



Neutral Citation Number: [2018] EWHC 184 (QB)

Case No: HQ14X03469

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 07/02/2018

**Before :**

**THE HONOURABLE MR JUSTICE FOSKETT**

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**Between :**

**FAIZ SIDDIQUI**

**Claimant**

**- and -**

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**THE CHANCELLOR, MASTERS & SCHOLARS  
OF THE UNIVERSITY OF OXFORD**

**Defendant**

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**Roger Mallalieu (instructed by Dale Langley Solicitors) for the Claimant**  
**Julian Milford (instructed by Bevan Brittan LLP) for the Defendant**

Hearing dates: 21-24, 27-28 November and 1 December

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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## Mr Justice Foskett :

### Introduction

1. The word “gobbet” does not generally evoke a pleasant picture or a comfortable feeling.
2. Shakespeare’s use of the word demonstrates at least one context in which it has appeared over the years. In Henry VI, Part 2, the young Clifford, on observing the dead body of his father, killed by the Duke of York, vows as follows:

“Meet I an infant of the house of York,

Into as many gobbets will I cut it

As wild Medea young Absyrtus did;

In cruelty will I seek out my fame.”

3. The word has, however, been adapted for use in the academic world. Many university students of literature, history, philosophy, theology and other similar subjects will have answered “gobbets questions” or taken “gobbets papers” as part of their undergraduate degree course.
4. It is the gobbets paper in a Special Subject taken by a group of Modern History students at Oxford University in their final undergraduate year in 1999/2000 that lies at the heart of this case. The Special Subject course was entitled “India, 1916—1934: Indigenous Politics and Imperial Control” (which will be called ‘the ISS’ for short in this judgment). Each student chose the ISS because of its particular interest to them. It covered the influence of Gandhi and the civil disobedience campaigns in India and the British responses thereto during the early twentieth century, and was a popular subject amongst students. It was known internally as ‘Special Subject 19’ (or SS 19), paper ‘A’ being the gobbets paper and paper ‘B’ being the essays paper.
5. The Claimant, who was at Brasenose College, was one of those students. He obtained a poor result in that paper (affecting, he contends, the level of his degree) which in these proceedings he attributes (i) to negligently inadequate teaching (teaching which also breached the relevant standard of care in the contract between the Defendant and him to provide teaching to him in his chosen subject) and (ii) to the failure of his personal tutor to convey information concerning his illnesses to the authorities responsible for making reasonable adjustments and for moderating his results. He also alleges that the University should have restricted the numbers taking the ISS to 8 (rather than the cap of 16) so that the negligently inadequate teaching would not have been provided. He alleges that his poor result has had a marked deleterious effect on his subsequent career and upon his continuing health.
6. The University of Oxford (‘the Defendant’) rejects all aspects of the case he advances and says, in any event, that it is far too late to bring such a claim.
7. The Defendant tried to have the claim dismissed at an earlier stage on the basis that there were no reasonable prospects of success, but that application was rejected by

Kerr J in December 2016: [2016] EWHC 3150 (QB). The hearing before me was the trial of the action.

8. That, in a nutshell, is what the case is about. Considerably more detail will be required in its resolution. Since the gobbets paper of the ISS is so fundamental to the case being advanced, I will start with a more detailed appraisal of what a gobbets paper is, what was involved in the particular gobbets paper with which this case is concerned and how it sat with the other elements of the undergraduate degree for which these students were studying at the time.

### **The ISS gobbets paper**

9. The Bachelor of Arts degree in Modern History at Oxford University is awarded on the basis of the results in 7 finals examinations taken in the final year of a 3-year course. Students could choose two papers in British History, one paper in General History, one paper in Comparative History and Historiography, one Special Subject (examined by way of two finals examination papers: a gobbets paper and an essay paper) and a Further Subject (examined by way of one finals paper). Although examinations take place at the end of the first year (Honours Moderations or ‘Mods’), only the results of the papers sat at the end of the final year count towards the student’s degree result. As indicated above, the ISS was one of the Special Subjects that undergraduates could choose to take.

10. Professor (then Dr) David Washbrook described the ISS gobbets paper in these terms in his first witness statement:

“... students are asked to comment on short selections of text from an agreed reading list (“gobbets”): what they are, where they come from, how they fit into the historical context etc.”

11. Professor Judith Brown, now retired but then the Beit Professor of Commonwealth History within the University and a Professorial Fellow of Balliol College, amplified this in her first witness statement as follows:

“A gobbet is an extract of text, which has been chosen to invite the student to reflect on an important issue and to test their knowledge of the document, its background and origins and its significance. The answer is not intended to be a mini essay but is intended to provide evidence of a different sort of historian’s skill on the part of the student. Students should address what the extract is, where it comes from, its context and significance.”

12. She went on to say this:

“I would normally expect an answer to a gobbet question to extend to three quarters of a page. Examiners would not choose obscure extracts but would try to offer the students opportunities to show their work on documents, often to complement and balance the more thematic essay examination paper.”

13. Her reference to “the more thematic essay examination paper” was a reference to the other part of the examination for the ISS, namely, the essays paper. Each candidate was expected to write 3 essays from a choice of 12 topics.

14. Professor Washbrook said this about the kind of answer expected for a gobbets question in the ISS course:

“A gobbet is a selection of text, which the students are asked to comment on. A high scoring answer to a gobbets question would generally involve a comment on the document itself - what it is, where it fits into the historical and political context, what it does and does not say and then an explanation as to why this is interesting.”

15. I will say something about the “reading list” to which Professor Washbrook referred below (see paragraph 17), but the gobbets paper taken by the Claimant and others during the afternoon of 8 June 2000 has been produced for the purposes of the trial. There were 4 questions to be completed in 3 hours and each question invited the student to comment on 3 out of 6 extracts from various sources. Those sources came from the reading list. It follows that to complete the paper it was necessary for a student to comment on 12 such extracts within the allotted period. This means that no more than 15 minutes per extract could sensibly be spent by the student. That indicates in itself the relative brevity required in commenting on each chosen extract.

16. Simply to illustrate the precise nature of what a gobbet is in the context of the ISS, the following are two randomly chosen examples from the paper that the Claimant and others took:

“In our view it is desirable, in order not only to carry out the spirit of the Declaration of August 1917, but to promote an increased feeling of camaraderie and equal sense of responsibility between British and Indian members of the Service, that a proportion of 50-50 in the cadre of the Indian Civil Service should be attained without undue delay and that the present rate of Indian recruitment should be accelerated with this object.”

(Report of the Royal Commission on the Superior Civil Service In India, 1924, Cmd. 2128)

“When I heard that you had called off the civil disobedience movement, I felt unhappy ... I was prepared to reconcile myself to the withdrawal of civil disobedience. But the reasons you gave for doing so and the suggestions you made for future work astounded me.”

(J. Nehru to M.K. Gandhi, 13 August 1934)

17. The reading (or set text) list that underpinned the ISS gobbets paper has also been put in evidence. It was divided into three parts: “Mainly personal material” (for example, extracts from the *Collected Works of Mahatma Gandhi*, *Selected works of Jawaharial*

*Nehru* and a section of *The Indian Struggle 1920-42* by S.C. Bose); “Mainly political material” (for example, various reports into disturbances and civil disobedience incidents and the record of certain meetings); and “Miscellaneous material” (for example, the *Census of India* in 1921 and 1931 and the Report of the *Royal Commission on Agriculture in India* 1928).

18. I was told that this list consists of over 260 documents and around 2,000 pages of primary source material. There were some practical difficulties in accessing all this material, but it was possible to obtain it since at least two of the students on the course obtained all the documents (see paragraphs 50 and 81 below).

19. I will say more about the overall structure of the ISS course below (see paragraphs 26 - 35), but the evidence is that the expectation was that the students would read all this source material. Professor Brown described the material in this way:

“7. The set texts list ... was published by the History Faculty in advance of the academic year and made available to students so that they knew the materials they would have to read and study during this course and in preparation for their examinations.

8. The set texts list for the India Special Subject was a comprehensive list of documents that students were expected to read and study for themselves in preparation for the classes, tutorials, college collections and ultimately the final University Examinations.”

20. She confirmed that the students were expected to read these documents in full in order to prepare themselves properly for the gobbets paper. She added this:

“We would not have covered the entirety of the material on the set reading list in the lectures, classes and tutorials. It would have been impossible to teach the course by reading through the texts line by line in class since they consisted of many pages and a major aspect of pedagogy at this stage in a degree course was for the students to read and study the materials themselves. The different styles of teaching (lectures, classes, and tutorials) were designed to guide the students towards the key issues in the subject and to the sources for study of these.”

21. I will return to the “different styles of teaching” below when dealing with how the course was delivered (see paragraph 27).

22. It is obvious that this kind of examination is different from the well-known essay-based examination. It plainly involves a somewhat different technique. Professor Brown said this:

“... answering a gobbets paper was not ... an exercise in writing mini essays and students needed to develop an extremely structured and methodical approach to gobbets. The documents classes were designed to prepare students for this

and to try to perfect an art form of a very distinctive kind which would allow them to demonstrate their abilities as historians. I would always advise my students to spend 2-3 minutes reading the document and 10 minutes writing. Each gobbet should really be no longer than three quarters of a page long.”

23. Professor Washbrook said this:

“It is not unusual for students to find gobbets a particular challenge because students are more used to essay writing, whereas with gobbets they are required to respond immediately to a passage presented to them. Sometimes a student will perform much better in a gobbets paper than in the rest of their examinations and sometimes they will perform significantly worse.”

24. He confirmed in his oral evidence that gobbets papers generally are “very testing” and “difficult”. There is some limited statistical support for that proposition in the fact that in the 1999/2000 academic year, 26% of the 290 or so students taking Special Subjects gobbets papers other than the ISS gobbets paper achieved their lowest or equal lowest mark in the gobbets paper. Professor Brown confirmed that students in 2000 would probably have been unfamiliar prior to coming to the University with gobbets-style questions or papers. Indeed, it was not merely the ISS course in 1999/2000 in which a high proportion of the students taking the Special Subject received their lowest or joint lowest mark as is revealed in the analysis undertaken by the Defendant, the results of which appear in Appendix A to this judgment and to which I referred earlier in this paragraph.

25. Professor Washbrook confirmed also that the ISS was a “difficult course”. I will return to that issue below (see paragraphs 27 – 29, 56, 59 and 60).

### **How the ISS was delivered ordinarily**

26. As already indicated (see paragraph 15 above), the gobbets paper in the academic year in question was taken on 8 June 2000. The essays paper was taken the following day. The essential tuition and study for these papers was undertaken in the 8-week Michaelmas Term in 1999. This was consistent with the pattern in previous (and indeed succeeding) years: the students ordinarily undertake no other work during that term, a term which is devoted to the Special Subject that each student chooses (the provision of which is apparently required by virtue of the University’s Statutes). Although, as will emerge below (see paragraphs 36 - 38), the precise circumstances in which the tuition was carried out in that year was somewhat different from other years, the essential structure of the course remained as it had usually been.

27. Over that 8-week period, the tuition would be delivered by means of a weekly documents class and supporting tutorials. Students doing the ISS also had weekly lectures. The need for the lectures was described by Professor Brown as follows:

“This was because students usually reached the final year of their History degrees with a more developed understanding of British and European History rather than wider world history,

and so we wanted to ensure that they had a good and broad grounding in the topic. It is fair to say that the Indian Special Subject was unusual in the sense that many of the students had no previous background in this area.”

28. She reinforced this in her oral evidence when she said that very few students would have studied any South Asian history earlier in their degree course or even previously.
29. Mr Roger Mallalieu, for the Claimant, has sought to characterise the need for the series of lectures as being to “address the inherent structural problems in this particular subject” which represented “a problematic course”. I will address that issue in due course (see paragraph 73 below), but, although Professor Washbrook has referred to “the structural limitations inherent in the course” (see paragraph 59 below), the Defendant, whilst accepting that it was a difficult course with issues peculiar to it, rejects this characterisation if it is advanced as the starting-point for an allegation of negligently inadequate teaching in the year in question. Professor Brown has described the ISS as “always extremely popular with the students” (something confirmed by Professor Washbrook) and her recollection is that students were always “extremely generous and complimentary at the end of the course”. Indeed in the year in question, at least some of the students bought Professor Brown and Professor Washbrook champagne at the end of the year (see paragraph 59 below).
30. It needs to be understood that the tuition for the ISS (and doubtless for other Special Subjects) was not College-based as such, but class-based across all Colleges of the University. I will expand on this a little below (see paragraphs 34 and 35). The undergraduates taking the course came from different Colleges within the University and, unlike other subjects within the overall course leading to the Bachelor of Arts degree in Modern History, the tutorials were delivered by tutors who were not necessarily members of the teaching staff of the individual student’s College. By way of illustration, in the case of the undergraduates taking the ISS in 1999/2000, as indicated above, the Claimant was at Brasenose College, and others were at Colleges that included St. Hugh's College, Magdalen College, University College, The Queen's College, Oriel College and others.
31. The formal arrangement for delivering the tutorials was described by Professor Brown as follows:

“These were the aspects of the Special Subject that the University’s Modern History Faculty (rather than the colleges) was responsible for arranging. The tutorial teaching was arranged by the colleges ....”
32. Professor Washbrook summarised the position as follows:

“[The] University teaching in lectures and classes was supported by eight tutorials ... which were organised and paid for by the [students’] individual colleges. Whilst generally speaking the majority of undergraduate tutorials took place in the students’ own colleges, due to the specialist nature of the

Special Subjects, most of the Special Subject tutorials took place outside of the students' colleges.”

33. The formal arrangement, therefore, was that each College would in effect “commission” the giving of tutorials in the ISS from teachers such as Professor Brown, Professor Washbrook and Dr Misra (see paragraph 34 below).
34. The members of the teaching staff ordinarily responsible for delivering the totality of the tuition for the ISS were Professor Brown, Professor Washbrook and a Dr Maria Misra, with occasional help with tutorials from a Dr Darwin. Professor Brown was based at Balliol College and Professor Washbrook, at the time, was employed by the University as a Statutory Reader and was also a non-stipendiary professorial Fellow of St Antony’s College (a graduate College) under a separate employment contract with that College. (As Reader, his principal duties were to engage in advanced study or research and to provide instruction in the history of South Asia from 1700 to graduate and undergraduate students by way of providing classes and lectures and to supervise graduate students.)
35. In an ordinary year, when Professors Brown and Washbrook were available to teach along with Dr Misra, the documents classes would be divided more or less equally between them, 8 members being regarded as the appropriate maximum for each class. The lectures would be shared principally between Professors Brown and Washbrook and the tutorials would be undertaken by Professor Washbrook and Dr Misra. Professor Brown did not provide tutorial teaching because of her other professorial duties. The usual tutorial group size was 2-3 students. From the teaching perspective, this enabled some group discussion that was considered helpful. This is to be contrasted with what was the more usual tutorial position so far as a College-based subject was concerned, where there was often one-to-one supervision.

### **How the ISS was delivered during 1999/2000**

36. For reasons to which I will turn below (see paragraphs 53, 61 and 62), during the 1999/2000 academic year the total number of students who could take the ISS was capped at 16 and Professor Washbrook undertook all the tutorial teaching for these 16 students in addition to taking his half-share of those students for the documents classes (see paragraph 35 above). This commitment was alongside other teaching commitments during that term.
37. With tutorial group sizes of 2-3 students, this meant that he was taking several more tutorial sessions each week during the Michaelmas Term that year compared with the number he would take when the tutorials were supervised by more tutors than merely himself.
38. It is this additional burden undertaken by Professor Washbrook and its consequences that underpins the allegation made by the Claimant of negligently inadequate teaching during the relevant term. As will emerge below (see paragraphs 54 - 61), Professor Washbrook was at the time himself critical of the Modern History Faculty for imposing extra burdens upon him during this term, but categorically rejects any suggestion that his teaching of any part of the ISS (including the preparation for the gobbets paper) was inadequate or that any of the students suffered as a result of those extra burdens.



39. The case in negligence based upon the standard of teaching is only one part of the Claimant's overall case, the other relating to his medical condition at the time (see paragraph 5 above and paragraphs 147 - 167 below). At this stage, I propose to concentrate for the time being on the teaching feature of the case.
40. Before I turn to how the criticisms of the teaching have been articulated and formulated, it would be helpful to record the marking convention in operation at the time. This is set out in Appendix B to this judgment.
41. As to the effect of the marks given in accordance with the foregoing convention for the purpose of determining the class of degree awarded, that can be seen from the convention operative at the time which can be found at Appendix C.

### **How the criticisms of the teaching on the ISS course surfaced initially**

42. The substantive criticisms of the teaching on the ISS course made by the Claimant personally have only arisen in the period since about September 2013 in the circumstances I will describe in due course (see paragraph 222). However, his criticisms have largely been founded on some criticisms made by another student in July 2000 which formed the focus of some internal consideration within the University at the time. One issue that the Claimant raises (in response to the Defendant's assertion that his claim is brought outside the usual 3-year limitation period) is that these criticisms and the internal consideration of them were concealed from him over the years (see paragraphs 232 - 236 below). However, for present purposes, I will simply review what was said by the particular student and what the responses of those consulted about it were.
43. Although a conversation between the Claimant and the particular student represented the effective starting-point for the Claimant's investigations that led to this case, the particular student has not been a witness in the case although several students who took the ISS course were. Whilst none sought (nor would, so far as I can see, have been granted) anonymity, I am proposing to adopt the expedient of referring to each of them by their initials. Their identities are wholly immaterial to the issues in the case and I do not really see why their own results in examinations taken over 17 years ago, to which it will be necessary to make some reference in due course, require their identities to be given in a public document such as a judgment of a court. Equally, in order for the Defendant to respond to the criticisms made by the Claimant, it has been necessary in some instances for observations to be made about those students, either individually or collectively, by the Defendant's witnesses. Again, I see no public interest in those comments being paraded in a public document such that the identities of the individuals concerned are revealed.
44. The student who had voiced criticism of the course at the time was SB. She was described by Professor Washbrook as a "very brilliant and exceptionally demanding" student. She obtained a First and was second overall in the year. Her lowest mark (B++) was in the gobbets paper. She did not ask for that mark to be reviewed and, as will appear, the written complaint she made was intended (and indeed treated by the University) as a contribution designed to improve things for the future as she saw it. This can be seen from the first two paragraphs and the last paragraph of her letter dated 4 July 2000. The first two paragraphs were as follows:

“I am very unhappy about the tuition that was provided on the ... course, with regard to both the classes provided and the tutorials. I feel that some of the concerns I raise below are particularly unacceptable and believe that they should be brought to the attention of the History Faculty. I would also like to stress that although I have chosen to write individually, my grievances were widely shared by other people on the course.

My complaint is motivated primarily by two factors. First, I hope that my letter will facilitate adjustments in the provision and coverage of topics in the course so that future undergraduates need not repeat my experience. The second is more personal; I had anticipated that I would thoroughly enjoy the paper, partly as I have a special interest in India – I had, for example, spent the summer working for the British Government in India – but also because I was very much looking forward to using documentary evidence and basing my understanding of a period around the use of primary sources. The majority of my fellow students on other Special Subject courses found their studies rewarding and interesting; most history undergraduates regard their Special Subject as their ‘favourite’, and the most intellectually challenging of the demanding BA course at Oxford. This was not my experience, and the comparison with other Special Subject courses is particularly revealing. I am also concerned that I was forced to spend a disproportionate amount of time preparing this paper for my final examinations, in order to bring the paper up to a standard which I considered sufficient. The comparison with the taught classes for my Further Subject and the enjoyment I gained from the use of documentary sources on that paper was also a factor in my decision to write to you.”

45. In the penultimate paragraph of the letter she criticised a revision tutorial supervised by Professor Washbrook and said that he did not “seem to care about what we thought, or why, or be interested in developing the thoughts we have.” The last paragraph was as follows:

“I would emphasise that this has not been the case with any of my other tutors or any of my other papers. I have thoroughly enjoyed all my other work; indeed, this is why I am particularly upset about this paper and decided to take this step in writing to you. I hope that you will take this matter seriously and ensure that other students in the future do not repeat my experience.”

46. I should, perhaps, just observe that, whilst she asserted that her concerns “were widely shared by other people on the course”, none of those concerns, if they existed, were, on the evidence before me, articulated or voiced by any other student to anyone within the Faculty or the University at the time. I will refer in more detail to SB’s concerns below (see paragraphs 50 - 52).

47. SB had discussed the matters referred to in her letter with Professor Martin Conway, a tutor at her College, at the regular meeting held at the end of the Michaelmas term between the students and the College's history tutors. His evidence is that he "agreed to read and critique, rather than to mark, some of her ... gobbets ... when it came to her revision for her Finals exams the following summer." He explained that he had "no particular expertise in [the] subject but was able to provide technical feedback on how [he] thought she was doing." He said that his "help was limited to providing technical feedback on the gobbets and a rough indication of the mark that [he] would expect them to achieve in the Finals examination" and that "providing additional support with her gobbets revision, [he] was acting as one of her college tutors, rather than in a University capacity."
48. At the stage she first spoke to him, it would seem that she was not minded to make any complaint because she did not do so. However, the situation changed after she had taken her Finals and Professor Conway gave this as his recollection:
- "After she had sat her Finals SB decided on reflection that she wanted to communicate her dissatisfaction to the Faculty. I thought that that might be useful, and would help to put her mind at rest, and I advised her to write to Professor John Robertson who was the Convenor of Undergraduate Studies in the History Faculty. I did so to support SB to communicate her particular experience to the Faculty and not because I endorsed her complaint. I recall that, when we discussed the matter, SB specifically did not want her letter to be taken into consideration by the Examiners. She felt that the examinations had gone well and wanted to be judged on her merit. This was why she chose (supported by me) to delay writing to the University until after she had received the results of her examinations. After she had sent the letter I recall that both SB and I considered the matter to be at an end, as the appropriate authorities had been informed."
49. I will say more about the more detailed, substantive criticisms made by SB below (see paragraphs 50 - 52), but, as I have indicated above, those who received and considered the letter did not treat it as more than a contribution by a former student to a discussion about how things might be improved in the future. The person with direct responsibility for considering it was Dr Felicity Heal, who was then Chair of the Faculty Board. Her evidence was that SB was raising criticisms arising from her experience in the particular year in question, but she was doing so "in the recognition that she was anxious that thought should be given to how things should be looked at in subsequent years." I will return to this when dealing with the "fraudulent concealment" issue raised within the limitation argument foreshadowed in paragraph 42 above (see paragraphs 232 - 236 below).
50. It is difficult to do full justice to SB's lengthy letter, but by way of summary, she expressed dissatisfaction with what she described as the "taught classes" in a number of respects. The criticism relevant for the purposes of this case is her criticism of the "documents classes". She asserted that the coverage of the "personal documents" (see paragraph 17 above) was "particularly inadequate", her estimate being that less than 10% of the documents were referred to either in a class or a tutorial. She said that

documents were “regarded more as an unnecessary part of the course that we would need to read at some point to answer the [gobbets paper], but not as an integral part of the course.” She said that about 80% of the “official” documents (see paragraph 17 above) were considered, but only in a desultory fashion and that there was no informed discussion about those documents. She said that, unlike other Special Subject courses of which she was aware, only once were her group asked to prepare presentations on a single group of sources and the comments from the tutors (the plural should be noted) were both “brief and distinctly unhelpful”. She estimated that only about 5% of the documents were dealt with in what she described as “this cursorily participatory fashion.” She criticised the students for not participating fully “as is common in other Special Subject courses.” She also said that there was “no pressure to read the documents themselves”, but said that she was encouraged by students on other Special Subject courses to do so.

51. She was critical of Professor Washbrook for not marking any gobbet answers she prepared and asserted that neither Professor Brown nor Professor Washbrook would give much assistance on what was required to give a full answer to a gobbet question.
52. So far as the tutorials were concerned, she said she found them “uninspiring” and said that a significant part of the problem was that Professor Washbrook was taking all sixteen students for the tutorials. She was critical of his approach and said that she had had a discussion with him on the basis that she felt “unhappy and insufficiently challenged”. Her final criticism of Professor Washbrook was the criticism referred to in paragraph 45 above relating to the revision tutorial.
53. The letter was written to Dr (now Professor) John Robertson, then the Co-ordinator of Undergraduate Studies in the History Faculty. He too saw it as a letter designed to improve things for the future and, accordingly, it was treated in that way. It was not seen as alleging grossly inadequate teaching. He discussed the letter with Dr Heal and she suggested that Professor Brown and Professor Washbrook be invited to give their comments. Professor Robertson did send a preliminary reply to SB in which he said the following:

“In the meantime, I can make a few preliminary points. The Faculty is responsible for lecture and class provision in Special and Further Subjects, but not, for the tutorials, since these are arranged and paid for by the Colleges. The Faculty does, however, seek to assure itself that there will be adequate tutorial as well as class provision for a subject in any given year, and sets the ‘cap’ on numbers accordingly. In the case of SS 19 we knew that because of sabbatical leave only one tutor, Dr Washbrook, would be available to give tutorials in 1999-2000 (Professor Brown not being under an obligation to give tutorials). We had the choice therefore of capping the subject at 8 (to reflect this) or at 16 (since Professor Brown could contribute to the classes); and with Dr Washbrook’s blessing we agreed to 16, in order to give as many undergraduates as possible the opportunity to take the subject. This may have resulted, as you suggest, in undergraduates receiving less tutorial attention than is possible in most Special Subjects; but

Dr Washbrook, I know, was teaching well over his tutorial stint for the year.

There is some reason to think that the situation will be different in the coming year. Dr Misra will be back from sabbatical leave, and will contribute to class and tutorial teaching. I also understand, informally, that the format of the classes will be changed to encourage more student participation, while the number of tutorials will be reduced to 6, to enable undergraduates to devote more time to topics of particular interest to them.”

54. Dr Heal sent SB’s letter, together with Professor Robertson’s initial reply, to Professor Washbrook on 18 September 2000 and he replied more or less immediately on 20 September 2000. It was a lengthy letter (running to about 4½ pages) and, once seen by the Claimant, has been relied upon by him as containing admissions that the teaching of the ISS in the relevant year fell below acceptable standards. I will set out the relevant parts below, but I should record that Professor Washbrook said in his first witness statement that in over 45 years of teaching university students, SB’s complaint was the only complaint he had ever received. Given, amongst other things, the high esteem in which he is held by his colleagues (see paragraphs 69 and 70 above), I have no reason to doubt that.
55. In his response he accepted that the “general pedagogic points” raised by SB were “well-taken and [represented] concerns which [he] and the other tutors who normally teach [the ISS] have had for some time”, the structure of the course being such as to make it “difficult to integrate ‘gobbet-based’ study of the documents into exploration of the major themes and problems of the period”
56. He developed this theme (to which reference has already been made: see paragraph 29 above) further as follows:

“The underlying problem comes from the attempt to teach an ‘advanced’ course on modern Indian history within the framework of an Oxford Special Subject. I have always assumed that Special Subjects were meant to broaden and deepen understanding of a topic or period, basic knowledge of which had previously been acquired. Also, in all the other universities where I have taught, Special Subject teaching has been stretched over the course of an entire year. However, the structure (or non-structure) of the Oxford modern history syllabus is such that no prior knowledge is required to take a Special Subject and the course tutors have to finish the job in eight weeks! In the case of the ‘India’ Special Subject, most of the students ... have not only never encountered the history of India before, but frequently not imperial history nor even modern British history. As a result, the course has had to be taught rather differently from most other Special Subjects, with a heavier emphasis – especially in the early weeks – on formal lectures and general essays to establish the context. But this is inclined to marginalise the significance of the documents until

the second half of term and can have a tendency to confuse their direct study simply with the need to supply gobbet answers for the examinations. This is the more so because several of the current documents would appear to have been chosen more for their informational value than for any special interpretative significance which they might possess. Professor Brown, Dr Misra and I are not happy with this state of affairs and, as I mentioned, are presently considering other ways of meeting the pedagogic challenge of the [ISS].”

57. He then went on to consider SB’s complaints and the possible reasons for them:

“With regard to other matters raised in [SB’s] letter and [Professor Robertson’s] reply, the teaching problems last year were exceptional and I think (or at least hope) that [SB’s] reactions to the course were not general. When [Professor Robertson] noted that I was teaching ‘over my stint’, he was indulging in considerable understatement. Last Michaelmas term, Drs Misra, Darwin, Carey and Vaughan were all on leave and the Faculty made no arrangements for replacement teaching. Providing coverage of the entire ‘Afro-Asian’ syllabus was left to Dr Phimister, Professor Brown and myself – with Professor Brown (as Chair of Graduate Studies) able to devote only limited time to teaching. In addition to providing half the lectures and classes and all of the tutorials for the 17 students who took the course, I was:

- Co-ordinating and providing tutorials for GHXVII<sup>1</sup>.
- Running the weekly classes on ‘Historical Methods’ for Group 4 graduate students.
- Taking classes and tutorials for the MSt in both South Asian and Commonwealth History.
- Supervising five Master students taking various courses.
- Supervising 11 D.Phil students of whom five were in the process of submitting their dissertations, three in the Michaelmas term.

In addition, I was an Interviewer for graduate admissions in Commonwealth History; had extensive College duties (not least, as Chair of the College’s General Purposes Committee at a time of new building, acute staff conflicts and an exceptionally assertive JCR); had to meet other teaching commitments to the Oriental Institute, Queen Elizabeth House and the Politics sub-faculty. My workload was *intolerable* – and I am afraid that I may not have been able entirely to

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<sup>1</sup> A reference to ‘General History 17’.

conceal either my exhaustion or my resentment from perceptive students, such as [SB], who may have mistaken my condition (certainly towards the end of term) as reflective of my attitudes towards them.”

58. Whilst referring to and acknowledging those matters, he did take issue with some of SB’s criticisms. Examples are:

“I am extremely sorry that [SB’s] expectations should not have been met by the tutorials which she took with me. However, I also feel that certain of her points are rather unfair and I would be surprised if her negative views of the course are entirely shared by the majority of her fellow students. As she notes, she has a special interest in and knowledge of India (having spent some time there). As is usual in such cases, I put her in a tutorial group with two other more advanced students (of south Asian origin with strong backgrounds in the subject) so that we could begin work at a higher level. However, the group did not function very successfully; her interests (which are less historical than concerned with contemporary social welfare issues) were not theirs. As she mentions, she approached me to discuss her special interests and I gave her help with reading. However, those interests – in labour relations and social anthropology – did not really fit with the main themes of the course. As a result, I was not able to integrate them into regular tutorial work and, although she hinted strongly that either I should give her separate tutorials or else revise the syllabus, shortage of time and the need to cover the topics on which the examinations would be set prevented me from agreeing ....

...

With regard to the documents, I always ask students in their early essays to read selections in concert with their secondary reading in order to get a sense of where they fit into the context. The problems come later in the term when we are obliged, by shortage of time, to move simultaneously into ‘deconstructing’ documents and doing formal gobbet practice. It is certainly true that I did not ‘mark’ [SB’s] fifteen practice gobbets (although, of course, I did all her essays, her Collection and the several pieces of revision work which she did for me on her own initiative). I find it better to teach gobbets in joint tutorials by having the students read them to each other for mutual comment and discussion. (Thus, I regard [SB’s] remarks about lack of student ‘participation’ as truly amazing). Of course, how successful this approach proves to be does depend to a large extent on the ‘dynamics’ of the particular group and the willingness of its members to participate. The ‘dynamics’ of [SB’s] group were not helped by her public pronouncement

(which I very clearly remember) that ... she found listening to other people's efforts – and the entire procedure – “boring”.”

59. He added this:

“Obviously, I regret having failed to provide an extremely talented student with the teaching quality and stimulation which, apparently, she found everywhere else in Oxford - undoubtedly with tutors more able than I, but also (I suspect) less overworked and better supported by Faculty, libraries and even furniture removal men. I regret even more the lack of preparedness evident in the Paper I performances of several of the less able students. In previous years and under considerably less strain, I have found it possible to overcome the structural limitations inherent in the course by intensive work on the documents in the second half of the term. Without wishing to blow trumpets, the results of most of the students I have taken for tutorials in the Special Subject have usually been good. (For example, [CH] who took the course with me in 1998-99 and is due to return to the Faculty in October with an AHRB grant to begin research, received his best marks for the Special Subject, which played a major role in raising him to an overall First). However, last year I was simply (and physically) unable to devote the same amount of time to each student - which, I accept, an exceptionally demanding student, such as [SB], may have taken as an affront to her 'rights'.

But I would be very surprised if her negative reactions were general - or at least, if so, the rest of her cohort had a curious way of signalling them. Again not wishing to blow trumpets, most of the group clubbed together to buy Professor Brown and myself bottles of champagne at the end of the course to thank us for our efforts on their behalf. Many of them (although I suspect not [SB]) also developed a notable esprit de corps, marked by their holding joint suppers in each others' rooms after each Monday class. At least five used either the Easter or the Summer vacations to make private visits to India to 'experience' for the first time what they had been studying. At the beginning of Hilary Term, there was some chaos in the teaching arrangements for Further Subject 15 when several students, who had taken the Special Subject, wanted to change their previously chosen options in order to continue studying India. In Hilary Term, I was also inundated with requests from former Special Subject students for help in bringing an Indian dimension to their 'Comparative and Historiographical' essays. I find it difficult to reconcile these reactions with [SB's] peremptory judgments that the course and my teaching – while obviously they failed her – were in themselves complete and abject failures.”

60. His concluding paragraph was as follows:



“Nonetheless and as I indicated above, the course tutors are only too well aware of the current deficiencies of the Special Subject and will be putting forward proposals to change it. [SB’s] letter serves as a valuable spur to that. It also serves as a spur for me in another matter. If [Professor Robertson’s] reply [was] meant to imply, in any sense, that I willingly volunteered myself for extra duties last year it would be quite false. I agreed to teach the whole group under pressure from Teaching Committee to keep the Special Subject going in spite of the grossly inadequate teaching provision made by the Faculty. If the same problems occur in the future, please be assured that I will not be so compliant. If the Faculty is unable to provide adequate means to teach its own syllabus, then as far as I am concerned, the syllabus cannot be taught – and the Teaching Quality Assessors can make of that what they may.”

61. Aspects of this letter were strongly-worded. It was written either on the day of, or the day after, receiving SB’s letter. When he gave his evidence, Professor Washbrook said that it was written in “hot blood” and rather hastily. He explained in more measured terms in his oral evidence why he had felt let down by the Faculty. In essence he said that when the course for 1999/2000 was under consideration in January 1999, it was known that Dr Misra and Dr Darwin would not be available to teach any part of it. He was asked if he could take the tutorials for 16 students if the number was capped at that figure and, at that stage, he said that he had no doubt that he could do so. He said that, at that stage, he did not feel that he was put under any pressure to take on this responsibility; he knew he could “cope under those conditions without too much difficulty.” The only other alternative would have been to abandon the ISS for that year because it was not viable to cut the course to just one group. It was, as previously indicated, a very popular course and it would doubtless have been a disappointment to the students if it was not available.
62. What he had not foreseen at that stage was the situation that confronted him at the beginning of October that year. He discovered then that two of his other colleagues (with whom he worked closely in terms of teaching functions) had also been allowed to go on leave. They did not teach on the ISS course - one taught South Asian history and the other African history - but they did collaborate with Professor Washbrook on a number of other courses, particularly General History 17, and also on postgraduate work. This caused what he described as “collateral pressure” upon him whilst trying to teach the ISS.
63. Mr Mallalieu suggested that he was trying to “recast” his account, compared with what he had said in his letter, because the Claimant had instituted proceedings against the University. Professor Washbrook rejected that suggestion and said, as I understood him, that, having reflected further on the situation that confronted him, he thought that two “separate streams” of events were brought together to cause the problem rather than the problem being imposed upon him from the beginning. Indeed it would seem that the bullet points in his letter (see paragraph 57 above) and the report he prepared for the Faculty in 2002 (see paragraph 64 below), confirmed the gist of what he was saying in his evidence. To the extent that it matters, I accept what he said in his evidence: the pressure he was under during the Michaelmas term was

caused largely by the “collateral” issue of the absence of these two other colleagues superimposed on something which otherwise would have been manageable. He said that when he wrote the letter he was “sounding off” about the position he was put in about which he was “extremely unhappy”.

64. The report to which I referred in paragraph 63 above was written in January 2002. It was a report on the ISS course generally which noted that the syllabus had not changed in the past five years, but that there were plans to revise it for the year 2003/2004. It noted that “the present course has continued to prove popular ... so much so that it has been necessary to impose a ‘cap’ of 16-24 students to accommodate teaching constraints.” It continued as follows:

“With the exception of one year – 1999/2000 – student reactions have also been positive and student performances consistently good. The problem year coincided with chronic teaching problems when four of the seven members of staff involved in teaching African and Asian history were on leave at the same time without replacement. However, ‘normal service’ resumed in 2000-01 when six of the 23 students taking the course were awarded first class marks on Paper 1 and five on Paper 2. I trust that Teaching Committee will take due notice of the problem of maintaining teaching standards with inadequate staff resources, especially in the areas of American and Commonwealth history which are thinly stretched at the best of times.”

65. The report also raised the “perennial problem” of library resources. It concluded with the expression of the view that “the continuing pressure on staff resources [would make it] very doubtful that, when the revised [ISS] is introduced, it will prove possible to lift the present cap on student numbers.”
66. Since SB’s complaint has represented the starting-point for the Claimant’s case that the teaching he received fell below reasonable standards (an issue to which I will return), it is of some significance to note the comments made by Professor Washbrook in his oral evidence about her expectations. It picks up a theme mentioned above at paragraphs 30 and 35 above. Professor Washbrook said the following in answer to Mr Mallalieu’s question:

“Q: The problem perceived, at least by [SB], in relation to the quality of the tutorial tuition. Would you consider that there may have been difficulties which arose in that tuition as a result of the fact that the burden grew as the term went on and you were the only person, so far as tutorials were concerned, who was carrying that burden?”

A: Speaking of [SB], I think her expectations were just completely unrealistic. She wanted me to teach her an independent course in a way, a course that catered to her interests. She basically thought I was a college tutor. College tutors, especially at her college, would teach individuated courses, would be very close to students, would respond to

them. I was teaching a special subject which is a class-based course. It is not a college tutorial course. It is taught in groups, and through participation. She ... never really grasped that. Her letter is full of comparisons of myself and this course with other courses that she had taken with college tutors in that close environment.

I would add similarly that she kept making comparisons with other special subjects and how her friends were doing other sorts of gobbets work, but this was not that kind of course. We were not doing a literary or culturally-based course. We could not take for granted the kind of background that the other students were doing. I think one of the issues I had with [SB's] letter is that at all sorts of levels, she was making false comparisons and had never got to grips with what this course was."

67. Those comments were not controverted by any other evidence in the case and they have the ring of authenticity about them. Indeed, I accept the validity of the observations.
68. This, of course, raises the question of the extent to which SB's criticisms of the course and/or the teaching advances the Claimant's case that the teaching he received was negligently inadequate. That in itself requires consideration of what constituted a reasonable standard of teaching and then determining whether the teaching the Claimant received was below that standard. This leaves out of account the various issues of causation that arise to which I will turn later (see paragraph 93 *et seq* below).

**Was the tuition the Claimant received on the ISS course negligently inadequate?**

69. This requires objective analysis and, on the evidence available in the case, the only satisfactory starting point for considering the issue is the manner in which the ISS course had been delivered prior to the year 1999/2000. There is no evidence of any complaint about it prior thereto. It had been approved as a course by the Faculty and had been delivered by acknowledged experts in the field. Professor Brown described Professor Washbrook in the following terms:

"Dr Washbrook ... was known as an excellent teacher. On the occasions that I examined his research students, they always spoke extremely highly of him and were well prepared for their examinations. It is also true to say that he was a world leader in the subject, who was internationally known and passionate about India. He was an experienced teacher of undergraduates, having taught at Cambridge and Warwick Universities before coming to Oxford."

70. Professor Conway described Professor Washbrook as a "high quality teacher".
71. I have not the slightest doubt that those assessments were correct and did not represent simply a case of "back slapping" by colleagues.

72. Professor Brown has a distinguished record in this particular field which represents one of her main areas of academic interest. The fact that, as I accept, most students in most years were pleased to have done the course and that it continued to be very popular confirms that the ISS was ordinarily competently taught, including the preparation for the gobbets paper, putting the standard of teaching at its very lowest for this purpose.
73. I have little doubt that the standard of tuition given in the years prior to 1999/2000 was distinctly higher than what could legitimately be regarded as merely reasonable or reasonably competent. To take it as the standard by which to judge whether a somewhat lower standard was unreasonable may well be setting the bar too high. However, I do not have any other standard by which to make that assessment and, as it seems to me, I need to consider the issue of whether there was a falling below reasonable standards of tuition in 1999/2000 by reference to what had gone before, albeit adopting a cautious approach to ensure that I am not imposing the equivalent of a 'counsel of perfection' on the teaching standard required. Furthermore, to the extent that there were issues with the course that rendered it more difficult to deliver than some (see paragraphs 29 and 56 above), I must proceed on the basis that those difficulties were overcome by the way in which the course was ordinarily structured and delivered.
74. In the year 1999/2000, the only difference between the way in which the course had previously been delivered was that Professor Washbrook undertook responsibility for all the tutorials for the 16 students as well as undertaking his other responsibilities. As with other years, he shared the lectures with Professor Brown and he took no more in the documents class for which he was responsible than in the previous years. Indeed, given that there were 33 students on the ISS course in 1998/1999, it is likely that there were 11 in each of the documents classes (bearing in mind that Dr Misra was available that year) and 16 or 17 to be taken for tutorials each week by Professor Washbrook and Dr Misra (possibly with some occasional assistance from Dr Darwin). As I have said, the real difference in 1999/2000 was that Professor Washbrook had to undertake similar responsibilities during the Michaelmas term in 1999 whilst continuing with his other responsibilities which were more onerous because of the absence on leave of two other colleagues (see paragraph 62 above). As he said in his evidence, whatever he thought about having been placed in that position, he simply put his shoulder to the wheel and got on with it.
75. Merely because someone has to work harder and longer hours to perform a familiar task does not mean that the task is accomplished less competently or less adequately. Indeed everyday experience suggests that being under pressure can sometimes provide a clearer focus on the task in hand. Professor Washbrook may, however, legitimately have felt let down by the administration, but that does not mean that the quality of his teaching suffered even if he felt tired by the end of the term. None of the former students who gave evidence suggested that he seemed tired at any stage. His evidence was that he taught the course in exactly the same way as in previous years. I see no reason not to accept that. SB did not appear to like his teaching style, but that was her view and not necessarily that of the others. In any event, that kind of view is not one out of which an allegation of negligence can be made. Indeed, Mr Mallalieu does not seek to do so. The only difference in that year from others was, according to Professor Washbrook, that because of his extra commitments he could

not provide the extra time on the course or for the benefit of individual students that in other years he sometimes could, if asked by individual students. He explained, however, that any such extra time in those other years was truly “extra” in the sense that it was above and beyond what was “formally required” and that he did not consider that anyone in this particular year truly suffered as a result of not being able to give that extra time. He emphasised that he put in a lot of effort and it is the case that he offered two optional revision classes in the Trinity Term prior to Finals.

76. SB certainly had some issues with the course, but the impression of all those who knew her at the time was that she was "very demanding". It follows that what she had wanted for herself was not the yardstick by which to judge the reasonableness of the tuition on the course.
77. Despite SB saying that her concerns were shared by others, there is no contemporaneous evidence to support that. One of her contemporaries, SC, produced a statement for the purposes of these proceedings in which he said that he now realised that there were "systemic and serious deficiencies in the Special Subject teaching and, in particular, Dr Washbrook's abject failure to cover the gobbets syllabus in anything approaching a sufficient manner." He also made the assertion that he was "short changed by Oxford University and cheated out of receiving the grades [he] deserved as a result of the seriously deficient teaching and the marks [he] subsequently received in the [ISS]." In his oral evidence, he included Professor Brown as someone who did not do justice to the texts from which the gobbet questions were chosen. His attack was blunted to some extent by his admission that he achieved his third highest mark in the seven Finals papers in the gobbets paper, but nonetheless he maintained his strident criticism of the way he had been prepared for the examination.
78. SC was probably somewhat more mature at the time he was at Oxford than many of the others taking the ISS course because he already had a first degree from an Indian university. According to Professor Washbrook's recollection, there was some tension between him and SB, the latter having characterised a class during which one of SC's gobbet answers was being considered by the class as "boring" (see paragraph 58 above). Professor Washbrook said that the group was "very difficult and uncomfortable" and said that he did not think that he had "ever had a more difficult tutorial group in [his] career." Be that as it may, my assessment of SC, having observed him give evidence by video-link and having considered the way he expressed himself in his witness statement, is that even 17 years ago he would have been quite capable of expressing his views about the adequacy of the teaching if he felt it was substandard, yet there is no evidence that he did so. Of all those who gave evidence, he was the most overt in his criticism of the teaching, but, as I have said, there is no evidence that he raised any issues at the time. I did sense that he had a view about the English way of teaching Indian history that did not coincide with his view of the way it should be taught. To that extent, I would discount his criticisms accordingly.
79. CS, to whom I will refer below (see paragraph 81), said that she –
- “... was a conscientious student and ... would have been quick to question if we were not being prepared for the final exam in the right way, especially as such emphasis is placed on the

“special subject” – it is your chance to shine as historian. I never believed I had reason to question the quality of the teaching. I just remember the subject was so different to anything else I had ever studied.”

80. That tends to confirm that a carefully-attuned student saw nothing wrong with the quality of the teaching of a new and unfamiliar way of answering questions.
81. SC's evidence also revealed that he did not consider that it was necessary to read all the texts on the reading list in order to prepare for the gobbets paper. In his evidence he said that "if we are given 1,000 pages of reading for a particular course, we will probably read 400 - 500 of them". Although SB made the comment that she did (as recorded in paragraph 50 above), in fact she read all the texts. So too did the other student described as "outstanding", CS, who also obtained a First overall. It does seem to me to be clear that anyone who chose not to read the whole reading list was inevitably "taking a chance" on what might appear in the examination paper. The two particularly outstanding students did not take that chance and their industry was rewarded. Professor Washbrook said that the students were told constantly to read the said texts for themselves and Professor Brown said it was "the absolute bedrock core" for the subject. Although the reading list was extensive (see paragraph 18 above) it is the fact that the ISS was the only subject covered during that one term. It is plain that a conscientious student could read all the texts in the time available.
82. Another (arguably related) criticism that was maintained by some, though not all, of the Claimant's witnesses in their evidence is that only a "very small proportion" of the gobbets covered in class came up in the examination paper. Again, so far as I am aware, there is no evidence that anyone complained to the authorities about this at the time, even if anyone thought it was a valid criticism of the teaching. I am bound to say that I cannot see how this could be a legitimate criticism of the teaching. The logic would be that, in order to be prepared properly for the gobbets paper, it would have been necessary for anything that appeared in the examination paper to have been covered specifically in class. The expression 'spoon-feeding' comes to mind which is hardly to be expected for an Oxford undergraduate degree course. It would, in any event, have been impossible to cover in 8 weeks every possible gobbet that might be included in the paper. As Professor Washbrook said, "like all special subjects at the time, [the course] was designed to encourage students to study the set texts themselves in preparation for their examination and as part of their development as historians."
83. Professor Robertson put this issue in context when he said this:

“... we expected the candidates to know the documents. If they did not know the documents, they would not do so well in the examination. That is not something that the gobbet preparation could cater for. The teaching preparation was not to, as it were, lob the passages that would be examined into the laps of the undergraduates so they could then answer.”
84. If it could be shown that each of the students taking the ISS gobbets paper that year achieved markedly worse results in that paper than in the other papers they took, that might afford the beginnings of the case that the teaching for the paper was inadequate.

However, even then the causal link would be very difficult to establish. As already indicated (see paragraphs 22-23 above), answering gobbets questions is an unfamiliar experience for undergraduates and, even with the best teaching, some of the most able students perform badly in such a paper whereas others perform well. In the present case, the Claimant can hardly say that his own mark demonstrated that he had not been prepared adequately because in the "Collections" (mock examination) that took place in early 2000, Professor Washbrook gave him a 'BA' (70%) in his gobbets paper and commented that he had several 'A' answers "although in a few instances, lack of familiarity with some of the documents let him down." Professor Washbrook said that his essay paper was of "outstanding quality, showing a strong grasp of the subject" and made a laudatory comment about his analytical approach, giving him an 'AB' (72%). His report on the gobbets paper contained the following conclusion:

"I marked it overall as BA (varying from AB to B+). He has the potential to do really well in the examination - providing he does not try to be too original in the wrong places!"

85. That suggested that a degree of self-discipline was necessary in the way he expressed himself and that he would be well-advised not to "go out on a limb" in the views he expressed. I have not seen what Professor Washbrook said about the other candidates in his reports on them, but his report on the Claimant demonstrates very clearly, to my mind, that he (Professor Washbrook) engaged closely with what the Claimant had done so far and he was offering him constructive advice against the background of generally having performed well in the Collections. I am sure that he would have done the same for all the students. The comments did not have the hallmarks of someone who could not care about how the student was doing in the gobbets part of the course or indeed the essay part of the course (c.f. the views of SB referred to at paragraph 45 above).
86. So far as the other students were concerned, CS ultimately (after "adjudication") achieved a BA which was only 2 marks less than the marks on 5 of her other papers and 4 marks less than the mark on the remaining one. Interestingly, she outscored SB by 4 marks on the gobbets paper, but SB's results on her other papers put her in the high First category to which I have referred (see paragraph 44 above). AT obtained a B+ in the gobbets paper which was one of his better marks. In his oral evidence he withdrew the criticism of Professor Washbrook that he had made in his witness statement, but maintained the suggestion that the gobbets paper had not been fully taught. It emerged that he had thought the mark (CB) that he obtained in the ISS essay paper was his gobbets paper mark. Overall, as I have said, he did well in the gobbets paper compared with several of his other papers. Another student, AA, achieved a B++ in the gobbets paper (which was the same mark as SB), a mark which was replicated in two other papers and was 2 marks above her essay paper in the ISS. LR was a student who obtained a B- in the gobbets paper which was the same as in two other papers.
87. There is thus no consistent pattern amongst these students of under-achievement on the gobbets paper by comparison with their results on other papers. Professor Washbrook asserted, with justification it seems to me, that judging the performance on the gobbets paper by reference to the results on the other papers of the individual concerned represented a better marker of intrinsic ability than simply saying that 50% (or slightly more) of those who took the gobbets paper achieved their lowest or joint

lowest mark. As the table in Appendix A shows, that rough statistic was replicated in other Special Subject courses in that year.

88. It is correct to say that the Claimant's mark (CB after "adjudication" by an external examiner up from the C+ he had been given by Professor Brown) was his lowest mark and the lowest in this group of students, but even had he achieved, say, BA (the highest achieved by any of the others: see paragraph 86 above), his degree class (Iii) as such would not have altered although he might have been higher in the overall list. He could not have obtained a First. The "adjudication" resulted in the Claimant obtaining a Iii rather than a Iiii (see paragraph 113 below).
89. None of this evidence supports the conclusion that the teaching of the gobbets paper that year fell below reasonable standards even if under-achievement by an individual (or even group of individuals) can of itself constitute evidence of negligent teaching. Generally speaking, it cannot do so. The matter was put thus by Lord Nicholls of Birkenhead in *Phelps v Hillingdon London Borough Council* [2001] 2 AC 619, 668, in connection with such an allegation in relation to the teaching of children –
- "Proof of under-performance by a child is not by itself evidence of negligent teaching. There are many, many reasons for under-performance."
90. It follows, in my judgment, that if this claim is not statute-barred (see paragraph 219 *et seq* below) and is based solely on an allegation of negligently inadequate tuition, it would fail on the grounds that no breach of duty has been established.
91. Equally, I can see no basis for the suggestion that it was negligent of the University not to cap the number of students at 8. The circumstances at the beginning of the Michaelmas Term 1999 were not ideal, but in Professor Washbrook the University had one of the foremost academics in the field who was prepared to put his shoulder to the wheel and undertake the tutorial provision required for the 16 students who wanted to take the ISS. For the reasons I have given, in my judgment, the students received reasonable (indeed probably more than just reasonable) tuition during that Term and it was not unreasonable for the University to have anticipated that this would be so.
92. That conclusion does not of itself dispose of the claim because of its second limb, namely, the alleged failure of the Claimant's personal tutor, Dr Martin Ingram, to convey information concerning his illnesses to the authorities responsible for making reasonable adjustments and for moderating his results. I will deal with that allegation separately below (see paragraphs 147 - 167), but it would be convenient to consider now the question of whether the Claimant could establish the loss and damage he says he has been caused if, contrary to my rejection of his case on breach of duty, a breach of duty did take place.

### **Causation of lower mark in the gobbets paper**

93. Mr Mallalieu has submitted that, if breach of duty is established, the conclusion on the evidence should be that the Claimant would have obtained higher marks in the ISS papers and a higher overall degree (a 'high' as opposed to 'low' Iii). He asserts that it is "axiomatic" that better teaching provision would, on the balance of probabilities,



have resulted in a better performance in the ISS. This is the platform upon which the allegation of psychiatric injury is based (see paragraphs 121 - 146 below).

94. Leaving aside all other factors, it seems to me that the Claimant faces an impossible task in demonstrating the causal connection between the (assumed for this purpose) breach of duty and the poor result in the gobbets paper because of the result he obtained in the gobbets paper in his Collections (see paragraph 84 above). Those examinations took place early in the Hilary Term 2000, after the full term's work on the ISS, the tutorials in which (and the documents classes attended by the Claimant) were taken by Professor Washbrook. If the teaching was as inadequate as the Claimant now suggests it was (something he had not noted at the time), it is inconceivable that he would have achieved the results he did in those examinations unless pure luck saw him home. It raises the question of whether he simply thought that he had "cracked" the way a gobbets paper was dealt with and simply coasted towards the Finals paper. He accepted that his reading of the texts was selective. When asked by Mr Milford about it he said this:

"The working assumption I think we all had is that what we needed to cover was being covered in classes, tutorials, and if there was a need to do further study there would have been directions for it."

95. It is clear that this was not the working assumption of SB and CS (see paragraphs 50 and 81 above) and was not the intention of Professors Brown and Washbrook. I do find it difficult on the evidence to understand how this perception on the part of the students arose if it was widespread. Spoon-feeding was not what was contemplated (see paragraph 81 above) and any decision not to read all the texts seems to me to have involved an element of calculated risk by those students who chose to proceed in this way.
96. Mr Mallalieu suggested that since the Claimant had been in Dr Washbrook's documents class and tutorial group and that it was a reasonable assumption that a paper set by Dr Washbrook, as (he suggests) the Collections paper was, would focus on those areas upon which he had himself focused in these classes, this afforded an explanation for why he was "able to do relatively well in collections despite the teaching problems" that existed. In fact, Professor Washbrook could not recall whether he had set the paper (which, he said, usually contained questions from previous papers) and, for my part even if he had, I cannot necessarily see why he would have focused solely on what had been the subject of discussion in class: it would be an artificial way of preparing the students for the final examinations and would risk creating a false dawn. Professor Washbrook was not asked about this and I do not think I can proceed as Mr Mallalieu invites me to do. One thing, however, is clear: whether or not he set the paper, Professor Washbrook marked the paper completed by the Claimant and made the comments to which I have referred (see paragraph 84 above), including the observation that "lack of familiarity with some of the documents let him down" in some instances. This was surely a "warning shot across the bows" that familiarity with the documents was essential to real success in the Finals paper.
97. At all events, there is another formidable obstacle in the way of the Claimant establishing causation: with the exception of the mark in the gobbets paper, his results

in the Final examinations were not generally out of line with those he had obtained in Mods (see paragraph 9 above). The 7 marks he obtained in total on the 4 papers taken in Mods (3 of which were double-marked) were spread between a BA at the top of the range and a B- at the bottom. The division between a Iii and a Iiii is not given in Mods, but on analysis most of his marks were close to the boundary between what would in Finals be a Iii and a Iiii. It does seem to me that Mr Milford is entitled to submit that a low Iii was a not unexpected result in Finals unless, of course, the preparations between Mods and Finals had been such as to move him into a different league. In any event, there was no prediction given at any point by his teachers or supervisors that he would obtain a First.

98. It is undoubtedly the case that the Claimant showed glimpses from time to time of excellent work and first-class ability (see, for example, what Professor Washbrook said as recorded at paragraph 84 above), but there were instances where he lacked discipline in his academic approach. His tutor in British History III said this in his Report for Trinity Term 2000:

“His grades will be principally determined by the discipline with which he addresses the question.”

99. This mirrors what Professor Washbrook said as recorded in paragraph 84 above and has a resonance with what his tutor in British History III had said in the Trinity Term 1999:

“He can write very fluently, and his later papers show the efforts he has made (and is making) to construct strong arguments, but he has a tendency to get carried away with words instead of analysis. If the effort continued, the progress will come. Faiz wants to do well, but I’m not sure if he has the ‘carry-through’ which will see him develop his potential over next year.”

100. However, there is an additional factor, wholly unconnected with the way that, intrinsically, he would have approached the paper. There is every reason to think on the evidence that his performance in the gobbets paper could well have been affected by the hay fever from which he was suffering at the time of the Finals. (It was something that he suffered from generally as his previous medical records demonstrate. Dr Isaac, the Consultant Psychiatrist who reported for the Defendant who suffers from it himself, testified to the serious discomfort and distraction to which it can give rise.) He obtained a medical certificate dated 27 June 2000 which contained the following medical appraisal:

“This man has suffered from severe Hay Fever and he has had a full house of symptoms - runny blocked nose, can't breathe, nose bleeds, sinus congestion, headache, itchy sore red eyes running all the time, scratchy throat, itchy skin, poor sleep, poor concentration, irritability. He has tried many treatments and consulted several times but is still suffering.

He had it particularly badly affecting the papers on 8/6/00 (paper 3115) and 30/5/00 (paper 3049)

Please would the examiners bear this in mind when awarding his class mark.”

101. The certificate also recorded that the hay fever had affected his revision.
102. This contemporaneous document indicates that he was suffering from severe hay fever on the day of the gobbets examination and that he claimed that it had affected his revision. There are entries in his GP records dated 19 May 2000, 22 June 2000 and 27 June 2000 recording symptoms of hay fever. In an email to Dr Ingram on 27 June 2000 he said that “only during 2 of my exams were the effects of hay fever particularly potent.”
103. In his evidence he said that he knew that the gobbets paper had not gone well and that his answers were very superficial. He attributed that at the time to the hay fever (as reflected in the medical material and the email to Dr Ingram to which I have referred), but he says that he now realises he was “barking up the wrong tree” and that it was an examination paper containing “vast swathes” of material which had not been covered during the course that led to the superficial answers. He said that he had misattributed the cause of his difficulties at the time to the hay fever.
104. I am bound to say that I did not find this a very convincing explanation, particularly in light of the fact that some 15/16 months after he had taken the paper (and in an email to Dr Ingram dated 25 October 2001) he actually asserted that “[it] was not my fault if illness conspired against me in my finals” although he also commented that he “would like to add that the Special Subjects gobbets paper was appallingly badly taught (only covering 5% of the gobbets!) and this may also have affected the outcome of my exam.” He continued by saying that “[it] was out of the goodness of my heart that I chose not to make a complaint afterwards, although several other students did.” On the evidence available to me, only one formal complaint was made, namely, the complaint made by SB.
105. I will return to the implications of that email on the limitation issue in due course (see paragraph 228 below), but the overall impression one gains is that by October 2001 he was casting around for any reason that could be advanced to explain his poor result other than simply not having performed well on the day or not having been adequately prepared. This contrasts with his attitude to the result in the gobbets paper in the few months after the results were announced.
106. His immediate reaction can be judged by reference to his response to Dr Ingram’s letter of congratulations dated 19 July 2000. Dr Ingram’s letter read as follows:

“Congratulations on getting a 2:1 in Finals! Attached is a breakdown of your marks. (When two markers agree on a mark after consultation, it is said to be 'reconciled'. When the markers disagree, and it is sent to a third examiner for determination, the mark is said to be 'adjudicated'.) You scored a rather mixed bag and I hope you won't be too disappointed. Your undoubted first-class qualities were revealed in British III, while several of the other papers were solid 2:1, but surprisingly you underachieved significantly on the Special Subject. The medical evidence was considered by the

examiners but I do not think that it affected your overall classification. I know you worked hard and purposefully, and I am sure that you have absolutely nothing to reproach yourself with. The overall result is very respectable. You are welcome to get in touch with me if you want to talk about it. And of course, if I can be of any assistance to you in the future - in writing references, for example - do not hesitate to get in touch.”

107. More about how the Claimant’s mark came to be “adjudicated” appears in paragraph 113 below.

108. The Claimant sent an email to Dr Ingram on 11 August 2000 as follows:

“Nice to speak to you on the phone a couple of weeks back. I hope this message finds you well. I understand the University awards prizes for top marks in particular subjects. I just wanted to check to what extent my A - in British III was in contention for this (being only one off the highest obtainable mark), as naturally it would be an advantageous thing to have on your resumé. I may need to contact you again shortly about references.”

109. However, by December 2000, he was giving active consideration to asking for clerical re-checks on some of his marks, the deadline for such a re-check being 6 months after the general release of the examination results. In an email to Dr Ingram dated 15 December 2000 he specified two papers where he thought the results were substantially different from the results he had anticipated. They included the ISS essay paper, but did not include the gobbets paper. Dr Ingram asked him in a subsequent email whether that was what he really wanted because it was the gobbets paper where he scored the lowest mark. In his response to Dr Ingram on 19 December 2000 he confirmed that he had said that he wanted the result in the ISS essay paper checked, not the gobbets paper. As to that paper, he merely observed that it “did not go, as they say, according to plan”. In a subsequent email to Dr Ingram (on 20 December 2000), he did say that if he (Dr Ingram) thought that it was a good idea to have four papers re-checked, then he would appreciate it if he emphasised that the two papers originally specified were his “main concerns” and the other two (which included the gobbets paper) were “just in case checks” because he was “not that surprised at the outcome of [those] 2 papers, though disappointed on the Further subject.” The “Further subject” was not the ISS gobbets paper (see paragraph 9 above).

110. In an email to Dr Ingram dated 17 January 2001, the Claimant also raised the question of whether the examiners had taken into account the medical evidence he had submitted. It had apparently been suggested to him that he should seek clarification through his Senior Tutor. He said that “[the] doctor’s note I submitted was quite clear that I was extremely ill for several of my papers, and seriously ill for a couple in particular.” This is, in my view, an embellishment of what was actually said in the note and of what he said at the time (see paragraphs 100 - 102), but it is noteworthy that he was still focusing on the hay fever as the reason for his poor performance.

There was, it is to be noted, no suggestion that depression, anxiety or insomnia played any part in that poor performance.

111. Mr Milford asked him about these emails. His answer concerning the reason for saying that it had not “gone according to plan” was as follows:

“... I had felt I had done pretty badly on gobbets, but I was not sure what the reason was. I had no idea. So ... I put it down primarily to myself. You know, one goes into an exam and sometimes you get three questions ... and they happen to be the three things that you have not revised, and you put it down to yourself and you say well, "Oh damn it, that was a bad exam." ... Little ... did I know that the whole syllabus had not been covered until later at stage 1 in October 2013 there is a revelation ....”

112. The “revelation” is presumably what emerged from his contact with SB (see paragraphs 42 and 222).

113. Before turning to the conclusions to be drawn from this, I should return briefly to the reasons for the uplift in his original mark. In a letter to Dr Ingram dated 20 February 2001, Professor Sharpe said this:

“Thank you for your letter of 16 February 2001 conveying Mr Siddiqui's further concern about his results. He should be made aware that a medical certificate does not automatically translate into marks and cannot guarantee any upgrade, even where the certificate is specific (as was Mr Siddiqui's) about the papers that may have been affected by medical problems. The Examiners' duty is to adjudicate on the merits of the performance submitted to them, not to try to estimate how that performance might have been improved if extraneous circumstances had not intervened.

In Mr Siddiqui's case, however, the primary mark for his Special Subject gobbets paper, 19A, was re-visited by the Examiners, who were aware of the medical evidence forwarded on his behalf. This primary mark was not only well below his average but, under the Examiners' Conventions, would also have cost him a class. The mark for paper 19A was lifted to CB and on this basis his class was also lifted from II.2 to II.1.

I hope that this information finally reassures Mr Siddiqui that there was no error in the conduct of his examination.”

114. When Mr Milford put to him that the gobbets paper was one of the two papers (the other being the general paper) where he had attributed any under-performance to the hay fever from which he was suffering (see paragraphs 100 – 102 above), his response was as follows:

“... my general paper actually was ... pretty good. It ... was just more gobbets, you know. I did not have any strong belief as to what the reason might have been, but it was my misperception in thinking at the time that it was down to the hay fever. But I now see, in light of all the evidence that [has] come out, that it was not down to that. It was the fact that a lot of the paper had not been covered and my experience was identical to the other students, which is they walked into the exam and thought "What on earth is this".”

115. I regret to say that this has all the hallmarks of a revisionist approach in which responsibility for a poor performance on the day of the examination is now sought to be placed upon the shoulders of those teaching the course, particularly Professor Washbrook, whereas illness and/or lack of proper preparation were the reasons originally assigned. It is not the first time that the Claimant’s expectations in an examination were not met (see further at paragraphs 124 – 126 and 181 - 182 below) and other reasons (including “anxiety”) have been attributed to those poor performances. It is possible that the Claimant (who sets himself very high standards) simply gets over-anxious during the examination process and does not do himself justice on occasions. There is evidence from his medical records that he sometimes asked for medication to help him cope with the anxiety caused by a forthcoming examination and in April 2010 he described himself to Dr Phornnarit (see paragraph 210 below) as “an anxious person constitutionally”. However, anxiety producing a less than otherwise merited result is not an unfamiliar examination scenario generally nor, in his case, is it the fault or responsibility of his teachers.
116. To be fair to the Claimant, however, there are things that Professor Washbrook said at the time, or in the aftermath of the relevant year, that afford some basis for suggesting that the overall quality of the results in the gobbets paper that year was affected by the pressure he was under as a teacher. Indeed, he accepted, when giving evidence, that the results in the gobbets paper were “unusually poor” that year with no student obtaining a mark in the First category although there was one borderline First. In the report referred to in paragraph 63 above, he drew attention to the fact that in the following year (when the teaching pressures had been relieved), 6 of the 23 taking the ISS were awarded first-class marks in the gobbets paper.
117. He did say in his oral evidence that the context in which he wrote that report needed to be understood. He was making a pitch to the Faculty for the continuation of the ISS, albeit in a revised form. He was using what occurred in 1999/2000 (which included the “exceptional” complaint made by SB) to emphasise the need for proper resources to support such a course and in doing so, as he put it in his evidence, he over-emphasised the problems in order to bring home the need to avoid them in future. The comparison with the following year was part of that pitch and he himself recognised that it would, in truth, be difficult to draw any valid comparisons between the results in the two years and conclude that the teaching pressures in 1999/2000 materially contributed to the lower marks in that year in the gobbets paper. His recollection (and there was no documentary material that either confirmed or disaffirmed this) was that the 2000/2001 year was “a very good year” and he “would be very surprised if those students were also getting lower second marks on their other

papers”. He also said the sample sizes were so small that making valid comparisons would be difficult.

118. I have not received any expert statistical evidence, but what Professor Washbrook says must, in my view, be correct. But leaving aside the validity or otherwise of any comparisons on a numbers basis between various years, there are so many factors that go into the result of a particular individual (c.f. paragraph 89 above), particularly in an unfamiliar context such as a gobbets paper, that it is difficult to see how a causal connection could be established, even on the balance of probabilities, between a particular level of tuition and the result unless, of course, the tuition failed to meet even the most basic of standards such that “simple operational negligence” (see [2016] EWHC 3150 (QB) at [26]) has occurred. It is always advisable not to say that such a connection could “never” be established, but it is very difficult to envisage the circumstances in which it could be. As Professor Washbrook observed, the quality of the tuition received is a part of what goes into producing a student’s examination result, but only a part.
119. Nonetheless, my conclusion in the Claimant’s case is that, assuming (contrary to my primary finding) that the tuition he received from Professor Washbrook (and Professor Brown) fell below a reasonably acceptable standard, he cannot, even on the balance of probabilities, establish the requisite link between that tuition and the result he obtained in the gobbets paper to found the full cause of action upon which he seeks to rely. It would be inappropriate to exclude the possibility that it had some impact, but that is never enough for the purposes of this aspect of the law.
120. If that conclusion should be wrong, and a causal connection between the “poor teaching” and a significantly lower mark is established to the requisite standard, the next issue would be whether the Claimant can establish the psychiatric injury that he contends occurred.

### **Alleged psychiatric injury**

121. The way this aspect of the claim was summarised by Mr Mallalieu was as follows:

“But for the Defendant’s breach of duty and/or negligence in relation to the teaching matters, the Claimant would have obtained higher marks in his Special Subject papers and a higher “overall degree (a ‘high’ as opposed to ‘low’ 2:1).

In addition, but for the breach of duty in relation to the medical matters, his overall degree classification is likely to have been higher still. His perception of his own performance would have been greatly more positive, as would his prospects of success in his pursuing his chosen post-graduate courses and careers.

In addition, with a high 2:1 ... and a better performance in the Special Subject, the Claimant would have escaped the torment of his inability to explain his poor performance.”

122. The “torment” has, it is suggested, led to, or materially contributed to, a psychiatric injury in the form at least of “an acute adjustment disorder” (as Dr Isaac would

describe it: see paragraph 141 below) or a “significant exacerbation of [his] mental health problems” (as Dr Beckett described it in his report). Mr Mallalieu drew all the features of the evidence, as he submitted the evidence was, together and his final formulation was as follows:

“The events at [Oxford] led to a clinically significant psychological reaction and at the very least an acute adjustment disorder .... Those events then became entrenched in [the Claimant’s] mind and are likely to have formed the most significant single causative factor in the development of his psychiatric condition from dysthymia<sup>2</sup> with occasional episodes of [Major Depressive Disorder] – both of which would have been capable of control with appropriate treatment and medication – to a chronic and permanent [Major Depressive Disorder] with an extremely poor prognosis.”

123. These attractively presented, albeit deceptively simple, constructs require rather greater analysis. Sadly, it involves a somewhat detailed history to be given of the Claimant’s own psychiatric history. One would have preferred not to have been forced to analyse this, but I can see no alternative if I am to deal in full with the Claimant’s case as he has wanted it presented. There is an interface here with the secondary basis of his claim (see paragraph 5 above) and, accordingly, it is appropriate to set out the history.
124. The history for this purpose has to start prior to his A-levels. His account, as given to Dr Jonathan Beckett, his treating psychiatrist since May 2012, is that his cultural and family background placed very high academic expectations upon him, something reinforced by excelling at school in his early years. He said that his mother, in particular, placed very high expectations upon him and he cited a number of threats she made that placed great pressure upon him. His recollection was that at the age of eight, on a visit to the Harvard Law School building, he vowed in front of his parents that he would one day return there to study as a student.
125. At Burnham Grammar School he took twelve GCSEs and obtained four A\* grades and eight A grades. He was overall second in the School at this level. He then went to the Royal Grammar School, High Wycombe for his A-levels. He took A-levels in History, English Literature, Economics and Maths. His school predicted A grades in the first three subjects and a B in Maths. In his application to Oxford his school provided him with an excellent reference. He was offered a place at Brasenose College on the basis that he obtained three A grades in the A-levels to be taken in the summer of 1997. In fact he obtained A grades in the History and English Literature papers, with B grades in the other two. Notwithstanding this, he was offered a place at Brasenose which he accepted. He began there in the Michaelmas Term in 1997.
126. Despite what many would regard as a success, the Claimant was very disappointed with his A-level results. It appears from his medical records in December 1997 that he had expected to achieve four As and expressed himself angry that he had been

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<sup>2</sup> ‘Dysthymia’ is another expression for Persistent Depressive Disorder. This is characterised by a chronic and persistent disturbance of mood for at least 2 years with typical depressive symptoms such as insomnia, decreased energy, low self-esteem and difficulties in concentrating.



deprived of the opportunity of doing so by the "constant disruptive visits" of certain relatives when he was trying to study. He expressed himself as being angry with his parents that they had not controlled the situation. Those matters were recorded in a lengthy note made by his GP in Oxford in December 1997. I will come to matters that occurred later in due course, but the same issue was raised by him with Dr Colin Tidy (his GP at Oxford) again in April 1999 and it has surfaced on a good number of occasions over the years since.

127. The issue of his under-achievement (as he saw it), in his A-levels has continued to cause him concern. He mentioned it in his witness statement of 9 May 2016. However, in December 1997 Dr Tidy concluded that he was "not clinically depressed" despite the anger he was expressing. It seems that his local GP near to home had sought some psychiatric help on his behalf in January 1998, but there is no evidence that this was ever pursued. That the referral on a private basis to a psychiatrist was made suggests that there were concerns about his situation at the time.
128. The next indication in the Claimant's medical records of any problems of a mental health nature was about a year later in early February 1999 and thus about half way through his degree course. Although in some respects the notes are a little difficult to decipher, it appears that the anger he felt (particularly towards his mother and sister) concerning his A-level results surfaced again, possibly prompted by having been rejected by various "law firms" (it appears, according to what he told Dr Isaac, for internships). He had written a letter to his father (which has not survived) expressing suicidal ideas which was of sufficient concern for his father to contact Dr Ingram to check on the Claimant's welfare. It looks as if this occurred on or about 1 February 1999 because there is a reference in the contemporaneous documentation to the Claimant seeing Dr Ingram at 14.00 on 1 February and the GP's note made on 3 February indicates that he had seen Dr Ingram and gave permission for Dr Ingram to discuss the position with the GP. There is a note of a telephone conversation between the GP and Dr Ingram on 4 February and reference to the Claimant requiring prolonged counselling. There was reference also to Dr Ingram's seeing the Claimant's parents on the following Monday (8 February) and his diary indicated that there was an appointment with Mr Siddiqui senior at 10.00. It looks as if Mr Siddiqui senior also spoke to Dr Tidy on the same day. The note recorded that he was supportive of the Claimant.
129. The GP's note for 10 February records that he was to see the Counselling Service "next Monday" (which would have been 15 February), but recorded that the GP's impression was that his anger towards members of his family was "almost obsessional" and he noted the possibility of the need for medication in the future. The counselling was provided by the Deputy Head of the University's Counselling Services, Mr Alex Coren. There is a GP note on 17 February that the Claimant had found the counselling "very helpful" and there was another note a few days later indicating that the Claimant and Mr Coren were due to meet again. Although in early March there was a note that the Claimant seemed "to be getting more confidence" and it was felt that medication was "not indicated at present", by the end of March he was put on a daily dose of 20 milligrams of Paroxetine (an anti-depressant) for 30 days on 30 March and was to be seen by the GP in seven days' time. On 6 April, it was noted that he was "well" and "settled", but he was to continue on the Paroxetine.

130. (On re-reading the papers for the purposes of preparing this judgment, I noted that on 30 March 1999 the GP recorded that the Claimant had appealed against his A-level result. I do not recall this being the subject of evidence during the trial and no other documents relating to it were, so far as I am aware, disclosed. I also noted, however, that in his email to Dr Ingram of 27 June 2000 – paragraph 100 above – he said that he felt it was very important to get a medical certificate “given that I have had the harrowing experience before of missing out narrowly (one mark) on a deserved grade in my A-levels due to illness on one paper.” He told Dr Isaac that “his school had not disclosed his ‘family and health issues’ to the examination board, so that when this was disclosed, his exams were re-graded upwards.” As I have said, none of this was pursued at trial and I am in no position to make any findings about it. There is no independent evidence, so far as I am aware, however, to support the proposition that any of his A-level grades were re-graded.)
131. As I have indicated, the GP to whom I have been referring throughout was Dr Tidy at the Jericho Medical Centre. On 27 April 1999, he referred the Claimant to Dr Steven Wilson, a Consultant Psychiatrist. He set out the background to the family issues and concluded his letter thus:
- "I am intending to continue seeing [the Claimant] as I have got to know him very well and feel that it is of benefit to continue providing support but I do feel that a lot of these issues are way beyond my level care and I am very grateful for your assessment and any help that you can provided. He is currently still taking Paroxetine 20 mgs daily which I started three weeks ago."
132. An appointment was made for the Claimant to see Dr Wilson on 4 May, but he did not keep that appointment. On 14 May there is a note in the GP's record indicating that the Claimant had decided against seeing Dr Wilson and that he wanted "to just try to get on with his life", but it was recorded that he was still very angry with his parents.
133. There are other entries in his GP records in the period thereafter, but there is no direct reference to any psychological or psychiatric issues until December 2000 (some six months after his finals). That note records that he “got a 2.1” and “long chat re [psychology]”. There was an entry in September 1999 recording that generally he "seems much better and more relaxed". The same entry records that the GP has permission to speak to the Claimant's father if he telephones. This was, of course, the beginning of the Michaelmas Term when the Special Subject course was to be undertaken and which led to a good outcome in Collections in early 2000 (see paragraph 84 above). There is no record after the record dated 6 April 1999 to indicate whether he was continuing to take Paroxetine. There is a record in March 2000 that he had a throat infection and a fever which forced him to "go home for 3-4 days" and that he was seeking a one-week extension for an extended essay that was due in two days' time. The references thereafter until 19 December 2000 largely related to his hay fever and I have dealt with them at paragraphs 100 - 102 above.
134. His results became available in July 2000 (see paragraph 106 above), but there is no contemporaneous indication of any psychological reaction to those results. Indeed such contemporaneous evidence that there is suggests that, whether disappointed or not with the results, he accepted them with a degree of equanimity, as the interchange

referred to in paragraphs 106 - 108 above demonstrates and the factors referred to in paragraphs 136 - 145 below reinforce.

135. Incidentally, the Claimant's email of 11 August makes no reference to any face-to-face meeting between the Claimant and Dr Ingram at or about that time. Dr Ingram had no recollection of any such meeting, particularly if, as the Claimant now alleges, the conversation was in part about whether the examiners had been alerted to his insomnia, depression and anxiety. To the extent that it matters, I find as a fact that no such meeting took place. There must have been a telephone conversation towards the end of July, but nothing more. I will deal below with the other issues concerning the suggestion that Dr Ingram told the Claimant in March 2000 that he would (or "could") alert the examiners to the general conditions to which I have referred (see paragraphs 147 - 167).
136. The suggestion is made that the Claimant had a serious, adverse reaction to his degree results. In his first witness statement, the Claimant had said that he was "very distraught" on receiving the results. He said that the results in the Special Subject papers were the most distressing for him as he had very much expected to score his highest marks in those papers. He said that his first reaction was to think that there had been some kind of mix up with someone else's papers and that he asked for a clerical re-check. The impression given in his witness statement is that he asked for this re-check immediately. That does not appear to be supported by the contemporaneous evidence. There is no reference to it in his email to Dr Ingram of 11 August 2000 (see paragraph 108) and in his email to Dr Ingram of 15 December 2000 (see paragraph 109) he records that the Clerk of Proctor's Office had expressed surprise that he had not asked for a re-check at an earlier stage. The re-checks he did ask for originally did not include the gobbet's paper (see paragraph 109).
137. This evidence, particularly given his somewhat resigned view that the gobbet's paper "had not gone according to plan" (see paragraph 109), does not support the conclusion that he did experience the kind of reaction he claimed in his witness statement and in his accounts to Dr Isaacs and Dr Beckett to have experienced.
138. Both Dr Isaacs and Dr Beckett seem to have accepted his account that he did have some such an adverse reaction at the time of the results. He told Dr Isaacs that he was "shocked and mortified" with the results in the Special Subject papers and felt that he had been delivered a "shattering blow". He also told Dr Beckett that the results came as a "shattering blow". He said that his "entire identity and personal psyche" had been shattered by these poor results.
139. In their joint statement they said this:

“Drs Beckett and Isaac agree that the Claimant experienced a clinically significant psychological reaction to his Finals results. Dr Isaac has suggested that, based on the Claimant's self-report, it is plausible that the Claimant experienced an acute adjustment disorder, with mixed anxiety and depressed mood that lasted for perhaps six months. Dr Beckett differs in emphasis in giving more prominence to the depressive symptoms; but Drs Beckett and Isaac are essentially agreed as to the magnitude of the effect.”

140. Not surprisingly, Mr Mallalieu says that this is “sufficient to establish causation of some injury.” I am bound to say that I have very considerable reservations about whether that is so if, as I understand it to be the case on the Claimant’s behalf, the actual receipt of the knowledge of his Finals results represented the cause of some adjustment disorder lasting 6 months or some more serious depressive period commencing relatively soon after the results became available.
141. Having reviewed their reports and their evidence, there is little doubt that both Dr Isaac and Dr Beckett (who were both very experienced psychiatrists and who only had somewhat differing views of this case because one was not the Claimant’s treating psychiatrist and the other was) had little to rely upon save the Claimant’s own perception and presentation of his problems. That represents one essential part of the working diagnostic material for psychiatrists: each acknowledged that self-report was intrinsic to looking for an answer to a potential psychiatric condition and a treating solution to it. In the agreement, Dr Isaac referred specifically to the role that “self-report” played in his conclusion. Indeed the way he expressed himself in his report was as follows:
- “... I think it plausible from his account, albeit retrospectively referring [to] matters that occurred more than 15 years ago, that he suffered an acute adjustment disorder, with mixed anxiety and depressed mood, that lasted for some months, perhaps up to six months, after he received his final results in 2000. This view is based on [the Claimant’s] account – the contemporaneous medical records contain no reference to psychological disorder until much later (December 2001), and the final examination results are not invoked in the records until June 2014.”
142. Dr Beckett said in his evidence that there are potential biases in a patient’s self-report. I should say that I do not accept Mr Milford’s submission that Dr Beckett’s evidence was devalued by having been the Claimant’s treating psychiatrist or even that it disqualified him from giving expert evidence. It is merely one factor to take into account in assessing the strength of the evidence, just as is the fact that Dr Isaac has seen the Claimant only once.
143. Inevitably, neither had the advantage, as I have had, of seeing the wider picture and having available certain contemporaneous documents evidencing the Claimant’s attitude to events at or about the time they occurred. I have already referred to aspects of this (see paragraphs 108 - 110 above) and will refer briefly to one or two others shortly, but both Dr Isaac and Dr Beckett appear to have acknowledged that the issue of the results he obtained “has become extremely important to [the Claimant]”, as Dr Isaac put it in his evidence. That is undoubtedly so, but the evidence does not demonstrate that he suffered any kind of psychologically or psychiatrically significant event following news of the results. It is, of course, understandable, if he had truly set his heart on a First or a top Iii, that he would have been disappointed with the result he obtained. But that is insufficient to amount to any kind of “injury” known to the law in this context.
144. The evidence does, however, demonstrate that when the Claimant, in the years following the obtaining of his degree, did become depressed (which he did from time

to time), it was largely to do with his failure to measure up to his ambitions and expectations. There is an issue about whether he was truly rejected by Harvard and other “blue chip” academic institutions that he had set his heart upon attending because his Oxford result was “poor” or whether there were other reasons (see paragraphs 172 - 187). However, that he came to perceive that his results were the cause of all his problems is not in issue, but it appears to have been something that developed during his consultations with Dr Beckett. Mr Milford cited a passage in Mr Beckett’s evidence for a different reason, but I repeat it here:

“... as my engagement with [the Claimant] developed from 2012 onwards, it became more apparent, particularly after the first few months, that he was developing more insight into the origins of his difficulties .... Within that, the issue of his perceived failing at Oxford and the implications of that on his future career and livelihood became apparent. Certainly, I developed a sort of formulation (or reformulation, if you like) of his condition as having, as its main origin, the fact that he did not achieve the grade that he set out to achieve and also the fact that he did not get into the law schools that he set out to get into. It became apparent, upon my further assessment, that this was particularly relevant as one of the predisposing factors, if you like – perhaps the main and primary predisposing factor – for his depression and he also developed insight along the way in relation to that as well. There was a shared understanding, a shared formulation of his difficulties in relation to that.”

145. The evidence is clear (particularly, in light of the evidence of Mr James Darbyshire, a friend of the Claimant) that it was not until about September 2013 that the actual results in the ISS emerged as a factor in the Claimant’s perception of his problems and, as Dr Isaac observed (see paragraph 141 above), it was not until June 2014 that there was anything in his medical records that raised this issue.
146. For these reasons, I do not consider that the Claimant can establish the alleged causal link between learning of his results and any psychological or psychiatric problems that may have ensued.
147. The next issue is whether there was a failure on the part of Dr Ingram to alert the examining authorities to the Claimant’s alleged depression and anxiety at the time of taking his Finals. The foundation for this is the Claimant’s evidence that appeared in this way in his first witness statement:

“I recollect a discussion with Dr. Martin Ingram in March 2000 in his College room in which I asked what medical documentation I would need to produce in respect of my medical conditions for the forthcoming finals examinations. Dr. Ingram commented that since my depression and insomnia were general conditions, no documentation would be required but that this was something that he could ensure was taken into account in the marking.”

148. Dr Ingram said that he had no recollection of the Claimant raising issues of “depression, anxiety and insomnia” with him at any stage (including in early 1999) and said, in respect of the suggestion that he said that “no documentation would be required”, that he “would not conceivably have told a student [this] because it was well-known that for any medical concerns to be communicated to the Proctors, and hence to the Examiners, a medical certificate was necessary”.
149. I can deal with this issue of fact relatively shortly. As the sequence of contemporaneous medical records referred to above (see paragraphs 128 - 133) demonstrates, there is no record after April/May 1999 of any psychological issues or issues relating to anxiety, insomnia or depression until, at the very earliest, December 2000 and then only in the most general sense. This material is far more persuasive than an *ex post facto* review of the records reflected in various letters written by the Claimant’s GPs in 2013 upon which reliance is placed by the Claimant. Whether the Claimant was experiencing any symptoms of this nature during this period from April/May 1999 onwards is unclear, but one thing is clear: he was not complaining of them to any doctor. This includes the period when he was taking Finals. It is possible, as Mr Mallalieu suggests, that his mental problems were in a sub-clinical state during this period, but how that is supposed to have had some influence on Dr Ingram’s attitude to him and actions in respect of him is impossible to see.
150. In the email chain between the Claimant and Dr Ingram in December 2000 and early 2001, when the Claimant was seeking a re-check of his marks (see paragraph 109 above), whilst there is reference to the “medical evidence” that he (the Claimant) submitted in the form of the doctor’s note (see paragraph 100 above), there is no request for confirmation that the issues of “anxiety, insomnia or depression” had been drawn to the examiners’ attention by Dr Ingram. The doctor’s note concerned solely hay fever. There was no reference to those other matters as affecting his performance at all. Indeed when the Claimant resumed contact with Dr Ingram in November 2013 (and thus after being in contact with SB), there was no reference in the email exchanges that continued until towards the end of February 2014 to the alleged conversation in March 2000. Mr Milford has drawn attention to the following passage in an email from the Claimant to Dr Ingram dated 13 February 2014 at 22.19:
- “The medical evidence on record reveals that you did indeed have discussions with Jericho Health Centre doctors about my family-related insomnia, depression and anxiety. However, neither of us thought to report this to the Proctors’ office at the time. This is by no means a criticism or slight on you – the regulation which mandates Colleges to report such conditions to the Proctor’s office did not exist in 2000 and so you were not under a duty to report this.
- Based on this evidence, I assume you would now be happy to confirm the fact that neither of us did report my medical conditions to the Proctor’s office at the time.”
151. Leaving aside any other observation that might be made about that passage, it is undoubtedly inconsistent with the case that has since emerged, namely, that there was a specific conversation in March 2000 in the terms set out in paragraph 147 above.

152. It appears that it was in this sequence of emails starting in December 2013 that the Claimant raised for the first time with Dr Ingram since the Finals results were announced any issue concerning his mental health at the time of his Finals. The only reference to medical matters until then concerned the hay fever.
153. When Dr Ingram (who had shown considerable restraint during the earlier email exchanges when the Claimant appeared to be threatening to raise against Dr Ingram issues concerning “lost” practice papers and demanded that he should be “truthful and honest”) saw the email from which the quotation in paragraph 150 was taken, he replied thus:

“Thank you for your message. I'm puzzled. I thought you were seeking a review of your Finals result on the basis that independent evidence has come to light that there were issues with the teaching you received on your Special Subject, which counts for two papers. On that basis I was happy to provide a supporting statement along the lines we agreed last term.

You now seem to be raising other issues. What are you hoping to achieve?”

154. The Claimant replied as follows:

“Yes - you are quite right. The principal matter here relates to the fact I was provided deficient teaching on my two Special Subject papers.

However, I thought it better to raise other background facts for the sake of completeness - e.g. the fact I had medical conditions at the time for which no reasonable adjustments were made, such that the Education Committee could fully take into account all of my handicaps at the time of the exams and thereby provide an appropriate remedy on that basis.

Once again, this is by no means intended as a criticism of you, but as I'm sure you will appreciate - I need to raise all the issues such that proper remedial action can be taken. As always, I would be grateful for your support in this matter and can only assume that your position on the two points is as I have suggested in my previous email?

Namely, that you simply don't remember whether the British History II collection and comparative history mock papers were marked and that you are also happy to defer to medical evidence which makes it plain/clear that you knew of my medical conditions at the time but did not refer this matter to the Proctors' office?

I should make clear that there was no regulation in place to mandate you to do so at the relevant time in 2000 so I don't believe you can be criticised for this in any way. However, I

think it is clearly useful that the Committee know about this such that they can take appropriate remedial action.”

155. Dr Ingram’s response was as follows:

“Thank you for your message. Aside from the issue of your Special Subject - on which new evidence has apparently come to light, and about which I've made the statement you asked for - I have no reason to doubt that the examiners were properly informed and that you were adequately prepared for the examination by the Brasenose teaching team. Please do not write to me on this subject again.”

156. Although the Claimant sent further emails to Dr Ingram, he did not reply.

157. When the Pre-Action Protocol Letter dated 14 June 2014 was sent to the Defendant, although its primary focus was on the alleged “patently deficient teaching ... provided by Dr Washbrook”, it contained the following two paragraphs:

“In addition, prior to the taking of the examination, Mr Siddiqui had raised with Dr Ingram, his personal tutor, that he was suffering from anxiety, insomnia and depression which were affecting his ability to prepare for and his performance in the examinations generally. Dr Ingram knew about these conditions through the extensive discussions which he had with Mr Siddiqui and his doctors at the Jericho Health Centre during his time at Oxford, which are evidenced in Mr Siddiqui's medical records.

Further, Dr Ingram met with Mr Siddiqui's father in 1999 to discuss the family related issues and his associated anxiety, depression and insomnia which he suffered from at that time. Notwithstanding this, Dr Ingram appears to have failed to refer any of these matters to the Proctor's office or to have taken any step to ensure that these matters were taken into account by way of any reasonable adjustment or allowance in relation to Mr Siddiqui's preparation and teaching and/or in the sitting of and/or the marks awarded for the examination.”

158. Leaving aside the question of whether in fact Dr Ingram knew anything about the anxiety, insomnia and depression referred to (see paragraph 148 above), it is noteworthy that the conversations said to have taken place about that were “in 1999” and not in 2000, that there is no suggestion that Dr Ingram said that there was no need for any medical documentation in support and no suggestion that he said to the Claimant that he “could ensure [that these matters were] taken into account in the marking.”

159. The Particulars of Claim, settled by Leading Counsel and Mr Mallalieu, contain no reference to the alleged meeting in March 2000 and nothing about the substance of the conversation said to have taken place at that time.



160. The first occasion on which reference to this alleged conversation was made was in the Claimant's first witness statement referred to in paragraph 127 above. With obvious justification, Mr Milford put to the Claimant that he had "fabricated" this meeting and conversation, an assertion which he rejected.
161. The Claimant was a difficult witness to assess. There are, as it seems to me, many layers to his perception of an event or a conversation. His communications with Dr Ingram concerning the various references he required over the years are replete with suggestions about how Dr Ingram might phrase such a reference, what to leave out and what to highlight, suggesting a tendency to try to ensure that a beneficial "spin" is put on matters affecting him<sup>3</sup>. I have already highlighted his propensity to revise his perception of something that has occurred in order to throw a different light on the event in question and, on any view, he has a very significant track record for looking for someone else or some other factor to blame for any failure on his part to achieve what he perceives to have been the right result for him. I did sense, when listening to him give evidence, that he only wished to answer a question in a way that he thought supported his case and there are some other issues, including some concerning disclosure (see paragraphs 174 – 186 and 202 below), that have added support to this assessment.
162. These factors could lead to a conclusion that he is capable of "fabricating" an event if it suits his purpose, but I think the more likely explanation for something that he now says that is not borne out by other more reliable evidence is that he persuades himself over a period of time that something happened which either did not happen or did not happen in the way that he subsequently says that it did. All the material events at Oxford took place 17 years or so ago upon which, on and off, he has been reflecting (and, to a degree, brooding) in that time, reflections influenced by his subsequent experiences. This necessitates considerable caution to be attached to some aspects of his account of events.
163. I should, perhaps, say that I felt that his father was under considerable pressure to support his son so far as he could. The overall history suggests that the relationship, whilst close and supportive, has not always run smoothly. Whilst I think Mr Siddiqui senior was trying to give an honest account of those matters upon which he was asked to give evidence, his own perception of those events was, in my view, influenced by the Claimant's forcefully expressed account of the same events and, to that extent, had to be approached with some degree of caution.
164. The Defendant's witnesses were, for the most part, distinguished academics who expressed themselves with conviction, but also with care. I did not feel that any was trying to pull the wool over my eyes and, subject to the inevitable fading of memories with the passage of time, I regarded them all as impressive and reliable witnesses.
165. On the particular issue under consideration, I have no hesitation in preferring the evidence of Dr Ingram and I am unable to accept Mr Mallalieu's criticisms of him as a witness. In my judgment, he was a careful and meticulous witness, which seemed to me to reflect his essential character, and I simply cannot envisage him giving the

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<sup>3</sup> I might observe in passing that the reference Dr Ingram gave for the Claimant to Stanford Law School dated 27 January 2005 was extremely thorough and generous in its praise for him. He could not have asked for more.

Claimant the somewhat blasé advice about the lack of need for medical evidence that the Claimant attributes to him. I have recorded in paragraph 148 above what he said about this in his evidence.

166. Indeed, I cannot envisage the Claimant accepting such advice if it was proffered to him given (i) his belief that illness was one factor that affected his A-levels (see paragraph 130 above) and (ii) that he had, at or about the time of the alleged conversation, sought medical support to extend the time for submitting an essay (see paragraph 133 above). That there were communications between him and Dr Ingram during this period is not in issue (though there is some, in my view, immaterial issue about their frequency), but the email exchanges in the period from February through to May 2000 were dominated by concerns the Claimant had about essays in his Further Subject (not the ISS) not having been marked by other members of the academic staff. There is nothing in them suggesting that he was suffering from insomnia or was feeling depressed, something which was also lacking from the medical records at the time, as I have observed. I am prepared to accept, contrary to his present recollection, that Dr Ingram might have picked up some reference to the Claimant's depression in the various exchanges that took place in early 1999 (see paragraphs 128 - 132), but I am quite satisfied that he did not have any such matter in his mind (nor indeed should have done) in about March 2000 which is the crucial time for present purposes.
167. It follows that this aspect of the claim against the Defendant fails because the factual premise upon which it is based has not been established.
168. This conclusion obviates the need for any conclusion on the argument raised by Mr Milford that the University could not be vicariously liable for Dr Ingram's action (or alleged inaction) because the role he was undertaking vis-à-vis the Claimant was a College, not a University, role. I express no view about it.
169. For completeness, I should say that even had I found that the Claimant was suffering from overt insomnia, depression and anxiety at the time of Finals and that Dr Ingram was aware of this and should have drawn it to the attention of the examiners, the substantially unchallenged evidence of Professor Richard Sharpe (who at the time was the Junior Proctor) demonstrates that it could have made no difference. He said this in his witness statement:
- “... a medical letter that said a candidate's entire preparation and performance were adversely affected by insomnia and/or depression would have had no effect on the examiners or the candidate's marks, since the impact of insomnia and/or depression across all papers cannot be determined and cannot be remedied. Afflictions such as hay fever on the other hand, which affect papers taken on a particular day, are a very different medical phenomenon.”
170. He amplified this in a subsequent paragraph as follows:
- “I understand that [the Claimant] now believes that further action should have been taken in respect of an additional medical condition (namely, mental health problems he says that

he was suffering at the time) .... However, if [the Claimant] was not fit enough to take his examinations, he had the option to withdraw and re-enter at a later date. As he sat his examinations, the examiners had to judge his performance, not his invisible potential (whether as perceived by himself or expressed in a tutor's letter). If a candidate seeks to argue that all exams have been affected by a particular medical condition, there is no means for the examiners to calibrate the effect of the condition. To attempt guesswork in favour of one candidate is unfair to all the others who will be judged by their performance. Where one or two papers are specifically affected by a condition the examiners can use the candidate's performance in the other papers to try to gauge their proper class and calibrate the affected papers against that. However, where all papers are said to be affected, no such calibration is possible.”

171. The other suggestion was that, had this condition been known about and drawn to the attention of the examiners, some adjustment (for example, the provision of extra time to sit a paper) might have been given. Professor Ian Archer (then the Chair of the Examinations Board) said that his “understanding is that it would be very unusual -- it did not happen, as it were -- that [the examiners] would give extra time to candidates suffering from depression.” The kind of adjustment that might have been given for depression would be an extension of time for a coursework submission. There is no evidence to contradict this and it would seem, therefore, that there is no basis for saying that an adjustment of this kind would have been given even if the existence of depression and knowledge of it could be established.

#### **Failure to obtain a place in a US Law School and career difficulties**

172. All the conclusions to which I have already come make findings concerning the Claimant’s failure to achieve a place at a leading US Law School redundant, as indeed do they preclude the necessity for reaching conclusions about features of his subsequent career that he attributes to the negligent teaching and consequent mental health issues.
173. However, should I be wrong about any of the foregoing matters, I will address these issues, though more briefly than I might otherwise have done. One or two matters in that analysis have played a part in my assessment of the Claimant as a witness and, accordingly, need to be mentioned.
174. The way he put the matter in his first witness statement was as follows:

“... I made several applications to law schools in 2000, 2001, 2003 and 2005 all of which have been unsuccessful. When I have then gone back to these law schools for further feedback as to why my applications were unsuccessful, they have all pointed to the fact that my Oxford grades and associated class rank were not high enough to justify admission to their academically selective programs. This is despite having achieved an LSAT score of 170 which is in the 98th to 99th

percentile and well within the admitted band range for these schools. As I understand matters, these institutions do not focus solely on the grade of degree, but also consider the makeup of the degree result and, for example, with a 2:1 degree take into account where in the 2:1 banding the graduate's results sit."

175. 'LSAT' is the acronym for the 'Law School Admission Test'. It is a standardised admission test used by all the principal Law Schools in the US. The current website says the following about the test:

"The LSAT is designed to measure skills that are considered essential for success in law school: the reading and comprehension of complex texts with accuracy and insight; the organization and management of information and the ability to draw reasonable inferences from it; the ability to think critically; and the analysis and evaluation of the reasoning and arguments of others."

176. Its relevance in the application process is said to be as follows:

"Your LSAT score is an integral part of your law school application, but remember: it is only one of several factors that law schools consider when determining which applicants to admit. Many unmeasurable qualities also contribute to your ability to succeed in law school, including motivation, obstacles overcome, past accomplishments, and leadership skills. Highlight these qualities in your application's personal statement."

177. In relation to the issue of repeatedly taking such a test to achieve a better score, the website says this:

"If you are considering retaking the test, keep in mind that law schools will have access to your complete test record, not just your highest score. Law schools are advised that your average score is probably the best estimate of your ability - especially if the tests were taken over a short period of time."

178. I will return to the significance of that last matter below (see paragraph 185).

179. The Claimant's assertion that the feedback was that his "Oxford grades and associated class rank were not high enough to justify admission to their academically selective programs" was not borne out by the evidence he produced. There is only one letter of rejection available for consideration and it came from Harvard in April 2005. It was in the following terms:

"I am sorry to report that, after full and careful consideration, the Admissions Committee has denied your application for admission to Harvard Law School.

During this admission season, approximately 7,000 candidates are applying to an entering class that is limited to 550 students. A large majority of these applicants have demonstrated strong academic preparation for law school and the ability to contribute significantly to the quality of our student body. As a result, we must select a class that we believe to be the very best from an outstanding pool and deny admission to many candidates whom we would like to have at Harvard. Denials of admission are neither negative estimates of potential for the study of law nor absolute assessments of candidates' achievements. Rather, they are the inevitable result of many attractive candidates for comparatively few spaces in our class.

Thank you for your interest in Harvard Law School, and best wishes for your education and career plans.”

180. It is thus in somewhat generic terms, but what it means is that the Claimant was one of the approximately 6450 applicants who did not achieve a place. That simply means that the 550 had better credentials than those other applicants amongst whom he numbered. There is nothing specific about his degree results. He sought to rely on conversations he had with various people at various Universities, but that is not sufficiently reliable to enable me to conclude, on the balance of probabilities, that his “low Ili” was the reason (or a material factor) in his rejection by these various schools.
181. Furthermore, in an email to Dr Ingram in January 2001 (and presumably in the context of his first application to Harvard), he said that he had been told by “the admissions representative at Harvard” that “the class rank, etc, was not really [an] important [piece] of information, and in any case irrelevant to schools which did not have the American G.P.A.<sup>4</sup> system.” In a further email to Dr Ingram in October 2001, he said that he had spoken to “the Yale director of admissions at some length regarding [his] previous application” and it emerged, he said, that “[the] problems were not at all with [his] academic record, but were more due [to] weaknesses in [his] essays and LSAT.” It appears that he was told that admission on the basis of his academic record was not unrealistic “even though the sheer numbers applying makes this a formidable task for any applicant.” This indicates that his LSAT score at that early stage contributed to his failure to get into Yale.
182. His assertion that his score was 170 (180 being the highest one could achieve) became less impressive as the evidence unfolded. He had produced no documentary evidence to support the assertion and he reacted to Mr Milford’s questioning about this by asking whether he was suggesting that he was being untruthful. That took place on the first day he gave evidence. On the following morning he produced an email dated 6 December 2003 showing that his “December 06, 2003 LSAT score is 170” and that the “percentile rank is 98”. He explained his failure to have revealed this before by having overlooked searching his Yahoo email account, an account he had not used for a long time. It later emerged that he had searched this account for relevant material, but had not looked for LSAT results. (The Yahoo email address was not the only email address he used during the relevant period, but he did continue to use it at least

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<sup>4</sup> The Grade Point Average system.

until October 2006 because there are email exchanges between him and Dr Ingram using that address until then, the final one being an email from him to Dr Ingram on 9 October 2006.)

183. It is, of course, now clear that he did achieve 170 on this one occasion. However, it also became clear that he had taken the LSAT on quite a number of occasions although, notwithstanding his ability to produce (albeit very late in the day) written confirmation of one (good) LSAT result, he did not produce evidence of the other scores. The result for December 2003 could only have been relevant for any application for entry to a Law School in September 2004. There was evidence that he took the LSAT again in December 2004 (though no evidence was available of the result) and that he was considering taking it again in February 2005. He must have taken the LSAT in December 2000 as his email to Dr Ingram demonstrates. I assume that this would have been the exam for which he wanted a medical certificate because his GP records have this entry for 29 December 2000: "still coughing [especially] nocte" and "wants letter for exams".
184. Incidentally, at the time of the LSAT in December 2003 he attended his GP asking for a sedative. The note recorded "Anxiety re exam on Saturday afternoon" and as follows:
- "Usual circular discussion of what could be done versus what should be done, usual high maintenance decision from patient, requests Temazepam. Reluctantly agreed".
185. Although he asserted in his oral evidence that the Law Schools took the highest LSAT score out of any sequence of tests taken, that is not supported by the provision referred to in paragraph 177 above and there is no satisfactory evidence that, as he also asserted, his average was 168-169.
186. This was a very unsatisfactory part of his evidence and it lent support to my view of him as a witness as recorded in paragraph 161 above. He was putting what he perceived to be the best gloss on an important issue when the reality was undoubtedly different.
187. It does mean that, whatever else might be said, there is no evidential basis upon which I could conclude, even on the balance of probabilities, that his failure to obtain a place at Harvard, Yale or any other top US Law School arose from the quality of his Oxford degree. On the evidence available to me, it is more likely that his early LSAT result put him out of the running for these Schools in the early stages (plus, of course, the huge competition there was for a limited number of places) and that he was unable to "rescue" that position subsequently with the further LSAT tests he took.
188. As will be apparent from the foregoing, the Claimant's initial attempt to get into Harvard or Yale with a view to commencing in September 2001 did not succeed. Sensibly, he looked for other alternatives whilst apparently still retaining the ambition to obtain entry to such an institution. His ambition was to be a lawyer and he decided to qualify as a solicitor. He had obtained internships at Clifford Chance and Clyde & Co in July and August 2001 respectively. (There was, incidentally, a medical record on 23 August 2001 when a number of issues were discussed, including "long chat re family and self-esteem".) As a non-law graduate he needed to obtain the Postgraduate

Diploma in Law ('the PGDL') and then take the Law Practice Course ('the LPC') in order to qualify as a solicitor. He took the first between September 2001 and the summer of 2002 and the latter between September 2002 and the summer of 2003. Prior to the examinations in June 2002 he had seen his GP on 30 May 2002 expressing concern about the "exams next week" and, it would appear, some prescription was given. In relation to examinations forming part of the LPC course taken at the end of February and early March 2003, he obtained a letter from Dr Leaver at the Jericho Health Centre in Oxford seeking "special consideration" for those examinations on account of "nasal vestibulitis as well as otitis externa which gave him headaches, nosebleeds and soreness in the nose and ears." It was said that this was "likely to have affected both his revision and his performance during the actual exams."

189. He had obtained a training contract with Clifford Chance that started in February 2004. Whatever his health (including mental health) issues during the period from, say, 2001 until starting his training contract, they did not prevent him obtaining "merits" in the PGDL and LPC and obtaining a training contract at a very well-known City firm of solicitors. He was justifiably proud of that achievement. He said this in an email to Dr Ingram dated 17 December 2003:

"... obtaining a training contract with Clifford Chance is an extremely impressive achievement which the Harvard admission committee will be well aware of. You can certainly draw attention to the fact it is a sizeable and notable achievement that I will be working there. It is ranked as the best law firm in England and one of the best in the world."

190. As I have indicated, and as will be apparent from his continuing attempts at the LSAT (see paragraph 183 above), he retained a desire to go to Harvard. It appears from his Clifford Chance personnel file that he did not tell anyone at the firm that he took the LSAT in December 2004, something that added to a very poor appraisal in that month and in the early part of 2005. It seems that he did not carry through his intention to re-take the LSAT in February 2005 because of the issues to which this would give rise within Clifford Chance. A letter to him from HR at Clifford Chance dated 7 February 2005 referred to "serious concerns about [his] performance" which was to be reviewed in early March.

191. Given the conclusions to which I have already come, it is unnecessary for me to deal with this period in detail. I am not sure that I will do any kindness to the Claimant by doing so in any event. But I cannot avoid mention of it completely. There were significant issues concerning his performance and development at Clifford Chance that led to him not being offered employment there at the conclusion of his training contract.

192. The Claimant's account is as follows:

"... I was continually blighted and held back by the problems relating to my by then acute depression and insomnia. For example, I was often not able to get to work on time, my personal organisation was poor, and my personal presentation and appearance was at times dishevelled."

193. If his case is that any symptoms of depression and insomnia at this time were caused by brooding about his degree results, it is not borne out by what appears in his medical records. It is not entirely clear what exam the following entry related to (probably the forthcoming LSAT), but on 21 September 2004, he is recorded as saying that he had become an insomniac, the cause being recorded (not very legibly) as –
- “Stress [at] home/[grandfather] died recently and he didn't go [home].
- due USA law exams in [illegible].”
194. The prescription was recorded as follows:
- "Temazepam, advised not to take two nights prior to exams because of effect on performance.”
195. The note concludes with “? Needs counselling.”
196. There is another entry in June 2005 along similar lines. On 6 June 2005 there is an entry that reads:
- "Sleep difficulties, due to exams and family argument. Understands may reduce his performance in exams tomorrow but insistent.”
197. A short course of Temazepam was prescribed.
198. A little while later, on 19 July 2005, there is a note concerning “distress due to dispute with father engineered by mother” with regard to A-levels. There is reference to him having letters “confirming he does not have mental illness”. The note is difficult to decipher, but it appears that the GP was contemplating that the Claimant would be referred to a psychiatrist for assessment. There is no referral letter in the records, but there is a letter from Dr Anne Cremona, a Consultant Psychiatrist at the Catio Nightingale Hospital in London, dated 24 August 2005 to the Claimant’s GP in London saying that he did not keep his assessment appointment on 24 August 2005.
199. That was the last reference in his medical records on any issue concerning his mental health until 20 October 2008 which, as appears below (see paragraphs 207 - 212), relates to his time at Field Fisher Waterhouse.
200. All I think I need say for present purposes is that it is quite impossible on all this evidence to link the issues concerning his performance and development at Clifford Chance either to his degree level at Oxford or his failure to obtain a place at an American Law School (save, in that latter respect, to potentially being distracted from his work at Clifford Chance by his focus on getting to Harvard).
201. As to the failure to get into an American Law School, he was asked in cross-examination about something he said in an email to Dr Ingram dated 13 May 2004 (and thus whilst at Clifford Chance) when he said that he had been “waitlisted and admitted to some of the programmes I applied to this year.” He was asked to which programmes he had been admitted. He replied that he had been wait-listed for



Columbia Law School, but ultimately was not admitted. He initially said that he had assumed he would be admitted to Columbia which is why he wrote what he did in the email, though he now accepted that that was “a little bit of an assumption on [his] part.” As written, he accepted that the impression given was that he was admitted to more than one programme and that that indeed had been the case. He said that there was one other school to which he had been admitted, but could not remember which it was save that it was not in the top league like Harvard or Yale.

202. I regret to say that I was left not knowing whether he had in fact been admitted to another school or whether the story that he had been so admitted was a piece of fiction to explain the sentence in his email to Dr Ingram. There was no documentation of any sort that informed the issue and I find it difficult to believe that, if he had been offered a place somewhere, he would have forgotten where it was. This was another passage in the Claimant’s evidence that damaged his credibility and reliability as a witness.
203. After Clifford Chance, he obtained employment as an assistant solicitor at CMS Cameron McKenna with effect from 16 October 2006. That he was told on 5 December 2006 (just over 7 weeks later) that he had been dismissed “due to a failure to meet the necessary work criterion” tells its own story. After 4 weeks in the job he was told that he was “not currently performing even to good trainee level.” It has to be inferred that matters had not improved by 5 December.
204. His version of what occurred was set out in his witness statement as follows:
- “Unfortunately, the same health problems related to poor personal organisation and concentration plagued me as they had at Clifford Chance. My employment did not work out there and was terminated after only 1½ months. It also did not help that I did not get on with my then supervisor, whom I found to be a very difficult person to work for.”
205. It has to be observed, first, that one of his complaints when at Clifford Chance was that he had a difficult relationship with his supervisor and, second, that there is no contemporaneous evidence of any “health problems”, the last record concerning any such issue being, as I have previously indicated, in August 2005 (see paragraph 198 above).
206. At all events, his employment at CMS Cameron McKenna came to an end in a short period of time. His account of what occurred next is as follows:
- “After this, I then had a hiatus of about 5 months before joining Burges Salmon in Bristol in May 2007. I was once again very much affected by problems relating to my severe insomnia and depression. The health problems I suffered from led to poor concentration, poor personal organisation and an inability to get to work on time in the mornings because of my abject failure to sleep at night. However, my then supervisor, was a tolerant and kind man and also noted that I did produce very good pieces of Tax work, despite being very much affected by these problems. However, I very much missed my family and friends in London

and so decided to accept an offer of employment at Field Fisher Waterhouse when I was headhunted to commence employment there in January 2008.”

207. There is no documentation from Burges Salmon, but it appears that the period of employment with that firm lasted no longer than about 7 months. Without seeing any documentation from Burges Salmon, I would be very cautious about accepting the Claimant’s version of events concerning his period of work there. Although he mentions health problems, his medical records are silent on any such issue until 20 October 2008 when he was nearing the end of his time with Field Fisher Waterhouse.
208. Since the period of employment with Field Fisher Waterhouse came to an end in October 2008 with recriminations and Employment Tribunal proceedings that were effectively withdrawn by the Claimant on or about 30 October 2009 in return for a single sentence reference, it is very difficult to reach any firm conclusions about the circumstances. However, I have little doubt that the Claimant’s version of events is simplistic in the extreme:
- “Unfortunately, the same problems followed me at Field Fisher Waterhouse. Despite being able to produce some good pieces of work, there were issues relating to poor personal organisation and concentration, including an inability to get to work on time in the mornings. My employment there was terminated in October 2008.”
209. There is reference in the personnel file to complaints about the Claimant’s attitude to other people within the office, a complaint that had been a common theme throughout his previous employments.
210. There is a medical report dated 20 October 2008, the purpose of which is not entirely clear from its terms, written by his GP (Dr Jedth Phornnarit) saying that the Claimant was depressed as a result of having been “bullied at work” and that he had been “very depressed for several months now.” He was assessed to be “severely depressed” at that stage.
211. As I have said, the Employment Tribunal proceedings came to an end at the end of October 2009. There is a medical record dated 3 October 2009 (probably from an out of hours doctor) in which the Claimant is recorded as having had a “sleeping problem” for about a “month and [a] half”. He was prescribed Zopiclone (a hypnotic drug used to remedy insomnia), given 5 tablets and advised to see his GP for review.
212. It seems that after Field Fisher Waterhouse the Claimant took what he has described as a Tax Masters under the supervision of Philip Baker QC, having in the meantime applied to King’s College London to pursue a Masters there which he decided not to pursue. The precise dates are unclear, but I note that there is a letter from his GP dated 2 February 2010 that sought “an extension to the deadline for his essay” because of his “problems with sleeping”. I assume that that essay was part of his Masters.

213. He says that he “achieved an overall distinction in the MA in Taxation and some of [his] papers were the highest in the class.” No documentary material was drawn to my attention in relation to this.
214. Nonetheless, the Claimant’s next employment was in the area of tax with Ernst & Young as a Tax Adviser in the Business Tax Advisory department which commenced on or about 28 February 2011. He was dismissed on 19 December 2011 for having “failed to meet or maintain the required standard of performance”.
215. He pursued the firm’s internal appeals procedure and the appeal was dismissed in March 2012. He launched Employment Tribunal proceedings seeking re-engagement and/or compensation, alleging unfair dismissal and disability discrimination. That latter allegation was based on the alleged failure of the firm to make reasonable adjustments despite knowing that “he was suffering from severe depression and chronic insomnia as a result of a family bereavement and other domestic issues”.
216. He did not mention the Employment Tribunal proceedings in his witness statement, the existence of which was revealed in third-party disclosure. What he had said in his statement was this:
- “Once again, I was unfortunately plagued by issues relating to my severe depression and chronic insomnia such as an inability to get to work on time and poor personal presentation, even though I produced written work to a good standard. Indeed in the subsequent Appeal against my termination, the EY Partner who chaired the Appeal accepted that each of the reasons given for my termination was affected by my medical conditions, even though my Appeal was ultimately unsuccessful.”
217. There is no need for me to make any findings about the substance of the criticisms made about him by Ernst & Young or his response thereto save to note that, in addition to matters of lateness and poor personal presentation, there were suggestions of poor behaviour, rudeness and lack of IT skills, issues that had surfaced in previous employments. At all events, it is to be noted that he attributed his insomnia and depression to family issues which is indeed what he attributed those problems to when speaking to his doctors in 2010 and 2011.
218. In so far as the Claimant did suffer from depression in the period after 2000, it is clear that it was not a constant feature of his life. When it did arise he attributed it largely to family issues (sometimes going back to the circumstances surrounding his A-levels) or issues associated with work, not to some perceived failure to obtain a better result in his Oxford degree. He is (and was) plainly an anxious person (as he himself recognised) and there is a whole host of reasons why he did not make a success of the various positions he obtained after obtaining his degree, but I do not consider that the evidence establishes that such depression as did arise from time to time was a precipitating cause of these failures. There is nothing at any point to suggest that what is said to have been his preoccupation with his Oxford degree result played any part in these false starts and indeed nothing to suggest that he was troubled by any such preoccupation. I accept that from time to time he might have looked back and felt disappointed, but that is very different from what might be termed a chronic or deep-seated preoccupation.

## Limitation

219. Kerr J reviewed the arguments advanced by both parties on the issue of limitation in his judgment on the Defendant's summary judgment application: [72] – [106]. I do not propose to undertake the same resumé of the arguments: in many respects they remain the same as advanced before him and I gratefully adopt what was said in that earlier judgment. The difference now, of course, is that I have heard the evidence whereas Kerr J did not.
220. In one sense, the whole issue is academic because I have endeavoured to deal with this case on the substantive merits and I have not felt that the parties have been significantly disadvantaged in advancing and meeting the respective cases advanced. Whilst I consider that there have been some gaps in the documentary material available to the court, there has been very considerable contemporaneous documentation available that has enabled proper consideration of the issues. Whilst the memories of all the witnesses had dimmed with the passage of time, (a) fortunately none had died in the meantime or become otherwise incapacitated from giving evidence and (b), as one might have anticipated given the intellectual capacity of all the Defendant's witnesses, each was able intelligently to recreate his or her perceptions of material events in a generally persuasive way. Where there were areas of doubt, the contemporaneous written material generally gave the answer. Those who had dealings with the Claimant during his time at Oxford will probably have had good cause to remember him, particularly given the tenacity with which thereafter he sought their assistance with the provision of references or the review of his results.
221. Nonetheless, given the very extensive delay in these matters arising and what must be regarded as the general undesirability of litigating the kind of issues to which this case has given rise many years down the line from the material events, I think I should address briefly the "knowledge issue" ([72] – [87] of Kerr J's judgment) and the "fraudulent concealment issue" ([88] – [96] of that judgment).
222. As a preliminary to this review, the circumstances in which the Claimant came to investigate and pursue this claim need to be understood. It will already be apparent (see paragraph 42), that it was the discovery of SB's views about the ISS course that led to the Claimant approaching Dr Conway. Dr Conway's evidence was to the effect that the Claimant "badgered" him into making a statement in support of his (the Claimant's) request to the University to reconsider its classification of his degree. Dr Conway eventually agreed to make a factual statement which he sent to Brasenose College. It referred to SB's letter and to Professor Washbrook's response which, of course, contained the concerns about the circumstances in which the course was taught (see paragraphs 44 - 66 above).
223. Mr Mallalieu described this as the Claimant's "lightbulb" moment. He had, it is suggested, always known that there was something wrong with his ISS grades, but until then he had had no explanation. Now he had at least some basis for believing that there might be an explanation for what had gone wrong. Mr Mallalieu says that prior to October 2013 the Claimant had insufficient "knowledge" for the purposes of section 14 of the Limitation Act 1980. There is no doubt that the proceedings were issued within 3 years of that date, the Claim Form being issued on 26 August 2014. It is accepted on his behalf that the burden lies on him to establish on the balance of

probabilities that he did not have the requisite knowledge of the relevant matters until within 3 years of the date of issue of the Claim Form.

### Knowledge

224. What constitutes “knowledge” for this purpose is an issue that is not free from difficulty when there is no obvious “injury” occasioned by the putative negligent act: see, e.g., *AB v MOD* [2013] 1 AC 78. The injury alleged in this case (depression or an adjustment disorder) was not, on the Claimant’s case, capable of being attributed to his low marks in the ISS gobbets paper until this attribution was made during the consultations with Dr Beckett in 2012-2013, yet it is the Claimant’s case that he suffered profound shock at the results at the time the results became available (see paragraph 138 above). As will be apparent, I do not accept that case (see e.g. paragraphs 137 and 145 above). Nonetheless, the case advanced (upon which an assessment of this aspect of the limitation issue must be based) is that he suffered a psychological injury at or shortly after the results were announced and that it was not possible to make the attribution of the cause of that injury to the alleged breach of duty by the University until October 2013 at the earliest.
225. It is common ground that “knowledge” that the “injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty” for the purposes of section 14(1)(b) means believing facts with sufficient confidence to embark upon the preliminaries to the issue of a writ. In *AB v MOD*, Lord Wilson JSC, said this at [12]:
- “What then is the degree of confidence with which a belief should be held, and of the substance which it should carry, before it is to amount to knowledge for the purpose of the subsection? It was ... Lord Donaldson MR in *Halford v Brookes* [1991] 1 WLR 428 who ... offered guidance in this respect which Lord Nicholls in *Haward v Fawcetts* [2006] 1 WLR 682 was, at para 9, to describe as valuable and upon which, at this level of generality, no judge has in my view yet managed to improve: it is that the belief must be held “with sufficient confidence to justify embarking on the preliminaries to the issue of a writ, such as submitting a claim to the proposed defendant, taking legal and other advice and collecting evidence”. In *Broadley v Guy Clapham & Co* [1994] 4 All ER 439 Hoffmann LJ ... paraphrased Lord Donaldson MR's guidance in terms of a search for the moment at which the claimant knows enough to make it reasonable for him to begin to investigate whether he has a “case” against the defendant ....”
226. Lord Wilson also confirmed that it is not the case that someone lacks knowledge for this purpose “until he has the evidence with which to substantiate his belief in court.” [11]
227. Applying these principles to a given factual situation may not always prove easy. One difficulty in this case, having heard the evidence, is knowing the reality of the Claimant’s subjective thinking about all the various material matters at certain

material times. I have already said that there are “many layers to his perception of an event” (see paragraph 161 above) and, whilst I intend him no discourtesy or unkindness given his acknowledged mental health issues, unravelling the complex mix of his mental processes at various times has proved extremely difficult.

228. Doing the best I can, my conclusion, on the basis of the case that is sought to be presented, is that he did possess no later than early 2001 sufficient material to justify embarking on the preliminaries to the issue of a Claim Form such as submitting a claim to the University, taking legal and other advice and collecting evidence. I reach that conclusion for the following reasons, briefly expressed:

(i) In relation to the teaching received in preparation for the gobbets paper, there is clear evidence that, at the time of the paper, he believed that there had been insufficient coverage of the syllabus. I have, of course, rejected this as a sustainable allegation (see paragraph 90), but his email to Dr Ingram of 25 October 2001 (see paragraph 104 above) shows that he believed in the fact of inadequate preparation as at the time he took the paper. He confirmed this in his oral evidence. He also asserted that he took a positive decision not to complain. Had he done so and received an unsatisfactory response, he might well have taken the next step of seeking legal advice.

(ii) It was accepted by him in evidence that he was aware of SB’s concerns about the teaching of the ISS course. They were in the same tutorial group and discussed these matters. This would have reinforced his belief as to the fact of poor preparation for the paper.

(iii) Whilst, again, I have rejected his case that it was the level of his degree that prevented him obtaining a place at Harvard or Yale, if that is what he genuinely thought (which is his case), following up what to him must have been a significant factor in his under-achievement in the gobbets paper (which, on his case, is the paper that brought his Iii down to a low level) would be an obvious step given (i) and (ii) above. He did not take that step.

(iv) In relation to the relevance of his mental health issues to his performance in the gobbets paper (and indeed any other papers), the letter from Professor Sharpe dated 20 February 2001 (see paragraph 113 above) demonstrated clearly that those issues had not been raised. It was only the hay fever that was known to the examiners. I have already drawn conclusions about the alleged failure of Dr Ingram to draw these issues to the attention of the examiners (see paragraphs 147 - 167 above), but if and in so far as the Claimant seeks to rely in these proceedings on the fact of Dr Ingram’s failure to inform them, he knew that fact from no later than when he saw Professor Sharpe’s letter which he acknowledged that he did at the time. I agree with Mr Milford that the Claimant’s suggestion, when confronted with the letter when giving evidence, that nowhere in the letter was it said “that the depression, insomnia and anxiety [were] not taken into account” is a wholly unconvincing response. However, the short point is that any sensible reading of the letter would have alerted him to the fact that his mental health issues had not been taken into account. Given the case he seeks now to bring, there was a clear basis for him to seek further information or advice about whether it afforded him a basis for taking proceedings.

(v) If, contrary to my earlier findings (see paragraph 224 above), the Claimant suffered extreme shock at his results such that his health suffered, he was in a position then to obtain medical advice about the cause of his ill-health.

229. To my mind, all that the events of September/October 2013 yielded was evidence, or further evidence, which arguably supported the facts that he believed existed at this early stage.
230. It follows from the foregoing that, in my judgment, and subject to the “fraudulent concealment” issue and the exercise of discretion under section 33 of the Limitation Act, I would have concluded that the claim was statute-barred.
231. I will turn to the issue of “fraudulent concealment”, but it should be noted that Mr Mallalieu, quite correctly, accepted that it could only apply to alleged inadequate teaching arrangements.

“Fraudulent concealment”

232. This depends on the meaning of section 32 of the Limitation Act. I will not set it out, but Mr Milford referred me to what Lord Scott of Foscote said about the two limbs of section 32 in *Cave v Robinson Jarvis & Rolf (A Firm)* [2003] 1 AC 384 at [60] and I think, with respect, it bears repetition:

“I agree that deliberate concealment for section 32(1)(b) purposes may be brought about by an act or an omission and that, in either case, the result of the act or omission, ie, the concealment, must be an intended result. But I do not agree that that renders subsection (2) otiose. A claimant who proposes to invoke section 32(1)(b) in order to defeat a Limitation Act defence must prove the facts necessary to bring the case within the paragraph. He can do so if he can show that some fact relevant to his right of action has been concealed from him either by a positive act of concealment or by a withholding of relevant information, but, in either case, with the intention of concealing the fact or facts in question. In many cases the requisite proof of intention might be quite difficult to provide. The standard of proof would be the usual balance of probabilities standard and inferences could of course be drawn from suitable primary facts but, none the less, proof of intention, particularly where an omission rather than a positive act is relied on, is often very difficult. Subsection (2), however, provides an alternative route. The claimant need not concentrate on the allegedly concealed facts but can instead concentrate on the commission of the breach of duty. If the claimant can show that the defendant knew he was committing a breach of duty, or intended to commit the breach of duty—I can discern no difference between the two formulations; each would constitute, in my opinion, a deliberate commission of the breach—then, if the circumstances are such that the claimant is unlikely to discover for some time that the breach of duty has been committed, the facts involved in the breach are taken to

have been deliberately concealed for subsection (1)(b) purposes. I do not agree ... that the subsection, thus construed, adds nothing. It provides an alternative, and in some cases what may well be an easier, means of establishing the facts necessary to bring the case within section 32(1)(b).”

233. Mr Milford’s short point is that neither limb (or gateway, as he termed it) was satisfied in this case. Mr Mallalieu, on the other hand, says that the Defendant, through its various officers, knew from about September 2000 that SB had made a "serious and very unusual complaint" (as he put it) about the teaching of the ISS course, that those matters might have affected the results in the ISS papers and indeed the marks were generally low by comparison with other Special Subject gobbets papers, that there was no First-level mark that year (which was unusual) and Professor Washbrook and Professor Brown (in September) each acknowledged that there were teaching difficulties that year. Bearing in mind that the Claimant was asking in December 2000 for the marking of four of his papers (including, as it happens, the gobbets paper) to be re-checked, it is argued that he should have been told of these matters and that the failure to do so amounted to deliberate concealment. Mr Mallalieu adds to this proposition what he submits was a concession by Professor Archer that he (the Claimant) ought to have been told about these matters once the University was aware that another student had said that his or her result did not reflect their performance and that “something might have gone wrong”, a somewhat loose expression used in the question that elicited the answer “yes”.
234. Mr Milford’s response to that last matter is that the Claimant’s request, through Dr Ingram, was to have his results on these four papers re-checked because he did not feel they were “an accurate reflection of his performance” and because he wondered whether the marks awarded were indeed marks given for his papers (and not the papers of someone else). The request did not focus at all upon the quality of the teaching which led to his performance in the paper – and, of course, if it is the case (see paragraph 104 above) that he felt at the time that he had not been prepared by the teaching for the paper, this is something he could have raised then. Indeed Professor Archer said very clearly that, if he had complained about poor teaching, it would not have been possible to alter the result in any event. Dr Heal was of the view (see paragraph 49 above) that the complaint made by SB (which, of course, was not wholly accepted by Professors Washbrook and Brown) was not a complaint that went to the marking of the papers or anything to do with the results. No other student made a complaint that reflected on the quality of the teaching.
235. As it seems to me, the issue is whether the attitude taken by those who got to know about the issues raised by SB (and the response, in particular, of Professor Washbrook), namely, that they were issues raised by one particular student who was not complaining about her examination result and which went as much to the content of the course as to her perception of Professor Washbrook’s style of teaching (see paragraphs 50 – 52 above), was obviously unreasonable. If it was, a duty to send the issue elsewhere (perhaps to the Proctors or to the University authorities) might well be seen to arise in the circumstances, particularly if there was clear evidence that the teaching was obviously inadequate. But if the view taken was reasonable and tenable, then it is difficult to see how any such duty could arise and, in consequence, why the Claimant should have been alerted to these matters when he asked for his marks to be



re-checked in the absence of any expressed concern about the quality of the teaching. For my part, I can understand how the view expressed, particularly by Dr Heal, was taken and against that background I cannot see any grounds for concluding that some fact relevant to the Claimant's cause of action had been deliberately concealed from him (Limb 1) or indeed that there was knowledge on the part of Dr Heal's committee of negligently inadequate teaching, the existence of which the Claimant could not discover for some time (Limb 2).

236. For these reasons, I do not consider that the Claimant has established that there has been any "fraudulent concealment" of material facts or matters upon which he could rely to extend the normal limitation period.

Section 33 discretion

237. Those conclusions would have resulted in his claim being statute-barred and his recourse would have had to have been to the discretion afforded to the court pursuant to section 33 of the Limitation Act 1980.
238. As I have already observed (see paragraph 220), I have in fact addressed this case on the merits and not felt that the Defendant, in particular, was disadvantaged having to meet the case on the merits. I cannot say what decision I might have reached had I dealt with the limitation issue as a preliminary issue. That possible avenue was abandoned by the Defendant and it may simply have been that the view was taken (in my view, justifiably) that the claim could be defended on the merits and that it would be better so to defeat it than to rely upon the limitation period. At all events, the issue has been left to what was otherwise the substantive trial and it is a somewhat futile exercise to reflect on it further.

**Conclusion**

239. The net effect of this lengthy judgment is that the Claimant's claim fails and must be dismissed.
240. I recognise that this will come as a great disappointment to the Claimant given the investment of time and effort he has made to pursue it. As Dr Beckett and Dr Isaac agree, he does now possess a "firmly entrenched belief" that all his post-Oxford problems lie with what occurred there. I have been unable to accept that this is so. It is well recognised that claims based on alleged educational negligence are notoriously difficult to bring to a successful conclusion and I am sure he will have been advised of this.
241. However, he has not lost the claim simply because it is the kind of claim that is generally a difficult claim to sustain. Although there were some problems with the delivery of the ISS course in the 1999/2000 academic year at Oxford, I have not been persuaded on the evidence that the manner of its delivery was negligently inadequate (thus constituting "simple operational negligence") and, in any event, that it can be demonstrated to the requisite standard that the manner of its delivery that year caused his low mark in the gobbets paper, that this mark made a material difference to the level of his degree and that the level of his degree caused the various consequences he has relied upon, including his failure to get to Harvard or an equivalent American Law School and his failure thus far to sustain a successful career in the law. He has

suffered intermittent bouts of severe depression over the years for which he is entitled to sympathy and understanding. However, I do not consider that they can be attributed to his degree result.

242. Although Dr Beckett has put forward a somewhat pessimistic prognosis for the future, the truth, in my view, is that the underlying issues that have given rise to his periods of depression have never been fully addressed and unfortunately for the last four years or so he has focused on this litigation as the solution to his difficulties. Now that it has been shown that the litigation has not had this effect, it is to be hoped that he can re-focus, perhaps lower his expectations at least for the time being and start using his undoubted intelligence to create a worthwhile future for himself. However, those are matters upon which he will doubtless take advice.
243. He undoubtedly feels that he has not achieved the high standards he has set himself. There is obviously a question about whether he has been asking too much of himself. However, history is full of examples of those who have not achieved the academic success predicted for them, but have gone on to be extremely successful in what they have done. There are those for whom no academic distinction has been predicted, but they go on to become people of significance. There are equally many examples of those who have achieved academic distinction, but have failed to capitalise on it. There is a wide spectrum of abilities and attainment in almost any sphere of activity, occupational or otherwise. The law is no exception. But whilst it cannot be said that some aspect of a person's education, inadequately delivered, can never be the cause of that person's failure to achieve some otherwise attainable objective, the hurdles in establishing a claim for compensation based upon that inadequate delivery are great and often insurmountable. In this case, I have not been satisfied that the delivery of one particular feature of the Claimant's undergraduate degree course was inadequate or, in any event, that it had the consequences claimed for it.
244. That said, in the present climate, some 17 years on from the material events in this case, when students are incurring substantial debts to pursue their university education, the quality of the education delivered will undoubtedly come under even greater scrutiny than it did in the past. There may be some rare cases where some claim for compensation for the inadequacy of the tuition provided may succeed, but it is hardly the ideal way of achieving redress. Litigation is costly, time- and emotion-consuming and runs the significant risk of failure, particularly in this area where establishing a causative link between the quality of teaching and any alleged "injury" is fraught with difficulty. There must be a better way of dealing with this kind of issue if it cannot be resolved by the individual concerned simply accepting what has happened and finding a positive way forward. Upon the question of what is that better way there will doubtless be many views.

### **Expression of thanks**

245. This case has been exceptionally well argued, both on paper and orally, by Mr Mallalieu and Mr Milford and I am extremely grateful to them for their assistance. If I have not referred to a particular feature of the evidence or of their arguments, it is because I have not felt that that it has taken matters any further than the considerations reflected in the body of the judgment.

**APPENDIX A**

**Gobbets Papers in Special Subjects in 1999/2000**

<b>Subject</b>	<b>No. of students receiving Highest mark on Gobbets paper</b>	<b>No. of students receiving Lowest mark on Gobbets paper</b>	<b>Total number of students in class</b>	<b>Proportion receiving Highest mark in Gobbets</b>	<b>Proportion receiving Lowest mark in Gobbets</b>
Politics, Heresy and Propaganda in France	Total highest: 1 <i>Outright highest: -</i> <i>Joint highest: 1</i>	Total lowest: 2 <i>Outright lowest: 2</i> <i>Joint lowest: -</i>	3	33.33%	66.67%
Church, State and English Society	Total highest: 1 <i>Outright highest: -</i> <i>Joint highest: 1</i>	Total lowest: 3 <i>Outright lowest: 1</i> <i>Joint lowest: 2</i>	5	20%	60%
English Architecture	Total highest: 3 <i>Outright highest: 1</i> <i>Joint highest: 1</i> <i>Highest agreed: 1</i>	Total lowest: 12 <i>Outright lowest: 3</i> <i>Joint lowest: 6</i> <i>Lowest agreed: 3</i>	26	11.54%	46.15%
War and Reconstruction	Total highest: 2 <i>Outright highest: 1</i> <i>Joint highest: 1</i>	Total lowest: 7 <i>Outright lowest: 6</i> <i>Joint lowest: 1</i>	14	14.29%	50%
Commonwealth and Protectorate	Total highest: 3 <i>Outright highest: -</i> <i>Joint highest: 3</i>	Total lowest: 8 <i>Outright lowest: 5</i> <i>Joint lowest: 3</i>	17	17.65%	47.06%
Byzantium in the Age of Constantine	Total highest: 0	Total lowest: 3 <i>Outright lowest: -</i> <i>Joint lowest: 3</i>	9	-	33.33%
Development of the Third Reich	Total highest: 3 <i>Outright highest: 1</i> <i>Joint highest: 2</i>	Total lowest: 2 <i>Outright lowest: 1</i> <i>Joint lowest: 1</i>	7	42.86%	28.57%
Politics, Reform and Imperial Crisis	Total highest: 9 <i>Outright highest: 4</i> <i>Joint highest: 4</i> <i>Highest agreed: 1</i>	Total lowest: 8 <i>Outright lowest: 2</i> <i>Joint lowest: 5</i> <i>Lowest agreed: 1</i>	30	30%	26.67%
Government,	Total highest: 8	Total lowest: 4	17	47.05%	23.52%

Politics and Society in England	<i>Outright highest: 4 Joint highest: 2 Highest agreed: 2</i>	<i>Outright lowest: 2 Joint lowest: 1 Lowest agreed: 1</i>			
High Renaissance in Rome and Florence	Total highest: 6 <i>Outright highest: 1 Joint highest: 5</i>	Total lowest: 8 <i>Outright lowest: 3 Joint lowest: 3 Lowest agreed: 2</i>	38	15.79%	21.05%
France from the Popular Front to the Liberation	Total highest: 0	Total lowest: 2 <i>Outright lowest: 2 Joint lowest: -</i>	10	-	20%
The Cuban Revolution and the End of the Spanish Empire	Total highest: 4 <i>Outright highest: 3 Joint highest: 1</i>	Total lowest: 1 <i>Outright lowest: - Joint lowest: - Lowest agreed: 1</i>	5	80%	20%
Francia in the Age of Clover	Total highest: 6 <i>Outright highest: 3 Joint highest: 2 Highest agreed: 1</i>	Total lowest: 2 <i>Outright lowest: - Joint lowest: 2</i>	12	50%	16.67%
Political Pressures and Social Policy	Total highest: 5 <i>Outright highest: 2 Joint highest: 3</i>	Total lowest: 5 <i>Outright lowest: 3 Joint lowest: 2</i>	25	20%	20%
Lancaster and York	Total highest: 4 <i>Outright highest: 4 Joint highest: -</i>	Total lowest: 2 <i>Outright lowest: 1 Joint lowest: - Lowest agreed: 1</i>	15	26.67%	13.33%
Slavery, Emancipation and the Crisis of the Union	Total highest: 11 <i>Outright highest: 5 Joint highest: 6</i>	Total lowest: 4 <i>Outright lowest: 1 Joint lowest: 3</i>	31	35.48%	12.9%
Norman Conquest	Total highest: 4 <i>Outright highest: 1 Joint highest: 2 Highest agreed: 1</i>	Total lowest: 1 <i>Outright lowest: - Joint lowest: 1 Lowest agreed: 1</i>	14	28.57%	7.14%
From Julian the Apostate	Total highest: 0	Total lowest: 0	1	-	-
Culture and	Total highest: 0	Total lowest: 0	1	-	-

Society in Early Renaissance Italy					
A Comparative History of the First World War	Total highest: 0	Total lowest: 0	1	-	-
The Scientific Movement in the 17 <sup>th</sup> Century	Total highest: 2 <i>Outright highest: 1</i> <i>Highest agreed: 1</i>	Total lowest: 0	4	50%	-
St Francis and St Clare	Total highest: 4 <i>Outright highest: 2</i> <i>Joint highest: 2</i>	Total lowest: 0	5	80%	-
Russian Revolution	Total highest: 1 <i>Outright highest: -</i> <i>Joint highest: 1</i>	Total lowest: 0	1	100%	-

**APPENDIX B**

**Modern History: Schools Examination, 2000**  
**Numerical equivalents**

A	80
A-	78
A-?-	76
A=	74
AB	72
BA	70
B+--+	68
B++	66
B+?+	64
B+	62
B	60
B?-	58
B-	56
B-?-	54
B=	52
CB	50
C-+	48
C+	46
C	44
C-	42
C=	40

Marks below C = score zero

## APPENDIX C

First Class: for a first, a candidate should have at least

- (i) 4 marks of AB or above: 2 marks of B+ or above:  
1 mark of B= or above
- OR (ii) 3 marks of AB or above: 1 mark of BA; 1 mark of B++  
2 marks of B+ or above

Upper Second Class: for an upper second, a candidate should have at least

- (i) 5 marks of B+ or above
- OR (ii) 2 marks of B++ or above: two marks of B+:  
1 mark of B
- OR (iii) 1 mark of B++ or above: 4 marks of B+ or above:  
1 mark of CB

In each case the remaining mark or marks must be B= or above.

Lower Second Class: for a lower second, a candidate should have at least

5 marks of B= or above: 2 marks of C= or above.

Third Class: for a Third a candidate should have at least

7 marks of C= or above