fabricated' Statement C. I have found he did not. Whilst there might have been an issue whether Mr Matloob fabricated it, that would raise issues of agency (to which I return) but is not pleaded. Therefore, I dismiss paragraph 51.12 of the Particulars of Claim.

214. I return to paragraph 51.6 of the Particulars of Claim and the 'accusation' (as it was) of 2nd June 2016 the Claimant had campaigned against the Party. I repeat part of it, quoted at paragraph 93 of this judgment above: "Officers of the Association have carried out an investigation and determined that you Mohammad Arif, actively campaigned against the Conservative Party candidate in the May 2016 local Election in the constituency of Walsall South. A number of local residents have independently come forward to report that you made derogatory comments about the Official Conservative Candidate in St Matthews and you encouraged Conservative supporters to vote for the Labour candidate." I have italicised 'determined' which was also emphasised at paragraph 25 of the Particulars of Claim, to which paragraph 51.6 refers. Moreover, the Defence at paragraph 27.2 in response

specifically denied the Federation had made any 'determination' at that stage. Therefore, whilst the primary way in which the Claimant put this allegation was that the disciplinary charge was 'trumped up'

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Arif v Baker (which I have rejected), it was squarely pleaded (and denied) that there had been pre-determination of the disciplinary charge. Indeed, this was linked in the Particulars of Claim to paragraph 51.7, 51.8 and 51.9 also relating to paragraph 25 complaining of no interview or informing the Claimant before 'determination'. This allegation can be put in two different ways: (i) Cllr Washbrook (Mr Letts was only a witness) had already 'determined' the Claimant was guilty without speaking to him but the matter would be considered at the meeting on 30th June; or (ii) the Federation itself had 'determined' that the Claimant was guilty and only the question of whether he should be expelled as a consequence would be decided at the meeting. The pleaded response was there had been no 'determination' by 2nd June. Applying Chapman, I am satisfied both are pleaded and both explored.

215. On the 'narrow' variant (i): Cllr Washbrook and Mr Letts had 'determined' the Claimant was guilty of the disciplinary charges but that the matter would be considered by the disciplinary panel. I do not accept the word 'determined' was simply a clumsy way of putting this, or a 'slip' and meant 'case to answer' as Mr Samra suggested. Indeed, on 7th June, only 5 days after the letter in question, as I said Cllr Washbrook said to Lord Feldman the evidence was 'overwhelming'. I find on the balance of probabilities that he had indeed determined – indeed pre-determined – the Claimant's guilt. However, Cllr Washbrook did not start with a blank sheet of paper with the Claimant. He already considered the Claimant had made what he called a 'false and uncorroborated accusation of religious discrimination' (on 9th November 2015 which led to the Roberts-Booth Report). One of the disciplinary charges was that the Claimant had called Mr Samra racist. I found both Cllr Washbrook and Mr Letts thought that was 'just the sort of thing the Claimant would say' in retaliation for being de-selected. So, their pre-determination of part of the disciplinary charge (if not all of it) was significantly influenced by the Claimant previously making discrimination complaints. As I have also explained at paragraph 208(3), whilst Cllr Washbrook genuinely believed in the Claimant's guilt of the allegations, his determination to expel him was also significantly influenced by the Claimant's protected acts (Nagarajan): mostly that of 9th November 2015 which led to the Roberts-Booth Report which he had called on 7th June 'a prolonged, drawn out and totally unnecessary investigation which found no evidence of religious discrimination', which in turn had led to the Claimant's re-approval, the bitter selection contest, and 'lack of campaign time', which had contributed to the defeat in St Matthews and loss of the Council. For Cllr Washbrook, it all stemmed from the Claimant's complaint in November 2015: not disputed to be (and clearly is) a protected act.

216. Yet that raises ‘the separability principle’ developed in victimisation cases by Underhill P in Martin, which he re-iterated as Underhill LJ in Page and applied to manifestation of belief in Higgs; which was also explained and applied for whistleblowing cases by Simler LJ (as she was) in Kong. Mr Beever argued it arose in the disciplinary process, so it is worth repeating Martin at [22]: “[T]here will in principle be cases where an employer has dismissed an employee (or subjected him to some other detriment) in response to the doing of a protected act (say, a complaint of discrimination) but where he can, as a matter of common sense and common justice, say that the reason for the dismissal was not the complaint as such but some feature of it which can properly be treated as separable. The most straightforward example is

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Arif v Baker where the reason relied on is the manner of the complaint. Take the case of an employee who makes, in good faith, a complaint of discrimination but couches it in terms of violent racial abuse of the manager alleged to be responsible; or who accompanies a genuine complaint with threats of violence; or who insists on making it by ringing the managing director at home at 3 am. In such cases it is neither artificial nor contrary to the policy of the anti-victimisation provisions for the employer to say ‘I am taking action against you not because you have complained of discrimination but because of the way in which you did it’. Indeed, it would be extraordinary if those provisions gave employees absolute immunity in respect of anything said or done in the context of a protected complaint.... Of course such a line of argument is capable of abuse. Employees who bring complaints often do so in ways that are, viewed objectively, unreasonable. It would certainly be contrary to the policy of the anti-victimisation provisions if employers were able to take steps against employees simply because in making a complaint they had, say, used intemperate language or made inaccurate statements. An employer who purports to object to ‘ordinary’ unreasonable behaviour of that kind should be treated as objecting to the complaint itself and we would expect tribunals to be slow to recognise a distinction between the complaint and the way it is made save in clear cases. But the fact that the distinction may be illegitimately made in some cases does not mean that it is wrong in principle.”

217. Mr Beever pointed out Cllr Washbrook in his 7th June email was not complaining about the Claimant’s religious discrimination complaint to the national Party in November 2015 itself, but that (i) Cllr Washbrook had described those complaints as ‘false and uncorroborated’ and pointed out the Roberts-Booth Report had found there was ‘no evidence of religious discrimination’; and (ii) the result of the Roberts-Booth Report prompted by the Claimant’s complaint had led to a lack of campaign time which contributed (along with the Claimant’s own campaigning against Mr Samra) to the loss of St Matthews and so, control of the Council.
- (1) (i) is not ‘properly separable’ from the fact of the discrimination complaint itself. No case I am aware of has ever suggested that a recipient or even investigator (as opposed to Court under s.27(3) EqA) considering that a discrimination complaint is simply ‘false’ is ‘properly

separable' from it. That would blow a hole in the centre of the protection of s.27 EqA. Indeed, in *Kong* at [61], *Simler LJ* spoke of the irritation and objection to a complaint as 'necessarily inherent' in making it, not separable from it. A personal or third-party conclusion that the complaint is 'false and unfounded' is a direct response to the central contents of the complaint itself, not separable like an unreasonable manner of complaining as in *Woods and Page*), or an underlying mental health condition or personality trait (as in *Martin* itself and *Kong*). In any event, in this case, Cllr Washbrook was not just influenced by past complaints, but that the Claimant may make future ones.

- (2) Whilst (ii) – the consequences of the Roberts-Booth Report - could in principle be 'properly separable' from the fact of the complaint itself, it is clear they were inextricably linked in Cllr Washbrook's mind to the complaint itself. He did not say 'I have no difficulty with the Claimant's

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Arif v Baker complaint, though I do not agree with it. My difficulty is with how the national Party handled it'. On the contrary, in making his complaint in his email of 7th June about 'lack of campaign time', Cllr Washbrook plainly blamed both the complaint and its consequences and said with his two reasons why the Party lost St Matthews 'This situation has been totally created by Arif'.

218. Therefore, I am satisfied that part of the reason Cllr Washbrook pre-determined the disciplinary allegations against the Claimant were the protected acts he had made (the discrimination complaints to the national Party on 9th November 2015 and to Cllr Washbrook himself on the approval appeal on 14th October 2015 (s.27(1)(a) EqA), but also he 'may do' further protected acts (s.27(1)(b) EqA). That was a 'detriment' on the Shamoon test (applied to investigatory processes in *Deer*) as a reasonable member would legitimately feel disadvantaged, not simply by a finding of a disciplinary case to answer, but that guilt had been pre- determined by the Chairman of the Walsall Party. I find Cllr Washbrook had done so not because of some separable feature, nor exclusively his belief in the Claimant's misconduct, which I find he thought was at least with the racism accusation 'just the sort of thing the Claimant would say'. Even if I am wrong about that, in the absence of an adequate explanation for Cllr Washbrook's explicit reference on 7th June to the Claimant's discrimination complaints and his 'pre-determination' on 2nd June, the burden of proof would clearly shift and cannot be discharged in the absence of the evidence of Cllr Washbrook. Therefore, I uphold the complaint of victimisation on the letter of 2nd June 2016.
219. However, the burden of proof does not shift on the direct discrimination complaints about the 2nd June letter. As I explained at paragraph 208(3), unlike the complaints relating to the approval process in Autumn 2015, there is no direct evidence that Cllr Washbrook during the disciplinary process in May-June 2016 was significantly influenced by the Claimant's Pakistani-national origins or Muslim faith. I accept he may have still thought the Claimant

was a 'Bad Muslim of Pakistani-origin', but he never raised the same issues as he had in 2014-15. In any event, I found Mr Letts in Autumn 2015 had not been influenced by the Claimant's faith or race and yet by 2nd June he also had pre-determined the Claimant's guilt (albeit partly because of his previous discrimination complaints). Whilst that was unreasonable, that does not justify an inference of discrimination (Zafar), so does not shift the burden of proof (Madarassy, Hewage, Efobi). Indeed, had a non-Muslim Pakistani-origin (or Muslim non-Pakistani-origin) de-selected councillor faced the same allegations with the same evidence, there is every reason to believe Cllr Washbrook would have pre-determined his guilt too. Therefore, I dismiss the direct discrimination complaints on the 2nd June letter.

220. Finally on these allegations I return to the wider variant of the allegation that the Claimant's guilt had been 'pre-determined' stated at paragraph 214 – that the disciplinary panel was only going to decide the sanction. Whilst that might have been the way the Claimant might have read the 2nd June letter: that is clearly not what was intended for – nor what happened at – the 30th June meeting. The Disciplinary Procedure

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Arif v Baker

221. That last point enables me to deal very quickly with two of the issues in this sub-heading, all of which I list again for convenience:
7. Failing to inform the Claimant he was under disciplinary investigation at any stage prior to the conclusion of the investigation.
  8. Failing to interview the Claimant in connection with the investigation.
  9. Failing properly or at all to inform the Claimant of the allegations against him in May-June 2016.
  10. Refusing in June 2016 to suspend the disciplinary investigation and hearing on the instructions of the national Party pending an investigation.
222. Issues 7 and 8 are misconceived because they make one (or both) of two incorrect assumptions. Firstly, they might assume the Claimant's guilt of the disciplinary allegations had already been pre-determined so that the 'opportunity to be heard' at the 30th June meeting was limited to whether he should be expelled. In fact, as I have just said, that meeting was to determine 'guilt' and 'sanction'. Therefore, the letter of 2nd June was the letter informing the Claimant that he was under disciplinary investigation and informing him of the allegations and the 30th June hearing was the 'interview' of the Claimant. Alternatively, the issues might assume a two-stage disciplinary process which in my experience is often adopted in larger employers: (i) an investigation where in addition to witnesses, the subject is interviewed (which even ACAS guidance only requires 'in some cases') to determine if there is a 'case to answer' and (ii) a disciplinary hearing. That is not

what the 2014 national Party 'Guidelines for Expulsion' to local associations and Federations like the Walsall Party required. For expulsion rather than suspension, the procedures, read with Rule 3.6 Sch.7A of the Constitution (quoted at paragraph 95) envisage a letter setting out the allegations with 'the grounds for the motion and any supporting evidence' 14 days ahead of the meeting. Therefore, there was no requirement under the procedures for the Claimant 'being informed he was under disciplinary investigation', nor for an 'interview' before 2nd June. Therefore, I dismiss issues 7 and 8 on the facts. But in any event, a failure to follow such a 'gold-plated' disciplinary procedure gets nowhere near a prima facie case of direct discrimination because of race or religion, because the hypothetical comparator by definition would have been treated the same. Likewise, whilst 'unfairness' above and beyond standard procedures can be a detriment (Deer), it cannot prove a causative link between itself and the protected act such as to shift the burden of proof. Therefore, I dismiss paragraphs 51.7 and 8 of the Particulars of Claim.

223. However, issue 9 is different and I uphold the complaint of victimisation, but again dismiss the complaints of direct discrimination:

- (1) As to detriment, as just explained the procedures required 14 days' notice before the meeting of the allegations and any supporting evidence: i.e. Statements A-D. As noted at paragraph 95, that procedure was not followed: Cllr Washbrook (Mr Letts was only a witness) instead offered for the Claimant to 'inspect' the statements but not take copies no earlier than 27th June (the last statement), only three days before the hearing. As the appeal body found in 2018, was a serious departure from procedure. It was a clear 'detriment' to the Claimant on the Shamoon/Deer approach and discouraged him from attending the hearing as he could not prepare for it properly.

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Arif v Baker

- (2) But once again, an inference of discrimination cannot be drawn simply from unfairness and departure from due process (Zafar), so does not itself shift the burden of proof (Madarassy, Efobi). The fact Cllr Washbrook discriminated in a totally different process nine months earlier does not enable an inference he did so here, even in the absence of an explanation. In any event, constructing a hypothetical comparator the same circumstances save protected characteristics as in Shamoon and Watt, both the Muslim non-Pakistani-origin and non-Muslim Pakistani-origin de- selected councillors facing similar allegations would have been treated the same. Therefore, the direct discrimination claims must fail. in
- (3) However, victimisation is different. There is no formal comparator under s.27 EqA (Deer) and even before 2010, it was just someone who had not done a protected act (Khan)). Here, Cllr Washbrook never explained (to Mr Samra's chagrin at the appeal in 2018) why he had departed from procedure in this way. He did suggest the three of the four statements were anonymised because of fear of reprisals. But I reject that explanation from Mr Matloob

which was unexplained, not suggested by Mr Ahmed in evidence and certainly cannot have been suggested by Mr Khan. However, even if Cllr Washbrook offered an (inadequate) explanation for anonymisation of the statements, he offered no explanation at all for why the Claimant could not have copies of the anonymised statements 14 days in advance of the hearing. The obvious explanation for such an unfair process is that Cllr Washbrook wanted to make defending the allegations as difficult as possible for the Claimant as part of his determination to see the Claimant expelled and I find on balance of probabilities that is the explanation. Moreover, as I found at paragraph 208(3), Cllr Washbrook's determination to see the Claimant expelled was itself significantly influenced by the fact – as he mentioned to Lord Feldman in his 7th June 2016 email - the Claimant had done protected acts (especially the complaint of 9th November 2015 which prompted the Roberts-Booth Report) and that he might do so again if the disciplinary did not proceed. Therefore, I find on balance of probabilities that Cllr Washbrook's unfair decision not to follow the disciplinary process was significantly influenced by the Claimant's past – and anticipated future – protected acts. Even if I am wrong about that, I certainly could properly draw that inference in the absence of an explanation so the burden of proof shifts and is not discharged – Mr Letts could not explain why Cllr Washbrook took the approach that he did. Therefore, I uphold the complaint of victimisation at paragraph 51.9 of the Particulars of Claim.

224. Finally in this sub-heading, I turn to issue 10: 'Refusing in June 2016 to suspend the disciplinary investigation and hearing on the instructions of the national Party pending an investigation'. Ms Reindorf did not really press that this was direct religious or race discrimination and rightly so because Cllr Washbrook's decision to proceed with the disciplinary had nothing to do with the Claimant's race or religion (for the reasons discussed at paragraph 208(3)). However, it was indisputably influenced by the Claimant's past and potential protected acts. I have set out the email correspondence in detail at paragraph 94. In his 7th June email to Lord Feldman Cllr Washbrook gave a detailed explanation of why he refused to follow Lord Feldman's instructions. In particular, Cllr Washbrook said:

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Arif v Baker "I believe it would be in the best interest of the Party to bring this matter to an early conclusion. I see no merit in allowing the current unresolved accusations to fester....without resolution. These last 8 months have shown it will only encourage further email complaints, lobbying and infighting... This is a situation has been totally created by Arif. All he had to do is stay silent and inactive until after the election. [Y]ou are asking for...the Federation to condone his actions...in breach of the Constitution and Party rules. [H]e was responsible in effecting our defeat in St Matthews..." I have italicised 'further email complaints' since in context it is clearly a reference back to what Cllr Washbrook had already said about the Claimant's complaints: "[A] disciplinary investigation [of the Claimant's] false and uncorroborated accusations of religious discrimination by the local panel. This resulted in a prolonged, drawn out and totally unnecessary investigation which found no evidence of religious discrimination..." Lord Feldman clearly gave an instruction (phrased politely as a request, but in context clearly an instruction) to

pause the disciplinary process pending an external investigation. Yet Cllr Washbrook's refusal was significantly influenced (Nagarajan) by - indeed explicitly referred to - both the Claimant's previous discrimination complaints and Cllr Washbrook's apprehension that the Claimant may make further complaints. As s.27(1) EqA states, victimisation can be either because (a) B does a protected act' or (b) A believes that B has done, or may do, a protected act'. In the case of Cllr Washbrook's email of 7th June, it was both. I have already rejected the 'separability' argument for the significant influence the Claimant's complaints had on Cllr Washbrook's determination to expel him at paragraph 217 above. Whilst Martin was a case where dismissal because of the risk of future complaints was considered not to be victimisation, Cllr Washbrook does not say that it would be future unfounded, still less irrational, complaints as in Martin. Indeed, since Lord Feldman's request was not to cancel the disciplinary process but only to pause it pending the external investigation, Cllr Washbrook's refusal could not be - and was not - justified simply by the strength of the evidence (as he saw it) of the Claimant's guilt. So, he specifically justified proceeding with the disciplinary procedure by the risk of 'further email complaints, lobbying and infighting': a specific reference to the risk of further protected acts. It was clearly victimisation and there is no need to resort to the burden of proof (Hewage). However, if I am wrong about that, there was unquestionably a prima facie case shifting the burden of proof that is not discharged by the Defendants as this was a decision by Cllr Washbrook alone.

225. Indeed, unlike in 2018, at the disciplinary hearing on 30th June 2016, there was no independent decision by the panel to proceed with the meeting despite the instruction from the national Party. Mr Hancox queried whether the meeting should proceed, but the Chair Mr Livingstone accepted Cllr Washbrook's point that Lord Feldman had not explicitly said the meeting must not proceed, so it did. In other words, this was the Chair of the disciplinary panel accepting Cllr Washbrook's decision, not an independent decision to proceed. So, as discussed in Reynolds, the panel decision to expel does not cut off the Defendant's liability for Cllr Washbrook's victimisation of the Claimant by proceeding despite the national Party's instruction. But for that victimisation, there would have been no

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Arif v Baker hearing at which they could expel the Claimant. I uphold paragraph 51.10 of the Particulars of Claim. The Disciplinary Hearing

226. The final sub-heading includes the following three allegations:

11. Failing to give the Claimant a fair hearing at the disciplinary meeting on 30 June 2016.
13. Purporting to expel the Claimant from membership of the Federation and the Party on 30 June 2016.
14. Failing to give reasons for the Claimant's expulsion.

227. On the face of it, Issue 11 is very widely drawn, but in paragraph 51.11 of the Particulars of Claim, it refers back to paragraph 30, which is more specific: “[The] Claimant declined to attend the hearing on 30th June 2016, at which he and Mr Mohammed Azam (also Muslim) were purportedly expelled from the Party. Other than the Chair, the Executive Council which expelled him was composed of Federation members who had dismissed the Claimant’s appeal against the decision not to approve him as a candidate. In reaching its decision to expel the Claimant, the Federation relied on written witness evidence that was fabricated.” The last sentence there must fall away in the light of my decision on paragraph 51.12 of the Particulars of Claim. Moreover, the Claimant did not attend the hearing but does not say it was unfair to proceed in his absence. So, the pleaded case on a ‘lack of fair hearing’ within paragraph 51.11 of the Particulars of Claim relates only to the composition of the hearing panel.
228. This issue was actually discussed at the start of the meeting on 30th June 2016. Inevitably, it was again Mr Hancox who wanted to ensure due process was followed. However, the discussion was about Mr Harry Gandham and his brother and Mrs Benton, who all stood down from voting. Nevertheless, the notes record that the panel (presumably not including them) resolved that ‘Mrs Benton and other members who had served on the Local Councillors’ Approval Committee would not be voting’. As discussed at paragraph 96, as Mr Baker did not attend and Mrs Benton, Mr Gandham and Mr Letts did not vote. Whilst Mrs Letts did sit on the panel, it was not suggested to Mr Letts that whilst he had done the right thing and stood aside, he had in some way ‘fixed things’ with his wife. The upshot was that the only member of the disciplinary panel who had participated in the approvals process – and indeed the only one where there is evidence to prove that they knew about the Claimant’s past protected acts – was Mr Sohal. His presence appears to be a breach of the procedure and I accept, a detriment (Deer).
229. However, an unfair process is not necessarily discriminatory (Zafar). After all, with the direct discrimination claims, the Muslim non-Pakistani and Pakistani non-Muslim hypothetical comparators otherwise in the same circumstances would have had the same panel (Shamoon). Moreover, at paragraph 175, I found that at the approval meeting, Mr Sohal (along with Mr Letts and Mr Baker) were not personally influenced by the Claimant’s Pakistani-origins or Muslim faith, but at paragraph 176, the decision was tainted by Cllr Washbrook’s participation

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Arif v Baker in the decision. However, as Mr Beever said, with the 30th June meeting, Cllr Washbrook only presented the case, more like Reynolds. Moreover, Mr Sohal gave clear and cogent evidence that he was never so motivated at any point. I go straight to the second stage (Laing) and find no direct discrimination by him.

230. However, I did not consider victimisation in relation to the September 2015 approval meeting, having found no prior protected act (and no apprehended future one suggested). As I have said, victimisation is a different issue. Whilst I accept it is implicit in Nagarajan and Khan that someone cannot victimise unless they are aware the complainant has done a protected act (or believes they have or may do), Mr Sohal was a member of the Executive and did not dispute that he would have been aware of both (i) the Claimant's appeal of 14th October 2015 alleging discrimination in the decision (in which Mr Sohal participated) not to approve the Claimant on 28th September 2015; and (ii) the Claimant's complaint of discrimination in the approval process to the national Party of 9th November 2015, which led to the Roberts-Booth Report, both of which were 'protected acts'. So, given that knowledge and the fact Mr Sohal should have absented himself from the disciplinary panel on 30th June 2016 in accordance with its motion that members who had served on the approval committee should not vote, I am satisfied that in the absence of an explanation (c.f. Bailey), I could conclude that Mr Sohal stayed on the panel when he should not have done in order to ensure the Claimant was expelled, motivated in part by his past protected acts. Therefore, the burden shifts to the Defendants to show that Mr Sohal's wrongful presence on the panel was not victimisation on the Igen approach. However, Mr Sohal gave evidence clearly and cogently that he was not influenced in sitting on the disciplinary panel by anything other than the evidence that the Claimant and Mr Azam had campaigned for Labour against Mr Samra and called him racist and moreover the Claimant had not substantively responded. Unlike Cllr Washbrook, Mr Samra and Mr Letts, I find that for Mr Sohal, it was just a case of accepting the evidence at face value, rather than any sort of 'confirmation bias' with the Claimant's previous complaints or thinking 'it was just the sort of thing the Claimant would say or do'. I find that Mr Sohal's decision was not significantly influenced by the Claimant's past protected acts and – I will find, the same is true of the rest of the panel, given there is no evidence any of them knew of or were told about them.
231. That brings me to paragraph 51.13 and 51.14 of the Particulars of Claim each referring to paragraph 31 of the Particulars of Claim: "The Claimant's expulsion was confirmed by a letter by Cllr Washbrook dated 1st July 2016. The letter contained no reasons. It stated that the Claimant had been expelled from the Party and all Associations. Pursuant to ss.54-59 of the Party's Constitution...the Federation was not entitled to expel the Claimant from membership of the Federation or the Party without first seeking the confirmation of the Party Board." The Defence at paragraph 30 simply responds that: "The Federation genuinely sought at all times to act in accordance with [its] Rules and the Party Constitution. Its decision was reached having regard to and in the absence of engagement from the Claimant. [He] was entitled to appeal, which he duly did. Save as above para 31 is not admitted"

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Arif v Baker Therefore, the Defendants did not deny that the summary of the relevant part of the national Party Constitution was correct (which having checked, it is), or to aver that the Federation either sought or obtained Party Board confirmation. Therefore, Cllr Washbrook's letter of 1st July 2016, insofar as it purported to expel the Claimant from the national Party, not just the Federation, was invalid. I will deal with that aspect of paragraph 51.13 along with 51.14 of the Particulars of Claim together in a moment.

232. However, it is also clear from paragraphs 51.13 and 31 (and 30) of the Particulars of Claim that the Claimant also alleged the expulsion decision itself by the disciplinary panel on 30th June 2016 was direct race and/or religious discrimination and/or victimisation. Ms Reindorf put this argument in three ways. She accepted the first way she put it stood or fell with the 'unfair hearing' point in paragraph 51.11, so must fall. The second way Ms Reindorf put it was her submission that the panel were 'manipulated' by Cllr Washbrook. This obviously engages the analysis in Reynolds discussed at paragraph 142. Underhill LJ said in Reynolds: "33. Supplying information or opinions which are used for the purpose of a decision by someone else does not constitute participation in that decision. There may be cases where it is difficult to distinguish between the two situations, but the tribunal was fully entitled to treat this case as one where Mr G did indeed make the relevant decision on his own.
34. We are accordingly concerned not with joint decision-making but with a different situation, namely one where an act which is detrimental to a claimant is done by an employee who is innocent of any discriminatory motivation but who has been influenced by information supplied, or views expressed, by another employee whose motivation is, or is said to have been, discriminatory. I will refer to this as a case of 'tainted information' (treating 'information' widely so as to cover also the expression of views)...
39. (1) By making an adverse report about C, Y subjects her to a detriment... (2) If in making the report Y was motivated by C's age his act constitutes [direct] discrimination...(3) If that discriminatory act was done in the course of Y's employment...then by virtue of [equivalent of s.109(1) EqA] it would be treated as E's act; and accordingly E would be liable (unless he could rely on the 'reasonable steps' defence). (4) Y would also be liable for his own act by virtue of [s.110 EqA]; (5) The losses caused to C by her dismissal could be claimed for as part of the compensation for Y's discriminatory act, as they would have been caused or contributed to by that act and would not (at least normally) be too remote." Based upon Reynolds, Mr Beever argues the panel's decision was an independent one and is not 'influenced' by Mr Washbrook's own mental processes.
233. I made my detailed findings about the conduct of the disciplinary hearing at paragraphs 96-100, summarised at paragraph 205(20). There are five key points:
- (1) Firstly, at para.96, I explained I accepted the accuracy of the minutes, taken by Mr Richards from Aldridge Branch.

- (2) Secondly, at paras.96-100 I noted the meeting was chaired by Mr Livingston from Burton: who was insistent the panel only consider evidence before it.

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- (3) Thirdly, at paragraph 96, I noted due to Mr Hancox's challenges, the only person on the panel with any previous involvement, or prior awareness of protected acts, was Mr Sohal, whom I have just accepted at paragraphs 229- 230 was not influenced by the Claimant's race, faith, or protected acts.
- (4) Fourthly, there was no reference at the meeting by Cllr Washbrook or anyone else to 'the Petition Controversy', or any repetition of his own directly discriminatory views. Indeed, I found at para 208(3) that he was not influenced by the Claimant's race or faith during the disciplinary process.
- (5) Finally, the minutes suggest the panel (including Mr Hancox) did not have Cllr Washbrook's email of 7th June which referred to the Claimant's previous protected acts. Whilst I found at paragraph 225 the panel made no independent decision about proceeding, there was also no discussion about protected acts. I did find at paragraphs 98-99 when referring to the Claimant and Mohammed Azam as 'portraying the Party as being anti-Muslim and racist', Cllr Washbrook did have in his mind the Claimant's previous protected acts (which I found at paragraph 208(3) significantly influenced his determination to have the Claimant expelled). However, I also said he would have been understood as referring only to the disciplinary allegations. So, I find none of the panel save Mr Sohal knew about any protected acts.
234. On that basis, I can deal with the direct discrimination claims very briefly. Not only do I accept Mr Sohal's evidence that he was not significantly influenced by the Claimant's race or faith in making the decision to expel, there is no evidence that any of the rest of the panel were either. This was not a 'tainted information case' of direct discrimination like Reynolds, as I have found Cllr Washbrook was not significantly influenced by race or faith during the disciplinary process. There is simply no evidence that either a Muslim non-Pakistani or non-Muslim Pakistani-origin de-selected councillor facing the same 'shadow campaigning' charge who had not attended to contest it would have been treated differently (Shamoon). Therefore, the burden of proof simply does not shift (Madarassy).
235. With victimisation though, I accept that it is a 'tainted information case' like Reynolds, because Cllr Washbrook's determination to have the Claimant expelled was significantly influenced by his previous and apprehended future protected acts (as I found at paragraph 208(3)). Moreover, both the information and views Cllr Washbrook expressed at the disciplinary hearing were 'tainted information'. The minutes show Cllr Washbrook told the panel the Claimant and Mr Azam had been sent a copy of the anonymised statements on condition that they be returned on completion. In fact, that had not happened. Moreover,

Cllr Washbrook also did not tell the panel that he had failed to give 14 days' notice of the statements in any event, in breach of the Rules, which I have found at paragraph 223(3) was victimisation. This aggravates the finding I have already made against Cllr Washbrook, as it was not drawn to the panel's attention. However, for the reasons explained in Reynolds at [39], that 'tainted information' gives rise to that separate complaint (here of victimisation), as Mr Beever says, it does not 'infect' the panel's decision itself as Cllr Washbrook was here not a joint decision-maker, especially as there was no discussion of protected acts (indeed Mr Livingstone discouraged discussion of other topics) and there is no evidence that any of the panel save Mr Sohal were even been aware there had been any protected acts and

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Arif v Baker I have positively found Mr Sohal was not influenced by them. So, I cannot properly infer victimisation even without an explanation, so I dismiss this aspect.

236. Finally in Topic 3, I turn to the remaining aspect of paragraphs 51.13 and 51.14 of the Particulars of Claim: the fact the panel purported to suspend the Claimant from the Party not just the Federation when it had no power to do so and Cllr Washbrook's letter gave no reasons for that. On the latter point, as I said at paragraph 100, I have no copy of that letter, but the national Party procedures do not require reasons. Therefore, I assume the letter simply took the standard form.
237. Therefore, whilst the absence of reasons may be surprising, it was consistent with procedures and I cannot find it was so 'unfair' as to amount to a separate detriment (Deer) in addition to the failure to give proper information I have upheld. In any event, a Muslim non-Pakistani and non-Pakistani Muslim would have been treated the same (Shamoon) and no proper inference of it could be drawn, even in the absence of an explanation (Madarassy). Indeed, whilst Cllr Washbrook was significantly influenced by the Claimant's past and future protected acts in seeking to have him expelled (as occurred), I cannot properly find the absence of reasons in the letter was significantly influenced by that when consistent with process (c.f. Deer). Therefore, I dismiss the complaint at paragraph 51.14 of the Particulars of Claim.
238. However, I take a different view in relation to the remaining aspect of paragraph 51.13 of the Particulars of Claim - the fact the panel purported to suspend the Claimant from the national Party not just the Federation, when it had no power to do so. This was a departure from procedure and plainly a Shamoon/Deer detriment on top of the expulsion from the Federation, as it wrongly purported to expel the Claimant from the whole Party. I cannot properly conclude that was because of the Claimant's race or faith given my findings about the panel at paragraph 234 and about Cllr Washbrook at paragraph 208(3). Indeed, even in the absence of an explanation, a Muslim non-Pakistani and non-Pakistani Muslim would have been treated in the same unfair way (Zafar), so there is no direct discrimination and so the burden of proof does not shift (Madarassy). However, given my finding that Cllr Washbrook's determination to expel the Claimant was significantly influenced by the

Claimant's previous and potential future protected acts, I can say that his decision to seek the Claimant's expulsion from the whole national Party was significantly influenced by those protected acts; or at least the burden of proof shifts and cannot be discharged (especially in the absence not only of Cllr Washbrook, but the letter itself). Therefore, Cllr Washbrook clearly victimised the Claimant in purporting to have him expelled from the whole Party.

239. However, Mr Beever contends that was not Cllr Washbrook's, but the panel's decision, not infected by any unlawful influence: Reynolds. I have accepted the decision whether or not to expel at all, in which Cllr Washbrook was not a 'joint participant', was only a 'tainted information' case like Reynolds because the panel reached an independent view on the evidence before them to uphold the disciplinary charges and to expel – Cllr Washbrook supplied the information (and the opinion), but they supplied the decision. By contrast, it was Cllr Washbrook who drafted the initial impermissible motion on 2nd June 2016 to expel the Claimant from the national Party not just the Walsall Party. It was Cllr Washbrook who had pressed in his summing up for that expulsion from the whole

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Arif v Baker Party, not suggesting the expulsion should be limited to the Federation. And it was Cllr Washbrook who sent the decision to the Claimant that he was expelled from the whole Party, not just the Federation. Therefore, in relation to the decision to expel from the national Party not just the Walsall Party, to all intents and purposes, Cllr Washbrook was the actual decision-maker and the panel simply endorsed his decision (as they did about proceedings despite the national Party's objections) rather than making their own decision. As confirmed in Deer at [48] there can be liability in victimisation even if it only affected the procedure not the outcome. Here, the victimisation did not affect the panel's own decision to expel as such, but it did affect the outcome of: (i) the decision to proceed with the disciplinary; and (ii) the expulsion from the national not just the Walsall Party. I uphold paragraph 51.13 of the Particulars of Claim. Topic 4: The Claimant's Appeal 2016 - 2018

240. Mercifully, I can be extremely brief on this Topic, which only consists of one allegation at paragraph 51.15 of the Particulars of Claim: 'relying on fabricated evidence at the appeal hearings on 9 November 2017 and 13 September 2018'. However, as I explained at paragraph 101, as with allegation 51.12 of the Particulars of Claim in relation to alleged fabricated evidence at the June 2016 disciplinary hearing, the effect of the pleadings narrowed this to 'Statement C': Mr Khan's 'statement'.
241. As I found at paragraphs 89-91, Mr Samra obtained and tendered to Cllr Washbrook in May 2016 'Statement C' without Mr Khan's knowledge or approval but did not 'fabricate' it. As I went on to find at paragraphs 211-212, it was not open to me (Chapman) to find discrimination on the basis that Mr Samra did not 'fabricate' Statement C but had tendered it without Mr Khan's knowledge or approval; and in any event, even if it was, I would not find direct discrimination or victimisation in any event. Therefore, I dismiss paragraph 51.12 of

the Particulars of Claim.

242. There is an even more fundamental problem with paragraph 51.15 of the Particulars of Claim, which is not only that, but in addition, as I found at paragraphs 106 and 110, whilst Cllr Washbrook relied on Mr Khan's 'statement' for the original appeal hearing on 9th November 2017, that was adjourned and Mr Khan later objected in July 2018, so it was not relied on in the hearing of 13th September 2018. But even relating to the November 2017 hearing, as I have found it was not 'fabricated', the complaint must fail. In any event, whilst Mr Samra in 2016 knew that 'Statement C' had not been approved by Mr Khan, there is no evidence Cllr Washbrook did so in 2017. Therefore, I am driven to dismiss all the complaints in paragraph 51.15 of the Particulars of Claim.
243. Moreover, whilst it is not pleaded the appeal statements of Mr Matloob and Mr Mahmood (relied on at both appeal hearings) were 'fabricated', in any event I found at paragraphs 106-108 that Mr Samra would not have known the statements contained untruths and exaggerations by Mr Matloob and Mr Mahmood because they were alleging the Claimant had said things to them at a meeting at which it was not suggested Mr Samra was not present (and found at paragraphs 88 and 106-108 Mr Matloob was not present and which Mr Mahmood misrepresented). I found both wanted 'to tell Mr Samra what he wanted to hear and to bolster the

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Arif v Baker case against the Claimant' about what he was alleged to have said to them in 2016 about Mr Samra (e.g. that he was a racist). Mr Matloob had messages suggesting he would meet the Claimant and Mr Mahmood actually did so, as the Claimant accepts. If Mr Samra did not know of any fabrication in those statements, then Cllr Washbrook can hardly have done so, having only met Mr Matloob and Mr Mahmood at the Royal Hotel who repeated their claims. Therefore, I find neither Mr Samra nor Cllr Washbrook (at least knowingly) 'relied on fabricated evidence at the appeal' even if it had been pleaded about Mr Matloob and Mr Mahmood.

244. Finally on Topic 4, even on the basis that Mr Matloob's and Mr Mahmood's appeal statements were 'fabricated' by them but without Mr Samra or Cllr Washbrook's knowledge, the answer to that is the agency point Mr Beever raised. I return to this briefly below, but in essence, whilst an association can be liable for an agent's discrimination even without knowing about or approving that discrimination (s.109(3) EqA), it must still be within the authority of the agent (s.109(2) EqA). In my judgment, disciplinary witnesses are clearly not 'agents'. Topic 5: The Claimant's 'Re-Expulsion' in October 2018 Issues, Submissions and Factual Findings
245. I reach the final Topic, after which there is only a relatively brief discussion of 'continuing act' and a summary and way forward. My findings of fact on Topic 5 at paragraphs 111-120 pick-up from the national Party allowing the Claimant's appeal on the '14-day rule' technicality on 13th September 2018. However, the appeal decision (and so re-admission of

the Claimant to the Walsall Party, as the purported expulsion from the national Party was ineffective) could not take effect until ratified by the national Party Board, which was initially due for 29th October 2018 but was then moved to 5th November 2018 (paragraph 116). As I explained, that prompted action from Cllr Samra, as he had finally become in May 2018 in Streetly Ward, now also Chairman of the Walsall Party after Cllr Washbrook's death, also in May 2018, when Cllr Rasab replaced him as councillor in Paddock.

246. The allegations relating to this final Topic overlap again:

16. Convening a meeting on 24 October 2018 to consider suspending or refusing membership to the Claimant.
17. Persisting in holding the meeting on 24 October 2018 notwithstanding the outcome of the Claimant's appeal against his previous expulsion had not been circulated.
18. Relying at the meeting of 24 October 2018 on evidence which did not form a proper basis for suspending the Claimant or removal of membership.
19. Relying at the meeting on 24 October 2018 on evidence which had been improperly obtained.
20. Deciding on 24 October 2018 to suspend or refuse membership to the Claimant.
21. Purporting to suspend or refuse membership to the Claimant by letter of 31 October 2018.
22. Maintaining its refusal to readmit the Claimant into membership.

## Judgment

Arif v Baker As with Topic 3, these issues naturally fall again into three sub-headings, which chronological order are: (i) improper or fabricated evidence (issues 18 and 19); (ii) re-instigation of the disciplinary process despite the non-completion of the Claimant's appeal (issues 16 and 17); and (iii) the decision to suspend or refuse 'membership' (issues 20 and 21). I address issue 22 below under 'continuing act' as it is more an argument related to the time point than a free-standing complaint. Since Ms Reindorf's submissions focussed on victimisation, before turning to the three sub-headings, I will analyse what 'protected acts' are potentially relevant.

247. Indeed, both Counsels' submissions on Topic 5 focussed on victimisation:

- (1) Ms Reindorf pressed for a finding of victimisation on all issues. She argued issues 16 and 17 were Cllr Samra victimising the Claimant for bringing the appeal, for his past protected acts and apprehended future ones. Ms Reindorf argued the social media posts (11)-(17) at paragraph 114 were all themselves 'protected acts' so the disciplinary charges were intrinsically victimisation (or discrimination for manifestation of belief); and all other charges and the decision were significantly influenced by the protected acts.

- (2) Mr Beever submitted there was no victimisation (or indeed direct race or religious discrimination) related to any of the seven issues in this Topic. He contended the decision to re-start the disciplinary process was a reasonable reaction to the appeal being allowed on a technicality to correct the error. He contended the disciplinary charges were legitimate: both the 2016 allegations and the new 2018 social media allegations which were neither ‘protected acts’ nor indeed ‘manifestation of belief’. He contended both the process and the decision were uninfluenced by any protected acts.
248. By way of very brief summary, my key findings of fact on this Topic are these (with cross-references to those findings in earlier paragraphs of this judgment):
- (1) On 13th September 2018, at the Claimant’s appeal, the panel said they would recommend it be allowed as he had not had the statements 14 days in advance (Rule 3.6 Sch.7A Constitution) (paragraph 110)
  - (2) On 3rd October, at the Walsall Executive meeting, Cllr Samra tabled (but did not vote on) a motion adopted to re-start the disciplinary process (paragraph 111)
  - (3) On 8th October, Cllr Samra invited the Claimant to a disciplinary hearing on 24th October 2018 on the 2016 charges and the social media charges, this time enclosing all the evidence relied on (paragraph 112).
  - (4) On 12th October, the Claimant’s solicitors wrote to the national Party asking it to direct the Walsall Party (which was copied in) not to proceed (paragraph 115)
  - (5) On 16th October, the national Party suggested Cllr Samra pause the disciplinary until the appeal was confirmed on 5th November (paragraph 116).
  - (6) The same day, Cllr Samra refused to pause the disciplinary (paragraph 117).
  - (7) On 24th October the hearing proceeded in the absence of the Claimant, presented by Cllr Samra who did not vote, with a panel including Mr Baker,

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Arif v Baker Mr Letts, Mr Gandham, Mr Sohal, Cllr Rasab and Mr Hancox (paragraph 118)

- (8) At that meeting, the panel voted to (i) proceed with the hearing despite the national Party’s request; (ii) uphold all the disciplinary charges; and also (iii) impose a ‘suspension of membership’ for 5 years on the 2016 charges and 3 years concurrently on the new 2018 charges (paragraph 119)
- (9) On 31st October 2018, Cllr Samra wrote to the Claimant saying his ‘membership of the Walsall Party was ‘refused or suspended’ but did not specify any period and confirmed the right of appeal (paragraph 120).
- (10) Exactly six months later on 30th April 2019, the Claimant issued the claim.

249. Since Cllr Samra not only initiated this disciplinary process, but called an Executive motion to proceed with it, prepared the evidence, wrote the charges, refused to pause the process, presented the disciplinary case and wrote the result letter, it is helpful to make findings about his mental processes throughout:
- (1) Firstly, as I said at paragraph 207(1), I accept Cllr Samra genuinely believed the Claimant was guilty of the 2016 allegations (and he remained unaware of the untruths in the statements of Mr Matloob, Mr Mahmood and Mr Mehboob (paragraphs.106-108 and 113). However, as I found at paragraph 207(2)-(3), Cllr Samra's belief was influenced by the Claimant's previous protected acts – the election allegations being 'just the sort of thing he would say and do'. Moreover, Cllr Samra was both complainant and prosecutor.
  - (2) Secondly, whilst Cllr Samra tried to suggest the charge about the social media posts (listed at paragraph 114) had been added on 3rd October by the Executive not at his behest, there is no support for that in the notes or other evidence and I reject it. It is not a coincidence it included the Claimant's June-August 2018 posts about 'Islamophobia' in the national Party. I find on the balance of probabilities that in Cllr Samra's mind (Nagarajan), there was an obvious connection between (i) those 'Islamophobia' posts; (ii) the Claimant's alleged comments (which Mr Samra believed) in the 2016 election that (then) Mr Samra was 'a racist and anti-Muslim'; and (iii) the Claimant's earlier and continuing allegations of 'Islamophobia' within the Walsall Party – i.e. his protected acts. Indeed, in a revealing April 2019 email just before the Claimant issued proceedings, Cllr Samra commented: "[The Claimant] continues to spread slander and paint the party both locally and nationally in a bad light. His sole basis has been 'Islamophobia', [but] he has no basis, the Federation is diverse, we have Councillors [and candidates] of all faiths...and communities." This reveals the evident indignation Cllr Samra felt at what he considered were baseless accusations of 'Islamophobia' by the Claimant, whether expressed in social media posts about the national Party, about himself in the 2016 election, or in the Claimant's complaints to the national Party. It is also clear Cllr Samra 'rolled together' all of these and the other social posts.
  - (3) I find on the balance of probabilities there were a combination of reasons in October 2018 why Cllr Samra wanted to ensure the Claimant 'stayed expelled' despite the national Party planning to allow his appeal. Firstly, there was Cllr Samra's genuine belief in the 2016 disciplinary charges.

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Arif v Baker Secondly, there was Cllr Samra's view that the Claimant's social media criticisms of the Party brought it into disrepute – particularly more 'baseless' accusations of 'Islamophobia'. Yet all but one of the charged social media posts related to the national Party, not the Walsall Party. But Cllr Samra did not check with the national Party whether this changed its request to him on 16th October to pause the disciplinary (only until the Board had confirmed the appeal). Like Cllr Washbrook before him in 2016, Cllr Samra justified his decision to proceed by reference to the risk of future protected acts: "Mr Arif has continued to paint the Federation and more

importantly the Party in a bad light and has been publicly claiming that he has been exonerated of any charges and therefore will be seeking legal retribution and damages. In light of this, the Executive have rightly decided that the Federation must protect its integrity and with the knowledge of the Board's decision need to act now before any legal proceedings are issued....[H]e should do the honourable thing and attend the meeting on the 24th, and further, he should cease and desists in bringing every issue to CCHQ.” (my italics) This reference to the ‘need to act now before any legal proceedings are issued’ clearly referred to the Claimant’s solicitor’s letter of 12th October. Moreover, I find on balance of probabilities that Cllr Samra’s reference to the Claimant ‘bringing every issue to CCHQ’ clearly refers to the Claimant making allegations of discrimination about the Walsall Party to the national Party, as he repeatedly had, to which I turn. The Claimant’s Protected Acts

250. For ease, I repeat s.27(1) and (2) EqA, which I discussed at paragraph 145: “(1) A person (A) victimises another person (B) if A subjects B to a detriment because (a) B does a protected act, or (b) A believes that B has done, or may do, a protected act.
- (2) Each of the following is a protected act (a) bringing proceedings under this Act; (b) giving evidence or information in connection with proceedings under this Act; (c) doing any other thing for the purposes of or in connection with this Act; (d) making an allegation (whether or not express) that A or another person has contravened this Act.” (my italics)
251. The Claimant pleaded no fewer than 14 protected acts at paragraph 61 of his Particulars of Claim, contending they fell within s.27(2)(b), (c) or (d). However, at paragraph 157, I decided the first – giving information to the Mort Report - was not a protected act at all; and the last – a solicitors’ letter on 7th December 2018 - came after all the alleged acts of detriment. Moreover, the Defence denied that any of the others in the intervening period were protected acts (although as I shall explain, this was rightly not fully pursued by Mr Beever). It denied knowledge of the Claimant’s external complaints to the national Party in October 2015, 9th November 2015, February 2016, twice in April 2016, 6th June 2016 and 9th October 2018. Knowledge was accepted of the Claimant’s internal appeal against non-approval in October 2015, his appeal against expulsion in September 2016 and his solicitors’ letters of 3rd January 2017 and 12th October 2018, as well as the 2017-2018 social media posts about Islamophobia in the national Party.

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252. I will deal separately with those social media posts in a moment, but in my judgment, there are five relevant protected acts of which the Walsall Party were aware by October 2018, which are plainly protected acts:

- (1) Firstly, the Claimant's appeal against non-approval on 14th October 2015 to Cllr Washbrook I found at paragraph 186 was a protected act as an allegation of race and religious discrimination under s.27(2)(d) EqA.
- (2) Secondly, as Mr Beever accepted, the Claimant's complaint to the national Party of 9th November 2015 about the approval process was an express allegation of religious discrimination under s.27(2)(d) EqA and treated as such by the Roberts-Booth Report, of which the Walsall Party Executive were well aware. This complaint was referenced expressly by Cllr Washbrook on 7th June 2016.
- (3) Thirdly, as discussed at paragraphs 94 and 208(3), I found on balance of probabilities that by 7th June 2016, Cllr Washbrook was aware that on 6th June 2016, the Claimant had complained to Lord Feldman that the national Party 'had condoned Islamophobia in Walsall'. Even if I am wrong and Cllr Washbrook did not know at that time, he (and I find Mr Samra who took over from him) certainly knew about this by Cllr Washbrook's appeal statement in 2017. An allegation under s.27(2)(d) EqA has to be of conduct unlawful under the EqA (Waters) and sufficiently specific, even if not express (Durrani). Here the 6th June email alleged the national Party had 'condoned Islamophobia in the Walsall Party': a clear allegation of religious discrimination by the Walsall Party (especially in prior context: Kokomane).
- (4) Fourthly, the Claimant's appeal against expulsion of 23rd September 2016, discussed at paragraph 102, was also a protected act under s.27(2)(d) EqA: "I have been a loyal member of the Conservative Party for 25 years and will not be chased out by a bunch of Islamophobes, bullies and those who deny others natural justice. The continued lack of action by the Party Board could reasonably infer that it condones Islamophobia but as a Party we rightly condemned and were up in arms and wanted the Labour Party to take strong action against Anti- Semitism...Are the Conservative Muslims in the Conservative Party not entitled to be treated equally?" Whilst this could have been put more clearly, for similar reasons as the 6th June 2016 complaint, it satisfies the Durrani test of being sufficiently clear as to be 'a complaint to which at least potentially the Act applies'. The EqA would apply to an expulsion on grounds of Islamophobia. Whilst I have not upheld it, if true it would have been unlawful under s.101 EqA (Waters).
- (5) Oddly the Claimant did not plead that his solicitor's letter of 4th November 2016 (quoted at paragraph 103) was a protected act, but it appears this was re-sent on or around 3rd January 2017 and elicited the response from Cllr Washbrook on 10th January 2017 that a claim under the EqA was out of time quoted at paragraph 104. Hardly surprisingly, Mr Beever did not dispute that the letter on 3rd January 2017 at least was a protected act under s.27(2)(d) EqA. That leaves two other alleged protected acts which are rather more complex.

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253. The Claimant's solicitor's letter to the national Party of 12th October 2018, copied to Mr Samra, asked the national Party to direct the Federation not to proceed with the disciplinary until the national Party Board had formally addressed the Claimant's appeal against the 2016 expulsion. However, it added (my italics): "We look forward to hearing from you by 17 October at the latest. In the meantime, all of our clients' rights are fully reserved, including his right to rely on the Federation's present actions, and any inadequate response by the Party, as further acts of discrimination and victimisation against him." I agree with Mr Beever this is not 'making an allegation (whether or not express) that A or another person has contravened this Act' under s.27(2)(d) EqA. It is an implicit contention that a failure to take this course 'would' contravene the Act. Nevertheless, I consider it was a protected act under s.27(2)(c) EqA, namely 'doing any thing for the purposes of or in connection with this Act'. As confirmed in Kirby at [34]-[35] of the similar predecessor provision, (c) is a 'catch all' and does not require an actual discrimination claim under s.27(2)(a) EqA, evidence or information in that claim under (b), or an allegation of contravention under (d). Kirby was a case where the complainant supported a colleague's discrimination grievance which the EAT held to fall within (c). Kirby at [29] also noted *Aziz v Trinity Street Taxis* [1988] IRLR 204 (CA) held that an action could fall within
- (c) if 'done by reference to the RRA in a broad sense, even though the doer does not focus his mind specifically on any provision of the Act'. Here, the 12th October solicitor's letter warned certain conduct could be the subject of a claim for discrimination or victimisation. In my judgment, that was plainly 'doing something for the purposes of or in connection with this Act': i.e. warning of a potential claim under the Act. Therefore, it was a protected act.
254. However, even if I am wrong about that, as I noted at paragraph 249(2), in his email to the national Party of 16th October 2018, Mr Samra said (my italics): "Mr Arif has continued to paint the Federation and more importantly the Party in a bad light and has been publicly claiming that he has been exonerated of any charges and therefore will be seeking legal retribution and damages. In light of this, the Executive have rightly decided that the Federation must protect its integrity and with the knowledge of the Board's decision need to act now before any legal proceedings are issued...." I am satisfied on the balance of probabilities that when referring to the 'need to act now before any legal proceedings are issued', Mr Samra had in mind the Claimant's solicitor's letter of 12th October 2018 warning of claims of discrimination or victimisation in their letter of 12th October 2018. In other words, Mr Samra was concerned the Claimant 'may do' a protected act under s.27(2)(a), namely bring a discrimination claim.
255. Ms Reindorf's submission that some of the Claimant's 're-posts' about 'Islamophobia' are protected acts gives rise to another novel point of law, on which neither I nor two experienced discrimination Counsel were aware of any authority. However, I must disappoint any hopes for a definitive answer in principle. It seems to me to depend on the particular facts of what is 're-posted'. Here, the relevant posts are (11)-(17) of those I listed at paragraph 114:

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- (11) 04/06/18 “Tory Councillor suspended after posting Islamophobic comments about Sadiq Khan.”
  - (12) 10/06/18 “Pro Tory Facebook group filled with Islamophobic abuse”
  - (13) 06/08/18 “Boris Johnson faces criticisms over burka 'letter box' jibe”
  - (14) 08/08/18 “Drop Johnson for burka remarks Tory peer”
  - (15) 08/08/18 “Boris Johnson is standing by his comments that Muslim women who wear niqabs look like 'letterboxes' or 'bankrobbers'.”
  - (16) 09/08/18 “May accused of staying silent on Islamophobia in Tory party”
  - (17) 14/08/18 “Should Boris apologise for burka comments”
256. It is noteworthy that s.27(2)(d) EqA in particular focusses on the content of an allegation, not its form. Whilst similar in lots of other ways, victimisation under s.27 EqA does not have the elaborate preconditions for ‘protected disclosures’ under ss.43A-43L Employment Rights Act 1996 (‘ERA’). As stated by s.43A ERA, a ‘disclosure’ must first be ‘qualifying’ under s.43B ERA (i.e. a disclosure in the public interest of a breach or risked breach of legal obligation etc), but must also be ‘protected’ by being made to an employer or other responsible person under s.43C, a legal adviser, Minister or regulator under ss.43D-FA, or otherwise meet strict additional criteria for disclosure to others like the media in s.43G: *Jesudason v Alder Hey Hospital* [2020] IRLR 374 (CA) [22]-[26]. s.27(2) EqA is quite different. Whilst s.27(2)(a) and (b) EqA are limited to EqA proceedings,
- (c) and (d) are not (Kirby). (d) does not say that an allegation must be made to the person being accused of the contravention: it covers allegations about ‘any other person’. Therefore, in *Page* (at [36]-[37]) an allegation made in a TV interview, or even as presented by a TV news article, fell within s.27(2)(d) EqA. To reverse *Marshall McLuhan*, for s.27(2)(d) EqA, it is the message, not the medium.
257. Whilst s.27(2)(d) EqA is therefore potentially very wide (and (c) as interpreted in Kirby even wider), as EAT Judge Clark said in Kirby at [36], a ‘protected act’ is only one element of a victimisation claim. Indeed, *Page* illustrates that, because whilst a TV interview/article could be a protected act, removal of a Magistrate from office due to giving an unsanctioned public interview, rather than for what is said about refusing adoptions to same-sex couples due to religious faith was ‘properly separable’ from the protected act. Similarly, making an allegation without an honest belief in its truth would be in ‘bad faith’ and not protected under s.27(3) EqA: *Saad*. So subject to those other control mechanisms, I accept in principle (as Mr Beever did) that making an allegation on social media that (say) your employer has discriminated against you would be a protected act under s.27(2)(d) EqA.

258. From there, it is a short step to conclude that re-posting on your own social media someone else's allegation their employer has discriminated against them is also a protected act. Whilst s.27(2)(d) EqA speaks of 'making an allegation', one can also 'make' an allegation by repeating it, as a matter of ordinary language, which also falls within the protective purpose of s.27(2) EqA (c.f. Kirby at [36]) whilst striking the balance between that and the precision of the scope of the EqA (Waters at [86]). Therefore – depending on their content – in my judgment, social media 're-posts' can in principle be 'protected acts' under s.27(2) EqA: such

## Judgment

Arif v Baker alleged contraventions of the EqA by someone under (d), or 'doing something for the purposes of or in connection with' the EqA under (c), such as re-posting support for someone else's discrimination claim (c.f. Kirby).

259. The question here is whether the Claimant's 're-posts' were 'protected acts', which must be considered individually applying the principles I have just set out:
- (11) 04/06/18 "Tory Councillor suspended after posting Islamophobic comments about Sadiq Khan." The difficulty with this is that even if it 'makes' (in the sense of 'repeats') an 'allegation' of religious direct discrimination, whilst possibly unlawful in other ways (e.g. a hate speech criminal offence), it is not discrimination made unlawful by the EqA. That is a required element of s.27(2)(d) EqA, just as in Waters a rape on a colleague outside of work did not fall within the SDA. As I explained at paragraph 121, the EqA only prohibits discrimination in particular contexts. The present case relates to Part 7 'Associations'. The most well-known is Part 5 'Work'. But also common in the County Court are Parts 4 'Premises' and Part 6 'Education'. But a Conservative Councillor alleged to make Islamophobic comments about a Muslim Labour London Mayor is not discriminating within any of those fields. As for Part 3 'Services and Public Functions', whilst Councillors provide a public service, I am not convinced they are a 'service provider' as a matter of law under s.29 EqA (at least in relation to social media posts) nor are they when posting 'exercising public functions'. It would be different if a Councillor made Islamophobic comments in a Council meeting about a fellow Councillor etc. Likewise, I cannot see how re-posting news about a Conservative Councillor being suspended for Islamophobic comments about Sadiq Khan was 'doing any thing for the purposes of or connection with' the EqA. Rather, he was making a political point consistent with the EqA: drawing attention to the serious issue of anti-Muslim invective in political life. It was not a protected act.
- (12) 10/06/18 "Pro Tory Facebook group filled with Islamophobic abuse" In the same way, this is not a protected act either. For the same reasons, it is drawing attention to a serious political issue, not 'doing anything for the purposes of or in connection with' the EqA under s.27(2)(c) EqA. Likewise, even if (re-)making an allegation of discrimination, it is again not discrimination prohibited by the EqA (unless that Facebook group qualified as an 'association' which was not suggested), so not within s.27(2)(d) EqA.

- (13) 06/08/18 “Boris Johnson faces criticisms over burka 'letter box' jibe”
- (14) 08/08/18 “Drop Johnson for burka remarks Tory peer”
- (15) 08/08/18 “Boris Johnson is standing by his comments that Muslim women who wear niqabs look like 'letterboxes' or 'bankrobbers'.”
- (16) 09/08/18 “May accused of staying silent on Islamophobia in Tory party”
- (17) 14/08/18 “Should Boris apologise for burka comments” I can deal with all these together because they all relate to the same issue and – once again – all of them were drawing attention to comments widely said to be Islamophobic about female Muslim dress by Boris Johnson, before he became Prime Minister. They were not ‘for the purposes of or connection

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Arif v Baker with’ the EqA under s.27(2)(c): not every public debate about race or religion will be. Nor were any of them actually ‘allegations’ under s.27(2)(d) EqA: they were social media posts reporting criticism of Boris Johnson for comments he accepted making, as reflected in re-post (15). Not every post which mentions ‘Islamophobia’ is a protected act. Indeed, as I have discussed repeatedly in this judgment, the word ‘Islamophobia’ is a convenient label for anti-Muslim discrimination which is far more subtle and insidious than any simple label can convey. These re-posts were not protected acts either. Improper or Fabricated Evidence

- 260. In the light of those observations and my earlier findings that evidence was not ‘fabricated’, I can deal briefly in the first sub-heading with issues 18 and 19:
- 18. Relying at the meeting of 24 October 2018 on evidence which did not form a proper basis for suspending the Claimant or removal of membership.
- 19. Relying at the meeting on 24 October 2018 on evidence which had been improperly obtained. The first allegation (via paragraph 41 of the Particulars of Claim) relates to the social media posts.
- 261. However, before that I address the second allegation (paragraph 42 of the Particulars of Claim) which contends the disciplinary statements attached to the letter of 8th October ‘had been improperly obtained by Mr Samra’. I can deal with this very shortly because I have rejected this allegation on the facts at length. Mr Khan’s statement was not included on 8th October. Those included were the 2017 appeal statements of Mr Matloob, Mr Ahmed, Mr Mahmood and Mr Mehboob. As I summarised at paragraph 243 from paragraphs 88, 106-108 and 113, whilst the statements of all but Mr Ahmed were inaccurate (and tellingly the other three at the disciplinary hearing all accepted they had not heard the Claimant say to vote Labour), Cllr Samra would not have known this and I find that remained the case in 2018.

262. Whilst I therefore dismiss the complaint at paragraph 51.19 of the Particulars of Claim, I should also briefly return to what I said at paragraph 244. On the assumption that the evidence of Mr Matloob, Mr Mahmood and Mr Mehboob was ‘fabricated’ but Mr Samra did not know that, I do not consider that any of the three witnesses were ‘agents’ of the Federation under s.109(2) EqA. As I explained at paragraph 124, whilst a principal can be liable even without knowledge or approval for an agent discriminating in the course of their authority (like the Federation’s officers such as Cllr Washbrook and Mr and later Cllr Samra), on common law principles (Kemeh/Anderson), members of an association merely becoming witnesses in a disciplinary (as opposed to conducting or hearing it) are plainly not its ‘agents’.
263. The complaint under paragraph 51.18 of the Particulars of Claim refers to paragraph 40 (addition of a disciplinary charge about the social media posts) and 42, but the latter (evidence allegedly improperly obtained) is clearly a typo for paragraph 41 of the Particulars of Claim:

## Judgment

Arif v Baker “The social media posts relied upon were attached to the letter of 8th October 2018 and consisted in large part...[of] press reports relating to allegations of Islamophobia within the Conservative Party. These social media posts were not capable of constituting a proper basis for expulsion...” The addition of a disciplinary charge in part related to the raising of political concerns about religious discrimination by members of a political party (even if not unlawful under the EqA) is plainly a ‘detriment’ from the perspective of a reasonable association member or applicant, if only because of the ‘chilling effect’ on free speech (see Higgs at [61]-[65]). Ms Reindorf put her case on discrimination/victimisation relating to that detriment three ways:

- (1) The first was that the Islamophobia posts were themselves protected acts under s.27(2) EqA. I have rejected that submission already.
- (2) The second (by reference to Ms Reindorf’s Skeleton Argument) was to argue that the Claimant’s ‘Islamophobia’ reposts were the manifestation of his Muslim faith, as discussed at paragraph 131 by reference to Higgs. However, in Higgs and Ali v Reason (2024) the issue was dismissal (of an employee in Higgs and the Deputy Leader of the Green Party in Ali) for ‘gender-critical beliefs’. Such beliefs were confirmed in Higgs to qualify potentially as a belief or the manifestation of one under s.10 EqA. However, the Claimant’s posts about Islamophobia in this case were posts about discrimination against Muslim people by members of the national Party, not about the Claimant’s faith or its manifestation itself. The present case is not like Higgs, or Bouganoui cited at paragraph 165 where a Muslim woman was dismissed as a customer complained about their headscarf. The Claimant was not manifesting his religious or philosophical beliefs in these posts, he was raising a real political concern about religious discrimination.

- (3) However, Ms Reindorf rightly did not argue the inclusion of the Islamophobia posts in the disciplinary charge was 'ordinary' direct religious (or race) discrimination. Applying the Nagarajan/Shamoon approach, the reason for the new disciplinary charge was not the Claimant's Muslim faith itself (still less his Pakistani-origins): a hypothetical non-Muslim comparator would have been someone criticising the national Conservative Party for some other religious discrimination (e.g. antisemitism), which is nothing to do with his race and 'properly separable' from faith (Higgs).
264. However, this raises the different question whether the Claimant's six 'Islamophobia posts' about the national Party ((11)-(17) discussed at paragraph 259 above) were 'properly separable' in Cllr Samra's mind from the Claimant's previous protected acts alleging 'Islamophobia' or anti-Muslim discrimination against the Walsall Party. That was Ms Reindorf's third point, based on the 'ordinary victimisation' claim made in paragraphs 41 and 51.18 of the Particulars of Claim. At paragraph 249(2), I found on the balance of probabilities that by 3rd October 2018, these six Islamophobia posts from June to August 2018 were connected in Cllr Samra's mind to the disciplinary allegation that the Claimant had called him a racist in 2016 and in turn to what I have now found were the Claimant's protected acts. Those were to the Walsall Party on 14th October 2015 and more importantly to the national Party on 9th November 2015, 6th June 2016, his appeal on 23rd September 2016 (when the Claimant said 'I will not be chased

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Arif v Baker out by a bunch of Islamophobes') and his solicitor's letter of 3rd January 2017. As Cllr Samra later said in April 2019 'the Claimant's sole basis has been 'Islamophobia' – Cllr Samra made no differentiation between 'protected acts' and some element 'properly separable' from them. This is not a case like Page where the dismissal was for the TV interview rather than the protected act during it. It is not a case for the 'separability principle' at all. Whilst I have found that none of the six 'Islamophobia re-posts' were themselves protected acts, Cllr Samra's inclusion of them in the disciplinary charge was in my judgment significantly influenced by earlier protected acts (Nagarajan), rather than 'properly separable' from them in Martin, Kong and Page. Even if the 'separability principle' could be engaged, as stressed in Martin, Kong and Page, it not a rule of law, but a way of establishing whether the real reason is separate from the protected act (or disclosure) or whether they are 'so closely connected with it that a distinction cannot sensibly and fairly be drawn'. The latter is the position here. Cllr Samra considered the Claimant's six Islamophobia re-posts were 'more of the same' as the protected acts and his inclusion of those re-posts in the disciplinary charge was significantly influenced by the Claimant's earlier protected acts and so was victimisation (Nagarajan). If I am wrong about that, in the absence of any other explanation, I plainly could conclude Cllr Samra's inclusion of the six 'Islamophobia' posts was significantly influenced by the Claimant's past protected acts (including alleging 'Islamophobia' against the Walsall Party) and the burden of proof shifts but is not discharged to show no significant influence (Igen) by Cllr Samra given I have rejected his evidence on how the posts came to be included. Either way, I uphold victimisation under

paragraph 51.18 of the Particulars of Claim. Re-starting/continuing disciplinary process despite the Claimant's pending appeal

265. I turn next to paragraphs 51.16 and 17 of the Particulars of Claim:

16. Convening a meeting on 24 October 2018 to consider suspending or refusing membership to the Claimant.
  17. Persisting in the meeting on 24 October notwithstanding the outcome of the Claimant's appeal against his previous expulsion had not been circulated. Paragraph 16 of the Particulars of Claim refers back to paragraph 39 of it, which relates to the notification to the Claimant by Cllr Samra on 8th October 2018 to re-institute the disciplinary process rather than waiting for the outcome of the Claimant's appeal. Paragraph 17 refers to the decision to proceed with the disciplinary on 24th October 2018 at the hearing taken by the disciplinary panel.
266. Counsel essentially focussed the allegation at 51.16 of the Particulars of Claim on the original decision to re-institute the disciplinary process, proposed by Cllr Samra and ratified by the Executive on 3rd October 2018 and communicated by him on 8th October 2018. The (undisputed) detriment is not the disciplinary process itself, but its expedition to render the Claimant's original appeal academic. Ms Reindorf did not really pursue any argument of direct race or religious discrimination. The obvious answer to that would again be Zafar and Shamoon: that as the ostensible reason for expedition was to render the appeal academic, a hypothetical comparator of a different faith or race would have been treated the same as the Claimant was.

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267. However, as there is no longer a comparator for victimisation (and even when there was, it was someone who had not done a protected act: Khan) the real issue is whether Cllr Samra and the Executive – even before the Claimant's solicitor's letter of 12th October 2018 and the national Party's request on 16th October 2018
- sought to render the appeal academic because the Claimant had previously done protected acts. I find that they clearly did victimise in that way, for three reasons:
- (1) Firstly, the Claimant's September 2016 appeal was itself a protected act, as found at paragraph 252(4). The Executive committee on 3rd October – consisting of regulars like Cllr Samra, Cllr Rasab, Mr Baker and Mr Sohal, along with Mr Hancox, were all well aware of the Claimant's appeal which they thought would be allowed on a technicality which they were evidently determined to avoid. That 'subjected the Claimant to a detriment because of a protected act': i.e. his appeal. It cannot be 'properly separable' on the Martin, Page and Kong approach to say that a deliberate decision to frustrate an impending successful appeal was not 'because of the appeal' and so 'because of a protected act' under s.27(1) EqA. The

protected act's outcome was directly causative of the decision. That is victimisation.

- (2) Secondly, the Executive consisted of several members who were well-aware of the Claimant's other past protected acts, including Cllr Rasab, Mr Sohal and Mr Baker who had specifically said (with whom the others evidently agreed) that the Claimant had 'circumvented the Federation at every opportunity, contrary to the Constitution of the Conservative Party'. Mr Baker did not explain in his statement or oral evidence what he meant by the Claimant 'circumventing the Federation'. The obvious inference, in the absence of any other explanation, was that Mr Baker was referring to the Claimant's complaints to the national Party about the Walsall Party – i.e. the protected acts. Therefore, the burden of proof shifts to the Defendants to explain the decision to proceed was not the protected acts or at least significantly influenced by them (Igen). Neither Mr Baker nor Cllr Rasab or Mr Sohal, still less Cllr Samra, explained that and so the claim succeeds on that basis in any event.
  - (3) Thirdly, even if I am wrong about that, whilst Cllr Samra did not vote on the motion to proceed before the appeal completed, he proposed it and once authorised, drafted the disciplinary charges (including those influenced by protected acts) on 8th October and arranged the meeting for 24th October 2018 before the Party Board meeting. Therefore, this is not simply a 'tainted information' case like Reynolds, but more like the situation Underhill LJ noted in Nagarajan where Lord Nicholls found where one agent of the association had victimised in making arrangements, even if others had not.
268. I turn to paragraph 51.17 of the Particulars of Claim: the decision on 24th October 2018 to proceed with the hearing that day before the appeal had concluded (and after the national Party had requested a pause on 12th October). As discussed at paragraph 118, the panel was chaired by Mr Sheath from Aldridge Brownhills and minuted again by Mr Richards and the local panel comprised: Cllr Rasab, Cllr Statham, Mr Baker (as President), Mr (Harry) Gandham, Mr Hancox, Mr Letts, Mrs Statham, Mr Sharpe, Mr Purewal, Mr Sohal and Mrs Flora. The first vote was framed as a resolution to adjourn consideration of the Claimant's membership of the Federation – not the national Party - until he sought renewal

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Arif v Baker of it. However, that motion did not carry in a secret ballot (clearly Mr Hancox voted to adjourn). This was clearly victimisation for these reasons:

- (1) The first point in paragraph 267(1) still applies: the decision was plainly significantly influenced by the objective of frustrating the effect of the Claimant's appeal which was itself a protected act, as several of the panel knew full well. It is unnecessary to show a majority knew because it suffices if victimisation is a significant influence, objective 'but for causation' is unnecessary (Khan/Deer).
- (2) The second point in paragraph 267(2) also still applies, not least as several of the panel, including Mr Baker, Mr Sohal and Mr Rasab, had made the decision to proceed on 3rd October and additional members on the panel included Mr Letts and Mr Gandham, who

were well-aware of the Claimant's protected acts. Indeed, whilst Mr Baker, Mr Letts and Mr Gandham had 'sat out' the 2016 expulsion as they had been involved in the approval process in Autumn 2015, none of them did in 2018. The combination of that, Mr Baker's comment on 3rd October 2018 and the fact that several members of the panel were well aware of the previous protected acts, would justify an inference of victimisation in the absence of any other explanation. In 2016, I found only one member of the panel was aware of protected acts – Mr Sohal, who was not influenced by them. By contrast, in 2018, the panel had several 'regulars' who knew all about the protected acts – both up to 2016 and since. As the Defendants and their witnesses did not satisfactorily explain any of this and given I have found several (save Mr Baker and to a lesser extent Mr Letts) essentially followed Mr Samra's lead, I find they have not discharged the burden of proof and so victimisation succeeds.

- (3) Indeed, linked to the point in paragraph 267(3), unlike in 2016, the whole panel (whether or not each member was previously aware), were also specifically told about a protected act – namely the Claimant's solicitor's letter of 12th October 2018; and about the national Party's request to pause the disciplinary; and were read Mr Samra's reply to that request, including this passage: "Mr Arif has continued to paint the Federation and more importantly the Party in a bad light and has been publicly claiming that he has been exonerated of any charges and therefore will be seeking legal retribution and damages. In light of this, the Executive... with the knowledge of the Board's decision need to act now before any legal proceedings are issued....[H]e should do the honourable thing and attend the meeting on the 24th, and further, he should cease and desists in bringing every issue to CCHQ." (my italics) As I said at paragraph 249(3), Cllr Samra was responding directly to the solicitor's letter of 12th October which I found at paragraph 253 was itself a protected act (or believed the Claimant may claim as a result of it). Whilst there was debate about it in the 2018 panel, all save Mr Hancox effectively adopted Cllr Samra's victimising view (or given it, the burden shifts without an explanation and has not been discharged).

269. However, whilst the motion in substance was to carry on with the disciplinary despite the pending appeal, its form was to refuse to 'adjourn consideration of the

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Arif v Baker motion to suspend membership of the Walsall Federation' until the Claimant 'sought renewal of membership of the Conservative Party'. That complicated label makes no difference to the substance of the decision which I have held to be victimisation, but it is relevant to the last set of allegations. At paragraphs 110- 112 and 118-119 above, I explained that on 8th October 2018, the Claimant's Appeal Panel had recommended to the Party Board (meeting in November) that: "The appeal be allowed and the Executive Council's decision of 30th June 2016 be set aside, with the consequence that Mr Arif's membership of the Party be re-instated." In response, the Executive had initially resolved on 3rd October 2018 to 'initiate proceedings again to ensure that Sch.7 is adhered to and documented' which was a reference to the requirements for a suspension or expulsion. However, Cllr Samra's disciplinary charge on 8th October proposed 'consideration of

suspension of membership' which was the motion the panel on 24th October voted (i) not to adjourn pending an application for membership; but (ii) to pass. In doing so, the Chair Mr Sneath (as explained at paragraph 119) noted the vote was in accordance with the national Party Constitution Sch.7[A] para 3.5 referring to 'suspension or termination of membership' or 'refusal of membership'. It was the latter which the panel resolved to do on 24th October, referring to a 'membership application being considered' and a compromise motion to 'refuse membership' for 5 years on the election charges and 3 years concurrent on the social media charges. However, Cllr Samra's letter of 31st October 2018 said the panel 'voted to refuse and/or suspend membership' but did not give any period for that 'refusal or suspension'. Nevertheless, it was and remains misleading to describe the panel as 'refusing membership' to the Claimant, because he had not applied for membership. He was waiting for the Party Board to adopt the Appeal Board recommendation that 'his membership of the Party be re-instated'. Whilst in isolation that might be thought to mean membership of the national Party, the Appeal Board did not leave in place the decision of 30th June 2016 insofar as it expelled the Claimant from the Federation, it proposed setting aside that decision which when the Party Board adopted it would reinstate the Claimant's membership of the national Party and the Federation. So, the disciplinary panel's motion to 'refuse membership to the Federation' was plainly intended to pre-empt the Party Board allowing the appeal by substituting a new decision which would prevent the Claimant's membership being reinstated. To all intents and purposes, that was a 're-expulsion', which is what I will call it. The decision and decision letter to re-expel the Claimant

270. That brings me to the final pair of allegations (issue 22 goes to time limits):

- 20. Deciding on 24 October 2018 to suspend or refuse membership to the Claimant.
- 21. Purporting to suspend or refuse membership to the Claimant by letter of 31 October 2018. Allegation 20 relates to the decision of the disciplinary panel on 24th October to purport to 'refuse membership' to the Claimant. Allegation 21 relates to the communication of the decision by Cllr Samra on 31st October.

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Arif v Baker

- 271. With allegation 20, I accept Cllr Samra only presented the disciplinary case and was not a participant in the decision on 24th October 2018 itself and so following Reynolds, my focus must be on the mental processes of the disciplinary panel, whom I listed at paragraph 268. Ms Reindorf did not press claims of direct race and religious discrimination in relation to the decision to 're-expel', rightly so, as I did not find the disciplinary charges were intrinsically directly discriminatory nor do I find any of those involved at an earlier stage directly discriminated. In the absence of Cllr Washbrook who had died earlier that year and with Cllr Samra not voting, I could not properly draw an inference that the reason for the re-expulsion was the Claimant's race or faith (as opposed to in part the Islamophobia posts which I have found political and 'properly separable' from his faith: Higgs). However, I find

it was significantly influenced by the Claimant's protected acts and so was victimisation for three alternative as well as cumulative reasons.

272. Firstly and most simply, as discussed at paragraphs 269 – 270, whilst framed as a decision to 'refuse membership', in practical terms this was a decision to 're- expel' and it was plainly 'because' of the Claimant's appeal (which was a protected act) – i.e. to prevent it re-instating his membership of the Federation. Therefore, the panel's decision – whatever its form – was clearly a 'detriment' 'because of' a 'protected act', so victimisation. The reason why the panel victimised the Claimant – i.e. that they found proved the disciplinary charges – is the motivation for the victimisation, which is immaterial as Lord Nicholls said in *Nagarajan* at [14]. Alternatively, even if it is material, it is not 'properly separable' from the protected act on the *Martin*, *Kong* or *Page* approach as stated at paragraph 267(1). This is not just a technical argument – it was clearly the attitude of several of the panel. As Mr Letts said in the hearing notes, 'everything had been done correctly [in 2016] except for one technical point' and various others expressed similar views. As Mr Gandham admitted in evidence, he thought that 'as the Claimant had not turned up, he had no answer to the allegations'. Whilst Mr Sohal had simply focussed on the disciplinary charge in 2016, he therefore had already reached his view on those charges and this time was 'going through the motions'. On the balance of probabilities there was pre-determination by several of the panel members (save Mr Hancox) and in the absence of any other explanation, I infer the objective of re-expulsion was to frustrate the appeal, which at least the key members of the panel and the Executive knew was also a protected act.
273. Secondly, even if I am wrong, whether or not all the panel did, I find Mr Baker, Mr Letts, Mr Sohal, Mr Gandham and Cllr Rasab were all aware of all the relevant protected acts and clearly significantly influenced by their negative view of them. After all, whilst all the witnesses confirmed they had not heard the Claimant saying vote Labour, all said they had heard the Claimant call Mr Samra racist. Whilst that is not a protected act, I found Mr Samra (paragraph 207(2)), Mr Letts (paragraph 206) and I would find the others I have named, thought that was 'just the sort of thing the Claimant would say' given his previous protected acts. Even Mr Sohal, who was not influenced by them in 2016, had by 2018 another two years and raft of new protected acts by the Claimant, including the appeal and unlike in 2016, protected acts (if not called such) were discussed at the 2018 hearing. Notably, Mr Gandham even asked Mr Mehboob if he thought the Claimant had been racist towards Mr Samra, which was not a disciplinary

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Arif v Baker charge. Tellingly, this echoed Cllr Washbrook's comment in 2017, quoted at paragraph 104: "The Executive remains extremely concerned that [the Claimant] continues to articulate a sectarian polemic and slanderous narrative of Islamophobia and racism, against the Party and membership, which will bring the Party into disrepute...[It is] racist, inflammatory and provokes sectarian conflict" In other words, Cllr Washbrook plainly thought the Claimant's

‘narrative of Islamophobia’ (i.e. his protected acts) was itself racist. Mr Gandham (who was on the same Executive at the time Cllr Washbrook said that) clearly took a similar view, which is why he asked Mr Mehboob the question he did. As Mr Beever pointed out, action taken because of a genuine belief in a racist remark is not ‘because of a protected act’ (Woods). But here, it was not just the accusation of calling Mr Samra racist which influenced Mr Gandham’s question. On balance of probabilities, I find it was significantly influenced by earlier protected acts. Likewise, whilst the ‘Islamophobia posts’ were not protected acts, as with Mr Samra (paragraph 249(2)), I find on balance of probabilities they were mentally associated with earlier protected acts by Mr Gandham, Mr Sohal, Cllr Rasab and Mr Letts (although Mr Baker was more independent). In 2016, Mr Sohal had been the only panel member who even knew about protected acts. In 2018, the panel had several people who knew all about them and all the panel were explicitly told of a recent one. Therefore, even if I am wrong to make positive findings on the balance of probabilities (Hewage), the burden of proof shifts to the Defendants, yet it was clear that, with the exception of Mr Baker, all of them effectively deferred to Cllr Samra’s view and so they do not on the balance of probabilities prove they were not significantly influenced by the Claimant’s protected acts, just as Cllr Samra clearly was. Therefore, I find the re-expulsion was victimisation.

274. In any event, I would find that the whole panel were significantly influenced by at least one protected act – namely the Claimant’s solicitor’s letter of 12th October 2018 warning of a discrimination or victimisation claim. All the panel had read to them Cllr Samra’s view that they ‘need to act now before any legal proceedings are issued’. Taken in combination with the Islamophobia posts, even though not technically protected acts, I find on the balance of probabilities that the whole panel – with the honourable exception of Mr Hancox - shared Cllr Samra’s view they needed to ‘re-expel’ the Claimant ‘properly’ before any discrimination claim about 2016. Even though Mr Baker had some independence of mind about the social media posts, he agreed they merited expulsion (albeit for a lesser period) concurrently with the 2016 disciplinary charges. It is clear from the notes that for the panel it was the accumulation of the social media posts, including the Islamophobia posts which I find were connected in the minds of all the panel with the Claimant’s warning of discrimination and victimisation proceedings and Mr Samra’s call to act now to pre-empt them. Therefore, I find positively each distinct expulsion decisions – especially that relating to the social media posts – was significantly influenced by the Claimant’s protected acts. Even if I am wrong about that, given all that, in the absence of an adequate explanation, the burden of proof on victimisation shifts (Bailey) and I find the Defendants have not proven on the balance of probabilities that their decision to expel – especially on the basis of the Islamophobia posts – was not significantly influenced by the Claimant’s protected acts (Igen). Victimisation can still succeed even if the outcome would

## Judgment

Arif v Baker have been the same (Deer). Here the outcome was plainly significantly influenced by the protected acts. On any one of these bases, I would uphold the claim of victimisation in paragraph 51.20 of the Particulars of Claim – the decision to ‘re- expel’ was victimisation.

275. I can deal with paragraph 51.21 of the Particulars of Claim very briefly, because as I said at paragraph 120, it was Cllr Samra’s decision to communicate the decision to re-expel by ‘suspension of membership’ indefinitely rather than for 5 years for the 2016 charges and 3 years concurrently for the social media posts as Mr Hancox proposed and the whole panel accepted (as noted at paragraph 119). Therefore, Cllr Samra materially increased the sanction from the panel’s decision, which is unquestionably a detriment. Given all the rest of my findings about Cllr Samra, especially at paragraph 249 given his apprehension of a discrimination claim, I do not need the burden of proof to make a positive finding on the balance of probabilities that Cllr Samra was significantly influenced by the Claimant’s past and apprehended future protected acts to decide to make it even more difficult for the Claimant to re-join the Walsall Party, as well as rendering his appeal academic. Therefore, I uphold the final complaint of victimisation in paragraph 51.21 of the Particulars of Claim. However, I dismiss that last complaint of direct race and religious discrimination. As I said at paragraph 207(3) of this judgment, whilst in Autumn 2015 (then) Mr Samra had cynically espoused racial and religiously-influenced views – without genuinely believing them – to align himself with Cllr Washbrook’s genuinely racially-and- religiously-framed perspective on the Claimant, they had no influence on him in the disciplinary processes in 2016 and 2018. However, the linkage between those processes and the earlier discrimination is key to the last issue: continuing act. Continuing Act

276. I discussed the law on ‘continuing acts’ at paragraphs 129-131 but for ease I repeat the key aspects. The claim on 30th April 2019 was just within the six month time limit under s.118(1) EqA of Cllr Samra’s ‘re-expulsion decision’ on 31st October 2018. Whilst all the earlier discrimination I have found occurred more than six months before the claim, Ms Reindorf submits they are a ‘continuing act’ under s.118(6)(a) EqA stating: ‘conduct extending over a period is to be treated as done at the end of the period’. In *Hendricks v CPM* [2003] IRLR 96 (CA), Mummery LJ said of the predecessor of s.118(6)(a) EqA that the claimant had to prove: “48....by direct evidence or by inference from primary facts, that the numerous alleged incidents of discrimination are linked to one another and that they are evidence of a continuing discriminatory state of affairs covered by the concept of ‘an act extending over a period’...”

52. [C]oncepts of policy, rule, practice, scheme or regime in the authorities were given as examples of when an act extends over a period. They should not be treated as a complete and constricting statement of the indicia of ‘an act extending over a period’...The question is whether th[ere] is ‘an act extending over a period’, as distinct from a succession of unconnected or isolated specific acts for which time....begin[s] to run from [each] date.”

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Arif v Baker In *Anderson v CAE* [2024] IRLR 465 at [41]-[42], EAT Judge Tayler re-iterated earlier comments that ‘conduct extending over a period’ can involve different types of prohibited conduct (e.g. a mixture of harassment and direct discrimination). However, it would be less likely if the acts relate to different protected characteristics and different prohibited conduct, although even then there is no absolute bar. In short, the more disparate the treatment, the more difficult to establish a ‘continuing act’. However, as I noted at paragraph 211, only unlawful acts form part of a continuing act: *Oxfordshire CC v Meade* (2015).

277. I turn first to the curious allegation 22 ‘maintaining refusal to admit the Claimant into membership’. This is not really a separate complaint, but a mechanism to extend time, or perhaps relevant to the application for an injunction, to which I return in a moment. However, there is a difference between an act (or ‘conduct’) ‘extending over a period’ and an ‘act with continuing consequences’: *Parr v MSR*

[2022] IRLR 528 (CA). Cllr Samra’s decision of 31st October 2018 – or indeed the disciplinary panel’s decision on 24th October 2018, was plainly an act with continuing consequences. However, that does not matter in relation to the 2018 disciplinary process because Mr Beever rightly accepted that what I am calling Topic 5: complaints 16-21 effectively all within October 2018, were part of a continuing act. Cllr Samra’s communication of the decision on 31st October was the culmination of the process Cllr Samra initiated on 3rd October. Therefore, the whole of Topic 5 is in time, but since I have dismissed complaint 15 (Topic 4), that cannot form part of a continuing act under s.118(6) EqA: *Meade*.

278. However, Mr Beever did contest that any of the complaints in ‘Topic 3’ (the disciplinary process in May/June 2016) formed part of a ‘continuing act’ with the process in 2018, especially because of the gap of over two years in unlawfulness. He argued there were different people involved, different claims and different issues. However, even aside from Ms Reindorf’s overarching submission of a ‘discriminatory campaign’ by Cllr Washbrook and Cllr Samra, I find the complaints I have upheld in Topic 3 form part of ‘conduct extending over a period’ with the complaints I have upheld from 2018. To re-iterate (though I list them below), on Topic 3, I have upheld complaints of victimisation 6 (Cllr Washbrook’s 20th June 2016 disciplinary letter having ‘determined’ the charges); 9 (Cllr Washbrook failing to provide the disciplinary statements with 14 days’ notice), 10 (Cllr Washbrook refusing to pause the disciplinary process at the national Party’s request); and 13 (Cllr Washbrook procuring the expulsion of the Claimant from the national Party not just the Walsall Party). In my judgment, they clearly form part of ‘conduct extending over a period’ with the 2018 conduct:

(1) Firstly - and most obviously - as (and partly why) I have explained at paragraph 269, the 2018 decision ‘to refuse membership’ was inextricably linked to the appeal against the 2016 decision to expel. In effect, because Cllr Samra, the Executive and the disciplinary panel knew the national Party would soon be setting aside the 2016 decision, the 2018 decision –

whatever its form - was intended in substance to replace the 2016 decision to ensure the Claimant 'stayed expelled' or was 're-expelled'. One act designed to replace an earlier one just about to be set aside is plainly a 'continuing act'.

- (2) Secondly, the conduct I have found unlawful in 2018 and 2016 is similar in other ways. At paragraph 116, I described a sense of 'déjà-vu' when on 16th

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Arif v Baker October 2018, Cllr Samra refused to pause the disciplinary process at the request of the national Party, just as Cllr Washbrook had done in June 2016. Moreover, one of the complaints I upheld in 2016 about failing to provide statements was why the appeal was to be upheld in 2018 which prompted the 2018 proceedings. I also upheld the complaint about expulsion in 2016 from the national Party and the Federation, which the 2018 're-expulsion' intended to preserve for the Federation despite the national Party's decision.

- (3) Thirdly, the prohibited conduct I have upheld in 2016 is the same as I have upheld in 2018: victimisation only; and in relation to a disciplinary process.
- (4) Fourthly, the subject matter of the two disciplinary proceedings was the same allegations from 2016 with some of the same witnesses. Whilst in 2018 Cllr Samra added the social media charges, I have found it was in response to protected acts, including the Claimant's appeal against the 2016 decision.
- (5) Finally, the key figure in 2018, Cllr Samra, was also central to 2016 (although I did not uphold a complaint against his own conduct). He initiated the 2018 proceedings in response to the impending successful appeal against the 2016 decision, he had 'taken over' defending from Cllr Washbrook. Moreover, Cllr Samra was the complainant in the charges in 2016. For all these reasons, independently and cumulatively, the allegations I have upheld in Topic 3 plainly form part of a 'continuing act' with those in 2018.
279. However, I recognise the allegations I have upheld from 2015: the conduct of the approval interview and refusal of approval on 28th September and appeal on 22nd October 2015 are further back in time still (with a further gap because I dismissed the complaints about the March 2016 selection meeting). On the face of it, they are not intrinsically linked to the 2016 and 2018 disciplinary proceedings and involve different prohibited conduct (i.e. including direct discrimination). Nevertheless, not without hesitation, even aside from any 'discriminatory campaign' (which is the only basis on which Mr Beever said I could find a continuing act to 2015), I nevertheless consider that the 2015 discrimination formed part of 'conduct extending over a period' with the 2016 and 2018 discrimination, for three reasons:
- (1) Firstly, there was a continuity of discriminators. I found in 2015 Mr Samra discriminated and victimised the Claimant in addition to Cllr Washbrook and indeed Mr Letts had also victimised the Claimant in October 2015 as I found he did alongside the rest of the panel in October 2018, in a minor way.

- (2) Secondly, there was a continuity of events. The main protected act related to the 2016 disciplinary process (inextricably linked to the 2018 disciplinary process as I said), was the Claimant's complaint of 9th November 2015 to the national Party, which led to the Roberts-Booth Report. On 7th June 2015, that report was blamed by Cllr Washbrook for contributing to the election defeat when victimising the Claimant by refusing to pause the disciplinary, as Cllr Samra would to in 2018, due to the appeal against the 2016 decision.
- (3) Thirdly, there was a continuity of prohibited conduct. As explained in Anderson, a continuing act can be comprised of different types of conduct. Here the victimisation related to protected acts complaining about the direct discrimination I have upheld. As Mummery LJ put it in Hendricks, this was

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Arif v Baker conduct 'extending over a period' rather than a succession of unconnected or isolated specific acts for which time....begin[s] to run from [each] date'. If I am wrong about that, I would certainly find the complaint of victimisation relating to the approval appeal in October 2015 was part of a continuing act with the later findings.

280. Whilst the Claimant set out to prove this was a 'discriminatory campaign' by Cllr Samra from beginning to end, as I have explained, that over-simplifies the case. Nevertheless, I find this was a 'policy' in the sense in Hendricks, initiated by Cllr Washbrook in September 2015 to replace the Claimant with Mr Samra who aligned themselves, clearly linked to the conduct in 2016, leading to the conduct in 2018. To that extent, it was part of one continuing act to exclude the Claimant. Summary and Way Forward

281. I summarise my findings of discrimination and victimisation:

1. The conduct of the approval interview on 28 September 2015. Race and Religious Direct Discrimination upheld.
2. Declining to approve the Claimant as a candidate in September 2015. Race and Religious Direct Discrimination upheld.
3. Refusing to allow the appeal against non-approval on 22 October 2015. Race and Religious Direct Discrimination and Victimisation upheld.
4. Making arrangements prejudicial to the Claimant for the selection meeting on 31 March 2016. Dismissed
5. Conducting the selection meeting on 31 March 2016 in a manner prejudicial to the Claimant. Dismissed
6. Accusing the Claimant orally on or around 29 April 2016 and by letter dated 20 June 2016 of campaigning against the Party. Victimisation only upheld.

7. Failing to inform the Claimant he was under disciplinary investigation at any stage prior to the conclusion of the investigation. Dismissed
8. Failing to interview the Claimant in connection with the disciplinary investigation. Dismissed
9. Failing properly or at all to inform the Claimant of the allegations against him in May-June 2016. Victimisation only upheld.
10. Refusing in June 2016 to suspend the disciplinary investigation and hearing on the instructions of the national Party pending an investigation. Victimisation only upheld.
11. Failing to give the Claimant a fair hearing at the disciplinary meeting on 30 June 2016.

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12. Fabricating evidence for the disciplinary meeting on 30 June 2016. Dismissed
13. Purporting to expel the Claimant from membership of the Federation and the Party on 30 June 2016. Victimisation only upheld.
14. Failing to give reasons for the Claimant's expulsion. Dismissed
15. Relying on fabricated evidence at the appeal hearings on 9 November 2017 and 13 September 2018. Dismissed
16. Convening a meeting on 24 October 2018 to consider suspending or refusing membership to the Claimant. Victimisation only upheld.
17. Persisting in holding the meeting on 24 October 2018 notwithstanding the outcome of the Claimant's appeal against his previous expulsion had not been circulated. Victimisation only upheld.
18. Relying at the meeting of 24 October 2018 on evidence which did not form a proper basis for suspending the Claimant or removal of membership. Victimisation only upheld.
19. Relying at the meeting on 24 October 2018 on evidence which had been improperly obtained. Dismissed
20. Deciding on 24 October 2018 to suspend or refuse membership to the Claimant. Victimisation only upheld.
21. Purporting to suspend or refuse membership to the Claimant by letter of 31 October 2018. Victimisation only upheld.
22. Maintaining its refusal to readmit the Claimant into membership. Dismissed

282. In terms of remedies, the Claimant is entitled to a declaration that his claim succeeds to this extent for the reasons stated in this judgment. Indeed, should he wish, he is also entitled to a declaration that he did not campaign at the 2016 election against Mr Samra as I have found, so contributory fault falls away. His claim for financial loss, which Ms Reindorf accepted stood or fell with Topic 2, is dismissed (and would have been problematic in any event as explained at paragraph 200). At trial, it was agreed I would need further submissions on whether to grant an injunction after the parties had digested my judgment. Since I have upheld the claim in part, in my view the same is true of submissions on injury to feelings, since I have only upheld part of the Claimant's overall allegations.

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283. I have now listed a consequential hearing for 8th May 2026 – the day after the local election in Walsall – to consider the issue of an injunction, injury to feelings and costs. Doubtless on all three topics, the Defendants will submit that the fact that I have only upheld part of the Claimant's case is highly relevant. However, it will be for the parties to address me about that. I have not been asked to make any directions about evidence, but it may be of assistance to have brief statements from the Claimant and one on behalf of the Defendants to be exchanged 21 days before the hearing, although I do not insist upon that, nor am I envisaging hearing live evidence at that hearing. I have also adjourned the issue of any applications for permission to appeal to that hearing as well.

284. Nevertheless, I would hope that the run-up to the May election would focus the parties' minds on putting their old grievances behind them and I would still hope that settlement of the few remaining issues may still be reached without the need for that further hearing. However, that is in the hands of the parties and not myself.

285. I am very grateful to Counsel (and the solicitors that instruct them) for their hard work and skilful and helpful advocacy in this difficult and sensitive case which has required this very long judgment. I hope that by publishing it, that some of the pitfalls fallen into in this case may be avoided in future discrimination disputes within political parties.

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