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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION
(JUDICIAL REVIEW)

APPLICATION BY DOMINIC GALLAGHER
FOR JUDICIAL REVIEW

Dominic Gallagher, as a Litigant in Person
Alistair Fletcher (instructed by Carson McDowell, Solicitors) for the Proposed Respondent

McLAUGHLIN J

Introduction

[1] This is an application for judicial review of a decision of Queen's University Belfast ("QUB") to expel the applicant as a student. The decision was taken on behalf of QUB by the Student Conduct Appeals Committee ("SCAC") on 14 October 2024, following internal appeals. At the time of the relevant events, the applicant was a student on the barristers' training course at the Institute of Professional Legal Studies ("the Institute"), which forms part of QUB.

[2] As set out below, the applicant was found guilty of several misconduct offences, including the offence of "*abusive, threatening, intimidating, bullying or harassing behaviour, whether in person or via social media or online platform*." Pursuant to QUB's Conduct Regulations, the standard (but not mandatory) penalty for this offence is expulsion from the university. The applicant therefore received the standard penalty. He appealed against the penalty only but did not appeal against the finding of guilt. On 16 December 2025, leave to apply for judicial review was granted on one ground, namely whether the expulsion decision was a breach of the applicant's rights under Article 8 ECHR and section 6 of the Human Rights Act 1998. Leave was refused to challenge wider aspects of the disciplinary investigation and misconduct process, including the finding of guilt on the ground, inter alia, that the finding of guilt had not been appealed (*Re Gallagher* [2025] NIKB 73).

[3] Upon successful completion of the barristers' training course at the Institute, students are awarded the Certificate of Professional Legal Studies, which is recognised by the Benchers of the Inn of Court of Northern Ireland for the purposes of admission to the profession in Northern Ireland. The implications for the applicant's future career in Northern Ireland arising from both the findings of guilt and the expulsion decision are set out in more detail below.

Relevant regulations governing misconduct

[4] Upon admission to the Institute of Professional Legal Studies, the applicant was required to give consent to QUB's Terms and Conditions of Entry (Taught Programmes) 2023. Clauses 10 and 11 of the conditions require that all students enrolling and registering at the University must abide by with the Student Charter and all of the University's regulations and policies which are specified in Annex A. The Student Charter identifies a series of commitments from QUB to students. In return, students are expected to observe certain behavioural standards, which include commitments to treat fellow students, university staff and visitors equally and respectfully, without regard to their background or status. They are also required to comply with the terms of all university rules, requirements and policies, including the Conduct Regulations.

[5] The QUB disciplinary procedure is governed by a combination of the Conduct Regulations and a Serious Misconduct Procedure. The process involves four stages:

(i) Investigation into complaints against the student, culminating in a report and factual findings.

(ii) Decision by a conduct officer on whether any misconduct offence has been committed.

(iii) Appeal to a conduct committee, or referral to a conduct committee for a decision on penalty.

(iv) Appeal to the Student Conduct Appeals Committee.

Conduct Regulations and Serious Misconduct Procedure

[6] The Conduct Regulations set out QUB's procedures for considering allegations of misconduct by students. They also include a schedule of misconduct offences and standard penalties for first and subsequent offences. A number of the offences relevant to these proceedings are set out below. Regulation 1.1 provides:

> "… misconduct under these Regulations is deemed to be improper interference, in the broadest sense, with the proper functioning or activities of the university, or those who work or study in the university; or behaviour which

> brings, or may bring, the university into disrepute. The purpose of these Regulations is to provide a framework for dealing with allegations of student misconduct in a consistent and proportionate way."

[7] Regulation 6 sets out a schedule of "*minor misconduct offences*" together with standard penalties. These include an offence of "*causing minor harm or threatening to cause minor harm to another person (eg slap, push) or making threats via social media or online platform.*" The standard penalty for this minor offence is a written warning and fine (£150) for a first offence and written warning and fine (£250) for a second offence.

[8] Regulation 6 also contains a separate schedule of *"serious misconduct offences."* These include the offence of "*abusive, threatening, intimidating, bullying or harassing behaviour, whether in person or via social media or online platform*", for which the standard penalty for a first offence is expulsion (para 9). The offence of *"physical misconduct"* also carries a penalty of expulsion for a first offence (para 15). The offence of "*threats of physical misconduct*", has a standard penalty of suspension for a first offence and expulsion for a second offence (para 16).

[9] Allegations of serious misconduct are also governed by a Serious Misconduct Procedure (regulation 2.5), which supplements and overlaps considerably with the procedures contained in the Conduct Regulations. The misconduct charges in this case were governed by the Serious Misconduct Procedure.

[10] Regulation 7 provides for an investigation process, carried out by an investigating officer appointed by the university. The investigation process involves consideration of the complaint; the possibility (but not obligation) of obtaining additional information/evidence either to support or to undermine a complaint; interview of the complainant, of any witnesses and of the accused student with interviews recorded. Students are given notice of all allegations in writing and are afforded the opportunity to pose questions to the reporting person. At the conclusion, the investigating officer prepares a "*written report of their findings to the conduct officer, providing copies of all supporting evidence*."

[11] Regulation 8 provides for a consideration of the investigating officer's report by a conduct officer. The conduct officer then decides whether or not a serious misconduct offence has been committed (regulation 8.5). In cases of serious misconduct, the case is referred to a conduct committee for consideration of a penalty. Students may also appeal a finding of misconduct to the conduct committee. The grounds of appeal are that there is evidence of a material procedural irregularity or that material new evidence has become available (regulation 10.2.10, Conduct Regulations). Student appeals are subject to a screening process to determine whether the evidence presented is "*sufficiently compelling*" (regulation 9.5.5). Where an appeal is "screened-out", the student may request a review by a Review Panel (regulation 9.5.5.3). The conduct committee may deal with an appeal

or consider the issue of penalty on the papers (at the request of the student) but will otherwise conduct an appeal hearing. The conduct officer attends the hearing to explain the reasons for their decision in the presence of the student (regulation 9.6). If the conduct committee allows the appeal against the finding of misconduct, it may require re-investigation, in whole or in part, or the investigation of any new evidence. Alternatively, it may "*dismiss the appeal and confirm the decision of the conduct officer*." When deciding on penalty, it may impose the standard penalty specified in the Conduct Regulations or it may deviate from the standard penalty "*where evidence to support the deviation is provided*." The range of penalties for a finding of serious misconduct are exclusion, exclusion from university accommodation, suspension, fine or a combination of lesser measures such as conditional discharge, written warning, provision of undertakings/apology, participation in training courses etc (regulation 10.1.3 and 10.2.12, Conduct Regulations).

[12] Where a penalty is imposed by a conduct committee, the student may appeal to the Student Conduct Appeals Committee (regulation 10). Appeals to the SCAC are also subject to screening. The appeal may proceed on the papers at the request of the student but will otherwise involve an oral hearing. The Chair of the conduct committee and the student both appear at the hearing. Appeals to the SCAC are limited to penalty only (regulation 10.1). The SCAC may uphold the appeal in full or in part and may impose any penalty which was available to the conduct committee.

Fitness to Practise Regulations

[13] The Fitness to Practise Regulations ("FTP Regulations") operate in addition to the Conduct Regulations. They apply to students whose programme of study leads to a professional qualification or to them entering directly into a profession including those undergoing professional legal training. The FTP Regulations are intended to maintain professional standards of behaviour or health which reflect the suitability of the individual to practise their chosen profession.

[14] Where a student is found to have committed a misconduct offence and a penalty is imposed via the Conduct Regulations, the student's school is notified of the penalty and will consider whether the FTP Regulations should be invoked. Where the expected penalty is expulsion, the case may be referred under the FTP Regulations before a penalty is imposed under the Conduct Regulations. For this purpose, the misconduct offence will be "*deemed proven and further investigation … will not be required*." (regulation 5.1.4)

[15] Where the Head of School refers a case to a Fitness to Practise Panel ("FTP Panel"), it will hear the case and decide whether or not the student's fitness to practise is impaired. If so, it may impose one or more of a series of specified sanctions including a written warning, written undertakings regarding future behaviour, conditions for completion of the programme of study, a requirement to

undertake measures recommended by occupational health, suspension or expulsion, with or without transfer to a non-professional programme of study.

[16] Referral to an FTP panel may also occur where a student has been convicted of a criminal offence or accepts a police caution which may have a bearing on the student's fitness to practise.

[17] The FTP Regulations apply independently of the Conduct Regulations (regulation 10). No referral has been made to an FTP panel in respect of the applicant. As set out below, if the applicant is successful in gaining re-admission to the Institute, it is likely that his case will be referred to a FTP panel before he is able to take up the place.

Admission to Inn of Court of Northern Ireland

[18] In the absence of evidence from the applicant, the court made a number of inquiries at the leave stage regarding the possible barriers to admission to the Bar of Northern Ireland which he may face as a result of the misconduct offences and expulsion decision. The respondent made inquiries with the Inn of Court of Northern Ireland and made available the relevant rules. In summary, Rule 8 requires that a person seeking admission to the profession in Northern Ireland must first be admitted as a student of the Inn of Court of Northern Ireland. The application process requires submission of a Memorial, Declaration and Undertaking, in a form specified, which is signed by a barrister in independent practice in Northern Ireland of at least 10 years standing. Every student of the Inn is then required to attend the barristers' vocational training course at the Institute, QUB. Rule 4 reserves a discretion for the Benchers of the Inn of Court to refuse admission as a student or to the degree of barrister in certain circumstances, including that the person has been convicted of or cautioned for a criminal offence "*of such a nature as in the opinion of the Inn makes his admission undesirable.*" Admission may also be refused if the person is "*for any other reason, considered by the Inn unsuitable for admission*." Students have ongoing obligations to inform the Under Treasurer of the Inn of Court of any matter which may impact the accuracy or completeness of a memorial, declaration or undertaking. The form of memorial requires the individual to confirm the absence of any criminal convictions and also that they have not been found guilty of an academic charge by a higher education institution. In the event of such conviction or finding, a full disclosure of the circumstances is required. Thereafter it is a matter for the discretion of the Benchers to determine whether the misconduct finding renders the person unsuitable for admission to the profession.

[19] Suitability for admission as a student is therefore determined by the Inn of Court prior to admission to the Institute.

[20] Admission to the Bar of Northern Ireland may also be achieved by call to the Bar of England & Wales or Ireland, followed by the completion of a period of

pupillage and three years' practise in those jurisdictions. Alternatively, Rule 15A of the Rules of the Inn of Court, provide for admission after qualification in England & Wales and completion of 12 months of pupillage.

Prior behavioural concerns and warnings about the applicant's behaviour

[21] The catalyst for the disciplinary proceedings was a complaint against the applicant (and counter-complaint by the applicant) arising out of an incident in February 2024 at the Institute formal. This was followed approximately one month later by a further complaint against the applicant by a group of his fellow barrister students which resulted in his interim suspension. As set out below, some of the incidents which formed part of both complaints occurred earlier in the academic year.

[22] On three occasions prior to February 2024, Professor Barbara Jemphrey, Director of the Institute, spoke to the applicant about his conduct in class and his behaviour towards other students. Professor Jemphrey made handwritten notes of each meeting which were subsequently made available to the investigating officer.

[23] On 14 November 2023, Professor Jemphrey emailed the applicant and asked him to speak with her after class. She recorded having a "*general discussion about how things were going*" and that the applicant was very positive about his experiences so far and was not aware of any issues about his behaviour in class. Professor Jemphrey noted that she advised the applicant about the need for care in the language which he used and about his conduct towards females. The note does not record any specific incident of inappropriate behaviour, any complaint against the applicant or any more specific behavioural concern. However, it does record that she advised him that "*debate was a good thing, but it must not become inappropriate/aggressive*." She expressed the hope that she would not have to speak to the applicant again about his behaviour.

[24] On 11 December 2023, Professor Jemphrey again emailed the applicant and asked to meet him after class. Once again, the note does not record any specific incident of inappropriate behaviour, any complaint against the applicant or any more general course of concerning conduct. However, she recorded that she was disappointed about being required to speak to him again about "*behaviour/language/aggressive attitude*." She recorded that the applicant was "*quite aggressive*" throughout the meeting. He expressed the view that other members of the class had been hostile towards him and that he had simply been "*sticking up for himself*." The applicant did not consider that he needed to take any action to change his behaviour. Consequently, Professor Jemphrey advised him that the meeting should be treated as a warning and that if there were further issues in the future she would "*progress matters*." She recorded that the applicant became "*v aggressive*", that he did not accept the warning and that he left the meeting.

[25] On 31 January 2024, Professor Jemphrey recorded a meeting with the applicant and a tutor, Diane Nixon. It was recorded that the meeting arose following an "*issue*" which had arisen with a fellow student during class for which the applicant declined to apologise. The detail of the issue was not recorded. Professor Jemphrey noted that the applicant maintained his "head down" during the meeting and became hostile towards the end. He did not accept that his behaviour had been inappropriate/unprofessional.

[26] All of the above meetings appear to have been verbal, with notes recorded in manuscript by Professor Jemphrey. No formal correspondence or warning letters appear to have been issued to the applicant, nor any formal misconduct process. The applicant was not subject to any formal recommendations/conditions regarding future conduct.

Summary of complaints involving the applicant

[27] On Saturday 10 February 2024, the annual Institute formal was held in a Belfast hotel. In the course of the evening an incident occurred involving a physical and verbal altercation between the applicant, a fellow female student in the Bar class ("Complainant 1") and her partner. On Monday 12 February 2024, she submitted a formal written complaint to QUB against the applicant, alleging a number of incidents of misconduct, including events on a night out in December 2023 and a complaint of assault against the applicant to the PSNI arising out of events at the formal.

[28] On 13 February 2024, Professor Jemphrey asked the applicant to contact her as a matter of urgency about events at the formal. The applicant had not been in class the previous day or that day. Professor Jemphrey made notes of a meeting with the applicant on 14 February, during which he advised that he had instructed solicitors and was due to attend an interview with PSNI the following week. He referred to a counter allegation of assault which he was considering making against Complainant 1. Professor Jemphrey made suggestions about future arrangements in class, including seating arrangements to ensure separation between the two students.

[29] On 19 February 2024, QUB wrote to the applicant advising that a formal complaint had been made against him and that misconduct offences may be investigated, including physical misconduct and "*abusive, threatening, intimidating, bullying or harassing behaviour*." The applicant was permitted to continue to attend class, subject to interim conditions regarding contact with the complainant.

[30] On 12 March 2024, the applicant was informed that seven further fellow Bar students at the Institute and one member of Institute staff had submitted formal statements of complaint against the applicant. The applicant was also advised that he was subject to an immediate precautionary suspension, following consideration of the case by a Risk Assessment Panel and a Precautionary Suspension Panel. The

suspension involved a total prohibition upon attendance at or access to university facilities, including attendance for the purposes of examinations. He was excluded from the entirety of the university campus and attending class in person. He was permitted online access to some classes and to complete assessments, should he wish to do so.

[31] On 20 February 2024, the applicant submitted a counter complaint against Complainant 1 alleging that she had physically assaulted him at the Institute formal on 10 February 2024.

[32] All complaints were the subject of a formal investigation, including interviews with the complainants and with the applicant. A summary of each complaint and the investigation is set in more detail below. The investigating officer completed two reports dated 24 May 2024, one relating to all of the complaints against the applicant and one relating to his complaint against Complainant 1. In addition to his factual findings, a number of general observations were made by the investigating officer:

(i) A number of potential witnesses/complainants did not wish to come forward to make complaints or give interviews on the record, including students who may have spoken both in support of and against the applicant. Some who might have spoken in support of the applicant held concerns that they may be ostracised or targeted by other students.

(ii) All those students who did make complaints commented upon the applicant's strongly held personal views and his pattern of behaviour which they found to be offensive.

(iii) All participants reported experiencing disruption to their learning in class, as a result of the applicant's behaviour.

(iv) Several complainants expressed concerns about the applicant's mental health. The investigating officer also expressed similar concerns based upon the applicant's "*behaviour, thought patterns and ideas*", as presented during the investigation.

Complaint made by the applicant

[33] The applicant made a formal complaint to QUB that he was assaulted by Complainant 1 during the Institute formal. He alleged that on the evening of the formal, a verbal altercation took place between him, Complainant 1 and her partner in the hotel which involved a mutual exchange of insults. Thereafter, he alleged that Complainant 1 had struck him with her handbag, which was followed by a further physical altercation between the applicant and Complainant 1's partner as a result of which both men ended up on the ground. The incident was of sufficient severity that police were called to the hotel. Complainant 1 also made a complaint to both

police and to QUB that she had been assaulted by the applicant during this incident. Police later secured the hotel CCTV footage as part of its investigation. The investigating constable considered that the footage supported the applicant's account and that Complainant 1 had been the aggressor by striking him with her bag. Once the views of the investigating constable became known, Complainant 1 withdrew the police complaint of assault, but she did not withdraw the QUB complaint of assault based upon the same facts.

[34] The QUB investigating officer obtained a witness statement from the police constable who had viewed the hotel CCTV but did not personally view the footage. In the course of the QUB investigation, both the applicant and Complainant 1 admitted that they had exchanged personal insults. Complainant 1 also admitted striking the applicant with her bag.

[35] During the QUB investigation process, the applicant also made a separate complaint that Complainant 1 had withdrawn the police complaint of assault, but not the QUB complaint of assault. Before Complainant 1 had withdrawn the police complaint, the applicant posted a message on the Bar class WhatsApp group stating that the hotel had viewed the CCTV footage and was of the view that her partner had been the aggressor. He stated, "*withdraw your complaint to the police and the IPLS or I will press charges against him. You have two days*." This message was later removed from the group chat but was sent directly to Complainant 1. During the QUB investigation process, she explained that she did not want the applicant to be arrested, nor did she want to face the stress of an ongoing criminal complaint while she was completing her qualification and commencing professional practice. She accepted that she had hit the applicant with her handbag but contended that he had later pushed her over and that she had struck her head on a table. She therefore decided to continue with the QUB complaint of assault.

[36] On the basis of this evidence, the QUB investigating officer found that the applicant's complaint of assault against Complainant 1 was made out but that there was insufficient evidence to support Complainant 1's complaint of assault against the applicant. By the time the final investigation reports were considered by the conduct officer, Complainant 1 had already completed her course and was no longer a student at the university. Accordingly, no decision was reached on the applicant's complaint that she had improperly maintained her assault allegation against him. It is not clear from the evidence whether any penalty was imposed on Complainant 1.

Complaints against the applicant - Decision of Conduct Officer, 17 June 2024

[37] As st out above, the applicant was the subject of three sets of complaints. The first was made by Complainant 1 on 12 February 2024. The second was a "group complaint" made by seven members of the Bar class and was made on 12 March 2024. The third was made by a member of the Institute teaching staff around the same time as the group complaint. The detail of the factual findings of the QUB

investigating officer and the misconduct findings of the conduct officer are summarised below.

[38] Following a detailed review of the factual findings made by the QUB investigating officer, together with all of the evidence gathered during the investigation, the conduct officer issued a report on 17 June 2024, finding the applicant guilty of four breaches of the Conduct Regulations and dismissing three complaints. One of the findings of guilt was for a serious misconduct offence and three were for minor misconduct. These findings were made following consultation with the Head of Student and Academic Affairs (per regulation 8.3 of the Serious Misconduct Procedure).

[39] The conduct officer's findings were expressed reasonably succinctly. However, they were based upon the factual findings within the investigation report, which included all of the evidence gathered. This included statements of complaint from all of the relevant individuals; transcripts of interviews with each complainant; supporting evidence submitted by complainants (eg text message exchanges); together with the response and supporting evidence from the applicant, including a transcript of his interview. The conduct officer therefore had substantial evidence about the applicant's conduct, the context in which it occurred and the impacts which it had upon the complainants. The conduct officer also had the evidence of other complainants which did not result in findings of misconduct.

[40] The following four misconduct offences were made out and include some areas of overlap:

(i) **Abusive, threatening, intimidating, bullying or harassing behaviour, whether in person or via social media/online platform.** This serious misconduct offence was found to have been established by a combination of the incidents summarised below, which formed part of the first and second sets of complaints by members of the Bar class. The summary is derived from a combination of the conduct officer's report, the investigating officer's report and the evidence appended to that report.

- <u>Dirty Onion incident – 8 December 2023 (Complainant 1)</u>. This incident formed part of Complainant 1's formal complaint of 12 February 2024. She contended that she was subjected to an episode of serious verbal abuse by the applicant during a class night out in the Dirty Onion Bar. Late in the evening there was discussion amongst the class about where they would go next. The applicant was intoxicated and disagreed with the suggestions made by Complainant 1. The applicant became verbally abusive and on his own evidence, he accepted that he said, "*I don't give a fuck, do whatever you want*." The altercation escalated and the applicant accepted he spoke to his fellow student in an inappropriate manner. The applicant's verbal abuse was such that he left Complainant 1 feeling unsafe for her personal safety and physically threatened. The incident ended when a fellow student (Complainant 2) intervened to avoid escalation. On Friday 15 December 2023, the applicant sent a personal WhatsApp message to Complainant 1 stating: *"… I was hoping to talk to you today. Sorry for getting angry with you last Friday. I'm afraid you drew the short straw and were the person my frustrations came out on. Hope you have a happy Christmas."* Complainant 1 replied a short time later and said *"Hi Dominic, I really appreciate you apologising. I hope this can be a clean slate for both of us. Hope you have a good Christmas."*

- <u>Threat to slap fellow student - 9 February 2024 (Complainant 2)</u>. This allegation was made by Complainant 2 as part of the group complaint by fellow Bar students. It was found that on 9 February 2024 the applicant made a threat of physical harm to a fellow Institute student, during class, by threatening to slap him. The threat was issued in front of other class members. Complainant 2 had alleged that the two had engaged in personal "banter" prior to class, which was not out of the ordinary for their relationship. However, after class had begun, the applicant's demeanour changed. He approached Complainant 2 and issued the threat to slap him if he repeated the behaviour which had occurred prior to class. The applicant accepted that he had made the threat during class but considered that he was justified in doing so on account of Complainant 2's behaviour. The applicant considered that the teasing amounted to psychological abuse.

- <u>Abusive comments to a fellow student – late February 2024 (Complainant 3)</u>. This incident involved Complainant 3 and formed part of the class group complaint. She complained that during a break in class the applicant had approached her and intervened in a conversation she was having with other class members. In the course of that conversation, she mentioned to the class members that she was on her period. The applicant overheard the comments and expressed his objection to this as a topic of conversation in a public setting. A verbal altercation ensued as a result of which Complainant 3 left the room. She was later encountered in a state of distress by a member of teaching staff. There was differing evidence between the applicant and Complainant 3 about the precise context and content of the incident. However, other witnesses were present. It was found that the applicant had called Complainant 3 "*disgusting*", "*a fucking idiot*" and a "*retard*." He also made derogatory comments about her Belfast accent. The applicant denied saying that Complainant 3 was "*disgusting*" but accepted that he had made clear his view that he did not wish to hear this discussion. He also claimed (and Complainant 3 accepted) that after the applicant's initial intervention, she and the other students had made derogatory comments to him of an unsavoury nature about performing oral sex upon a female during menstruation. The applicant contended that these comments amounted to sexual harassment. It was only after these comments had been made that the applicant responded using the offensive and upsetting language described above. He later apologised verbally to Complainant 3

- Derogatory Comments about Complainant 1's partner – 10 February 2024. In the course of the altercation at the Institute formal, the applicant was found to have called Complainant 1's partner a "*douchebag*" and "*a disappointment to his father*." The applicant accepted making the comments but did so in response to be called a "*cunt*" and a "*virgin*" by the other two individuals.

- Threatening Social Media Message – 15 February 2024 (Complainant 1). Upon learning of the complaint by Complainant 1 of assault the Institute formal, the applicant posted a message on the Bar class WhatsApp group directed at Complainant 1 in which he stated that the hotel management had reviewed the CCTV and had confirmed that he had not been the aggressor. He then stated, "*… withdraw your complaint to police and the IPLS or I will press charges against him. You have 2 days.*" At the request of another student, he removed this message from the group chat but re-sent it directly to Complainant 1.

The conduct officer's conclusion on the cumulative effect of these incidents was as follows:

> "While individually these incidents might appear to be minor, the cumulative nature of these incidents (coupled with the fact that you had been spoken to about your behaviour on several occasions) present a worrying pattern of clear and unprofessional behaviour. While it is accepted that you apologised for some of the incidents and that everyone is entitled to their personal opinion, this pattern of aggressive behaviour displayed a clear intent to harass, bully and threaten a number of your peers. This pattern of behaviour is not only a breach of the Conduct Regulations and Student Charter but could also present concerns regarding your fitness to practise in your chosen profession."

(ii) **Threat of causing minor harm on 10 February 2024, by threatening to slap a fellow Institute student during class (Complainant 2).** The incident described above involving a threat to slap Complainant 2 during class on 9 February 2024 was found to amount to a freestanding minor misconduct offence.

(iii) **Disruption or obstruction of or interference with the functions, duties or activities of the University or any member of the University.** This finding of minor misconduct was based upon three incidents of disruptive behaviour which occurred during class. The incidents were:

- During a family law tutorial in November 2023, a discussion was taking place about practice at the Family Law Bar which involved reference to camaraderie and friendships between practitioners. The applicant contributed by commenting aloud in front of the class "*if you can't beat the craic, you can beat the wife*." This comment was then repeated in front of other class members, four of whom included the incident within their formal complaints.

- The threat to slap Complainant 2 during class on 9 February 2024.

- On 19 February 2024, the applicant behaved in an unprofessional manner in the course of a lecture delivered by Complainant 4, by repeatedly chatting, laughing and being inattentive. The applicant was seated in the front row of the lecture hall, immediately in front of Complainant 4 and made her feel uncomfortable. In addition to talking, his inattention consisted of declining to take any notes. The applicant accepted that he had been inattentive and speaking with others during class and that his behaviour had continued after being asked to stop by Complainant 4. When asked to stop for a second time, the applicant raised his hand and bowed his head in apology.

The conduct officer's conclusions on this offence were as follows:

> "In light of the above, the evidence demonstrates that there is a pattern of behaviour on your part of incidents occurring within the classroom environment in formal taught settings, which were disruptive and interfered with teaching and learning."

(iv) **Breach of University Regulations or policy procedures.** All of the above incidents were found to be a breach of various obligations under the Student Charter regarding the treatment of fellow students and staff. The applicant was therefore found guilty of this freestanding minor misconduct offence.

[41] The three allegations against the applicant which were not made out were:

(i) **Physical misconduct - 10 February 2024 (Complainant 1).** As set out above, the complaint that the applicant assaulted Complainant 1 at the Institute formal was not made out.

(ii) **Causing minor harm or threatening to cause minor harm – 10 February 2024 (Complainant 1).** The allegation of causing or threatening harm to Complainant 1 at the formal was not made out.

(iii) **Threat of physical misconduct – 9 February 2024 (Complainant 2).** The threat to slap Complainant 2 was considered not to be of sufficient severity to constitute the physical misconduct (a serious misconduct offence) but was instead treated as a threat to cause minor harm (a minor misconduct offence).

[42] Although not specifically highlighted by the conduct officer, a number of aspects of the chronology of these findings are notable:

(i) Two of the incidents which formed part of the misconduct findings were of some vintage at the time of the relevant complaint and investigation. The incident in the family law tutorial occurred in November 2023, and the incident in the Dirty Onion bar occurred on 8 December 2023. Approximately 2-3 months had therefore passed before these incidents were the subject of formal complaints by Bar students. Complainant 1 had received and acknowledged an apology from the applicant for the incident in the Dirty Onion two months before she included it in her formal complaint.

(ii) The first occasion on which Professor Jemphrey spoke to the applicant about his behaviour in class was 14 November 2023. Her notes record that she warned him about the language which he used towards other students, in particular, females. She spoke to him again and gave him a formal verbal warning about his behaviour on Monday 11 December 2023. This included a warning about his aggression towards others. The applicant's apology to Complainant 1 about the Dirty Onion incident occurred five days later on Friday 15 December 2023.

(iii) Following Complainant 1's report of misconduct in February 2024, the applicant received a written letter from QUB dated 19 February 2024 in which he was informed of the complainant advised about the investigation which would follow. He was also issued with a "Future Conduct Requirement" relating to contact with the complainant. The letter also contained a warning about future misconduct. It stated "*… please also note that if further evidenced incidents of misconduct are brought to the University's attention, this may result in the Risk Assessment Panel reconsidering your case and imposing additional measures (such as a precautionary suspension).*"

(iv) The incident involving the use of inappropriate and abusive language towards Complainant 3 occurred in late February 2024, just over two weeks after events at the Institute formal and his third meeting with Professor Jemphrey on 14 February 2024. It was also approximately one week after QUB's letter of 19 February 2024 notifying him of the complaint by Complainant 1.

Decision of Conduct Committee – 21 August 2024

[43] Following the decision of the conduct officer that a serious misconduct offence had occurred, the case was referred to the conduct committee for consideration of a penalty (per regulation 8.3 Serious Misconduct Procedure).

[44] On 18 June 2024, the applicant submitted an appeal against the finding of guilt on the serious misconduct charge. He did not appeal the findings on the minor misconduct charges. Two grounds of appeal were advanced by the applicant, alleging material procedural irregularities in the investigation. He contended:

(i) His complaint that Complainant 1 had made a false allegation of assault against him had not been determined. He contended that this undermined the substance of her complaint against him and was a failure of justice.

(ii) The investigator had failed to determine whether Complainant 3 had been guilty of sexual harassment arising out of her comments to him.

[45] On 27 June 2024, the Screening Panel considered that the investigation had been fair, balanced and that its conclusions were based upon evidence from more than one source, including admissions made by the applicant. It concluded that the evidence put forward by the applicant was not sufficiently compelling to merit consideration of an appeal against the findings of guilt. It concluded:

> "In particular, the panel noted that the Conduct Officer, in finding that the misconduct offence of abusive, threatening, intimidating, bullying or harassing behaviour had been committed, referenced three specific incidents of your behaviour. This decision was not made on the basis of interactions with [Complainant 1] alone.
>
> In relation to your submission regarding [Complainant 3], the Panel noted that the Investigation Reports clearly outlined the nature of the allegations being investigated, none of which related to an allegation by you against [Complainant 3].
>
> The Panel agreed that you had not presented any evidence of a procedural irregularity in the conduct of the investigation which has had a material effect on the investigation findings, making the decision of the Conduct Officer unsound."

[46] The Screening Panel comprised two academic members of QUB staff, from different schools within the university and were unrelated to the Institute.

[47] By letter of 8 July 2024, the applicant was advised of his right to request a review of the Screening Panel's decision. The applicant elected not to do so. In the course of oral submissions, he confirmed that he had become disillusioned by the disciplinary process and that he had decided to focus on the issue of penalty. This decision is of considerable significance to these proceedings. It was a voluntary decision and amounted to a failure to exhaust the University's appeal procedures against the finding of guilt on the most serious charge. In particular, at no stage of the appeal process, did the applicant attempt to argue that the incidents identified by the conduct officer either were not capable of supporting the serious misconduct charge or that a minor misconduct charge (or charges) should have been substituted (eg breach of University Regulations). The result is that the applicant did not exhaust efforts to contest his guilt of an offence for which the standard penalty is expulsion.

[48] The conduct committee met on 13 August 2024 to consider the issue of penalty. The committee consisted of five members: an independent member of the University's academic staff, a Student Union representative, a representative of Student Compass Life, a member of the Inn of Court of Northern Ireland and a member of the Law Society of Northern Ireland. Two representatives from Academic Affairs were also present. The conduct officer also attended, along with the applicant and his representative, Father Gerard Magee.

[49] The committee meeting minutes record that the applicant had no questions for the conduct officer after her presentation. When asked to outline any mitigating circumstances, the applicant acknowledged his fault in the two incidents involving Complainant 1 and Complainant 3. He referred to his apology to both students and the fact that the apology had been accepted. He expressed the view that the incident at the formal had been "fabricated" and based on a false report by Complainant 1 and her boyfriend. He considered that he had been the victim of physical assault by Complainant 1 and had been sexually harassed by Complainant 3. He considered that he had also been the victim of personal insults over many months by Complainant 2 and that his threat to "clip" him was a legitimate response which would have amounted to self-defence if he had done so. He also relied upon the extent to which he had been provoked during these incidents and the fact that witnesses within the Bar class group had felt unable to come forward to speak in his favour. When asked about any positive steps he had taken to ensure no repeat of his behaviour, the applicant indicated that he had reflected carefully and he confirmed that in the future he would "walk away" if confronted by a stressful situation. He acknowledged that he had disrupted class and also Complainant 4 in her delivery of a lecture. He considered that he had not obstructed her and referred to the fact that he had spoken with her after the incident. The applicant confirmed that he had not read the statements of complaint by other members of the Bar class regarding his behaviour. He considered that their upset had been unreasonable in most cases. He felt that he had been a positive influence in the class and should receive an absolute discharge.

[50] The committee considered that the applicant's submissions had largely amounted to justifications for his actions, as opposed to mitigation. The committee concluded:

> "The Committee was concerned that you demonstrated a lack of personal responsibility, reflection or insight into your actions and the impact that they had on other people. The Committee noted that you did not demonstrate any positive action or steps that you have taken to give assurance that such incidents would not happen in the future. The Committee was extremely concerned that you displayed a lack of consideration of the gravity of your actions, and their consequences.
>
> After careful consideration of the documentation and verbal statements made, the Conduct Committee agreed that you had not presented or evidenced any personal or specific mitigation for the misconduct offences committed, which would cause the Committee to deviate from imposing the standard penalties. The Committee noted that you had apologised to [Complainant 1] and [Complainant 3] but agreed that these apologies did not provide sufficient mitigation to deviate from the standard penalty."

[51] The committee therefore imposed the following penalties:

(i) Abusive, threatening, intimidating, bullying or harassing behaviour. Expulsion with immediate effect.

(ii) Threatening to cause minor harm to Complainant 2: Written warning and £75 fine.

(iii) Disruption or obstruction of, or interference with, the functions duties or activities of the university: Written warning and £75 fine.

(iv) Breach of University Regulations and Policies: Written warning and £75 fine.

[52] The committee also agreed that, in the event the applicant sought readmission to the University to a professional course, the matter should be referred to the relevant school for consideration of a referral under the FTP Regulations.

Student Conduct Appeals Committee – 14 October 2024

[53] The applicant appealed the decision of the conduct committee to the SCAC (per regulation 10.1 of the Serious Misconduct Procedure). The appeal related solely to the penalty of expulsion and not the finding of guilt. The grounds of appeal differed from those advanced before the conduct committee. In summary, the applicant contended:

(i) The investigating officer had failed to gather and/or take account of evidence provided "off the record" from other Bar students. The applicant considered that this evidence would have been favourable to him and would have provided further mitigation. He considered this was a material deficiency in the investigation and hence undermined the penalty.

(ii) The full context of the apology to Complainant 1 had not been considered by the conduct committee. He pointed out that she had accepted the apology in December 2023 but later included the incident in her complaint, following events at the Institute formal in February 2024. He also contended that his verbal apology to Complainant 3 had been accepted and never retracted.

(iii) The conduct committee had not considered the issue of provocation in relation to the incidents involving Complainant 2 and Complainant 3, including the applicant's complaint of sexual harassment against Complainant 3.

(iv) The conduct committee had failed to recognise the positive steps taken by the applicant to address his behaviour, namely pastoral guidance from Father Magee, his empathy towards the victims and his recognition of the hurt caused.

[54] The SCAC met to consider the appeal on 2 October 2024. The committee comprised three members of QUB academic staff with the rank of Professor (including head of School of Law), President of the Student's Union, a representative of the Inn of Court of Northern Ireland and a member of the Law Society of Northern Ireland. Two members of QUB academic affairs were also in attendance. The applicant requested a paper only appeal and he did not attend the meeting (regulation 10.4 of the Serious Misconduct Procedure).

[55] The minutes of the SCAC meeting summarise its deliberations. It noted that the appeal was limited to the question of penalty and not the finding of guilt. In relation to each of the grounds of appeal, the SCAC concluded (in summary):

(i) The conduct committee had reached its decision based upon the evidence presented to it and could not have relied upon evidence which had not been gathered and was not available. To do so would amount to speculation.

(ii) All available evidence about the context and extent of the applicant's apologises had been available to the conduct committee. It had not been necessary for the committee to spell out every aspect of its reasoning in the decision letter and there was no basis for the contention that the committee had not considered the full context of the apologies.

(iii) The conduct committee had considered the issue of provocation. It noted the committee's view that this was a matter of defence to the charge, rather than mitigation, but confirmed that the question of guilt was not disputed. The SCAC considered that any point of defence was beyond the remit of the appeal.

(iv) The SCAC noted the committee's finding that the applicant had not demonstrated any positive action or steps to avoid repetition of his behaviour. It considered that this finding was appropriate and that the applicant simply disagreed. It considered that disagreement was insufficient to displace the committee's finding.

[56] In its decision letter of 14 October 2024, the SCAC stated:

> "Having carefully considered all of the evidence, the SCAC agreed that you had not met the ground of procedural irregularity in the conduct of the Conduct Committee proceedings which had a clear and demonstrable impact on the decision."

[57] The appeal was therefore dismissed and the penalty of expulsion was upheld.

Consideration

[58] Leave to apply for judicial review was granted on the sole ground of whether the expulsion decision amounted to a breach of the applicant's rights under article 8 ECHR. The respondent contended that it did not amount to an interference under article 8(1) and, in the alternative, that any interference was justified under article 8(2). The applicant contended that the expulsion decision was an interference with his rights and that it was disproportionate.

Article 8(1) ECHR – Respect for private life

[59] It is well-established in the ECtHR jurisprudence that the concept of private life within article 8 ECHR includes an "inner circle" of personal liberty in which an individual may live his personal life as he chooses and that this can include the right to develop and establish relationships with other persons. Since the decision in *Niemietz v Germany* [1992] ECHR 13710/88, it has been established that this aspect of private life may include activities and relationships of a professional or business nature. Professional and working life can represent a very important part of the

opportunities available to a person to develop and establish person relationships. Since the decision in *Niemietz*, the Strasbourg jurisprudence in this area has continued to develop.

[60] In *Sidabras v Lithuania* [2006] 42 EHRR 6, the ECtHR found that a lustration law precluding former KGB officers from holding or applying for certain public and private sector posts for a 10-year period fell within the scope of "private life." The restrictions were particularly extensive but did not amount to a total prohibition upon pursuing certain types of professional employment. Nevertheless, the restrictions affected their ability to develop professional relationships "*to a very significant degree and has created serious difficulties for them as regards a possibility to earn their living, with obvious repercussions on their enjoyment of their private life*" (at [48])

[61] In *Bigaeva v Greece* (Unreported, Application 26713/05, 28 May 2009), the ECtHR held that a nationality-based restriction prohibiting a Russian national from qualifying as a legal professional in Greece fell within the scope of article 8. The applicant had been permitted to undertake the relevant course of study and the court found a violation.

[62] This aspect of the right to respect for private life was considered authoritatively by the Grand Chamber in *Denisov v Ukraine* [2018] ECHR 76639/11. It confirmed that article 8 does <u>not</u> confer a general right of access to employment in the public sector, nor the right to choose or follow any particular profession (*Denisov* at [100]). However, measures involving removal from or access to public and private sector employment, including restrictions on access to a profession, can give rise to interferences with private life (*Denisov,* at [101]).

[63] The Grand Chamber distinguished between measures which restrict a person's professional life by reference to their personal characteristics and measures of general application but which have or may have serious negative consequences for the individual's professional life. It described measures in the former category as involving a "reasons-based approach" whereas those in the latter category involve a "consequence-based approach." Cases involving a "consequence-based approach" require consideration of the effects of the impugned measure upon three aspects of the individual's private life (*Denisov* at [107]-[109]):

(i) The impact upon the individual's "inner circle", in particular, where there are "serious material consequences";

(ii) The individual's opportunities "to establish and develop relationships with others";

(iii) The impact upon the individual's reputation.

[64] In every such case, an interference will only be established where the effect upon the individual's private life reaches a minimum threshold of severity. When

assessing severity, the analysis should include a comparison of the individual's life both before and after the measure in question. An individual must be able to substantiate the nature and extent of his or her personal suffering and there should also be a causal connection between the effects and the impugned measure. It is also necessary to distinguish the individual's subjective perceptions of the effects of the measure from the objective circumstances in the particular case (*Denisov* at [117]).

[65] The Grand Chamber summarised the relevant principles as follows:

> "116. If the consequence-based approach is at stake, the threshold of severity with respect to all the above-mentioned aspects assumes crucial importance. It is for the applicant to show convincingly that the threshold was attained in his or her case. The applicant has to present evidence substantiating consequences of the impugned measure. The court will only accept that Article 8 is applicable where these consequences are very serious and affect his or her private life to a very significant degree."

[66] When assessing the reputational effects of an impugned measure, the Grand Chamber also referred to the principle developed in *Gilberg v Sweden* [2012] 34 BHRC 247. In that case, the Grand Chamber held that the protection for reputation under article 8 does not include protection from stigma which is the foreseeable consequence of the commission of a criminal offence. Accordingly, where a person has committed a criminal offence, any protection which might be available under article 8 to protect reputation does not extend to the personal, social, psychological or economic reputational damage which is the foreseeable consequence of that offence. The Grand Chamber in *Gilberg* was concerned to avoid any possibility that the protection of reputation under article 8 could provide protection against criminal conviction. In *Denisov*, the Grand Chamber extended the *Gilberg* principle beyond criminal convictions to exclude from the scope of article 8, the foreseeable adverse reputational consequences of "*other misconduct entailing a measure of legal responsibility with foreseeable negative effects on private life*" (*Denisov* at [98]).

[67] These principles have been applied by the UK courts on a number of occasions in recent years. In *Royal Cayman Islands Police Association v Commissioner of the Royal Cayman Islands Police Service* [2021] UKPC 21, [2021] IRLR 819, the Privy Council relied upon the Strasbourg authorities (including *Denisov*) when interpreting section 9 of the Cayman Islands Constitution, which included private life guarantees very similar to those in article 8 ECHR. The case concerned a mandatory retirement provision for some Cayman Islands police officers. The Board summarised the article 8 jurisprudence (at [65]-[75]) and expressed the relevant core values protected by article 8 in the following terms:

> "81. … In *Denisov*, the core values are protection from measures whose reasons are primarily, though not exclusively, connected with a suspect ground, … or from measures whose consequences are 'very serious' affecting private life to 'a very significant degree.' … In the context of an employment-related dispute between an individual and a State the reasons under the reason-based approach are limited and severity is a necessary component of a consequence-based approach ..."

[68] In *R (Atatattu) v Secretary of State for the Home Department* [2011] EWHC 1388, the applicant was a Sri Lankan national who wished to study in the UK in order to obtain the qualifications necessary to work in the Merchant Navy. After an appeal to the First Tier Tribunal, it was found that he ought not to have been refused a visa. Thereafter, he experienced substantial delay before securing the necessary visa. Relying primarily upon the *Sidabras* decision, he maintained a damages claim alleging that the delay breached his article 8 rights, insofar as he was restricted from pursuing his chosen profession. The claim was unsuccessful. The court distinguished *Sidabras* on the basis that it involved a much more intrusive restriction, in which the applicants were "wholly or very substantially deprived of the ability to work altogether" and also suffered adverse reputational consequences. The court also reiterated that article 8 did not confer a "right to work", nor a "right to choose a particular profession." While the plaintiff had been "*hampered*" in his ability to work, there was no evidence that he had been "*unable to work at all*" during the period of delay. The case was decided prior to *Denisov* and might now be explained on the ground that the restrictions were not of sufficient severity.

[69] In *HA v University of Wolverhampton* [2018] EWHC 144, the applicant was excluded as a pharmacy student by a university Fitness to Practise Panel. The applicant had failed to disclose during the admissions process that he had been convicted of robbery and assault occasioning actual bodily harm four years previously when he was aged 15. The applicant successfully challenged the decision, including on article 8 grounds. The case was decided shortly before the Grand Chamber decision in *Denisov* and it did not include a detailed analysis of the article 8 jurisprudence. The court simply concluded that the exclusion decision amounted to an interference with the applicant's article 8(1) rights "*because it had the effect of preventing him from pursuing a chosen career*" (at [159]). The decision was ultimately quashed on public law grounds, including a departure from the relevant University Guidelines governing its approach to penalty.

[70] *Husson v Secretary of State for the Home Department* [2020] EWCA Civ 329 was a permission decision, following the judgment ECtHR in *Denisov*. The applicant was a Mauritian national who was lawfully present in the UK and experienced a two-year delay securing a work permit. The Court of Appeal granted permission to apply for judicial review on article 8 grounds. It considered there was arguable breach of

article 8(1) on the basis that applicant's only practical opportunity for any work during the relevant period was to return to Mauritius.

[71] In *Kulumbegov v Home Office* [2023] EWHC 337, the applicant was a foreign national working in financial services in London. His leave to remain in the UK was not extended following his conviction for a domestic assault and he ultimately lost his job. A judicial review challenge to the immigration decision resulted in the Home Secretary agreeing that the original decision could not stand and offering reconsideration, including the possibility of a permit granted outside the immigration rules. In a subsequent claim for damages under article 8, no violation was found. The applicant's employment terms and conditions involved the possibility of relocation throughout the world. The consequence of having to work outside the United Kingdom was therefore not unreasonable in the circumstances. However, the court also emphasised that the onus lies upon an applicant to demonstrate real and serious impacts upon protected private life interests, rather than simply a loss of employment. The court stated:

> "67. ... A Human Rights Act damages claim for lost work requires a claimant to establish not only causative unlawfulness but also a distinctive basis of rights violation deriving, in a case like this, from the impact of the loss on protected private life interests. It is for a claimant to demonstrate that impact, with relevant evidence and to an appropriate level of seriousness."

[72] Applying the above principles to the facts of this case, it is necessary to identify the effects of the expulsion decision upon the applicant. For this purpose, it is difficult to separate entirely the effects attributable to the finding of guilt and those attributable to the expulsion decision. Nevertheless, I consider that the following effects have been demonstrated:

(i) As a result of his expulsion, the applicant was unable to complete the only course of study in Northern Ireland which leads to the award of the degree of barrister-at-law and which is recognised by the Inn of Court of Northern Ireland. The applicant achieved the academic standards necessary for entry to the course and paid his tuition fees. Expulsion from the university has had the obvious consequence that he has been unable complete his course, obtain admission to the Inn of Court or commence practice as a barrister in Northern Ireland. Expulsion has therefore had a clear, obvious and significant adverse effect upon his ability to practice his chosen profession.

(ii) Expulsion from QUB and the Institute is not a prohibition upon future re-admission to the university or to the same course. The applicant is at liberty to sit the annual Institute entrance exam and, if successful, undertake the Bar training course afresh, irrespective of the outcome of these proceedings. However, places on the course are limited and success is not guaranteed. The applicant would lose the benefit of his prior tuition fees and be required to pay again. Annual fees for the Bar course are currently just in excess of £10,000. The time, expense and personal effort involved in attempting to regain admission plainly amounts to a significant adverse personal and financial effect for the applicant.

(iii) Even if the applicant achieves re-admission to the Institute (whether through these proceedings or the entrance exam), he may be referred to a QUB FTP panel which can exclude him from the Bar course (and possibly the solicitors' course) on the ground of unfitness for practice. It is not possible to predict the outcome of any such proceedings. Nor is it possible to assess the extent to which a panel will be influenced by the underlying conduct, as opposed to the fact of expulsion. Nevertheless, the expulsion decision alone is likely to be at least a relevant factor. Accordingly, I consider that the possible contribution which the expulsion decision may have on the outcome of the process represents a further barrier to entry to the profession and a material adverse personal effect for the purposes of article 8.

(iv) If the applicant achieves re-admission and is not found unfit to practise, he will experience delay in completing his studies and commencing practice. At the date of these proceedings, he has already lost approximately one and a half years. The practicalities of the academic cycle are such that, even in the most favourable circumstances, he is likely to be delayed by at least one further academic year. In that time, the applicant is likely to have experienced some loss of personal connection and ability to pursue professional relations with fellow students from his original year group (both solicitor and barrister students). This has occurred at a formative stage of the applicant's professional development. It must be recognised that if he does achieve admission to the profession in Northern Ireland, he will have new opportunities to form personal and professional relationships with future students, but there will be an inevitable adverse impact upon existing relationships with those in his original year group. In a small jurisdiction such as Northern Ireland, the court readily understands that relationships formed during this period can be of significant personal and professional importance. They can prove to be enduring and are a recognised part of professional development. It is of note that the importance of this factor was emphasised by Professor Jemphrey in her meeting with the applicant on 14 November 2023.

(v) If the applicant overcomes the academic barriers for re-admission to the Institute, he will also face professional barriers. As set out above, students on the Bar course, must first be admitted as students of the Inn of Court of Northern Ireland, for which they must provide a Memorial containing undertakings to the Benchers about their personal circumstances. The applicant will be required to disclose the fact and outcome of the misconduct proceedings. In those circumstances, the Benchers have power to refuse admission as a student if they consider him to be "*unsuitable for admission*" (per rule 4(c)). This possibility undoubtedly represents a further barrier to admission to the profession and an adverse personal effect.

(vi) As set out above, if the applicant is unable to secure re-admission to the Institute or as a student of the Inn of Court of Northern Ireland, he may be able to obtain entry to the profession in Northern Ireland by qualification in either Ireland, England & Wales or elsewhere. All of those options would involve undertaking study and pupillage in those jurisdictions and require considerable additional time and expense. Qualification in Ireland or England & Wales would also require the applicant to leave his home. It is possible that the applicant may face similar barriers to admission in those jurisdictions if he is required to disclose the fact and/or circumstances of the misconduct offences and expulsion decision. However, no evidence is available to the court on that issue.

(vii) The applicant's exclusion from QUB will undoubtedly have an adverse effect upon his professional reputation and is likely to carry stigma in his future career. It may be difficult to separate that consequence entirely from the finding of guilt for the misconduct offences. However, it cannot be disputed that an expulsion decision is likely to carry at least some independent element of stigma. The extent to which this may properly fall within the protection of article 8 is considered below.

[73] It is necessary to consider these effects by reference to the three factors set out in para [107] of *Denisov*. As regards the effects upon the applicant's "inner circle" and any adverse material consequences he has adduced very little, if any, concrete evidence from which the court might assess the precise extent of personal and financial effects. It is therefore left in a position of making only an informed assessment. However, I consider it to be reasonably clear that he has already experienced significant adverse personal consequences and it is likely that there will be further effects if he is able to continue his studies. The primary adverse effect is the investment of significant additional time and personal expense in completing his professional qualifications. These are likely to arise to differing degrees depending upon a number of variables, including the outcome of these proceedings. The applicant ought to have concluded his studies in June 2024. In a best case scenario, he could now complete those studies in June 2027. If he is unsuccessful in these proceedings the delay is likely to be longer. No evidence is available about whether he has undertaken the entrance exam for the forthcoming academic year or the outcome. At best, a delay in qualification of at least three or more years is therefore inevitable. No evidence is available about the whether he has or will receive any reimbursement of tuition fees for the 2023/24 year or what liability he may have for future tuition fees even if the expulsion decision is quashed. However, it would seem to be a reasonable inference that re-admission and completion of his studies is likely to incur at least some additional personal expense, particularly if he is

unsuccessful in these proceedings. The financial consequences are likely to be particularly severe in the event he is required to leave the jurisdiction to qualify in Ireland, England & Wales or elsewhere. No evidence is available about the likely costs of qualifying outside the jurisdiction. However, it would seem likely that tuition costs alone are likely to be of a similar magnitude if not greater. Living costs over a period of years would be a further substantial financial burden. Notwithstanding the lack of concrete evidence adduced by the applicant, it is clear from the evidence that is available that, even in the best case scenario, the delay and expense associated with completing his professional qualifications will give rise to significant adverse effects upon the applicant's personal "inner circle."

[74] As regards the impact upon the applicant's opportunities to develop personal and professional relationships, the exclusion decision and associated delay in completing professional qualifications will have inevitable adverse effects upon him in the manner explained above. While he would have an opportunity to develop alternative and substitute relationships with students in a later year group, at least some adverse effects upon relationships with members of the Bar and solicitors' classes from his own year group are inevitable which is likely to have a material impact upon his practice. If the applicant is required to travel for studies outside the jurisdiction, his opportunities to develop those personal and professional relationships would be more substantially affected.

[75] As regards the impact of the expulsion decision upon the applicant's reputation, it is necessary to consider the *Gilberg* principle. It is inevitable that the decision to expel the applicant from QUB will result in significant detrimental consequences for his reputation and standing within professional and social circles in Northern Ireland. However, it is difficult to separate those consequences from those which flow from the finding of guilt and his underlying misconduct. Experiencing a stigma or loss of standing amongst friends and professional colleagues must be regarded as a foreseeable consequence of the misconduct findings and therefore fall outside the scope of article 8 protections. Nevertheless, insofar as the expulsion decision can be separated from the finding of guilt on the misconduct offence, it is likely that it would have some separate or additional adverse impact for his reputation. Many people may be unfamiliar with the details of the misconduct offence or the reasons for the expulsion. In the mind of at least some people, the mere fact of expulsion is likely to be the most identifiable basis for the stigma. While the majority (possibly the vast majority) of any such effects are likely to be the foreseeable consequences of the misconduct finding and hence outside the scope of article 8, the possibility of some separate stigma associated with the expulsion cannot be entirely excluded. I therefore consider that at least some separate element of stigma or reputational damage can properly be considered in the overall assessment of whether an article 8 interference has occurred.

[76] The *Denisov* test, also requires the court to conduct a "before versus after" comparison of the effects of expulsion upon the applicant. This should be clear from the above analysis in any event. In summary, without expulsion, the applicant

would have completed his studies on the Bar course in June 2024. Assuming he did so successfully and found a Master, he would have been called to the Bar in September 2024. It is not possible to predict how events would have unfolded, but he at least would have had the opportunity of a professional career at the Bar. As a result of the expulsion decision he will, at best, experience at least a three or four year delay in commencing practice, with the attendant personal, social and professional consequences described above. In a worst-case scenario, his ability to attain a professional legal qualification in Northern Ireland, or even outside the jurisdiction, will be precluded. I consider that these effects are sufficiently clear from an objective analysis of the circumstance. While there are uncertainties about the full extent of the effects, they are not based entirely upon the applicant's own perception.

[77] The respondent contends that an article 8(1) interference will not occur unless the applicant can "*show that the impugned decision has all but prevented him from pursuing any employment in Northern Ireland*." The submission was founded in large part upon the decisions in *Atatattu* and *Kulumbegov,* in which the analysis of severity turned in large part upon the ability of the applicant to undertake any work while awaiting the relevant immigration authorisations. I consider that the formulation contended for by the respondent is an oversimplification of the *Denisov* test. Clearly, the existence or otherwise of alternative employment opportunities can be an important factor in the assessment of severity of a restriction on employment or professional activities. However, it is only one factor which may be relevant in the circumstances of any particular case. I consider that the staged approach set out in *Denisov* clearly requires a broader and more holistic analysis of all of the circumstances.

[78] On the basis of the above analysis and applying the test of severity required by *Denisov,* I am ultimately of the view that sufficient evidence is available to the court to demonstrate that the effects of the expulsion decision upon the applicant reach the necessary level of severity to give rise to an interference with his right to respect for private life, protected by article 8(1) ECHR. I reach that conclusion notwithstanding the absence of evidence from the applicant on some important aspects of the effects. Even in a best-case scenario, the likely financial and personal implications for the applicant and the likely impacts upon his ability to form professional relationships which are consequent upon a three to four year delay in commencing professional practice are unquestionably significant. I consider that they are sufficiently severe to cross the article 8 threshold. In a worst-case scenario, the severity of the effects are much clearer as the applicant faces a potential total inability to pursue his chosen profession. Accordingly, I consider that the expulsion decision does amount to an interference with the applicant's article 8(1) rights and it is necessary to consider justification in the circumstances of this case.

Article 8(2) ECHR – Justification

[79] There was no significant dispute between the parties that the expulsion decision was "in accordance with law", nor that it pursued a legitimate aim. I agree

with that position. It is clear that the decision was taken pursuant to and in accordance with the procedures set out in a combination of the Student Charter, the Conduct Regulations and the Serious Misconduct Procedure. The respondent did not specify precisely the objectives pursued by the expulsion decision. However, it is clear that the entire underlying purpose of the Student Charter and the Conduct Regulations is to regulate behaviour by members of the university community and to protect students, staff and the public from misconduct, including exposure to threatening, abusive and insulting behaviour. To this extent, the exclusion plainly pursued the aims of the prevention of disorder, the protection of the health or morals of the university community and the protection of their rights and freedoms of others to pursue their employment or studies free from disruptive and abusive behaviour. The focus of the applicant's challenge was therefore on the proportionality of the expulsion decision.

[80] There test of proportionality is the structured analytical approach set out by Lord Reed in *Bank Mellat v HM Treasury (No.2)* [2013] UKSC 39, at [74], which requires consideration of four issues:

(i) whether the objective of the measure is sufficiently important to justify the limitation of a protected right;

(ii) whether the measure is rationally connected to the objective;

(iii) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective; and

(iv) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.

[81] The role of the court in reviewing a decision by a public authority on proportionality grounds has been considered on many occasions at appellate level. It has recently been explained authoritatively by the Supreme Court in *Shvidler v Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] UKSC 30; [2026] 1 All ER 93 at [120]-[125]. In summary:

(i) The proportionality of a decision by a public authority is a matter of substance for the court itself to decide. The court's role is to decide for itself whether there has been a breach of Convention rights and therefore goes beyond the traditional public law review function of determining whether or not the decision maker properly considered whether there had been a breach.

(ii) The court does not itself become a primary decision maker. Rather, it applies a more exacting standard of review, the intensity of which varies considerably according to the right in issue and the relevant context. The court does not, substitute its own view for that of the decision maker, rather, it determines whether that decision was proportionate.

(iii) In fulfilling its function, the court may afford a measure of respect to the balance between public and private interests reached by the public authority at a stage (iv) of the proportionality test, but it is not bound by that assessment. Accordingly, the court may find a decision to be disproportionate, notwithstanding that the decision maker has correctly directed itself on the law and taken account of all material considerations, reaching a decision which would otherwise satisfy the test of *Wednesbury* rationality.

(iv) A court is entitled to afford a wider margin of appreciation and to attach special weight to the decisions of public bodies which have a special institutional competence or a particular expertise.

(v) When determining the scope of the available margin of appreciation, the court will have regard to the importance of the right, the degree of the interference and the extent to which the courts are well placed to adjudicate on the substance of the issue, in light of its relative expertise, its institutional limitations and the principles of democratic accountability.

[82] In this case, there has been no dispute that limbs (i) and (ii) of the proportionality test have been satisfied. The objectives of establishing and maintaining appropriate standards of behaviour across a university campus pursue the important objectives of providing a safe environment for learning, promoting positive relationships within the university community and ensuring respectful engagement amongst peers. These are all sufficiently important objectives to justify imposing restrictions on student behaviour. The ultimate sanction of expulsion for serious breaches of conduct standards is also clearly rationally connected to the attainment of those objectives. It was not disputed that less intrusive measures could have been used in this case, insofar as regulations 9.3 and 10.1.3 of the Conduct Regulations set out a series of alternative penalties which might have been available (eg suspension). However, the mere fact that a less intrusive alternative *might* have been used is not the relevant test. The issue is whether such an alternative could have been used "*without <u>unacceptably</u> compromising*" the achievement of the relevant objectives. To this extent, a value judgement is required on the part of the decision maker and the court must make an assessment of the breadth of the available margin. Insofar as this calls for a balancing exercise between the respective private and public interests, there is an overlap between limbs (iii) and (iv) of the proportionality test.

[83] The disciplinary process was conducted in accordance with the Conduct Regulations and Serious Misconduct Procedure. The decision-making power at each tier of that process is limited. The investigating officer decided the facts. The conduct officer decided whether or not misconduct had occurred. The conduct

committee decided on penalty. The SCAC also decided only on penalty. However, it did not decide the matter afresh on the merits. It decided whether there had been a procedural irregularity by the Conduct Committee when deciding not to deviate from the standard penalty. If an appeal against guilt had been pursued to the conduct committee, both it and the SCAC would have focused upon whether there had been a procedural irregularity at the lower tier. Accordingly, none of those bodies expressly undertook a full "proportionality analysis" in those terms. However, the factors which were relevant to the decision each entity was required to take embraced many of the same factors which are now relevant and the cumulative effect of the multi-tier decision making was to provide ample scope for disproportionate decision making to be corrected. In any event, I confirm that I have undertaken my own proportionality analysis of the penalty and the process which led to the decision. In doing so, I have considered all of the matters set out below.

(i) The applicant's conduct

[84] Expulsion is the most serious penalty which QUB can impose upon a student for a misconduct offence and should be reserved for the most serious cases. Any proportionality analysis must therefore begin with a consideration of the seriousness of the conduct in question. The offence which attracted this penalty is "*abusive, threatening, intimidating, bullying <u>or</u> harassing behaviour*" [my emphasis]. The offence will clearly capture a huge range of conduct, ranging from prolonged targeted harassment and stalking of specific individuals, to one off abusive behaviour. Bullying and harassing behaviour will normally (but not necessarily) involve a targeted course of conduct, with more than one incident and a single victim or group. However, abusive, threatening and intimidating behaviour does not require a course of conduct. It can consist of one or more individual incidents and may involve different actions and victims with different consequences. The conduct officer found this offence was made out by reference to five separate incidents, with some overlap in victims and some common features. They are each described in detail above and involve conduct which was abusive, threatening or intimidating in nature, rather than bullying or harassment.

[85] The first incident occurred on Friday 8 December 2023 in the Dirty Onion pub. The applicant was intoxicated at the end of a class night out. Following discussion and some differing views about where the class should go next, the applicant engaged in a serious and offensive verbal assault upon Complainant 1. He plainly lost control of his temperament and demeanour. He shouted into Complainant 1's face in a public setting and admitted that this included saying, "*I don't give a fuck, do whatever you want*." His demeanour and aggression was such that he left her feeling humiliated and threatened for her physical safety. Such was the concern by the other members of the class about what may happen that Complainant 2 felt obliged to intervene to prevent the matter escalating.

[86] In his evidence to the investigating officer, Complainant 2 referred to the height and gender difference. He genuinely believed that the altercation could

become physical. In his evidence, the applicant accepted that he engaged in all of this conduct and that he had apologised by text on Friday 15 December 2023. The applicant therefore delayed by a full week before apologising. It would seem likely that he would have had multiple opportunities to do so in the course of the week. It was also made four days after the applicant's second meeting with Professor Jemphrey in which he refused to accept a verbal warning about his aggression and behaviour. While there is no record of the incident in the Dirty Onion being raised during the meeting, the applicant is recorded as having blamed other members of the class for aggression and generally characterised his behaviour as "*just sticking up for himself*."

[87] While it may be possible to characterise the incident on 8 December 2023 as a "row in a pub after alcohol had been consumed", it was plainly more serious in nature. It was perceived as physically threatening both by Complainant 1 and by those who witnessed it, who were more familiar with the applicant's nature. It was also unprovoked and occurred in a public place. It involved abusive and intimidating conduct with a complete loss of self-control, out of all proportion to the circumstances. The incident also occurred against a background in which the applicant's aggressive behaviour had already been the subject of adverse attention from students and staff in the Institute. The applicant's apology was delayed and was made after a formal verbal warning about aggressive behaviour had been issued.

[88] The second incident involved a threat to slap Complainant 2 and occurred on 9 February 2024 in the classroom, during class. The applicant maintained he was the subject of significant prior teasing by Complainant 2 and that he had been provoked. Complainant 2 accepted that they had engaged in personal "banter" before class, which he believed was in keeping with the nature of their relationship and prior exchanges. It is difficult to make an assessment about the nature or content of the exchanges prior to class. However, what is clear is that the applicant's threat was made after a lapse of time and after class had begun. It was therefore a considered and deliberate act. The applicant took it upon himself to disrupt classroom activities by approaching Complainant 2 and threatening to hit him a "clip." While he did not actually strike Complainant 2, the applicant believed he would have been entirely justified in doing so in light of the prior provocation. He considered it amounted to self-defence and maintained that position at all tiers of the disciplinary process. The incident therefore involved another episode involving a targeted threat to a fellow student and a loss of self-control. The applicant's behaviour was unquestionably threatening, abusive and clearly disproportionate. It was also entirely inappropriate for a classroom setting, causing disruption to other students and bemusement on the part of Complainant 2 about his sudden and complete change in demeanour. Even if he might have been justified to make a threat in those terms as an immediate (or even a delayed) response to targeted personal insults, the decision to do so during class illustrates his lack of self-control. The appropriate response to verbal insults would have been to speak to Complainant 2 in a private setting or to make a report to the university authorities. The applicant's inability to recognise the inappropriate

nature of his conduct at any stage of the prolonged disciplinary process also illustrates a lack of insight on his part.

[89] The context for this incident is also important. It occurred after the applicant had been spoken to by Professor Jemphrey on three occasions regarding his aggressive behaviour in class, including a formal verbal warning issued on 11 December 2023. The most recent discussion with Professor Jemphrey had occurred just over a week beforehand on 31 January 2024, after a tutor had reported a separate incident of inappropriate behaviour towards another student during class. As noted above, during the meeting on 31 January the applicant had refused to accept that he had behaved improperly towards the student. Few details about the incident are available and it is difficult to make any meaningful assessment of responsibility. However, the relevance lies in the proximity in time of the most recent warning about behaviour in class, without any apparent impact on his subsequent behaviour.

[90] The third incident involving Complainant 3 occurred in late February 2024, after the applicant had been spoken to formally about his behaviour on three occasions, after the events at the Institute formal and after receiving the letter from the university dated 19 February 2024 advising that his behaviour at the formal was under investigation. While there are several strands to the exchanges between the applicant and Complainant 3 during this incident, it is not disputed that it occurred in a classroom setting and was initiated by the applicant when he elected to intervene in a personal conversation between three female classmates. He did so to express his personal disapproval of Complainant 3 stating to her friends that she was on her period. These facts alone are a further example of the applicant's inability to control his behaviour in the face of events of which he disapproved. He chose intentionally to assert his own personal beliefs and opinions to others and did so overtly, in a classroom setting in a manner which was confrontational, if not hostile. It is perhaps not surprising that his fellow students reacted by asking him to remove himself and by challenging his conduct. Rather than backing down or retreating after he had expressed his opinion, the applicant directed personal, abusive and insulting comments at his classmate to the point that she left the room and was found upset and in tears by one of the tutors. The applicant's conduct, in the face of warnings about his behaviour, represented either a total inability to control his behaviours or a disregard for the consequences. To call a fellow classmate, an "*idiot*" and a "*fucking retard*" within the classroom setting and in an escalating situation which he had initiated is again unquestionably abusive, threatening and intimidating behaviour. There is some dispute on the facts about whether the applicant also called Complainant 3 "disgusting" or said that public discussion about menstruation was disgusting. However, resolution of that factual issue is not necessary to assess impropriety of the applicant's behaviour or its disproportionality to the circumstances. It is recognised that the applicant did make a personal verbal apology to Complainant 3. However, it is equally notable that throughout the entire disciplinary process he continued to maintain that he had been the victim of sexual harassment by her because he was exposed to discussion about

menstruation. On any view, his response was wholly disproportionate to the circumstances and illustrates a lack of insight on his part.

[91] The fourth and fifth incidents which formed part of the serious misconduct charge were both ancillary to events at the Institute formal. As regards the fourth incident, the applicant admitted calling the partner of Complainant 1 a "*douchebag*" on several occasions. I consider this to be a relatively low level personal insult. It also occurred in the context of an incident of physical aggression which was initiated by Complainant 1 and her partner. In the course of that incident those parties also directed a number of far more insulting personal comments towards the applicant. While the applicant's comment was undoubtedly abusive in nature, its significance pales in comparison to the first three incidents.

[92] The fifth incident consisted of a message, posted to the Bar class WhatsApp group informing Complainant 1 that if she did not withdraw her complainant of assault he proposed to press charges against her partner. It was clearly inappropriate for the applicant to post such a message on the Bar group. It was a private matter between him, Complainant 1 and her partner. The fact that he posted it to a group chat demonstrated a lack of insight and a disregard for the interests of other members of the class, by involving them in this issue. However, an ill-judged post to a group chat is not unknown and it was swiftly removed, at the request of another class member. Insofar as this statement could be regarded as intimidating in nature, it should also be viewed in the context of the factual findings about events at the formal. Since the applicant's complaint against Complainant 1 was upheld, his demand for a withdrawal of her complaints is more understandable, even if expressed in an aggressive tone and in an inappropriate forum. Overall, I consider that this conduct lies at the low end of the scale of intimidating behaviour.

(ii) Cumulative effect of the incidents

[93] For the reasons set out above, I consider that the fourth and fifth incidents are different from the first three. They reveal a lower level of culpability and do not add any significant adverse weight in the proportionality balance. The conduct officer recognised that, when viewed individually, none of the incidents might sufficiently serious to attract the most severe penalty. This is perhaps illustrated by the fact that the same incidents were also prosecuted as a breach of university policies/regulations and attracted a fine of £75. However, she also explained that she considered that their seriousness lay in the pattern of behaviour they revealed and that they must therefore be viewed cumulatively. I consider that to be an appropriate approach when assessing the overall proportionality of the penalty. The first three incidents unquestionably demonstrate a repeated pattern of openly aggressive behaviour towards the applicant's fellow students, which was out of proportion to the circumstances. Each incident involved a serious loss of self-control and left a significant mark upon the particular complainant. The seriousness of his lack of self-control is illustrated vividly when the incidents are viewed against the chronology of advice and warnings given to the applicant by Professor Jemphrey

and by the QUB Complaints Team in its letter of 19 February 2024. The cumulative picture reveals the applicant's inability to respond to the warnings by controlling his behaviour. It also reveals a lack of insight and a limited ability to acknowledge that his behaviour was wrong, even when the effects upon his fellow students must have been obvious to him. While the applicant did apologise to two of the complainants about two of the incidents, one of the apologies was delayed and both were made after warnings were issued. The applicant's lack of insight is perhaps demonstrated most clearly by his refusal to accept the verbal warning issued by Professor Jemphrey on 11 December 2023. The cumulative picture also reveals either an unwillingness or inability to deal with personal challenges and a propensity to respond with aggression. QUB was therefore dealing with an individual who repeatedly demonstrated abusive and aggressive behaviour towards other students, who did not respond positively to warnings, who demonstrated little insight into his own behaviour, who was both slow and selective in apologising and who persisted with grievances about the behaviour of complainants by way of justification. All of these features add to the seriousness of the individual incidents, when viewed cumulatively. I consider that QUB was entirely justified in giving weight to these features when deciding whether to depart from its standard penalty. They also weigh significantly against the applicant when making an overall assessment of the proportionality of the penalty.

(iii) Professional standards of behaviour

[94] In the course of submissions, the respondent submitted that since the applicant was a Bar student, he should be judged against a professional standard of behaviour. It was argued that he was a post-graduate student seeking entry into a regulated profession in which abusive, threatening and intimidating behaviour towards colleagues is prohibited and may attract professional disciplinary sanction. Accordingly, it was suggested that those professional standards could be taken into account when assessing the proportionality of the penalty.

[95] It may be that in some cases, professional standards may have an influence on the university's exercise of its disciplinary powers. However, that did not occur in this case. His conduct was judged against the standards applicable to all students and the punishment was the standard penalty contained in the Conduct Regulations. Neither the conduct officer nor any other decision-making tier suggested that his conduct only reached the threshold of "*abusive, threatening or intimidating*" because he was a Bar student, but that it might have been characterised differently if he had been studying a different course. Nor did the conduct committee or SCAC make any reference to his course of study when assessing the appropriate penalty. He received the standard penalty. It may have been different if he had received a *harsher* penalty than would normally be applied. Accordingly, I consider that this factor is neutral in the overall proportionality assessment. It is still necessary to assess whether expulsion was proportionate to the misconduct finding.

(iv) Personal and Professional consequences for the applicant

[96] As set out above, the personal and professional consequences of an expulsion decision extend beyond completion of the applicant's current course of study. They are also likely to affect his ability to enter his chosen profession. I have already summarised those consequences to be delay in accessing the profession, additional personal expense, disruption to personal and professional relationships and some limited degree of stigma. I have also assessed those consequences to be significant and they form an important part of the proportionality assessment. However, it is important to separate the role of the university from the role of the professions. While the proportionality assessment must consider the totality of the effects for the applicant, the university is entitled to set and maintain its own standards of student behaviour and its own Code of Conduct with its own range of sanctions.

[97] It is also important not to conflate the university disciplinary process with the fitness to practice process, which has a different purpose. The disciplinary process concerns the identification and punishment of breaches of the university's behavioural standards, in the interests of promoting and maintaining a positive learning environment. The fitness to practice process concerns an assessment of an individual's suitability to enter a profession. The process is conducted separately and while the individual is still a student, hence reducing the risk of wasted time, effort and resources completing qualifications (eg *Bigaeva v Greece*, *supra*). While it will undoubtedly consider a relevant disciplinary record, the task is wider. It is focused upon the character and suitability of the individual, rather than the imposition of further punishment for past events. The concrete professional consequences of a misconduct finding therefore fall to be addressed through the FTP procedure, in which the relevant professional bodies will be involved

[98] In his submissions, the applicant maintained it was "inevitable" that the expulsion decision would preclude him from gaining re-admission to the Institute and hence to the profession. I do not accept that submission. It is simply not possible to predict the outcome of a FTP procedure. The range of outcomes are wider than a binary decision on exclusion from the university. In any event, any assessment of his suitability to enter the profession is much more likely to focus upon the applicant's underlying actions, rather than the fact of an expulsion decision, particularly if the applicant was to gain re-admission. The applicant may be able to put forward stronger or different submissions than he did during the disciplinary process. He may be able to demonstrate more clearly any additional steps which he has taken in the interim to address his issues with aggression and loss of control. As set out below, more evidence might be available about the connection between his current medical condition and his behaviours. The applicant may be able to obtain professional advice and assistance as to how to approach any future assessment of his fitness to practise. I do not therefore accept it is "inevitable" that admission to the Bar in Northern Ireland has been foreclosed on account of the misconduct finding.

[99] Overall, I consider that a proportionality assessment of the expulsion decision must also include consideration of the professional consequences. These are summarised above. However, the assessment cannot be conflated with any possible future fitness to practice process, nor is it appropriate to assume that it would inevitably result in exclusion from the profession.

(v) The applicant's medical condition

[100] Following the grant of leave, the applicant sought and ultimately obtained permission to amend the proportionality challenge and to adduce further evidence that he was diagnosed as suffering from schizophrenia in 2019. In a supplementary affidavit he filed a single page extract from his GP medical notes and records confirming the diagnosis. He also filed an affidavit which consisted of a "cut and pasted" academic article on the interpersonal consequences of schizophrenia. The article appears to have been published recently in the medical journal Psychology Today. The core conclusion in the article is that individuals suffering from schizophrenia experience divergent thinking. They can also experience social isolation on the ground that this type of thinking can lead to unique ideas which may not be well received in group settings and produce adverse reactions to the individual's unintended non-conformity. It is suggested in the article that social skills training might be an appropriate intervention to assist individuals with schizophrenia to deal with social stigma.

[101] Over a number of case management hearings, the court afforded the applicant an opportunity to consider whether to file any further medical or other evidence which might assist in explaining a connection between the applicant's medical condition and the behaviours which constituted the misconduct charge. The applicant confirmed that he did not wish to file any further evidence.

[102] In the course of oral submissions, the applicant acknowledged candidly that he had not disclosed his medical condition to any person or body within QUB, either during his period of study or during the disciplinary process. The applicant explained in oral submissions that he simply did not wish the process to involve examination of his medical condition. He did refer to the fact that the investigating officer had expressed concerns about his mental health. However, he did not go so far as to contend that QUB had a legal duty to offer to undertake a psychological assessment as part of the disciplinary process. Such a contention has formed no part of the case.

[103] In light of the lack of any knowledge of the applicant's medical condition on the part of the disciplinary decision makers, I do not consider it is appropriate to afford this factor more than minimal weight in the proportionality assessment. Even if I might have been minded to do so, the medical evidence which was available to the court was limited to confirmation of his diagnosis, without any evidence which might connect the applicant's condition to his behaviours or otherwise explain his behaviours. The journal article was an academic study and not medical evidence. It

did not assist in explaining the particular behaviours of the applicant and was also of limited assistance. The applicant's medical condition is therefore of limited weight.

(vi) Mitigation offered by the applicant

[104] During the disciplinary process, the applicant contended to the SCAC that the conduct committee did not take account of his apologies as mitigation. There can be no question that the applicant's apologies to Complainants 1 and 3 may properly be regarded as mitigation. However, it is also clear that his apologies were selective insofar as he did not apologise to all complainants. The two apologies which he did make came after he had received oral and/or written warnings about his behaviour and the apology to Complainant 1 was delayed.

[105] In submissions, the applicant contended that there was little more he could have done. He submitted that the panel should have afforded them much greater weight and that they should have been sufficient to provide either exoneration or very substantial mitigation. I do not accept that submission. The apologies clearly represent a mitigating factor. However, this is only one element of the proportionality assessment and I consider it to have been appropriate not to regard the apologies as sufficient to provide exoneration.

[106] The applicant also contended that provocation was a feature of the incidents involving Complainant 2 and Complainant 3. He considered that the panel was wrong to characterise his representations on this issue as an attempted "defence" rather than mitigation. However, it is clear that the applicant maintained throughout the process that his threat to Complainant 2 was entirely justified in the circumstances and, hence, he did maintain that provocation was a defence, rather than mitigation. Nevertheless, the conduct committee and the SCAC dealt with provocation in a general way without clearly distinguishing between the incidents. They did characterise the applicant's submissions as an effort to justify or excuse his behaviour, rather than a point of mitigation. To this extent, I consider the panel may not have approached the matter entirely correctly. However, it is clear that both the conduct committee and the SCAC were aware of the underlying facts of all incidents.

[107] I consider that provocation might properly be regarded as an aspect of mitigation and I take into account the applicant's criticism of its treatment as a factor in the proportionality assessment. However, there was no provocation for the first incident. There was a substantial gap in time between the personal insults and the threat in the second incident and in the third incident there is no clear connection or proportionality between the comments allegedly made by Complainant 3 and the verbal abuse which he directed at her. Accordingly, I consider that the issue of provocation should attract only limited weight in the proportionality assessment.

Procedures

[108] The Conduct Regulations provide for the conduct officer to determine whether a serious misconduct offence has been committed and for the conduct committee determine the penalty. The grounds for appeal against these decisions are narrow. In serious misconduct cases, they are:

(i) Evidence of a procedural irregularity in the conduct of the investigation and that this had a material effect on the investigation findings; and

(ii) Substantial and relevant new evidence which could not reasonably have been obtained in time to present to the investigating officer.

[Conduct Regulations 10.2.10 and 11.1.1]

[109] In submissions, the applicant maintained that these grounds did not enable him to challenge the finding that the misconduct offence of abusive, threatening, intimidating, bullying or harassing behaviour had been established. He wished to maintain that these were individual incidents and were insufficiently serious to constitute the offence. His reading of the grounds of appeal was such that he did not consider it was open to him to maintain that argument. He submitted that this influenced his decision to accept the finding of guilt and not to seek a review of the decision to screen out his appeal, which had been focused on "procedural grounds." I do not accept that the grounds of appeal are as restrictive as the applicant understood. The concept of "procedural irregularity" is clearly sufficiently broad to include an argument that a misconduct finding was erroneous on the ground that the relevant acts or omissions were not sufficient to constitute the offence. It is difficult to conceive of a more serious irregularity of procedure. Nevertheless, it is clear that the applicant did not challenge the finding of guilt and that the appeal process did not include an appellate review of that finding. In making a proportionality assessment of the penalty, the court is therefore constrained by the findings of the conduct officer and the investigation process upon which it was based. However, substantial evidence of the individual incidents was gathered, was available to the conduct officer and is available to the court. I have considered all of that evidence and it is clear that for almost all aspects of all of the key incidents which comprised the abusive behaviour charge, the applicant made relevant admissions about his conduct. The court is therefore well placed to make a proportionality assessment of the penalty, even in the absence of appellate review within the disciplinary procedure.

Margin of appreciation and institutional competence

[110] The context for these proceedings is a finding of misconduct, based upon evidence gathered during an investigation. It is an area where the court is particularly well placed to review the underlying decision and in which the university does not have any unique or specialised institutional competence.

Nevertheless, the university is entitled to a wide margin in prescribing its own institutional standards of behaviour in line with its own culture and ethos. It is also entitled to a wide margin in determining the appropriate enforcement mechanisms for those standards. In this case, it has done so through detailed conduct regulations which include easily accessible and generally applicable standard penalties for all identifiable offences. The relevant procedures are based upon sound and widely applicable standards and cannot in any way be regarded as arbitrary or unusual. They reflect precisely the sorts of social and professional standards which would be expected of students, particularly those seeking entry to the legal profession.

Conclusions

[111] I am satisfied that the applicant's conduct consisted of a series of incidents of abusive, threatening and/or intimidating behaviour. When viewed cumulatively, I am also satisfied that it constituted the serious misconduct offence under the Conduct Regulations. Even if the finding of guilt did not fall within the scope of the applicant's challenge, I wish to make clear that the finding was not a disproportionate exercise of QUB's disciplinary powers. The focus of the challenge was upon the penalty of expulsion. Taking account of all of the factors set out above in the manner which I have described and applying intense scrutiny to QUB's decision, I am ultimately of the view that the expulsion decision was proportionate. I am particularly influenced by the repetitive nature of the applicant's abusive threatening behaviour, which was out of all proportion with the circumstances and was perpetrated notwithstanding repeated warnings which he received from QUB staff, both orally and in writing. I consider that QUB is entitled to take a principled disciplinary stance against repeated abusive behaviour which is targeted at fellow students after multiple warnings were provided by its staff. I consider it to be within the scope of its discretion to mark such serious misconduct with the most serious penalty. The potential for this penalty was contained within the Conduct Regulations and was accessible to the applicant. The disciplinary process afforded a fair opportunity to put forward any material evidence by way of defence or mitigation.

[112] I have given anxious consideration to the consequences which the decision has already had upon the applicant and also the potential future professional implications if he remains committed to pursuing his chosen career. As regards the consequences to date, I have already recognised that these consequences are significant. As regards the future consequences, they are also significant. However, I do not consider that they are sufficient to render disproportionate the entitlement to enforce its own disciplinary code and to mark serious misconduct with the penalty of expulsion. The expulsion decision delays rather than precludes the applicant from pursuing a legal career. If he remains committed to do so in Northern Ireland, he will have a fair opportunity to demonstrate his suitability both to a FTP Panel and the Benchers of the Inn of Court, notwithstanding this past course of conduct and finding of guilt. However, the fact that he will have to overcome these additional burdens are consequences of his underlying conduct,

rather than the expulsion decision. Accordingly, I find that the sole ground of challenge has not been made out and the application for judicial review must be dismissed.

[113] I shall hear the parties on costs.