IN THE EMPLOYMENT TRIBUNAL NBF2-SX2J

B E T W E E N

JON HOLBROOK

Claimant

and

(1) TOM COSGROVE QC
(2) PHILIP COPPEL QC
(3) JAMES FINDLAY QC
(4) RANJIT BHOSE QC
(5) HARRIET TOWNSEND
(6) RYAN KOHLI
(7) ROBIN GREEN
(8) WAYNE BEGLAN
(9) ROB WILLIAMS
(10) ASHLEY BOWES

Respondents

Amended STATEMENT OF CASE

This claim is explained under the following headings:

1. The Claimant is a barrister who was called to the bar in 1991 and thereafter had a full time practice until 2021. He was a member and tenant of Cornerstone Barristers (Cornerstone) from July 2006 until 1 February 2021.

2. The Respondents are members and tenants of Cornerstone. Ms Clare Bello is, and has been since 18 July 2019, Cornerstone's Chief Executive Officer (CEO). In January 2021

they were all members of the Management Board of Cornerstone Barristers. The 1st and 2nd Respondents are, and have been since 2020, joint Heads of Chambers. The 7th Respondent is, and has been since 2020, Cornerstone's Equality and Diversity Officer.

3. The claim is brought against each Respondent as representatives of all members of Cornerstone, an unincorporated association, and as individual members of Cornerstone.

4. Under the Equality Act 2010 the relationship between the Claimant and the Respondents was governed by s47(2):

> A barrister (A) must not discriminate against a person (B) who is a … tenant –
> (a) as to the terms on which B is a … tenant;
> …
> (d) by subjecting B to pressure to leave chambers;
> (e) by subjecting B to any other detriment.

1. Summary: the need for a legal remedy

5. On Friday 22 January 2021 the Claimant left Cornerstone having finished a set of instructions which he sent to a solicitor by email at 7.20pm. It had been a week like any other: full, long and hard but rewarding and worthwhile.

6. The Claimant left Cornerstone that Friday evening knowing that he had a full diary for the following week but unknown to him at the time, that email of 7.20pm contained the last piece of work he would ever send from his Cornerstone email account. The following day, Saturday, at 4.36pm Cornerstone issued a public statement repudiating the Claimant's political beliefs with the implication that unless renounced (by deleting a tweet 'immediately and permanently') he would be subject to a detriment (as Cornerstone was 'undertaking an urgent internal investigation'). The clear implication of that public statement was that the Claimant had posted a tweet that undermined Cornerstone's 'record as a diverse chambers, which promotes social mobility at the Bar' and which demonstrated a Neanderthal view of 'equality, diversity and tolerance'. This was a gross distortion of the political beliefs that the Claimant had posted in a tweet. It turbo-charged the Claimant's political opponents to put pressure on Cornerstone to subject the Claimant to a greater detriment.

7. Cornerstone's public statement forced the Claimant to choose between renouncing his political beliefs and renouncing his Cornerstone membership. The former would have destroyed the Claimant's moral integrity and his political reputation as a champion of conservative causes. He therefore tendered his resignation on Wednesday 27 January. Worse was to follow as Cornerstone acted with political malice in order to satiate the appetites of those who wanted revenge for the Claimant's expression of non-woke beliefs. Accordingly, Cornerstone did not accept the Claimant's terms of resignation (waiver of six months' notice to avoid a considerable and unjustified windfall to Cornerstone from the Claimant's continuing financial contributions) and proceeded to expel him on Sunday 31 January. The effect of expulsion was materially the same as the offered terms of resignation, namely an immediate cessation of the Claimant's expenses. (The Claimant voted for his own expulsion in order to secure this just financial outcome.) But expulsion was politically spiteful.

8. At the time, the Claimant did not believe he had a legal remedy against Cornerstone because the first instance decision in *Forstater* had effectively ruled that his non-woke views were 'not worthy of respect in a democracy' (a widely held understanding of the law that persisted until 10 June 2021). Accordingly, he took his case into the political sphere by writing articles and publishing his letters aimed at drawing attention to how cancel culture was undermining British democracy by muzzling centre-right beliefs and causing political debate to be skewed. He argued that the one diversity that the bien pensant will not tolerate is a diversity of political beliefs: one has to be either woke or muzzled in order to be accepted in polite society. Indeed, the Claimant published one article on 12 February 2021 asking: '*Is the Bar a left-wing club?*'

9. Belief is protected under the Equality Act in the same way as race, sex, sexuality and gender. Belief discrimination is outlawed and is put on the same legal footing as racial etc. discrimination. There is no defence to victimisation under s27 or direct discrimination under s13. Accordingly, the fact that Cornerstone came under pressure from those of a certain political persuasion (for want of a better description 'the woke') to act against the Claimant for expressing his political beliefs is no different to how a barristers' chambers may have come under pressure decades ago to act against a black barrister because of his race. The pressures on a commercial organisation then and now may be strong but the law is there as a corrective. This case highlights its importance:

for without the law, as now interpreted by *Forstater*, barristers, other professionals and workers in general are in peril if they express conservative beliefs.

10. Racism and belief discrimination (cancellation) are different but equally repugnant. Racism is prejudice on racial grounds, cancellation is tyranny on political grounds. Just as a person should not be discriminated against for skin colour so he should not be discriminated against for expressing political beliefs, so long as they are worthy of respect in a democracy i.e. expressions that are not: the gravest form of hate speech, inciting violence, or antithetical to the European Convention on Human Rights such as Nazism or totalitarianism (*Forstater* §82).

11. Belief discrimination challenges the framework of democracy for it seeks to deny the public's right to hear views that challenge the mainstream. Unless and until it is widely recognised that belief discrimination is unlawful the practitioners of cancel culture will continue to get away with cancelling rather than criticising, denouncing rather than debating and expelling rather than engaging. When belief discrimination is widely accepted as unlawful, cancel culture will end and robust public debate can be resumed.

2. The Claimant's conservative beliefs

12. The Claimant is a social conservative in the manner of the late Professor Sir Roger Scruton and in particular he is a critic of identity politics. Accordingly, he believes in the importance of nation, community and family and on finding ideas that members of society can share, whereas emphasising one's race, sex, sexuality and gender draws attention to characteristics that are exclusive, rather than inclusive.

13. On the issue of race the Claimant supports the approach of Martin Luther King in believing that people should be judged by the content of their character, not the colour of their skin. Society should strive to be colour blind in the sense that race should never be the basis for different treatment. This belief stresses the importance of assimilation (the 'melting pot') over multiculturalism (the 'salad bowl'). The problem with 'multiculturalism' is that it results in multi mono-culturalism. The aspect of the Claimant's belief that is central to this claim is his opposition to identity politics and, in the sphere of race relations, his belief in the importance of assimilation, rather than its antithesis, multiculturalism.

14. The Claimant is a critic of the legal protection the Equality Act 2010 affords to race etc with its notion of 'indirect discrimination' which can require the majority to adapt to the practices of the minority. For example, the Claimant is a critic of the House of Lords decision in *Mandla v Dowell-Lee*, which applied the notion of indirect discrimination to find that a headteacher had discriminated against a Sikh with a school uniform rule that required short hair. The House of Lords overturned the Court of Appeal that had found in the school's favour after noting that the headteacher was against cultural practices that:

> would tend to accentuate those very religious and social distinctions which it is his desire to minimise in trying to effect a homogenous school community.
>
> *Mandla v Dowell Lee* [1983] 1 QB 1, 17G, CA

15. The beliefs outlined above sit within the conservative tradition of Sir Roger Scruton and can be traced to the views expressed by the Bradford headteacher Ray Honeyford in an article, *Education and Race – an Alternative View*, published in *The Salisbury Review*, under Scruton's editorship in 1984. Honeyford drew attention to a number of Asian factors, such as the desire 'to preserve as intact as possible the values and attitudes of the Indian sub continent'. And he concluded that 'these elements, far from helping to produce

harmony, are, in reality, operating to produce a sense of fragmentation and discord.' Honeyford also noted how the term 'racism':

> functions not as a word with which to create insight, but as a slogan designed to suppress constructive thought. It conflates prejudice and discrimination, and thereby denies a crucial conceptual distinction.

16. Twenty-two years later, *The Salisbury Review* said that it 'salutes Mr Honeyford's courage and intellectual integrity, which has been so clearly vindicated by recent events' and Honeyford's article was republished by the *Daily Telegraph* on 27 August 2006.

17. The Claimant had written regularly to criticise identity politics and the following are some of his published articles on race (in chronological order) from the website *Spiked*:

- *Yes, we should abolish workplace race laws* 18 March 2015
- *Tower Hamlets: the tyranny of fake 'anti-racism'* 29 April 2015
- *Ul Nasir: a case of victim-centred injustice* 22 Sept 2015
- *Racism is a spent force in British society* 11 Sept 2017
- *Enoch Powell was wrong – so were his critics* 17 April 2018
- *No, Oxford University is not racist* 29 May 2018
- *Dr Bawa-Garba was struck off because she was incompetent* 21 August 2018

3. The Claimant's conservative beliefs were widely known

18. The Claimant had been interested in politics for decades but after a period of relative political inactivity he began rewriting political articles in late 2010. He wrote regularly on a variety of themes (often on the interface of law and politics) and particularly on his belief that equality law and identity politics were flawed, as he argued in these early articles from the website *Spiked*:

- *In the courts, equality trumps tolerance* 18 Sept 2012
- *The tyranny of equality laws* 21 January 2013
- *'I have a bad dream': the fall of MLK's civil-rights ideal* 26 April 2013

He also wrote for the *New Law Journal*. For example, after various workers were disciplined for their 'non-conformist views' he wrote about 'a disturbing new tort of intolerance' (1 August 2013).

19. The Claimant's articles were widely read and in 2014 he was shortlisted by the legal publisher, Halsbury, for its Legal Journalism award.

20. The Claimant used Twitter to reach a wider audience for his beliefs. Nobody reading the Claimant's tweets could not know that they were expressions of his political belief. His Twitter profile (@JonHolb) always outlined the political nature of his tweets such as by describing him as: 'Barrister who tweets for Brexit & democracy', or, Barrister opposed to identity politics. It also linked to his author archive. By January 2021 it had for several months described him as:

> Barrister. For Democracy. Against identity politics. Halsbury Legal Journalism award, s/list. Rule of Law essay in "From Self to Selfie", 2019, £16.06 (Amazon). Views my own

21. Every member of Cornerstone, and it seems, even a 'potential pupil', knew of the Claimant's political beliefs. In particular, in June 2019, instigated by a Twitter pile-on, Cornerstone's then Head of Chambers, Philip Kolvin QC, took exception to some of the Claimant's tweets which he considered to be 'homophobic' and 'transphobic'. The Claimant defended himself with letters of 24 June and 7 July 2019, which he circulated to the Cornerstone Membership by email on 13 July 2019. The first letter asked (§13):

> is there a broader issue here in that it is fine for barristers to tweet as 'barristers' in favour of Remain, diversity politics and social liberalism (e.g. @JoloyonMaugham)

but not to tweet in favour of Brexit, our common humanity and social conservatism, as I do?

22. During the summer of 2019 the Claimant, in response to Mr Kolvin's concerns, spent a couple of days walking round Cornerstone and explaining his beliefs and listening to the views of other members. He managed to speak with about half the membership and of the Respondents he spoke with all of them except the 3rd, 5th, and 8th (unavailable). The conversation with the 6th Respondent happened a few weeks later. Of the Respondents, the 2nd and 10th Respondents were particularly supportive of the Claimant's free speech rights and the only Respondent who expressed concern at the Claimant's membership of Cornerstone was the 4th who claimed that if the Claimant continued to tweet in the same vein he 'might have to seek chambers elsewhere'.

23. On 12 October 2020 the Claimant was sacked by Brighton and Hove City Council (BHCC) from the *Ncube* case. The Council's principal solicitor told Cornerstone's senior clerk, Elliot Langdorf, that the Claimant had been sacked for the views he had expressed on Twitter and she stressed that the sacking had nothing to with the Claimant's handling of the *Ncube* case which she stated he had conducted 'with total professionalism'.

24. The Claimant discussed this issue with the 2nd Respondent and the CEO and stated that he intended to bring a belief discrimination claim against BHCC. He told the 2nd Respondent (the meeting in the Ashley Underwood room) that he was a conservative in the manner of Sir Roger Scruton. The 2nd Respondent explained how he had resolutely defended the Claimant's position before a clerk (or clerks) who were concerned at the financial impact on Cornerstone, as BHCC had threatened to divert work from Cornerstone. The 2nd Respondent helpfully advised the Claimant on how to deal with the issue. By this incident the Heads of Chambers (1st & 2nd Respondents), the CEO and clerks were reminded of the Claimant's conservative beliefs.

25. According to the Bar Standards Board Cornerstone received complaints about 17 other tweets posted by the Claimant for the period 25 March 2019 to 1 November 2020. All the complaints related to the Claimant's criticisms of identity politics, which would have put Cornerstone on notice that the Claimant was expressing political beliefs that were drawing the ire of his political opponents.

26. Other particular occasions causing Cornerstone barristers to know of the Claimant's political beliefs included:

a) In May 2018 the Claimant returned to Cornerstone after a 1-year period of sabbatical leave during which he had been writing a book critical of identity politics. Although the book was never finished he told many Cornerstone members and his clerks what he had been doing during this period of leave.

b) On 23 August 2018 the Claimant sent the 1st Respondent a link to his article (*This had nothing to do with racism*) about a doctor (Dr Bawa-Garba) who had, he claimed, used the accusation of 'racism' to overturn a decision by the High Court that she be struck-off, following a conviction and 2-year prison sentence for gross negligence manslaughter. He sent it to the 1st Respondent because of his professional interest in medical misconduct cases.

c) As noted above (§21), on 13 July 2019 the Claimant circulated 2 letters to all Cornerstone members. In response, he received supportive emails from Mark Lowe QC, Paul Shadarevian QC, James Findlay QC (3rd Respondent) and Richard Hanstock, although only the former circulated his support to all members. Philip Coppel QC (2nd Respondent) was supportive by telephone. Others were not supportive. For example, Lisa Busch QC emailed to say that freedom of speech is 'in the days of Twitter, rather exaggerated' and she claimed the Claimant had been tweeting 'racist, sexist, homophobic Tweets'. But whether supportive or not, these emails showed how members knew of the Claimant's political beliefs.

d) On 13 February 2020 a membership wide email noted how the recently appointed Attorney General, Suella Braverman MP, (a Cornerstone pupil in 2005-2006) had written about how she was 'the shy Tory in my Chambers of “right-on” human rights lawyers'. After some members joked dismissively about Ms Braverman the Claimant responded on 14 February:

> Fortunately, we're now a chambers that embraces diversity - of opinions.

4. The nature of the Claimant's tweet

27. The Supreme Court has noted how Twitter is a 'casual medium' that is 'in the nature of conversation rather than carefully chosen expression' (*Stocker v Stocker* [2019] UKSC 17, Lord Kerr. §43). It is also a medium that limits tweets to a maximum of 280 characters.

28. On 17 January 2021 the Claimant responded to a political video on Twitter posted by the Equality and Human Rights Commission (EHRC), which featured the case of a schoolgirl who had challenged her school uniform policy which had required her Afro hair 'to be of a reasonable size and length'. The EHRC tweet said:

> When Ruby was sent home because of her hair, she knew something was wrong. The Equality Act 2010 is clear, no one should face discrimination because of their race. Thank you Kate and Lenny Williams for sharing your family's story.

The EHRC saw this as a victory against racial discrimination. The Claimant saw it differently as a case that undermined school discipline in the face of a teenage schoolgirl being able to use her race to secure preferential treatment. In this regard the Claimant was aware of a number of other court cases where similar arguments had secured similar outcomes. He wrote about them in an article published on *The Conservative Woman* (*Should school uniform policy have to accommodate cultural sensitivities?*) on Monday 25 January 2021. This article set out the background to the Claimant's Equality Act tweet:

> The Equality Act undermines school discipline by empowering the stroppy teenager of colour.

i) The tweet was political, not personal

29. On Friday 22 January the Claimant's tweet ('the tweet') started to arouse controversy on the grounds it was 'racist'. The nature of the complaint showed that the tweet was being criticised for its political content. At all material times the Respondents knew, or should have known, that the tweet was a statement of political belief, rather than, as Cornerstone claims in its letter of 24 September 2021:

> It was open to Chambers to consider that [the Claimant's tweet] of 17 January demeaned or insulted a schoolgirl and thereby was in breach of Core Duty 5 requiring the maintenance of public confidence.

30. This attempt to portray the tweet as demeaning or insulting or generally as something that was a form of personal abuse, rather than a statement of political belief, is not supported by the facts:

a) The tweet was from a political account from the Claimant who regularly tweeted his opposition to aspects of identity or racialised politics.

b) The Claimant had never insulted or demeaned anyone with a tweet, which is why Twitter, prior to 25 January 2021, had never sanctioned the Claimant for any of his 15 thousand or so tweets (despite multiple attempts by the 'woke' to secure such an outcome). His tweets were always political in content, not personal.

c) The tweet was a response to a political message about racial discrimination, as the EHRC saw it, and how the Equality Act could be used to overcome this. The Claimant saw it differently as a case of race being used to secure a dispensation.

d) The Claimant's description of the then schoolgirl as being 'a stroppy teenager' was apt since she had defied her school uniform policy and hence been sent home on several occasions.

e) The Claimant's description of the then schoolgirl as being 'of colour' was apt since that was the basis on which (i) she made her legal claim and (ii) the EHRC featured her case.

f) The schoolgirl was, at the time of the tweet, 19 years of age and hence not a child. In any event, as a minor she had not sought anonymity and indeed she had sought publicity for her case.

31. The objective facts outlined above were readily clear to others and would or should have been clear to the Respondents:

a) On 22 January the Claimant told the 2nd Respondent by phone that the tweet was a challenge to various school uniform cases where the Equality Act had been used to secure preferential treatment on the grounds of race or culture. The Claimant

specifically referred to the case of the cornrows boy decided by Collins J (a point he then developed in the article published on 25 January by *The Conservative Woman*).

b) The 2nd Respondent recognised during that phone conversation with the Claimant that the complaint made by the mother of the former schoolgirl in the video was one of 'affected outrage'. The 2nd Respondent also told the Claimant that he shared many of the Claimant's criticisms of the Equality Act and that his only objection to the Equality Act tweet was 'the final two words, "of colour"'. He said that deleting this tweet would not impair the Claimant's ability to continue tweeting about 'issues you feel strongly about' (or words to that effect).

c) On 23 January the Claimant emailed the 2nd Respondent (prior to seeing his email that had been sent a few minutes earlier) stressing the political nature of the tweet by referring to:

- 'My tweet, critical of the Equality Act …'
- 'Some of these morons actually believe that if you criticise the Equality Act you should be driven from the Bar.'

d) On 23 January Twitter ruled that the tweet breached none of its rules.

e) On 25 January the Claimant set out in a memo to the Management Board the political nature of his tweet.

f) Cornerstone did not contact the woman in whose defence it claimed to be acting, 19 year old Ruby Williams. Nevertheless, on 1 February the teenager was reported in the *Guardian* as saying that 'she was not pleased about Holbrook's expulsion'.

g) Cornerstone should also have realised that Kate Williams (the mother of Ruby Williams) was grateful for the attention she was attracting. On 23 January, 8:04pm, she thanked the Claimant for 'highlighting what happened to my mixed race daughter' and on 30 January she retweeted a Sky News video interview with her daughter and asked 'how beautiful is Ruby! Any modelling work welcome … to pay her way through University'.

h) On 9 August the Bar Standards Board concluded that the tweet was a 'statement of personal political opinion on a piece of legislation' and was not intending to demean or insult another.

ii) The tweet was not 'racist/discriminatory'

32. The Respondents' alternative argument impliedly accepts the Claimant's contention that the tweet was a statement of protected political belief because 'racist/discriminatory ' expressions of belief are worthy of respect in a democracy unless they 'espouse violence and hatred in the gravest of forms', a threshold that the Claimant's tweet clearly did not cross.

33. In any event it is clear from Cornerstone's formulation of 'racism/discrimination' as set out in its email to the Claimant of 23 January and pre-action response of 24 September (p3, §3) that it has adopted the far left notion that racism arises when any cultural or racial attributes or differences are either criticised or not accommodated to by the majority. This approach:

a) Builds on the mistake noted by Ray Honeyford in 1984 of conflating prejudice and discrimination i.e. of seeing 'prejudice' where there is none by treating a desire for equal treatment (that Afro hair should conform to school rules) as inherently racist.

b) Compounds this mistake by contending that it is inherently racist to criticise the indirect discrimination provisions of the Equality Act (letter of 24 September, p3, §3).

34. The Respondents knew, or should have known, that the tweet was neither racist nor discriminatory (in any meaningful sense). The objective facts of and surrounding the tweet make such a contention absurd. Furthermore:

a) On 25 January the Claimant set out in a memo to the Management Board why the contention that his tweet was 'racist/discriminatory' was absurd.

b) On 2 February Melanie Phillips in *The Times* (*Vindictiveness of woke warriors knows no bar*) addressed the claim that the tweet was racist:

> Seriously? Holbrook was making the reasonable argument that schools should be entitled to set their own uniform policy without being required by law to accommodate cultural sensitivities, an issue that should instead be left to their discretion.
>
> His reference to Ruby as a teenager "of colour" was also reasonable, since she had won her case on the basis that the law gave her the "protected characteristic" of race.

c) On 5 February Zita Tulyahikayo and James Pereira QC in *The Lawyer* noted:

> Mr Holbrook's condemnation was swift, firm and public. Within two weeks of his tweet, he was out. People who may never have met him were happy to publicly shame him. There was no shortage of righteous judgement. But what was his offense?
>
> Was it the use of the term "of colour"? The acronyms POC (person of colour and BIPOC (black, indigenous and person of colour) are mainstream terms of expression in the field of racial awareness. Not everyone agrees on their acceptability, but that difference is tolerated. Black and minority groups use the term as a form of identity. Their use does not label the user a racist. There was no other obviously racially charged language in the tweet.

5. The Respondents' unlawful victimisation, s27

35. Under s27 of the Equality Act:

    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.

36. The Claimant did two protected acts in respect of which the Respondents victimised him.

Protected Act: Claimant alleged that BHCC had contravened the Equality Act

37. As noted above (§§ 23, 24), the Claimant was 'sacked' by Brighton and Hove City Council (BHCC) on Monday 12 October 2020. This was after he had successfully resisted an application for interim relief on 8 & 9 October made by Mr Ncube (*R(Ncube) v Brighton & Hove CC* [2020] EWHC 3646 (Admin)). Moreover, the Claimant was in the middle of doing more work for BHCC on the case as: (i) the judge gave a direction for a witness statement from Mr Ncube's solicitors, by 4pm on Monday 12 October, that could have resulted in a wasted costs application against Mr Ncube's lawyers, and (ii) on Friday 9 October 2020 Mr Ncube lodged an appeal and the Claimant gave written advice by email on Friday evening and Saturday 10 October at 14:13 on how to respond. Accordingly, BHCC's officers (who had observed the remote hearing) were most grateful for what the Claimant had achieved to date.

38. In response to being 'sacked' (the word used by BHCC's Principal Solicitor, Natasha Watson, in her letter to Cornerstone of 29 January 2021) the Claimant alleged that BHCC had contravened the Equality Act by de-instructing him due to his protected political beliefs ('the Protected Act'). The Claimant sought the support of his Heads of Chambers and the CEO to challenge his discriminatory treatment, whilst making it clear that other

members must *not* know of his treatment (because if they did, word would spread and he would regularly become, in his professional capacity, a target for the woke):

a) On Wednesday 14 October 2020 the Claimant emailed the CEO explaining that his sacking was particularly important in two respects:

   i) that the right to express political opinions must prevail over 'the pernicious "cancel culture" which is aimed at silencing those who do not hold woke ideas'; and

   ii) 'the administration of justice is undermined if clients cannot freely choose counsel who may offend Guardian journalists.'

   The Claimant asked the CEO to 'obtain from Elliot [Langdorf] a full statement of what he was told on Monday, so that I and Chambers can decide how to respond.'

b) On Thursday 15 October 2020 the Claimant emailed the 2nd Respondent and the CEO and explained that:

> 3. My concern is that unless I can establish that my sacking was wrong, legally & morally, I will be a sitting duck for woke campaigners who will seek to sack me each time I act in politically charged cases (which is quite often, because local authorities value the way I deal with them). Word of my sacking will spread quickly around legal aid lawyers. (This is why I have not raised it in Chambers save with you and Clare.)
>
> 4. As to the law, I have little doubt that Brighton's decision was unlawful under:
>
> …
>
> c. Equality Act 2010: because belief, such as the conservative views I have expressed, is a protected characteristic.
>
> 5. My concern, at this stage, is to ensure that Chambers takes this matter seriously and responds promptly. I trust that with the benefit of hindsight Elliot's view that "my concerns is with Chambers' reputation" has changed.
>
> …
>
> 8. After getting Elliot's statement can I please have a discussion with relevant parties on how Chambers should respond.

c) In an email of Friday 16 October 2020 the Claimant informed the 1st and 2nd Respondents and the CEO that he had been sacked 'because of my political beliefs' and he stated:

> Please be in no doubt about how seriously I view this grave abuse of my right to express my strongly held beliefs and that unless I secure appropriate redress I will become another victim of the left's cancel culture – which is intended to silence and drive from public life people like me who challenge their woke opinions.

> …
>
> Accordingly, I intend to serve Brighton & Hove Council with a JR pre-action protocol letter on Monday based on the three legal arguments outlined in the email below. I will be seeking the following redress: A public statement that my sacking was unlawful on the grounds that: … [my sacking] was contrary to the protection afforded to 'belief' under the Equality Act 2010.
>
> …
>
> I intend to keep this matter confidential (to the three recipients of this email and my legal advisors) …
>
> I will be corresponding on this matter with my Chambers' email and postal address & using Chambers' notepaper because this is a wrong that has happened to me in my professional capacity as a member of Chambers.
>
> Could you please let me know what redress Chambers will be seeking against Brighton for its breach of Chambers' Equality & Diversity policy that, as noted below, states "we do not accept instructions from solicitors who seek to select Council on a discriminatory basis." As you know, 'belief' is protected in the same way as race, sex, sexuality, religion etc - a point made in the Chambers' policy.

39. Because of the Claimant's Protected Act the Respondents subjected him to the detriments set out below in section 6. The necessary link between this Protected Act and the detriments arises from the following five factors.

i) BHCC harmed Cornerstone's income and reputation

40. In the immediate aftermath of the Claimant's sacking BHCC transferred the brief to a competitor chambers (39 Essex Street) and removed some work from Cornerstone. At about 5:15pm on Friday 5 February 2021, when the Claimant attended Cornerstone to collect a memory stick and post, Mr Langdorf told him that he thought BHCC had removed some work from Cornerstone in the aftermath of the sacking.

ii) Cornerstone sided with BHCC

41. On Monday 12 October 2020 Mr Langdorf told the Claimant, in the wake of his sacking, that "my concern is with Chambers' reputation". The Claimant registered his unease about this lack of concern for *his* rights in the aforesaid email of 15 October.

42. As noted above (§24), in the aftermath of the BHCC incident, the 2nd Respondent explained how he had resolutely defended the Claimant's position before a clerk (or

clerks) who were concerned at the financial impact on Cornerstone, as BHCC had threatened to divert work from Cornerstone.

iii) Cornerstone cast the Claimant adrift

43. Cornerstone did not accede to the Claimant's request for support. Indeed, on Monday 19 October 2020, after the Heads of Chambers and the CEO had discussed it, Cornerstone erected two artificial hurdles that ensured that support would not be forthcoming, as set out in the CEO's email of 19 October:

a) Cornerstone claimed that:

> As I am sure you know for "Chambers" to take a position on such a matter will, in the first instance, require consideration by the Management Board. Article 35 b in particular requires decisions relating to such matters are considered by the Board and taken in light of advice from E & D officers (Robin Green and Ruchi Parekh).

Article 35 is irrelevant as it empowers the Management Committee to delegate to the Heads of Chambers. It appears as if the reference in the email should have been to article 34(ii) but this relates to 'the monitoring and review of any adopted policies' whereas the Claimant asked for the *existing policy* to be *implemented*. The Heads of Chambers were empowered to implement the policy under article 27, including article 27(ix), which empowered them to perform duties laid upon them by the Code of Conduct (which has extensive equality and diversity duties under rC110). The CEO was also empowered to implement the existing policy (article 39(iii)). Cornerstone made informing the Management Board of the BHCC sacking a precondition of support because it knew the Claimant would decline to allow others to know of his sacking (see Claimant's email of 15 October, summarised at §37(b), above).

b) Cornerstone asserted that: 'any legal action you propose to take is undertaken entirely in a personal capacity.' This was absurd since the Claimant had been sacked in his professional capacity as a member of Cornerstone.

iv) A rift developed between the 2nd Respondent and others and pressure was put on him, to which he ultimately succumbed

44. As noted above (§24), in the aftermath of the Claimant's sacking, the 2nd Respondent told the Claimant (the meeting in the Ashley Underwood room) how he had resolutely defended the Claimant's position before a clerk (or clerks) who were concerned at the financial impact on Cornerstone, as BHCC had threatened to divert work from Cornerstone. At no stage during that conversation, or at any other time prior to Friday 22 January 2021, did the 2nd Respondent (or the 1st Respondent) complain to the Claimant or make any complaint about any of his tweets.

45. The 'helpful advice' the 2nd Respondent gave the Claimant (§24 above) during the meeting in the Ashley Underwood room, was on how he might like to develop an information rights practice so he could make himself a nuisance to BHCC and others who the Claimant believed had caused this problem, such as his opponent in the *Ncube* case (Josh Hitchens) and journalists at *The Guardian*. Accordingly:

a) on Friday 23 October 2020 the Claimant, on arriving at his desk in Cornerstone, saw a book given to him by the 2nd Respondent which was signed by him with a note inside:

> Dear Jon, Further to our discussion the other day, please accept this complimentary pre-publication copy of my book [*Information Rights: A practitioner's guide* …, 5th edn] …. With my best wishes, Philip

b) on Saturday 16 January 2021 the Claimant emailed his Heads of Chambers to draw their attention to how his opponent in the *Ncube* case, Josh Hitchens, was 'keen to harass those who don't share his opinions'. On Sunday 17 January 2021 the 2nd Respondent emailed a reply saying 'Tosh from Josh'. The 1st Respondent did not respond.

46. However, despite the helpful advice tendered in the Ashley Underwood room the 2nd Respondent was clear that his support for the Claimant was not shared by majority opinion within Cornerstone, which is why the 2nd Respondent advised the Claimant that any proceedings he brought against BHCC should be in his own name and from his own address, rather than on Chambers' notepaper etc. The 2nd Respondent seemed to recognise

that this was wrong in principle - as the breach of the Claimant's rights had accrued in his professional capacity as a member of Cornerstone - so he said: 'Why risk antagonising other members of Chambers?' Because the Claimant welcomed the 2nd Respondent's support and advice he then wrote to BHCC using his private contact details and stating that this was because 'Nobody from Chambers can speak on my behalf or indeed accept responsibility for what I did or do in a non-Chambers capacity' (email of 19 October 2020). In particular the Claimant, using personal contact details:

a) on 19 October, exercised his right to a statement of reasons for the sacking (Local Government Act 1988, s20), and

b) on 14 November, served a judicial review pre-action protocol letter arising from the non-provision of these reasons.

47. The significance of the rift between the 2nd Respondent and others within Cornerstone only started to become clear to the Claimant when the 2nd Respondent phoned the Claimant late on Friday 22 January 2021. At an early stage of the conversation the 2nd Respondent, said, or words to the effect of: Jon, since the Brighton incident I have defended your right to tweet but that position is not shared by all and I am coming under pressure from others due to the commercial risk you're posing to Chambers.

v) In January 2021 BHCC intensified its threats to Cornerstone

48. On 29 January 2021 Cornerstone received a formal letter of complaint from BHCC's principal solicitor, Natasha Watson, which stated that it could be used in Cornerstone's investigation into the Claimant's Equality Act tweet. This letter noted or claimed, inter alia:

a) how the Council had previously (October 2020) 'queried whether we should ever instruct Cornerstone Chambers again';

b) its incredulity at the Claimant's threatened legal action ~~(the Protected Act)~~,

c) that BHCC's contractual relationship was with Cornerstone, rather than the Claimant;

d) that had it not been for pressure of work BHCC would have drawn the Claimant's 'outrageously unprofessional conduct ~~[the Protected Act]~~ to your attention sooner', in other words independently of the furore over the Claimant's Equality Act tweet;

e) that Cornerstone had wrongly (in BHCC's opinion) put out a legal update, on 15 January 2021, drawing attention to the legal principles established in the *Ncube* case.

6. The Respondents' unlawful discrimination (s13)

49. Under s13(1) of the Equality Act direct discrimination on the grounds of philosophical belief is outlawed:

> 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.

50. Over a period of ten days and subsequently the Respondents engaged in eight acts of unlawful discrimination and harassment in that each act treated the Claimant less favourably than they would have treated a member with mainstream political views or a member who did not espouse conservative beliefs such as ones that challenged identity politics, multiculturalism and 'woke' ideas.

i) 22 Jan, 8.45pm, Friday evening phone conversation

51. The 2nd Respondent asked the Claimant to take down the tweet and this was less favourable treatment.

ii) 23 Jan, 9:43am, Saturday morning email

52. In an email the 1st and 2nd Respondents treated the Claimant less favourably by:

a) Claiming he had breached section 3 of Cornerstone's Social Media Policy - but by failing to state any way in which it had been breached. (The Claimant denied this in his Monday memo of 25 January.)

b) Asking him to remove his 'tweet immediately and permanently'.

iii) 23 Jan, 4:36pm, Saturday's public statement

55. Cornerstone made a public statement on Twitter (and on LinkedIn), which was repeated on Cornerstone's website on Monday 25 January. This statement constituted less favourable treatment because:

a) It expressly challenged the merit and worth of the Claimant's political belief.

b) It implied that 'the views of Cornerstone Barristers' were better than the Claimant's, whose views were impliedly disreputable.

c) It implied that unless the Claimant deleted the tweet he would be subject to a detriment.

iv) 26 Jan, Tuesday memo

56. The 1st and 2nd Respondents, with the authority of the Management Board, wrote to the Claimant on 26 January and subjected him to less favourable treatment in that they:

a) Mischaracterised the school uniform tweet as 'denigrating and/or insulting', making 'a personal and offensive allegation' and as being 'designed to demean or insult' so as to undermine public confidence in the bar, and as being 'in fact racist'.

b) Asked the Claimant to 'remove the tweet and to make a proper apology for the offence it has caused both on Twitter and in writing to the Williams family'.

c) Informed the Claimant that the Board considered it necessary for the Cornerstone membership to consider his expulsion.

d) Generally denigrated the Claimant's right to express his political beliefs.

v) Rejection of the Claimant's resignation

57. Cornerstone declined to accept the Claimant's constructive resignation as it wanted to expel him so as to satiate the appetites of those who wanted revenge for the Claimant's expression of non-woke beliefs.

vi) 31 Jan, Sunday Chambers' Meeting

58. Cornerstone held a Chambers' Meeting on Sunday 31 January that passed a resolution to expel the Claimant at 00.01 hours on Monday 1 February 2021.

vii) 31 Jan, Sunday statement

59. Cornerstone made a public statement (including on: Twitter, LinkedIn, its own website and to the *Guardian* and other media via its consultants, Kysen PR) which treated the Claimant less favourably by challenging the merit and worth of the Claimant's:

a) political belief by mischaracterising the tweet so as to describe it as 'particularly offensive' and as having unspecified insinuations that needed to be 'unequivocally condemned'

b) social media 'statements' (plural). (The Claimant had not been asked by the Board about any other statements during this ten day period.)

7. The Respondents' unlawful harassment (s26)

63. The conduct outlined above also constituted harassment as defined by s26(1) of the Equality Act 2010:

> A person (A) harasses another (B) if—
>
> (a) A engages in unwanted conduct related to a relevant protected characteristic, and
>
> (b) the conduct has the purpose or effect of -
>
> i) violating B's dignity, or
>
> ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

64. The conduct outlined above was unwanted, it was related to the Claimant's political beliefs and it had the purpose or effect of creating a hostile etc environment for the Claimant. Indeed, the Respondents' acts were so intimidating and hostile etc that they resulted in the Claimant's resignation when he realised that he could no longer remain a member of Cornerstone.

65. Despite the Claimant's resignation the Respondents would not accept the proposed terms and proceed to seek his expulsion on identical terms. Accordingly, the Respondents acted with political malice and spite in order to satiate the appetites of those who wanted revenge for the Claimant's expression of non-woke beliefs. This was a gross form of harassment.

8. Cornerstone's social media policy

66. Cornerstone's social media policy could not turn unlawful discrimination or harassment into lawful conduct. It could no more do this to belief discrimination than a policy could do it to racism. Furthermore, s47(2)(a) of the Equality Act outlaws a policy that seeks to make belief discrimination lawful.

67. In any event the Claimant did not breach Cornerstone's social media policy, as alleged in the pre-action response of 24 September (p8):

a) The policy distinguishes between the barrister who identifies himself 'as a member of Cornerstone Barristers' and the barrister who does not. Only the former are obliged not to publish 'any material or content which may damage Chambers' reputation or interests' (§3). Despite claims to the contrary in the letter of 24 September this reputational harm point did not apply to those who could merely be identified as a member of Cornerstone (a test that would embrace every member who could be so identified with a simple google search). The Claimant went to considerable lengths to ensure that he did not identify himself as a member of Cornerstone Barristers:

i) The Claimant's articles and introductions at conferences or speaking events never mentioned Cornerstone, a point remembered and remarked on recently by Joshua Rozenberg, *Must lawyers meet higher standards?* 27 August 2021:

> [Holbrook] had a separate Twitter account for chambers-related tweets. Because he wanted to keep his professional work separate, he even asked me some years ago not to use his chambers email address when writing to him about his personal campaigns.

ii) The Claimant operated two Twitter accounts: one for professional purposes (@JonHCornerstone) that identified him as a member of Cornerstone and which used the Cornerstone logo and Cornerstone photograph of him, and one for political purposes (@JonHolb) that did not mention Cornerstone and which used a different photograph and which, since July 2019, stated that the views were the Claimant's own.

iii) When Cornerstone reviewed its social media policy in July 2018 the 1st Respondent told another member, Asitha Ranatunga, that any chambers devising a social media policy would want to model it on the way the Claimant operated his two Twitter accounts.

iv) The Claimant identified himself as a 'barrister' on his political account because many of the issues he wrote and tweeted about were concerned with the politics of law. It was relevant to the Claimant's readers and followers that he had a particular kind of professional knowledge and insight.

b) As to the policy's deeming provision of section 3, which triggers the right to request that a post is taken down:

i) It could not be invoked in circumstances where the Claimant had patently not breached the relevant trigger of publishing 'hate speech' namely 'abusive or threatening speech or writing that expresses prejudice against a particular group, especially on the basis of race, religion or sexual orientation'.

ii) Since every expression of belief involves an act of 'discrimination' (i.e. judgment) the Claimant did not breach any meaningful interpretation of the obligation not to publish something that was 'discriminatory', as he explained in his memo to the Board of 25 January.

iii) It only meant that action may be taken under the Constitution, it did not outline that any particular action would be taken.

68. Cornerstone is being highly selective with its claim that the Claimant breached its social media policy. In respect of the 17 other tweets about which individuals apparently complained between 25 March 2019 and 1 November 2020 only one or two of them were ever drawn to the Claimant's attention and that was by Philip Kolvin in June 2019. Cornerstone never showed the Claimant any of the complaints that were allegedly made and the Claimant only knew they existed when so informed by the Bar Standards Board on 12 April 2021.

9. Causation

69. But for the discrimination and harassment outlined above the Claimant would have remained as a member and tenant of Cornerstone with a full-time practice.

70. In his resignation letter of 27 January the Claimant referred to various factors that had triggered his resignation but three factors were central and they were each caused by unlawful discrimination.

a) The Claimant's sacking by BHCC. On 7 October 2020 this Council instructed the Claimant to resist an application for a High Court injunction by an overstaying migrant who was not allowed access to public funds. The Judge dismissed the application, as the Council had sought, but an hour or so later the Claimant was warned of an impending sacking after a *Guardian* journalist had drawn the Council's attention to some of his tweets. The journalist had stated:

> My name is Molly Blackall, I'm a journalist working predominantly at the Guardian. I've been made aware of some tweets by a barrister, named Jon Holbrook, who I believe has been instructed by the council on a 'no recourse to public funds' case. The tweets appear to have strongly anti-immigrant rhetoric and arguably racist undertones, and as the nature of the case is to do with provisions for immigrants, there has been some alarm about the appropriateness of his hiring.

As the Claimant noted in his resignation letter this meant that with all future cases he was now 'but one Guardian email away from being sacked' a situation that was 'not fair on my clients'.

b) The Claimant referred to the fact that 'it has in any event become clear that it is not possible to practise at the bar as a member of any chambers unless one is either a Guardian-reading liberal or is prepared to say nothing to challenge their agenda'.

c) The Claimant was in the middle of an almighty storm caused by Cornerstone's unlawful conduct and in respect of which he did not want the woke mob to realise that it had secured a scalp. Accordingly, the Claimant was doing what he could to make a virtue out of necessity. In fact when *RT* re-published on 5 February the Claimant's article from *The Critic*, it, at the Claimant's request, deleted the sentence that read 'The woke mob on Twitter have not succeeded with their attempted

cancellation' as the Claimant was by then candid enough to realise that they had succeeded.

71. The reality is that without legal protection each of the above three factors showed that the Claimant could not continue to practise from Cornerstone, unless he ceased expressing his political beliefs. Under the Equality Act the Claimant's situation was no different from the circumstance that could have afflicted a black man in a racist society: without a law making it clear that less favourable treatment due to belief or race etc, discrimination will persist. The challenge for society today is to address this problem so that those who challenge mainstream beliefs are not hounded out of their professions, jobs and polite society in general by those who would rather denounce than debate.

Jon Holbrook

30th September 2021 and amended with permission given in an order of 15th February 2022.

Appendix: the just and equitable issue of time

Relevant legal framework.

i) Delay is an issue of limitation, not jurisdiction

72. Time limits created by the Equality Act 2010, s123, are issues of limitation, not jurisdiction. The situation is different under the Employment Rights Act, s111(2), and similarly worded legislation, but only because of the language which establishes that: a tribunal 'shall not consider' a claim of unfair dismissal unless it is lodged in time (see *Radakovits v Abbey National PLC* [2009] EWCA Civ 1346, §16). The point is confirmed in *Dunn v Parole Board* [2008] EWCA Civ 374, §20 which was concerned with wording in the Human Rights Act 1998, s7, which is materially the same as in the Equality Act 2010, ss120 & 123, namely: 'Proceedings on a complaint within section 120 may not be brought after the end of the period of 3 months …'.

73. Accordingly, the Claimant does not need permission to plead that it is 'just and equitable ' to allow this claim to be brought. Alternatively he seeks permission to amend to rely on the points below. Moreover, for the reasons below it would be just and equitable to allow this claim to be brought.

ii) Time did not start to run until 12 March 2021

74. Under the first 7 allegations of detriment time started to run on 1 February 2021, the day of expulsion (the effective date of termination). However, due to the 8th allegation of detriment the Claimant was subject to a course of conduct that did not end until 12 March 2021, when Cornerstone acted on its complaint to the BSB of 27 January by submitting images of the 17 tweets that it had asked the BSB to investigate.

75. On this basis, the primary limitation period required proceedings to be issued by 11 June 2021.

iii) The wide ambit of the just and equitable jurisdiction

76. Parliament has given the employment tribunal the widest possible discretion with the power to extend time for 'such other period as the employment tribunal thinks just and equitable' (*Abertawe Bro v Morgan* [2018] EWCA Civ 640, §18). The discretion is broader than in the Limitation Act 1980, s33 (*Adedeji v University Hospitals* [2021] EWCA Civ 23 §§37, 38). And in *Adedeji* Underhill LJ warned that a:

> rigid adherence to a checklist can lead to a mechanistic approach to what is meant to be a very broad general discretion, and confusion may also occur where a tribunal refers to a genuinely relevant factor but uses inappropriate *Keeble*-derived language.

Relevant factual framework

i) The nature of Cornerstone

77. Cornerstone and chambers generally are not like other workplaces: the barristers are self-employed and most are busy and are focussed on doing their own work. The typical employer-employee culture does not pertain to barristers. Disputes of the sort arising in this case are almost unheard of at the bar.

ii) The Claimant's practice

78. In 1991/92 when the Claimant was mostly a pupil he did about half a dozen 'industrial' tribunal cases for the Free Representation Unit. To the best of his recollection all but one of them settled either at or before the hearing. Over the next 29 years he had almost no employment law experience, save when TUPE issues would very occasionally impact on his practice.

79. The Claimant's practice was mostly in public law, housing and social welfare law. Accordingly, he was familiar with Equality Act concepts such as discrimination (in the context of service provision) and the public sector equality duty of s149 but he had never had to consider equality law in the context of an employment dispute.

iii) Cornerstone's haste and its impact on the Claimant

80. Starting late on Friday 22 January 2021, Cornerstone acted with such speed that the Claimant was forced to choose between his practice and his right to speak freely, within about 24 hours. Within 10 days he was expelled. Prior to the Claimant's constructive resignation, tendered by email at 10.42am on Wednesday 27 January, the only Respondent who had spoken to the Claimant was the 2nd Respondent (for about 20 minutes late on Friday 22 January, whilst the Claimant was in a supermarket). Although the Claimant was in Chambers on Monday 25 January this was during lockdown and the only members who the Claimant was able to discuss this issue with were Richard Ground QC and Michael Bedford QC. The former said words to the effect of: 'well I hope you can sort something out' and the latter was unsympathetic on the grounds that he and others (he claimed) were concerned at the financial impact of this issue on Cornerstone. At 10pm on Wednesday 27 January the 2nd Respondent called the Claimant. This was in response to the Claimant's text ('Is it too late for a quick chat?') and they briefly discussed the Claimant's proposed terms of resignation. The 2nd Respondent was sympathetic to the terms but said that he felt as if he was 'running a creche'.

81. On Thursday 28 January the Claimant was in Chambers hoping to find Board members to discuss the terms of his resignation with. He had a ½-hour or so conversation with the 1st Respondent. He then phoned the 6th Respondent who referred to the Management Board needing some 'red meat' and how in 'this day and age you have to pick a side to avoid being tarred with a brush'. He said the issue was being seen as a 'black and white' one. The Claimant asked who on the Board he could speak to about the terms of his resignation and he was told that the 4th Respondent (who the Claimant had known for 30 years and considered to be a good friend) was 'very angry' and might refuse to speak to him. (The Claimant phoned him and left a message asking him to call him back, but he did not.) The Claimant believes that he also called the 7th and 10th Respondents but is not sure if he left messages, as he realised it was probably pointless to do so.

82. This was a traumatic event for the Claimant which left him in a state of shock and of having to do the best he could in difficult circumstances. He resolved to try and turn adversity into an opportunity. It was fairly clear that the Claimant would soon face a BSB investigation (which the BSB confirmed on 12 April) which the Claimant feared could

have resulted in his disbarment. In the aftermath of his expulsion the Claimant was focussed on dealing with that impending (and then actual) challenge in respect of which he knew he could rely in law on his human right of free speech, as the BSB, unlike Cornerstone, was a public body.

iv) Cornerstone effectively outsourced its investigation to the Bar Standards Board

83. Any investigation that Cornerstone carried out into the Claimant's tweet(s) was at best rudimentary and at worst it was one that failed the most elementary principles of fairness and natural justice. Cornerstone effectively pinned the legal and moral justification for its conduct on the fact that, in its view, the Equality Act tweet and 17 others were so egregious that a summary expulsion was the only appropriate sanction.

84. And since Chambers reported these 18 tweets to the BSB, for it to carry out the sort of investigation that it had failed to conduct, Chambers effectively outsourced the legal and moral justification for its conduct to the BSB. The Equality Act states that 'conduct extending over a period is to be treated as done at the end of the periods' (s123(3)) - so as to delay the date for triggering the start of the 3-month primary limitation period. But this is not apt to cover a situation where a chain of events initiated by X (Cornerstone) is outsourced to and continued by Y (the BSB).

85. However, the chain of events initiated by Cornerstone continued to subject the Claimant to a significant detriment, in the form of a BSB inquiry into 18 of his tweets. Accordingly, the fact that the Claimant waited for a BSB decision before giving serious consideration to bringing a claim against Cornerstone is highly relevant to the court's exercise of its just and equitable discretion. It is akin to delay caused by a claimant invoking an internal grievance or disciplinary appeal procedure prior to commencing proceedings, something that is a relevant factor (*Apelogun-Gabriels v Lambeth LBC* [2001] EWCA Civ 1853). And for reasons explained below (the need to avoid being disbarred or sanctioned by the BSB), the desirability of waiting for a BSB decision was a particularly weighty factor in this case.

86. It is against this background that the Claimant relies on the following 6 factors as to why it would be just and equitable to allow his claim of 30 September to be brought even

though the primary limitation period ended on 11 June (or 30 April without the course of conduct point).

1. Throughout the short delay there were good reasons for it

i) The reason for the initial delay: *Forstater*

87. The Claimant was aware of the first instance decision in *Forstater* (18 December 2019), indeed he wrote an article about it that was published by *Spiked* on 23 December: *Maya Forstater: a champion of democracy*. The Claimant knew that on the basis of *Forstater* (at first instance) any claim he issued for belief discrimination would almost certainly be dismissed on the grounds that his beliefs were not 'worthy of respect in a democracy' (the 5th Grainger test). Plainly, if Maya Forstater's belief in challenging transgender politics failed the 5th Grainger test then the claimant's belief in challenging politics relating to race, sex, sexuality and transgender would also fail it.

88. The Claimant's understanding of the law was why he:

a) Wrote to BHCC in October and November 2020 but based his challenge only on provisions in the Local Government Act 1988 (which he ultimately concluded would not succeed).

b) Did not raise or rely on an Equality Act argument in his 33-page submission to the Bar Standards Board of 4 May 2021, defending himself against the complaint set in motion by Cornerstone. This submission focussed on freedom of expression under article 10 of the ECHR and the common law.

89. During the cancellation process the Claimant relied on professional advice from three sources, none of which suggested that the Claimant had a Equality Act claim:

a) He sought and obtained legal advice on Tuesday 26 January which focussed on the issue of libel, in respect of which counsel (Nicholas Leviseur at 3 Paper Buildings) advised that there was no realistic claim. Counsel advised that the BSB was 'the forum for a defence'.

b) He liaised regularly with the Free Speech Union's (FSU) chief legal counsel, Bryn Harris.

c) Via the FSU the Claimant discussed his circumstances informally with counsel, Paul Diamond, who has much experience of fighting free speech cases.

90. Accordingly, the Claimant had a compelling reason for not issuing a complaint until after the EAT gave judgment in *Forstater* on 10 June 2021. Developing case law on the merit

of a claim is a material factor (*R(D) v Metropolitan Police Commissioner* [2012] EWHC 309, Eady J, §11 and *Foster v South Glamorgan Health Authority* [1988] IRLR 277). *A fortiori*, appellate case law that appears to turn an 'unprotected belief' into a protected one is highly material.

ii) The reason for the delay after 10 June: BSB investigation

91. The BSB notified the Claimant that it was investigating his tweets on 12 April and the Claimant submitted his 33-page response on 4 May. On 5 July the BSB told him that it would be considered by a panel on 2 August. He was focussed on that outcome which he hoped (as transpired) would exonerate him for the tweet that had triggered his expulsion. Although he knew from news reports that *Forstater* had been overturned he did not consider the judgment as he was expecting a BSB decision shortly and did not want to make further submissions which would or may have postponed the BSB's decision.

92. As the Claimant's submission to the BSB made clear: the complaint that Cornerstone initiated could result in 'disbarment, namely stripping me of my status as a barrister'. The Claimant knew that if the BSB impaired his ability to speak freely on political issues then he would quickly become a serial offender (his political opponents would guarantee it) and disbarment would be likely.

93. If the BSB had disbarred the Claimant then his claim for lost earnings against Cornerstone would fail, indeed his claim may have failed in its entirely. It would not have been proportionate for the Claimant to have issued his claim in circumstances where his expulsion would effectively have been upheld by the BSB and he would have no claim against the Respondents whatsoever. Accordingly, the delay until receiving the BSB decision on 9 August was sensible and prudent. Further, the Claimant was not an employment lawyer, had not practised any employment law for 29 years and did not know of the unusually short time-frames that applied in cases of this nature.

iii) Claimant acted promptly after the BSB decision of 9 August

94. The BSB decision of 9 August concluded that the Claimant had not committed professional misconduct with regards to any of the 18 tweets that Cornerstone had referred to it. However, it imposed an 'administrative sanction' in respect of one of these tweets, which the Claimant had 28-days to appeal. He submitted his appeal on 5 September (after liaising with the BSB to secure disclosure of relevant documents and other matters). Having read and considered the *Forstater* EAT decision for this purpose the Claimant's appeal put the Equality Act defence at the front and centre of his 12-page submissions (whereas he had not mentioned an Equality Act defence in his 33-page submissions of 4 May).

95. Whilst preparing this BSB appeal the Claimant realised that *Forstater* had changed the legal landscape to such an extent that he now concluded that he had a good claim against Cornerstone for unlawful belief discrimination. In haste he contacted a solicitor (Tilbrooks), who he knew did employment claims, on 23 August.

iv) Tilbrooks did *not* advise the Claimant to issue a claim promptly

96. The modest delay between 23 August (contacting a solicitor) and issuing a claim (30 September) was because Tilbrooks did not advise the Claimant to issue a claim promptly. Tilbrooks were of the opinion that the claim would be in the civil court (s114) and hence that the primary limitation period was 6 months (s118). Tilbrooks advised the Claimant that since the primary limitation had recently passed it was important to serve a letter before action promptly, as that would effectively stop the clock.

97. Without delay the Claimant drafted the 13-page pre-action letter and emailed it to Tilbrooks on 25 August. It was reasonable to serve a letter before action as (a) that put Cornerstone on notice of an impending claim, and (b) enabled the parties to address issues. Indeed, Cornerstone's solicitors raised three issues on 17 September (which the Claimant, through Tilbrooks, addressed immediately on Monday 20 September). These exchanges helped the Claimant to focus on the relevant issues.

98. Cornerstone's solicitors did not raise the issue of limitation in their correspondence of 17 or 24 September or at any time before filing their ET3 on 12 November 2021.

99. At an early stage the Claimant was concerned about the advice he was getting from his solicitor and on 26 August he instructed Tilbrooks to arrange a conference with counsel. Tilbrooks did not act on this instruction until 7 September when they sought fee quotes by letter (not telephone) from various clerks in different chambers. Ultimately, a conference took place with counsel on 29 September and the detailed claim (18 pages) was submitted the next day.

2. The evidence did not lose cogency due to the short delay

100. Cornerstone had notice of the Claimant's intention to issue a claim on 27 August, a mere 5½ months since the 8th detriment ended (& 7 months since the expulsion). This delay - 2½ months more than is allowed under the primary limitation period - could not materially have caused the evidence to lose cogency. This delay should be compared to the inevitable delay that attends any case of this nature before it can be determined. This case is set to conclude at a final hearing in December 2022, 23 months after the relevant events.

101. Regarding the cogency of evidence:

a) The essential facts should not be in dispute and are well documented.

b) The Claimant's expulsion was high-profile (reported in *The Times*, *Guardian*, *Daily Mail*, *Sun* etc) and attracted much press commentary. It was unprecedented both within Cornerstone and at the bar. Recollections will not have faded materially during the 2½ months of delay. Indeed, it is clear that Cornerstone was still exercised by what had happened as it commissioned a Reputation Management Plan that was provided by Kysen on 25 February 2021. Moreover, there was continuing contact between the CEO and Mrs Williams on 10 May and 29 August, regarding the Claimant's published articles in the *Critic* magazine and *The Conservative Woman* (regarding the BSB decision of 9 August).

c) Throughout the 2½ months of delay Cornerstone retained a material interest in the outcome of the BSB proceedings, which it had initiated on 27 January 2021 and for which it supplied further information on 12 March. The BSB proceedings resulted in a determination on 2 August, but which Cornerstone may not have known about until the end of August (when the Claimant published an article about it on 25 August). Moreover, since the Claimant appealed that determination the BSB proceedings remained live at all times up to and beyond the issue of this claim. Cornerstone and its members were also under a continuing professional duty to assist the BSB with its investigation and all regulatory functions (rC64).

d) Cornerstone's barristers were under a regulatory duty to take reasonable steps to ensure that their 'chambers is administered competently and efficiently' (BSB Handbook, rC89). Under its constitution the Heads of Chambers and the Management Committee held a particular responsibility for Cornerstone's management, including the keeping of appropriate records.

e) Cornerstone's barristers must have know that a legal claim was a possibility. Indeed on 25 February 2021 the PR company (Kysen), commissioned by Cornerstone to deal with this issue, submitted its Reputation Management Plan which stated that 'It may seem unlikely, but it is possible that Holbrook may threaten to litigate against Chambers.'

f) As noted below, Cornerstone could be sued in contract on substantially the same basis as in this claim at any time within 6 years. Accordingly, if it or any member did delete relevant information (as the 2nd Respondent may claim regarding his own records, given his response of 11 January 2022 to a data subject access request) then that would have been foolhardy and possibly a breach of rC89.

102. In any event any 'forensic prejudice' resulting from the short delay is likely to affect the Claimant just as much as it affects Cornerstone Barristers (see *Southwark LBC v Afolabi* [2003] EWCA Civ 15 where the court found that a 9-year delay would be equally prejudicial to both parties).

3. The Employment Tribunal is the appropriate forum

103. As noted above, it would have been foolhardy (and possibly a breach of BSB rule c89) for Chambers or their members to have destroyed relevant evidence in this case, because a legal claim could still be brought for breach of contract within a primary limitation period of 6 years. The basis for any such claim being that:

a) Under the Constitution membership of Cornerstone obliged members to 'adhere to the [BSB] Code of Conduct and to any policy that has been adopted by the Management Committee' (§46). Furthermore, members were obliged to comply 'with all approved policies and procedures of Chambers' (§50).

b) Accordingly the allegations of victimisation, unlawful discrimination and harassment in this case amount to contractual breaches of the Constitution because unlawful discrimination etc on grounds of belief is outlawed by:
   i) the BSB Code of Conduct (rule c12),
   ii) Cornerstone's Equality and Diversity Policy of October 2019 (§§2, 8, 31).

104. In other words Cornerstone had a Constitution and policy that effectively turned the anti-discrimination provisions of the Equality Act 2010 into contractual obligations. However, it would be neither just nor equitable to deploy this as an argument against extending time given that:

a) Parliament has determined that disputes of this nature involving discrimination against barristers should ordinarily be determined by the Employment Tribunal, which has considerable experience and expertise in dealing with such matters.

b) There is an inequality of arms in this case in which one barrister, with no current earned income due to the Respondents' (unlawful) acts, is being opposed by 58 barristers with (mostly) substantial incomes. This inequality is mitigated by the no-costs jurisdiction of the Employment Tribunal.

c) Any such contract claim under the Constitution would have to be determined by an agreed arbitrator (§85). This would not be in the public interest given that it would:

i) not be in public,

ii) be more expensive,

iii) deprive the Claimant of the Tribunal's no-costs jurisdiction,

iv) appear to be slanted in favour of Cornerstone as the arbitrator:

> shall be appointed on terms that he will uphold any decision of members in Chambers Meeting which if implemented would neither be a breach of the Code of Conduct nor contrary to the provisions of this Constitution. (§85(ii))

v) give rise to additional and time consuming arguments over the precise effect of applying Equality Act provisions via the BSB Code of Conduct, Cornerstone's Equality and Diversity Policy and Cornerstone's constitution.

4. The potential merits

105. Without expecting the Tribunal to engage in a detailed consideration of the merits of the claim it ought to be clear that the substantive merit of the claim is considerable. This is a relevant factor (*Rathakrishnan v Pizza Express Ltd* [2016] IRLR 278, EAT).

5. The importance of the claim to the Claimant

106. Issues of unlawful discrimination are serious and are of the utmost importance for the Claimant because:

a) His 30 year career at the bar - which saw him top-ranked for housing and public law and for which he had an unblemished professional record - was ended in the space of 10 days with an expulsion for public consumption.

b) Although he hopes to return to the bar his reputation and earnings potential have been irreparably harmed by Cornerstone's conduct. These continuing harms will be attenuated by a ruling in his favour in this case.

c) His lost income is considerable, as he intended to work full-time as a barrister for another 12 years, until he was 70, after which he may have continued to work part-time. These would have been the most profitable years of the Claimant's working life. Quantum of likely damages is relevant to extending time (*A v Essex CC* [2010] UKSC 33, §90).

6. The broader importance of the claim

107. Cornerstone claims that it 'and its members take equality and diversity seriously' (Grounds of Resistance §12). The Claimant contends that Cornerstone and its members have failed to appreciate the equality that the law affords to those with beliefs that challenge mainstream opinion. The workplace should be a place where citizens can express a diversity of political beliefs just as they should be inhabited by a diversity of races etc.

108. This case highlights the considerable force that can be wielded by those who disagree with the political beliefs of others. This is a serious problem for a democracy which is premised on every citizen being free to express his beliefs and to engage in political debate. The Claimant's treatment by his then colleagues was egregious and this case gives the tribunal an opportunity to rule, post *Forstater*, that those who seek to silence others for political reasons will be acting unlawfully. This is a case where a strata of society needs to feel and appreciate the full ambit and force of the law. Justice, democracy and the rule of law require that this case be heard by the Tribunal.

7th February 2022