

OFFICE OF THE DIRECTOR OF EQUALITY INVESTIGATIONS

3 Clonmel Street
Dublin 2.

Phone: 353 -1- 4173300
Fax: 353-1- 4173399

E-mail: info@odei.ie
Website: www.odei.ie

EMPLOYMENT EQUALITY ACT, 1977

EQUALITY OFFICER'S RECOMMENDATION NO: EE 05/2000

**Ms. Mary Helen Davis
(Represented by the IMPACT)**

AND

**Dublin Institute of Technology
(Represented by Arthur Cox Solicitors)**

File No. EE 37/1998

1. DISPUTE

1.1 This dispute concerns a claim by Ms. Mary Helen Davis that the Dublin Institute of Technology penalised her, in terms of Section 2(d) of the Employment Equality Act, 1977, for having brought previous claims in pursuance of an entitlement under the provisions of that Act.

2. BACKGROUND

2.1 The Dublin Institute of Technology was established by the Dublin Institute of Technology Act, 1992 and came into being on 1st January, 1993. At that time it took over certain third level colleges including their staff from the City of Dublin Vocational Education Committee (CDVEC). The claimant was included in this transfer.

2.2 In December, 1997 the claimant instituted claims against the Dublin Institute of Technology in relation to her non-appointment to the position of Head of Library Services (EE 2/98) and Senior Librarian (EE 3/98). The first claim (EE 2/98) was investigated by an Equality Officer and a recommendation issued in February, 1999 while the second claim (EE 3/98) was withdrawn. In July, 1998 the claimant brought a further claim to the Labour Court in which she alleged that she, the claimant, was the victim of a number of instances of discriminatory and harassing behaviour and that the Institute had not treated her in a professional manner since January, 1998. The Labour Court referred the matter to an Equality Officer for investigation and recommendation.

3. SUMMARY OF THE CLAIMANT'S SUBMISSION

3.1 The claimant alleges that, since January, 1998 and subsequent to her bringing two claims of discrimination under the Employment Equality Act, 1977, the respondent has not treated her in a professional manner and she outlines a series of instances of alleged discriminatory and harassing behaviour towards her as follows:

- (a) On 15th January, 1998 at a Senior Management Team Meeting (SMT) Mr. Peter Cahalane was selected as the member to go forward to the respondent's Library Committee. The claimant was not able to attend this meeting and as a result was not given a chance, as one of the two most experienced members of the Team, to express her interest in being a member of this committee. She says that no formal method of selection was used, in contrast to the selection procedure adopted at the SMT meeting on 25th March, 1998 for the final library staff member from other categories.
- (b) On 19th January, 1998 the Head of Library Services, telephoned the claimant to inform her that she was being replaced on the respondent's Web Advisory Group (WAG) by another member of the SMT. The claimant had served on that Group since the start of that Academic Year. The claimant says that she was unhappy with this because of its sudden nature. She asked to be allowed attend the next meeting of the Group so that she could thank the other members of the Group and say farewell to them. This request was acceded to by the Head of the Library Services. The next meeting of the Group took place on 2nd March, 1998 and the claimant was not notified of it. She found out about the meeting after it had taken place and she was upset that she had not been given prior notice of it. The claimant then contacted the Personal Assistant to the Director of External Affairs i.e. the person who sends out the notifications of meetings and minutes of previous meetings. According to the claimant the Personal Assistant told her that she didn't send her a copy of the minutes and the notification because she had been told that the claimant was no longer a member of the Group. The claimant was unable to establish who had told this to the Personal Assistant. A copy of the minutes were sent to the claimant after she complained and she was marked down as 'excused' even though she did not receive the notification of the meeting. The claimant says that, on 10th March, 1998, it was conceded that she should be allowed attend one more time and she did so in April at which she made known to the other members of the Group her regret at being given no choice in leaving the Group. She further documented this in a letter to the Personal Assistant.
- (c) According to the claimant the reason given to her by the Head of Library Services for removing her from the Web Advisory Group (WAG) was her lack of HTML expertise. The claimant says that she was not selected for this training by the Senior Librarian responsible for staff training despite having expressed an interest in attending at meetings of the SMT on 27th January and 10th February, 1998. The claimant says that she also mentioned it to the President at a meeting with him on 2nd March, 1998. The President said that the claimant could not expect a special course to be arranged for her but she subsequently discovered that this course was being arranged internally that very month. The claimant then organised her own HTML training externally using the respondent's training fund to finance it. However, by obtaining this training the claimant says that she was not offered her place back on the WAG.
- (d) The claimant says that she has expressed an interest in other respondent level committees, including specifically the Teaching and Learning Committee as far

back as the SMT meeting of 10th February, 1998 and in subsequent e-mails to the Head of Library Services and the Director of Academic Affairs. The Director of Academic Affairs then suggested the Head of Library Services as a member of the Teaching and Learning Committee, but the latter was not immediately willing to become a member (SMT minutes of 12th May, 1998). The claimant says that she has not been selected for any Committees or Working Groups since January, 1998 despite being the most experienced librarian to have expressed an interest in being involved. The claimant says that three of the five Faculty Librarians are members of Committees or Working Groups.

- (e) On 6th February, 1998 the claimant says that the Head of Library Services telephoned the general staff phone in Kevin Street Library and asked for Ms. de Foubert. When she took the call he asked if the claimant was in attendance. The claimant says that she knows that the Head of Library Services did not call her directly as she was in her own office at the time. Ms. de Foubert told the Head of Library Services that she thought the claimant was at lunch given that it was lunch time and also she assumed that the Head of Library Services had tried to contact the claimant directly first. The Head of Library Services did not leave any message. When the claimant asked him why he wanted her the Head of Library Services said that he was ringing the Library to check how things were proceeding. The claimant says that the Head of Library Services has never phoned this library before or since in this manner.
- (f) At about 11.40a.m. on 11th February, 1998 the claimant phoned the Personnel Officer for clarification on guidelines set out in the pamphlet produced by the respondent entitled “Dublin Institute of Technology Policy on Preventing and Dealing with Sexual Harassment”. In this policy the respondent states that it applies the same guidelines to General Harassment. The claimant says that she asked the Personnel Officer if “any Senior Manager” (as referred to on the back page of the pamphlet) included the President. The claimant says that the Personnel Officer refused to answer that question. According to the claimant he then proceeded to confuse her semantically on the telephone and his manner and tactics caused her to become extremely upset. The claimant says that this upset was noted by the caller of an incoming call shortly after. The claimant then rang the Employment Equality Agency because she felt helpless and frustrated. She also contacted Mr. Ciaran Taafe in a very distressed state and left a message on his voice mail. He agreed to meet her at 1.10p.m. that day and the claimant says that she believes that Mr. Taafe logged the visit.
- (g) On 26th May, 1998 the Head of Library Services along with a Senior Librarian visited the claimant in her office to discuss budgets. Once this discussion concluded the Head of Library Services remained behind after the Senior Librarian had left. He asked the claimant how long she had had her office. The claimant said that she informed him that he had been in her office previously and that she had been in this office since the Library had been in this new building. The claimant says that she felt threatened by his question and has never been given any explanation for it.

- (h) On 28th May, 1998 the claimant says that she asked the College Chaplain about counselling and he agreed to look into it for her. On 5th June, 1998 the claimant followed up her request for counselling with the College Chaplain and he informed her that he had telephoned the Personnel Department on her behalf and was told that the counselling would be arranged confidentially but the claimant would have to contact Ms. Ryan in Personnel directly. The claimant contacted Ms. Ryan and says that, only after she told her who was calling, did Ms. Ryan ask her the reason for the counselling. The claimant told Ms. Ryan that she understood that an appointment would be made confidentially on her behalf with an outside counsellor with which the respondent has links. The claimant says that Ms. Ryan insisted that she needed to know the nature of the problem specifically before she could make the appointment. The claimant feeling under pressure by this, reconsidered her position and withdrew her request.
- (i) On 15th June, 1998 the claimant went to the office of the Head of Library Services for a pre-arranged meeting with him and another Faculty Librarian to discuss the new Library building. The claimant arrived early for the meeting and on entering his office she says that she expressed a wish to visit the toilets. The claimant says that the Head of Library Services ignored her wish and proceeded to ask her if she had sent an e-mail "about this document" (i.e. a document he had sent the claimant that morning as part of a briefing for the meeting which he had said was confidential). The claimant says that, on a previous occasion, she had been accused of showing a 'confidential document' (minutes of SMT meetings of 27th April and 27th May, 1998 refer) to other members of staff. At the time her professional judgement had indicated to her that what she was doing was not a breach of confidentiality, so on this occasion she was anxious to prevent this happening again. Consequently the claimant sent an e-mail to the Head of Library Services pointing out that, as the document for the meeting had come to her in a resealable circular envelope which was not marked 'confidential', she could not guarantee that it had arrived intact and, therefore, she would be obliged to contact the authors to guard against being wrongly accused of breach of confidentiality. The claimant said that she did not send the e-mails and went to leave the office but the Head of Library Services detained her by raising his voice and saying that she had no right to send the e-mails. The claimant said that she disagreed with the Head of Library Services but told him that she had not sent the e-mails. The claimant says that the Head of Library Services was, at this stage, shouting and she left the room very upset. On her return to the office of the Head of Library Services the claimant said that the third person who was to attend this meeting had still not arrived and the Head of Library Services asked her if she had read the document. She said that, while she had read it, she had not much time to consider it and make an informed comment. The claimant said that the Head of Library Services stated in an antagonistic tone that she had plenty of time to read the document, but she rejected this and the claimant told him that he was shouting at her again. The Head of Library Services then got up, went over to the door and closed it. The claimant asked him to leave it open because she

told him that she did “not want to be in the room on my own with you”. According to the claimant the Head of Library Services said “that’s a preposterous suggestion”. The claimant says that she does not know what the suggestion was to which he referred and that she was quite within her rights to ask to have the door left open. The claimant again left the room and only returned when the third person had arrived for the meeting. The claimant attended the meeting with the Head of Library Services and the third person. She participated fully and remained until the end of the meeting.

- (j) The following day (16th June, 1998) the claimant received a memo from the Head of Library Services accusing her of unreasonable behaviour and of leaving the room peremptorily. The claimant says that, on both occasions when she left the room, she stated her reasons for leaving and only returned when the reasons were no longer applicable. The claimant replied to the memo and requested a written apology. She also left a voice mail message for the Head of Library Services and she received a written response to her memo dated 7th July, 1998.
- (k) On the morning of 30th July, 1998 the claimant received correspondence from the Personnel Officer dated 28th July, 1998 saying that she had “refused to attend a meeting”. The claimant says that she was stunned as this correspondence was written only 24 hours after the request had been made and also because she had written to the Head of Library Services the day before and copied it to the Personnel Officer. The claimant says that her response did not constitute a refusal. She says that she was further upset by the scheduling of a meeting on 12th August, 1998 when she would be on annual leave, a fact which was known. The claimant telephoned the Personnel Officer who admitted that he had just received her letter which he said he had not been expecting. The claimant argues that the Personnel Officer should not have pre-judged her and she sought a withdrawal of the correspondence and an apology which to date she has not received. The claimant says that she had wanted to attend this meeting but the conditions for the meeting were constantly being changed by the respondent. She says that the Personnel Officer stated in his correspondence that this was an “example of unreasonable and unco-operative behaviour on your part”.
- (l) On 14th August the claimant unexpectedly received a request to meet with the Head of Library Services and a Senior Librarian concerning a PC Library Project. As the claimant was unsure as to the particular project she clarified this. The claimant says that she did not welcome the prospect of another small meeting with the Head of Library Services given her experiences on 15th June, 1998 and also the fact that she did not consider the meeting particularly urgent, it did not involve her to any great extent and the instigator of the project (Dr. Paddy Mulligan) would not be there. On 18th August the time for the meeting was provisionally changed, but not confirmed. By e-mail on 18th August the claimant wrote to the Director of Academic Affairs explaining her unease at attending the meeting and she copied this e-mail to the Head of Library Services. Because of the change of the meeting time and the fact that the

claimant did not relish another small meeting with the Head of Library Services, she did not confirm her attendance and she let the Head of Library Services know this by e-mail on the morning of 19th August. The Head of Library Services responded on 20th August accusing the claimant of failing to reply directly to him about his request for a meeting. She says that he also accused her of “obstructing the normal running of the Library”. The claimant rejects this and says that he is the only person to have made such a comment to her throughout her entire career. The claimant says that the Head of Library Services also accused her of making unwarranted allegations about another member of staff which were a “serious slur on your line managers”. The claimant says that she made absolutely no allegations against this member of staff specifically. She said that she simply expressed her fears and unease given her own experience especially in relation to the events of 15th June, 1998. The claimant says that these allegations should be withdrawn.

- (m) On 15th September, 1998 the claimant says that she viewed her Personnel File in Fitzwilliam House and requested a photocopy of some of the documents and submitted queries with regard to other documents. To-date the claimant says that the Personnel Department has not replied to these requests and has frustrated her attempts to have these requests met.
- (n) On the 16th and 22nd September, 1998 the claimant says that she met with the Head of Library Services and the Director of Academic Affairs. Mr. Robert McMahon, Lecturer, D.I.T. Kevin Street was also present. The claimant had failed to have an originally planned meeting for 10th July, 1998 go ahead, despite several communications expressing her willingness to attend such a meeting. The claimant says that these meetings (16th and 22nd) yielded no significant result. She asked for more opportunity for membership of Committees and Working Groups at D.I.T. Institute level and this was refused by the Head of Library Services who said that there were no Faculty Librarians on Committees at this level. The claimant says that this is not the case and she had to correct the Head of Library Services. The claimant says that she has not yet received clarification on the respondent’s grievance procedure, despite having requested it at the meeting on 22nd September, 1998. The claimant also says that none of the unsubstantiated memos from the Head of Library Services or the correspondence from the Personnel Officer have yet been withdrawn despite requests to that effect.
- (o) On 24th September, 1998 the claimant says that she received circular correspondence dated 22nd September, 1998 from the Web Administrator, concerning the work of the WAG. This correspondence had been circulated widely throughout the respondent organisation and it extended thanks to named members of the Group, including the claimant’s replacement. The claimant says that she was not one of those named and was therefore extremely upset. In an attempt to rectify the situation she wrote to the Director of External Affairs and the Chair of the WAG. She received a reply in which he personally thanked her but she considers that this did not rectify the situation as this did not have the same wide circulation as the original correspondence. The claimant then wrote

to the Director of External Affairs again and to-date has not received a reply.

- (p) On Thursday 1st October, 1998 the Head of Library Services addressed the Board of Kevin Street on library matters. The claimant says that she was extremely surprised, when, once again, she was informed of this by chance by a Board member. The claimant contends that the Director or the Head of Library Services should have informed her that this was taking place and, at best, the claimant argues she should have been present. She says that she has addressed the Board on library matters previously.

3.2 In terms of a remedy the claimant asks that the Equality Officer finds that victimisation has occurred and that the remedy should most significantly include:

- The withdrawal of any of the unsubstantiated correspondences from the Head of Library Services and the Personnel Officer;
- Apologies for these correspondences;
- An assurance that similar unsubstantiated accusations would not be made in the future;
- The approval of the claimant's assignment to at least one of the D.I.T. Institute level Committees in which she has an interest;
- Wider acknowledgement of the claimant's contribution to the WAG;
- An assurance that - regardless of the outcome of the present case - the claimant will not be penalised or victimised by D.I.T. for having taken it, and that she will be treated by them in a professional manner;
- Appropriate compensation for the distress the claimant has been caused in recent months.

4. SUMMARY OF THE RESPONDENT'S SUBMISSION

4.1 The respondent organisation was established by the Dublin Institute of Technology Act, 1992 and it took over certain third level colleges from the City of Dublin Vocational Education Committee (CDVEC). Under Section 13 of the Act the members of staff (including the claimant) of the CDVEC who had been employed in the Colleges in question transferred into the staff of the Institute on the same pay and conditions of service as they previously enjoyed in the CDVEC. In 1996 the respondent decided to change the Library structure moving from a College based local authority library structure to a University based

Faculty structure whose Library would benefit an institution which would shortly be awarding degrees at undergraduate and post-graduate level. A new staffing structure was agreed in January, 1997 as follows:

- Chief Librarian (later re-titled Head of Library Services) (SL II) (1 post)
- Senior Librarian (L II) (2 posts)
- Faculty Librarian (L I) (6 posts)
- Assistant Librarian (Grade V) (10 posts)
- Senior Librarian Assistant (Grade IV) (10 posts)
- Library Assistant (Grade III) (24 posts)

4.2 The positions of Head of Library Services and Senior Librarian were filled by competition. The claimant applied for both competitions and was unsuccessful. She was appointed, following interview, into the new structure at the grade of Faculty Librarian. The claimant initially refused to accept her promotion to that grade in the new structure when it was offered to her in September, 1997. She eventually accepted the position in March, 1998.

4.3 The respondent, in its submission, has replied to each of the allegations made by the claimant of discriminatory and harassing behaviour towards her. The details of its reply are as follows:

- (i) *the selection of Mr. Cahalane as a member of the Institute's Library Committee*

According to the respondent Mr. Cahalane was suggested as a nominee for the Library Committee to represent Faculty Librarians at the Library Senior Management Team (SMT) meeting of 15th January, 1998 and the two other Faculty Librarians present agreed. Together they formed a majority of three of the then number of four Faculty Librarians present. The respondent says that the decision was taken because the matter was urgent as the first meeting of the Committee was scheduled for five days later on 20th January. Furthermore all Faculty Librarians, except the claimant were happy with this procedure. The respondent says that the claimant, at this time, was not a Faculty Librarian because she had refused to accept this post which was offered to her in September, 1997. Her presence at SMT meetings was on the presumption that she would accept the offer and, according to the respondent, it would not have been appropriate for her to represent Faculty Librarians on the Library Committee.

(ii) *the composition of the Institute's Web Advisory Group*

The Web Advisory Group is an ad hoc group with no official status within the respondent organisation. It was established by the Director of External Affairs who was given responsibility to up-date the Institute's Web site. The Group, consisting mainly of people with web experience, acts as a sounding board and is representative of the Institute's different faculties, administrative structures, etc. The Group also acts as an information gatherer for the Director of External Affairs, inputting to the best of its knowledge, issues that might be of interest to the area of the organisation in which the individuals work. Members of the Group volunteer to disseminate information among their colleagues in various parts of the respondent organisation insofar as that is reasonably possible. According to the respondent being part of this ad hoc Group cannot be seen to have any particular status. The respondent, in its submission, sets out the history of the claimant's involvement with the Group and this is described in Appendix A.

(iii) *The claimant's non membership of Committees and Work Groups*

According to the respondent it is the responsibility of the Head of Library Services to nominate library staff to committees or working groups as appropriate, and to accept nominations himself as and when appropriate. Faculty Librarians (Ms. Brazier and Mr. Gillespie) have not been nominated to committees, but the Head of Library Services has, as he attempted to do with the claimant, given them important projects to manage. The respondent notes that the claimant did not accept the post of Faculty Librarian until March, 1998 i.e. almost six months after it was offered to her and her status during this six months period was unclear. In spite of this the claimant was allowed to attend library SMT meetings. The respondent rejects the insinuation that the Director of Academic Affairs suggested the Head of Library Services as a member of the Teaching and Learning Committee only because the claimant expressed an interest in membership of this committee. Rather the Director of Academic Affairs suggested him because he believed that the Head of Library Services should represent the Library Services on this important committee.

(iv) *Telephone call made by the Head of Library Services to Kevin Street Library on 6th February, 1998*

According to the respondent the Head of Library Services cannot recall this incident. He frequently telephones library desks directly to ask for Faculty Librarians if he thinks that they may not be in their offices at the time and he wants to check if they are in the library itself as opposed to being out e.g. at lunch.

(v) *Telephone conversation between the claimant and the Personnel Officer on 11th February, 1998*

The respondent says that the Personnel Officer received numerous telephone calls and letters from the claimant around the 11th February, 1998. The Personnel Officer did not keep a record of these telephone conversations. However, he did recall the claimant asking him if the Institute's President was considered to be a senior manager in the Institute. The Personnel Officer asked the claimant why she wanted to know, as this, he considered, was a most unusual question. The claimant did not give any reason for asking the question but persisted in seeking a response to it, which the Personnel Officer did not specifically answer. The respondent says that the Personnel Officer does not recall the claimant asking the question in the context of a grievance issue and says that if this had been clear to him he would have answered in the affirmative. The respondent says that there is an oblique suggestion in the claimant's submission of harassment by the Institute's President and it utterly rejects this. According to the respondent the President had long meetings with the claimant about her failure to get positions she applied for, but at all times the President was patient and did not raise his voice in any way. The President repeated the Institute's position to the claimant but she was clearly in no mood to listen and eventually she walked out of the meeting.

(vi) *Meeting between the claimant and the Head of Library Services on 26th May, 1998*

The respondent says that the Head of Library Services does not accept this account of the meeting. He had asked a Senior Librarian (Ms. McSweeney) to let himself and the claimant speak privately because he needed to discuss with her the circumstances in which a Library Assistant (Ms. Bevan) would be joining her staff to fill a vacancy. The Head of Library Services did ask the claimant about her office by way of a casual remark as he was leaving. He does not see how this conversation could be considered threatening in any way. The respondent says that, in the meeting immediately prior to this, the Head of Library Services found the claimant's attitude to be aggressive and unco-operative. He had hoped that, in a private conversation with the claimant, she might be more forthcoming about any difficulties she might have felt with the budget process, but this did not happen. According to the respondent the Head of Library Services and Ms. McSweeney had detailed discussions in the same format with all other Faculty Librarians but the claimant was the only person with whom the discussion was curtailed by her own wish. The claimant sent a letter to the Head of Library Services dated that same day and received the next day in which she stated that she was not prepared to carry out certain actions regarding the book budget. She had been unwilling to discuss this at the meeting with the Head of Library Services and Ms. McSweeney despite the meeting being called for this express purpose.

(vii) *Telephone conversation between the claimant and Ms. Ryan on 5th June, 1998*

On 5th June, 1998 the College Chaplain telephoned Ms. Ryan, Personnel

regarding someone (no name given) who was having difficulty at work and who wanted to talk to a counsellor. Ms. Ryan informed him that there was no formal employee assistance programme (EAP) in place at the time but that the Institute would consider each situation as it arose and deal with it appropriately. Ms. Ryan said she would check out the situation regarding referral to an outside EAP provider and get back to him. Ms. Ryan then spoke to the Personnel Officer and an external EAP provider (who is not contracted to the Institute) and the advice from both was that the Institute should first determine if there was a problem (i.e. examining work performance of a person over a period, monitoring levels of absenteeism and discussing the situation with the person's supervisor/ manager) and only then should the Institute consider referral to an outside EAP provider. Ms. Ryan then called the College Chaplain and informed him of this and asked if he had permission to identify the person to her so that the situation could be investigated. The College Chaplain suggested that the person contact Ms. Ryan directly to discuss the situation. The respondent states that Ms. Ryan did not tell the College Chaplain that the person could call her to make an appointment to see a counsellor as Ms. Ryan does not have access to the services of a counsellor and she never referred anyone for counselling. The only counsellors employed by the Institute are student counsellors. Ms. Ryan subsequently received a call from the claimant asking that Ms. Ryan make an appointment for her to see a counsellor. Ms. Ryan asked the claimant for an indication of the nature of the problem but the claimant refused to tell Ms. Ryan this as she was not a counsellor. The respondent says that Ms. Ryan informed the claimant that the Institute does not have available the services of a counsellor and, therefore, she was not in a position to make an appointment with anyone. The claimant accused Ms. Ryan of refusing to help her to which Ms. Ryan replied that she was not refusing to help her but that she needed to know the nature of the problem before she could do or suggest anything. The claimant then said that she would get her own counsellor and terminated the conversation. In her submission the claimant suggests that, when she identified herself, Ms. Ryan changed her mind about the course of action to be taken. The respondent states that Ms. Ryan is very clear that the general course of action was discussed and decided with the Personnel Officer prior to her return telephone call to the College Chaplain and also before the claimant's call to Ms. Ryan. The respondent says that both Ms. Ryan and the Personnel Officer were unaware of the identity of the person when the matter was first discussed.

(viii) *Meeting with the Head of Library Services on 15th June, 1998 and his memorandum of 15th June, 1998*

According to the respondent the Head of Library Services does not accept the claimant's account of this meeting. The Head of Library Services called the meeting by e-mail for 15th June with Ms. Ambrose (Faculty Librarian, DIT Aungier Street) and the claimant to discuss the planning of a new library. He circulated them with a report (by former colleagues of his in another library) of

a visit to a university library and he asked them, in his e-mail, not to distribute the report. The claimant replied, by e-mail, that since the document was sent in a treasury envelope and not marked confidential she would relay this fact to the authors of the document to protect herself. When the claimant arrived at the meeting the respondent says that the Head of Library Services remonstrated with her about presuming to contact senior managers in another library about the Institute's library business, without reasonable cause. The Head of Library Services did not shout at the claimant, but he did make his view clear. The claimant left the room. When she returned the respondent says that the Head of Library Services wanted to discuss the document. He did not shout at any time. He did move towards the door but the claimant asked that it be left open and so the Head of Library Services left it open. The respondent says that it was rare for the Head of Library Services to have meetings in his office (which is located on a busy corridor) with one or a number of people without closing the door. This would apply to other offices on this corridor. The respondent says that the claimant indicated that she would not remain in the room with the Head of Library Services, despite the door being open and she left. The respondent says that the Head of Library Services questions the accuracy of the purported quotations from the conversation which took place between himself and the claimant and he points out that the claimant was not taking contemporaneous notes. Just after Ms. Ambrose arrived the claimant returned. The Head of Library Services explicitly referred to his memo regarding the non-distribution of the report on the external library and the meeting carried on in a calm and business-like manner. The Head of Library Services found the claimant's attitude to be unco-operative and negative and he communicated this to the claimant by memorandum of 15th June.

- (ix) *Memorandum from the Personnel Officer dated 28th July, 1998 and a subsequent telephone conversation with him*

The Personnel Officer wrote to the claimant about her refusal to attend a meeting on 30th July, 1998. The respondent says that the claimant did not approve of the composition of the management team which would have been different to the group that would have met with her on 10th July. The respondent says that she referred to it as a 'totally different meeting' stating that she could not 'consider this meeting as a substitute for the original, and therefore cannot attend at present'. According to the respondent the subsequent re-scheduling of the meeting for 12th August overlooked her planned annual leave on that day and this was acknowledged on 9th August, 1998.

- (x) *An August meeting with the Head of Library Services and a Senior Librarian*

The respondent says that the Head of Library Services e-mailed Ms. Gavin and the claimant on 14th August to discuss a proposed PC project for the Institute's Kevin Street library. Ms. Gavin was involved as Head of Systems

in the library and the claimant was involved because the project was to be located in the library she manages. The Head of Library Services does not understand the reference to 'sudden' as it is his normal practice to involve the relevant managers in such initiatives and the proposed meeting was six days later. The memorandum of 20th August, 1998 by the Head of Library Services to the claimant addresses the other issues; it was not acceptable that the claimant should decide whether the meeting was urgent and the Head of Library Services does not understand how such a large project in Kevin Street library could 'not involve' her to any great extent. This proposal concerns the placing of the greatest number of computers in an Institute's library. The claimant did not reply directly to the Head of Library Services, but to the Director of Academic Affairs on the 18th August and then to the Head of Library Services on the 19th August. The respondent says that the Head of Library Services stands by his characterisation of the reasons the claimant gave for not attending the meeting as proposed in her e-mail to the Director of Academic Affairs (18th August). In relation to the proposed meeting the claimant said 'I have great fear that more false unfounded accusations will be made against me, and derogatory and negative adjectives will once again be issued totally unjustifiably to describe me'. The respondent says that, as the Head of Library Services had only called the claimant and Ms. Gavin to the meeting, the allegations anticipating certain conduct can only refer to Ms. Gavin and the Head of Library Services. The respondent denies that the Head of Library Services made a general accusation of 'obstructing the normal running of the library' in his memo of 20th August, 1998 rather he wrote 'I regard your response as obstructing the normal running of the library without reasonable cause'.

(xi) *The examination by the claimant of her Personnel file*

In her submission the claimant complains about access to her personnel file. According to the respondent the Personnel Officer wrote to the claimant on 20th November, 1998 explaining the situation. He also wrote to her on 12th November in respect to questions she raised regarding grievance procedure.

(xii) *September Meetings with the Director of Academic Affairs and the Head of Library Services*

The respondent says that the Director of Academic Affairs arranged the meeting of 16th September in an attempt to bring a 'fresh start' to the situation. He did not intend to analyse past correspondence rather he considered it worth attempting a new beginning in which the past is ignored and the parties involved agree to a fresh start. Therefore he considered the meetings on 16th and 22nd September, 1998 as genuine attempts on his part

to bring about this fresh start. The Director of Academic Affairs does not agree with the claimant's version of these meetings. According to the respondent the claimant sought a direct reporting line to the Director of Academic Affairs which he declined, as she reports to the Head of Library Services. However the Director of Academic Affairs emphasised that he operates an 'open door' policy for all staff in Academic Affairs and that the claimant was welcome to come and see him once she had explored any issues with the Head of Library Services. The respondent says that the Director of Academic Affairs does not recollect the Head of Library Services refusing the claimant's request concerning membership of committees. He pointed out that no-one was excluded from membership but that all current positions were full and that nominations for future positions would be dealt with in the normal manner.

(xiii) *The non-mention of the claimant in a memorandum dated 22nd September, 1998 concerning the work of the Institute's Web Advisory Group*

On 22nd September, 1998 the Institute's new web site was launched and the Web site administrator thanked all who had helped and especially the then current group for its efforts. The claimant wrote to the Director of External Affairs stating that she was upset at having to leave the Group and then, even more so by the fact that she was not named in the memorandum. The respondent says that the claimant was not the only former member of the Group at the time but only the current members of the Group were named. Despite this the Director of External Affairs wrote to the claimant to assure her that the omission of her name was a 'pure oversight', that 'there was absolutely no slight intended' and he thanked her once more for her contribution.

(xiv) *The Head of Library Services addressed the Executive Board of Kevin Street on Library matters*

The Head of the Library Services was invited to address the Kevin Street Executive Board by the Director, Dr. Hussey. In his address he was asked to give an outline of general library developments, all of which had been discussed at the library Senior Management Team meetings and of which the claimant would have been aware. At the claimant's request he gave her a brief summary of what he had said. According to the respondent this address was a follow-up to a similar address the previous year at which the claimant was not present. The Head of Library Services has also addressed the Executive Boards in DIT Bolton Street and DIT Aungier Street on general library progress when the local Faculty Librarians were not present.

- 4.4** The respondent, in its submission, said that the claimant, in recent weeks, had been asked to sit on a Selection Board responsible for the short-listing and interviewing of applicants for

the position of Library Assistant in the Institute. According to the respondent the claimant was very unco-operative in this matter and she refused to accept or reject this invitation, despite her having received the request in three separate e-mails and one memo. Other similar invitations were extended to other members of the library staff and they were all accepted.

4.5 The respondent notes that the claimant still insists on using the title 'Senior Librarian' despite accepting the post of Faculty Librarian in March, 1998. She did this in correspondence with another member of staff and also in that correspondence mentioned her equality claims. The respondent considers this reference to be inappropriate when the correspondence is with a more junior member of staff. The respondent regards this as further evidence of unco-operative and unreasonable behaviour on the claimant's part.

4.6 The respondent says that, on the basis of the foregoing, it refutes all allegations that it has perpetrated or tolerated a series of instances of discrimination and harassing behaviour towards the claimant and it further refutes any suggestion that it has not treated her in a professional manner. The respondent cites the law in relation to the bringing of a claim of penalisation as has happened in this claim. The details of the respondent's legal arguments are set out in Appendix B.

5. SUMMARY OF THE CLAIMANT'S SECOND SUBMISSION

5.1 The claimant states that, since she lodged her original submission, more incidents have occurred where she has been penalised as a result of taking cases under Section 19 of the Employment Equality Act, 1977. These are set out as follows:

- (a) The claimant had a meeting with the Director of Academic Affairs, the Head of Library Services and Mr. R. McMahon (Lecturer) on 22nd September, 1998 (paragraph 3.1(n) also refers). As a result of this meeting the claimant asked for information on any formal specific grievance procedure. She received a letter from the Personnel Officer on 19th October, 1998. He failed to address her query despite the Director of Academic Affairs, in a letter dated 2nd October, 1998 to her, stating that he had referred her query to the Personnel

Officer for a response. The claimant had to write to the Personnel Officer on two further occasions before she received a response. According to the claimant her request was ignored and she contends that such a request from another member of staff would not have been ignored by the Personnel Officer.

- (b) On 8th October, 1998 the claimant wrote to the Personnel Department requesting photocopies of documents which were on her Personnel File and which she had seen on viewing her file in September, 1998 (paragraph 3.1(m) refers). As she received no reply to her letter the claimant telephoned Ms. Ryan, Personnel Department. The claimant was told that she would have to make her request directly to the Personnel Officer. The claimant points out that she had always dealt with Ms. Ryan and she was not aware that she had to make this request directly to the Personnel Officer. On 14th October, 1998 she wrote to the Personnel Officer and received a response on 20th November, 1998. It contained no reference to supplying photocopies of the requested documents. As a result the claimant contacted the Personnel Department requesting to view her file again. On 25th November, 1998 the Personnel Officer wrote to the claimant refusing her access to the file and stating that this is “in view of recent actions which [she had] initiated against the Institute”. According to the claimant the actions referred to were two cases under Section 19 of the Employment Equality Act, 1977. The claimant was unable to view her file until 20th April, 1999 following an e-mail request to the Personnel Officer on 17th April, 1999.
- (c) The Personnel Officer wrote to the claimant on 7th May, 1999 as a result of her visit to DIT Head Office on 20th April, 1999 to view her file. The letter contained a number of complaints made against the claimant by a junior member of staff. The claimant argues that the Personnel Officer accepted the validity of the complaints on face value without giving her a right of response. The claimant says that the denial of normal procedures and natural justice to her is just another example of her being singled out for special unacceptable treatment since taking her two cases under the Employment Equality Act, 1977.
- (d) At the hearing of the claim brought by the claimant (Ref: EE 02/1998) the respondent made a reference to another claim which the claimant had brought i.e. Ref: EE 03/1998. According to the claimant this reference made by the respondent in no way contributed to the hearing of claim EE 02/1998. She argues that it was unfair harassment during the equality hearing and she was intimidated by it. The claimant says that the behaviour of the respondent was unfairly influenced by the fact that she had brought an action against the respondent under the Employment Equality Act, 1977.
- (e) In January, 1999 the claimant applied for attendance at a conference and her application was refused. In March, 1999 she applied for attendance at another conference to be held in September, 1999 and was told by the Head

of Library Services that her application was too early. At the same time the claimant was being asked by the Senior Librarian, with responsibility for Staff Training and Development, to submit a detailed account of training needs, conferences, etc. projected to August, 2000. By June, 1999 the claimant had still not heard from the Head of Library Services about attendance at the September, 1999 conference.

- (f) In February, 1999 the claimant received an e-mail from a senior Library Assistant (a junior member of staff) regarding library Web page content and in this e-mail he had signed himself "Web Editor". [Ms. Brinkley, Faculty Librarian who had been put on the Web Advisory Group, instead of the claimant, had resigned (paragraph 3.1(b) refers)]. The claimant applied to attend a Web Internet course and her application was rejected on the basis that the course was reserved for Departmental Web Editors. The claimant contacted the Senior Library Assistant to know how he had become "Web Editor" and he directed her to Ms. Ambrose, Faculty Librarian. According to the claimant, Ms. Ambrose told her that Ms. Gavin, Senior Librarian had approached her about the member of staff concerned. The claimant also discovered that a junior member of staff had been allocated a place on the course for which she had made previous application and to-date the claimant has received no confirmation of a place on this course.
- (g) In late January, 1999 the claimant sought to have the matter of invalidity of Selection Boards addressed within the Rights Commissioner Service. The respondent objected to this, citing the previous claim (Ref: EE 03/1998) and also giving the reason that the claimant had "instigated proceedings against the Institute under the Employment Equality Act, 1977....". According to the claimant it is unprecedented for the respondent to refuse to attend at a Rights Commissioner hearing in relation to an individual member of staff. The claimant attempted to refer the case to the Labour Relations Commission but the respondent refused to attend because the claimant had instituted a claim under the Employment Equality Act, 1977. According to the claimant this shows beyond doubt that she was penalised by the respondent for having taken an action, contrary to Section 2(d) of the Act.
- (h) On 5th February, 1999 the claimant was asked in an e-mail from the Head of Library Services to act on a Selection Board for recruitment of Library Assistants. The claimant had queried the selection procedures in the respondent organisation and for this reason considered that this placed her in an awkward situation. Therefore, before accepting the invitation to act on a selection board the claimant felt it was incumbent on her to seek further information about the procedures. As a result written communication ensued between the claimant, the Head of Library Services and the Personnel Officer. On 11th February, 1999 the Personnel Officer wrote to the claimant informing her that her services as a member of the Selection Board were not required. She replied by letter dated 16th February, 1999 and received no response to that letter.

- (i) The claimant states that, as time progresses, members of management are communicating with her less and less. In late March the claimant attempted to get Ms. Gavin, Senior Librarian to visit the library premises. Mr. Murphy, a member of staff (junior to the claimant), visited the library without prior notice and at a time when the claimant was not present, a fact which should have been known to Ms. Gavin. Mr. Murphy gave the claimant no up-date on technical diagnosis. The claimant then tried to arrange another visit from Ms. Gavin with a member of the Kevin Street Library Committee and gave her four dates. Ms. Gavin chose a completely different date and the claimant asked her to come at 10.30a.m. as she needed to leave by 12.15p.m. According to the claimant Ms. Gavin arrived at 11.50a.m. accompanied by Mr. Murphy. Following the visit the claimant asked Ms. Gavin for an up-date on the result of her visit. Despite repeated requests a response was received almost two months later.

- (j) In the response from Ms. Gavin to the claimant (mentioned in paragraph (i) above) reference was made to a form pertaining to training, conferences, etc. projected to August, 2000. Ms. Gavin stated that the claimant had returned the form blank. The claimant denies this and says that she had returned the form with very little detail having discussed the matter with the Staff Training and Development Officer, various Heads of School, a member of a relevant Committee and also at the end of a meeting of the Academic Board. According to the claimant she received no indication that the form was not completed to Ms. Gavin's satisfaction until the allegation was made in this response. The claimant states that the respondent has wrongly made written allegations against her without warning and totally out of context.

6. SUMMARY OF THE RESPONDENT'S SECOND SUBMISSION

6.1 The respondent made the following response to the claimant's second submission:

- (i) In response to the point raised by the claimant in her submission and set out above at paragraph 5.1(a) the respondent denies that requests by the claimant for information were ignored by the Personnel Officer. According to the respondent the Director of Academic Affairs was asked by the claimant to refer two issues to the Personnel Officer. The Personnel Officer dealt with these two issues in his letter to the claimant dated 19th October, 1998. The claimant wrote to the Personnel Officer stating that she had received no clarification on the issue of the respondent's grievance procedures. The Personnel Officer responded on 12th November, 1998 providing full details of the grievance procedure. The respondent denies that any request from the claimant was ignored.

- (ii) The respondent denies that it acted improperly in relation to the arrangements made for the viewing by the claimant of her personnel file (paragraphs 5.1(b) and (c) refer). According to the respondent the Personnel Officer responded in great

detail to the claimant's questions following her viewing of her personnel file in September, 1998. Shortly afterwards she requested sight of her file again and her request was refused. According to the respondent the only documents added to the claimant's file in the intervening period were either correspondence to and from the claimant or information that the Institute was gathering to enable it to respond to the previous claims made by the claimant under the Employment Equality Act, 1977. That information is reflected in the respondent's submissions to the Equality Officer and copied to the claimant. The respondent says that, by refusing the second request in such circumstances, it was not penalising the claimant for taking actions under the 1977 Act. The respondent says that it afforded the claimant the opportunity to view her file again in April, 1999. After this the Personnel Officer was obliged to write to the claimant to express his views at her attitude and behaviour towards a member of his staff on the occasion of her visit to inspect her file. According to the respondent the staff member was in a visibly distressed state immediately after the claimant's visit and this fact was reported to the Personnel Officer. The respondent cites examples of what it deems to be unreasonable and inappropriate behaviour by the claimant. It says that she continues to use her former title of Senior Librarian, notwithstanding that she accepted in writing the post of Faculty Librarian in March, 1998 and with it the enhanced salary appertaining to that post and despite being instructed by both the Personnel Officer and the Head of Library Services to desist from using the old title. The respondent says that the claimant has made inappropriate remarks regarding the validity of Library staff appointments (see Appendix C).

- (iii) In relation to paragraph 5.1(d) the respondent says that, at the hearing of the claim on 7th January, 1999 (Ref. EE 02/1998), its representatives indicated that if any additional time or information were required on this case, it could be dealt with at the hearing of the claim (Ref: EE 03/1998) scheduled to take place on 14th January, 1999. According to the respondent the statement was made for the convenience of the parties and the Equality Officer who was hearing both these claims. The respondent argues that this reference to the second claim did not and could not reasonably be regarded as harassment or intimidatory of the claimant as the Equality Officer was aware of the other claim and was in receipt of written submissions in both claims from both parties.

- (iv) The respondent denies that it acted improperly in relation to the claimant's request to attend conferences (paragraph 5.1(e) above refers). According to the respondent the claimant, by e-mail in January, 1999, indicated that she 'might' wish to attend a conference in Barcelona if no-one else wished to attend. The Head of Library Services responded by e-mail indicating why attendance by any Library staff would not be merited. In March, 1999 the claimant requested permission to attend a conference in Paris in September, 1999. The Head of Library Services replied that he would not be making a decision on attendance at this conference then. He said that all senior staff needed to be informed of conferences and attendance would be based on value for money. In his e-mail

the Head of Library Services also pointed out that there was no contradiction between Ms. Gavin's request for training needs, which was to be used to determine a budget, and his deferring of a decision on a specific request. According to the respondent the Head of Library Services had to decide on attendance at conferences based on relevance and value for money given a limited budget. The Head of Library Services did approve the claimant's attendance at conferences in the academic year 1998-1999. She attended conferences in York (England) in December, 1998 and also day events in Ireland on 22nd October, 1998; 26th March, 1999 and 31st March, 1999. The respondent says that the Head of Library Services has, for relevance or budgetary reasons, declined to approve attendance at conferences by other members of Library staff.

- (v) The respondent denies that it acted improperly in dealing with the claimant's request for access to a particular training course and the use by a Library colleague of the title 'Web Editor' (paragraph 5.1(f) above refers). The respondent says that Ms. Gavin nominated Mr. Mangan, Senior Library Assistant for the role of Library Web Editor on the resignation of Ms. Brinkley. The task, at this stage, was reduced to the maintenance of web pages, as opposed to the creation of the Library web site which had been part of Ms. Brinkley's responsibility in this area. Mr. Mangan was one of two Library staff who had expressed an interest in this work. He had already acquired himself the necessary *html* programming skills necessary to enable him to maintain the web site. The respondent says that there was no question of any Faculty Librarian being considered for this purely technical task. The Head of Library Services informed the claimant to this effect in an e-mail dated 29th April, 1999. According to the respondent the claimant's allegation does not recognise the changed nature of this task or the need to allow all grades of Library staff to exercise responsibilities appropriate to their grade. The respondent states that no application from the claimant to participate in the Web Internet Course has been rejected. Such courses have been run on four occasions to date. As they were oversubscribed, priority was given to Departmental Web Page Editors. Other applicants (including the claimant) have been put on a waiting list. On 14th January 1999 a Notice issued describing the prioritisation process.
- (vi) The respondent denies that it acted improperly by exercising its legal entitlement to decline to participate in a Rights Commissioner hearing or a Labour Relations Commission investigation (paragraph 5.1(g) refers). The respondent says that the claimant has, in the past, alleged that the Selection Board for the positions of Senior Librarian and Head of Library Services were not constituted in accordance with the Ministerial selection procedures issued under Section 11 of the Dublin Institute of Technology Act, 1992. The claimant had separately challenged the selection process for these posts under the Employment Equality Act, 1977. The claimant was unsuccessful in her challenge in the claim (Ref: EE 02/1999) and she withdrew her claim (Ref: EE 03/1999). The respondent says that it is entirely satisfied that the Selection Boards were duly and lawfully constituted and the Institute considers that it was entirely reasonable and lawful for it to exercise its entitlement not to have the appointments again considered by

an external agency. According to the respondent it has previously exercised its entitlement to object to a Rights Commissioner hearing (cases IR403/99; RC640/97 and RC1126/97 are relevant in this regard).

- (vii) The respondent denies that it acted improperly by requesting the claimant to act on a Selection Board for the recruitment of Library Assistants and by not proceeding with that request following the receipt of detailed queries from her (paragraph 5.1 (h) above refers). In February, 1999 the Head of Library Services sought to assess the claimant's availability to act on a Selection Board. He regarded this as one of the more important responsibilities of Faculty Librarians and he wanted to ensure that the claimant had the opportunity to participate. Other Faculty Librarians have been requested to act on other Selection Boards and have done so without query. In this case the Selection Board would be providing a replacement for her own site. The respondent says that there followed a protracted e-mail correspondence on the claimant's part in which she raised questions of detail regarding the particular process. According to the respondent this information was only appropriate to people who had accepted an invitation to participate on the Board. In his final memo to the claimant, the Head of Library Services stated that her insistence on answers to the questions she raised *before* she would indicate her availability to act on the Selection Board was unreasonable and for that reason he had nominated another Faculty Librarian to act on the Selection Board in the claimant's place. The respondent notes that it is a function of the President to actually appoint the Selection Board.
- (viii) The respondent denies the allegation that it is acting improperly by communicating less and less with the claimant as the time goes on. In relation to the incident set out in paragraph 5.1(i) above Ms. Gavin states that she informed the claimant in writing on 12th March, 1999 that she would send someone to check out a PC fault which the claimant had reported. The respondent says that Mr. Murphy was not sent to the Library without prior notice as was claimed. According to the respondent Mr. Murphy's visit would not have been necessary had the claimant forwarded the system error message to Ms. Gavin as she had been requested to do. The respondent says that Mr. Murphy told the claimant that he had come to get the system error message on the faulty PC and he left the library at 2.30p.m. on the day in question. At 4.17p.m. that day the claimant sent an e-mail to Ms. Gavin saying that Ms. Gavin would probably not be 'sending someone today at this stage'. This e-mail was sent two hours after Mr. Murphy's visit even though Mr. Murphy had spoken to the claimant and explained the purpose of his visit. Approximately thirty minutes later the claimant sent another e-mail complaining that Mr. Murphy had addressed a relatively junior member of staff. The respondent says that it was only necessary for Mr. Murphy to request a key at the Library desk in order to gain access to the room which housed the problem PC - it was not necessary for him to ask for the Faculty Librarian (the claimant). On 29th March, 1999 Ms. Gavin accompanied by Mr. Murphy paid a routine visit to the Library in Kevin Street to check out four PCs which had been reported faulty. The time agreed for the visit was between 11.00a.m. and 12

noon and as Ms. Gavin arrived at 11.35a.m. she was not late as claimed. The respondent says that the claimant sought to dictate the exact date and time on which Ms. Gavin would visit the Library but other commitments prevented Ms. Gavin from visiting the Library at the times chosen by the claimant. The respondent says that when Ms. Gavin arrived at the Library the claimant insisted on the presence of a member of the Kevin Street Library Committee (Dr. Paddy McHale). According to the respondent this was totally unnecessary as Ms. Gavin had already expressed the view to the claimant that the presence of someone from the Library Committee was inappropriate as this was a routine visit. In advance of her visit, Ms. Gavin had suggested to the claimant that it would be more appropriate and indeed helpful if the claimant could arrange to have a technician present, instead of a Committee member. The respondent says that, when Ms. Gavin arrived at the Library, the claimant asked her not to mention a technician again as she had no technical support available to her. According to the respondent the claimant's attitude to Ms. Gavin was unreasonable.

- (ix) The respondent denies the allegation that Ms. Gavin, in a report prepared by her, included an improper reference to the claimant (paragraph 5.1(j) refers). On 26th February, 1999 all Faculty Librarians were asked to complete a form identifying staff training and development needs for the academic year 1999/2000 and return it by 16th March, 1999. The claimant returned her form on 29th March, 1999 with no details enclosed. According to the respondent Ms. Gavin did not state that the 'form was returned blank' as claimed but rather that the 'form was returned blank with no details enclosed'. All other Faculty Librarians co-operated with Ms. Gavin's request and completed the forms.

6.2 In addition to responding to all of the above charges the respondent says that the claimant alleges that she has been penalised in the discharge of her duties as a Faculty Librarian by being excluded from positions, committees, projects, etc. The respondent denies this and says that the claimant has been offered the following positions/projects since the appointment of Mr. Sheehan as Head of Library Services:

- The claimant was offered close involvement in a project established under the aegis of the Academic IT Committee to establish a PC laboratory in an available room in Kevin Street Library. The claimant refused to attend meetings on the project with the Head of Library Services and the Senior Librarian with responsibility for systems.
- The claimant was involved in discussions on a prospective Institute South-Side Library for which an outline specification had been drawn up. Before the first meeting of the small group investigating this (the Head of Library Services, the claimant and Ms. Ambrose) the claimant claimed the right to contact members of another institution regarding papers which the Head of Library Services had circulated. The Head of Library Services had leave of the author of the report to circulate the papers to Library

staff within the respondent organisation.

- The claimant was requested to investigate photocopying in Libraries in the respondent organisation. She did not report on this until April, 1999 when she stated that, as she had assumed that the area had been partially covered by another project, she had not proceeded with her own investigation.
- The claimant was a member of the Library team which developed the Library Web Site.
- The claimant was invited to be a member of a selection board for Library Assistant recruitment. The claimant made a series of unreasonable requests before she would indicate whether she was prepared to sit on the board and the invitation was withdrawn.
- While the claimant is not now a member of the Library Committee she had the same opportunity as her fellow Faculty Librarians to stand for election as their representative on the Library Committee. The claimant stood for election but was not elected by her fellow Faculty Librarians on the Senior Management Team in January, 1999.

7. CONCLUSIONS OF THE EQUALITY OFFICER

- 7.1** In this claim the claimant has alleged that the respondent penalised her within the meaning of Section 2(d) of the Employment Equality Act, 1977 for having brought previous equality claims against the respondent. In making a recommendation in this claim I have taken into account all of the evidence, both oral and written, made to me by the parties. Following the joint hearing in this claim the respondent submitted additional information in response to questions I posed at the hearing. The Union responded to this additional information. A summary of these submissions is set out in Appendix D. Because of the high volume of information received in this claim it was not possible to include all of it (e.g. letters, e-mails, etc.) in this recommendation. However, it will be made available to the Labour Court should it require access to it.
- 7.2** The claimant has raised numerous incidents in making her case that the respondent penalised her within the meaning of Section 2(d) of the Employment Equality Act, 1977. I propose to deal with each incident individually having regard to the information submitted and the comments made to me at the hearing. In relation to each incident I will make a decision as to whether or not I consider that the claimant was penalised by the respondent. If I so find that she was penalised by the respondent in respect of one or more of the incidents I will then decide on whether or not she was penalised for having brought previous equality claims

under the Equality legislation.

7.3 The details of my findings in respect of each incident are as follows:

- ***Selection of Mr. Cahalane as member of the Library Committee***
[see paragraphs 3.1(a) and 4.3(i)]

I am satisfied that the respondent did not penalise the claimant in any way by selecting Mr. Cahalane as a member of its Library Committee. The claimant was not present at the Senior Management Team meeting at which the selection was made. The respondent was under pressure to make the selection as the first meeting of the Library Committee was scheduled for five days later. All of the Faculty Librarians present at the meeting agreed with Mr. Cahalane's appointment to the Library Committee.

- ***Composition of the Web Advisory Group (WAG)***
[see paragraphs 3.1(b) & (c), 4.3(ii) and Appendices A and D]

I am satisfied that the claimant was treated in an adverse manner to the other members of the WAG when she was removed from the group. The respondent presented no evidence to show that the Director of External Affairs formally contacted the various units in the Directorate seeking nominations to the WAG. It was after the meeting of 9th December, 1997 that the Director of External Affairs allegedly contacted the various units and not following the WAG meeting of 29th October, 1997 as appears to be implied by the respondent in its submission following the hearing of this claim (see Appendix D). The notes of the WAG meeting on 29th October, 1997 say that, on the appointment of the Web Administrator, a small group would continue to meet when necessary. When the Web Administrator was appointed the group's composition, in terms of members, changed only in respect of the claimant when she was replaced by Ms. Brinkley. I note that the claimant was informed of the decision to replace her on the WAG on 19th January, 1998 and was given no reason for this decision. At the hearing of this claim the Head of Library Services said that the Director of External Affairs gave no indication as to why he was seeking a nomination for the WAG

and the Head of Library Services said that he did not question the request or point out that the Library already had a representative on the group. The manner in which this issue was handled by the respondent was most unsatisfactory and I find that the claimant was penalised by being forced to step down from this group.

- ***Claimant's non-membership of Committees and Work Groups***
[see paragraphs 3.1(d), 4.3(iii) and 6.2]

I note that the claimant has not been appointed to any committees or work groups in the respondent organisation. Two other Faculty Librarians (namely a male and a female) have not been nominated to any committees or work groups either. I note that the Head of Library Services has given them important projects to manage and he has attempted to do the same with the claimant. I do not, therefore, consider that the claimant has been adversely treated by the respondent in this regard.

- ***Phone call by Head of Library Services to Kevin Street Library on 6/2/98***
[see paragraphs 3.1(e) and 4.3(iv)]

I don't accept that the Head of Library Services treated the claimant in an adverse or discriminatory manner by ringing up her colleague and asking if the claimant was present.

- ***Phone conversation between claimant and Personnel Officer on 11/2/98***
[see paragraphs 3.1(f) and 4.3(v)]

I accept the respondent's version of this incident. In answering the claimant's question I consider that the Personnel Officer was justified in asking the context in which the question was posed before giving a response. The failure by the claimant to set out the context of the question resulted in the Personnel Officer's inability to adequately respond to the question. I am, therefore, satisfied that the Personnel Officer did not treat the claimant in an adverse manner.

- ***Meeting between claimant and Head of Library Services on 26/5/98***
[see paragraphs 3.1(g) and 4.3(vi)]

I accept that the remark by the Head of Library Services about the claimant's room/office was a casual remark and there was no ulterior motive in asking the question. Therefore, I find that the Head of Library Services did not penalise or threaten the claimant in any way by making this remark.

- ***Phone conversation between claimant and Ms. Ryan, Personnel on 5/6/98***
[see paragraphs 3.1(h) and 4.3(vii)]

I am satisfied that Ms. Ryan, Personnel would have needed to know the nature of the problem in order to organise appropriate counselling. I do not accept that Ms. Ryan changed the course of action to be taken on learning that it was the claimant who was seeking counselling. I am satisfied that Ms. Ryan did not, in any way, treat the claimant in an adverse manner.

- ***Meeting with Head of Library Services on 15/6/98 & his memo of the same date***
[see paragraphs 3.1(i) & (j) and 4.3(viii)]

The Head of Library Services did indicate to the claimant that the documentation he was sending to her was not to be distributed. I consider that it was unprofessional of the claimant to suggest that she would contact the authors of the documents to inform them that this document was sent to her in a treasury envelope which was not marked confidential. I understand how the Head of Library Services would have questioned her on whether or not she had contacted the authors of the document and I can understand that he would have been annoyed with the claimant for having considered this course of action. There is a conflict between the claimant and the Head of Library Services as to what was said when the claimant asked for the door to be left open and the Head of Library Services denied that he raised his voice. I accept that the claimant has the right to ask for the door to be left open, but equally the occupant of the room has the right to decide whether or not to accede to that request. I do not, however, consider it acceptable for the claimant to make the comment that she did "not

want to be in the room on my own with you” without qualifying this comment. The comment is open to many interpretations and I expect that a comment of this nature would serve to frustrate the person to whom it is directed. It could be argued that the Head of Library Services was the victim in this incident. I find that the Head of Library Services did not penalise or victimise the claimant in any way in relation to this incident.

- ***Memo from Personnel Officer dated 28/7/98 and subsequent telephone conversation with him***

[see paragraphs 3.1(k) and 4.3(ix)]

I am not satisfied that the respondent intentionally mis-treated the claimant in relation to this incident. I am satisfied that the scheduling of the meeting for 12/8/98 overlooked the claimant’s planned annual leave on that day.

- ***August meeting with Head of Library Services and Senior Librarian***

[see paragraphs 3.1(l) and 4.3(x)]

In relation to this incident I find that the claimant’s own actions were understandably the source of much annoyance. I accept the respondent’s right to question the claimant’s authority to decide on the merits of the meeting arranged by her superior officer. I can also accept that the Head of Library Services would be annoyed by the claimant’s response to his request for a meeting being directed to the Director of Academic Affairs. I cannot find that the claimant was treated in a discriminatory manner by the respondent in relation to this incident.

- ***Examination by the claimant of her Personnel File***

[see paragraphs 3.1(m), 4.3(xi), 5.1(b) & (c) and 6.1(ii)]

The claimant viewed her personnel file in September, 1998. As a result she sought photocopies of certain documents but did not receive them. She, therefore, sought permission to view her personnel file again but this request was refused and in a letter to the claimant from the Personnel Officer he stated “In view of recent actions which you have initiated against the Institute, I regret that I cannot accede to this request at the present time”. I note that the respondent

states that the only documents which were added to the claimant's file, between the period when she initially viewed her file and when she requested to view it again, were either correspondence to and from the claimant and information the respondent was gathering to enable it respond to her equality claims. I cannot establish any reason as to why the respondent did not afford the claimant the opportunity of viewing her personal file. Therefore, I find that the respondent did penalise the claimant in this regard.

- ***September meetings with the Director of Academic Affairs and the Head of Library Services***

[see paragraphs 3.1(n), 4.3(xii), 5.1(a) and 6.1(i)]

Having examined the issues raised by the claimant in this regard and the response made by the respondent I am satisfied that there was no discriminatory treatment of the claimant.

- ***The non-mention of the claimant in a memo dated 22/9/98 concerning the work of WAG***

[see paragraphs 3.1(o) and 4.3(xiii)]

I note that none of the former members of the WAG were acknowledged in a circular which issued throughout the organisation at the launch of the Web site. The claimant was, therefore, treated no differently to previous members of the group and I find that she was not treated in an adverse manner in this regard.

- ***The Head of Library Services's address to the Executive Board of Kevin Street on Library issues***

[see paragraphs 3.1(p) and 4.3(xiv)]

I do not accept that the respondent was under any obligation to inform the claimant that the Head of Library Services was addressing the Kevin Street Executive Board at the invitation of the Director, Dr. Hussey. Furthermore the claimant failed to show why she should have been present at the talk. I note that the Head of Library Services gave similar addresses to other Library Executive Boards and that the local Faculty Librarians were not present at these talks. I

am, therefore, satisfied that the claimant was not treated in an adverse way by the respondent.

- ***Reference to an Equality Claim***
[see paragraphs 5.1(d) and 6.1(iii)]

I do not accept that the respondent either unfairly harassed or intimidated the claimant by making reference to a second claim (EE 3/98) by the claimant during the course of the hearing into the first claim (EE 2/98) and given the context of the reference.

- ***Attendance at Conferences and Budgets***
[see paragraphs 5.1(e) and 6.1(iv)]

I consider the respondent's position reasonable in relation to deciding on attendance at conferences based on relevance and value for money while operating within a limited budget. I, therefore, find that the claimant was not penalised in this regard.

- ***Attendance at Web Internet Course***
[see paragraphs 5.1(f) and 6.1(v)]

Attendance at this course was based on a waiting list system given the high numbers of staff wanting to avail of the course. I am satisfied that the claimant was not treated unfairly in relation to attendance on this course and I accept that priority was given to the Web Editors.

- ***Referrals to Rights Commissioner Service and Conciliation Service of the Labour Relations Commission***
[see paragraphs 5.1(g) and 6.1(vi)]

The claimant lodged a claim under Section 19 of the Employment Equality Act, 1977 with the Labour Court. After forwarding submissions to the Equality Officer investigating the claim the claimant withdrew her claim on the morning of the hearing. The claimant then tried to have the matter addressed before the

Rights Commissioner Service and the Conciliation Service of the Labour Relations Commission. The respondent wrote to both these Services indicating that the matter had already been brought before an Equality Officer and had been withdrawn. The respondent, therefore, objected to the matter being addressed by a Rights Commissioner and it declined the proposal from the Conciliation Service on the basis that it did not consider that a dispute existed. In refusing to attend either a Rights Commissioner or the Conciliation Service of the Labour Relations Commission the respondent cited the fact that the claimant had already brought a claim under the Employment Equality Act, 1977. This would, therefore, mean that the respondent was penalising the claimant for having previously brought a claim under the 1977 Equality Act. I do not consider it reasonable to have an employer proceed in good faith in a claim under the Equality Legislation only to have the claim withdrawn at a late stage in the investigation and then to expect the employer to re-open the same claim in another forum. I, therefore, find that the respondent did not penalise the claimant in this regard.

- ***Communications with the claimant***
[see paragraphs 5.1(i) and 6.1(viii)]

According to the claimant members of the respondent's management are communicating with her less and less. This is denied by the respondent. The claimant furnished an example and the respondent replied to same. I am satisfied that the alleged lack of communications with claimant is not as a direct result of her having brought claims under the Employment Equality Act, 1977. In this current claim the claimant has submitted a high level of detail on a variety of issues. Each issue she alleges has resulted in her being penalised for having brought claims of discrimination under the Equality Legislation. I consider it understandable that members of management in the respondent organisation would be wary of communicating with the claimant on the basis that the communication could be used against them in a manner such as this.

- ***Completion of form re: training, conferences, etc.***

[see paragraphs 5.1(j) and 6.1(ix)]

I consider that the task of completing the form demonstrates a lack of communication firstly on the part of the claimant in that she failed to communicate the fact that she could not or would not complete the form and secondly the respondent could be criticised for not having communicated the fact to the claimant that the form was incomplete and, therefore, unacceptable. However, the incident in itself cannot be deemed to be one where the claimant was treated in an adverse manner.

7.4 In summary, I find that the respondent penalised the claimant in relation to two incidents above namely her removal from the Web Advisory Group (WAG) and the failure by the respondent to permit the claimant to view her personnel file on the second occasion she requested permission to view it. The next issue to consider is whether or not the reason for the claimant having been penalised was because she brought previous claims under the Employment Equality Act, 1977. In this regard I find as follows:

- ***Removal from the WAG***

No reason was advanced for the claimant's removal from the WAG. She was told of the decision within one month of having brought two claims against the respondent organisation under the 1977 Equality legislation. At the hearing of this claim the respondent was unable to give any indication for the reason that the Director of External Affairs asked for another nomination to the WAG in place of the claimant. It was only after the hearing that the respondent made a detailed written submission on this issue (see Appendix D). Having taken all this into account I am satisfied that, by removing the claimant from the WAG, the respondent penalised her for having brought claims under the Employment Equality Act, 1977.

- ***Viewing of the claimant's Personnel file***

I am satisfied that the respondent had no reason for not showing the claimant her personnel file on the second occasion she requested permission to see it. By the respondent's own admission no new correspondence had been added to the file

which had been seen by the claimant previously. In a written communication to the claimant refusing her access to her personnel file the Personnel Officer implied that the refusal was as a result of recent actions which she had initiated against the respondent organisation. I, therefore, find that the respondent's refusal to view the file was directly related to the fact that the claimant had brought claims against the respondent organisation under the Employment Equality Act, 1977.

In conclusion I find that the respondent penalised the claimant for having previously brought claims under the Equality legislation in respect of two incidents namely the removal from the WAG and the refusal to allow her to view her personnel file on the second occasion she requested to do so.

7.5 For the record I consider it important to say that the claimant in no way facilitated a good working relationship with management in the respondent organisation. In this regard I will mention three issues which arose during this investigation as follows:

- Following the re-structuring of the organisation the claimant's job title changed from Senior Librarian to that of Faculty Librarian. In September, 1997 the claimant was offered the post of Faculty Librarian under the re-structuring agreement. It was not until March, 1998 that the claimant actually accepted the post of Faculty Librarian. Then despite having accepted the post of Faculty Librarian in March, 1998 the claimant continued to persist in using the title Senior Librarian in correspondence. It should be noted that in the re-structured organisation there were both Senior Librarians and Faculty Librarians with the Senior Librarians having a higher status. While the claimant had not accepted the position of Faculty Librarian she was not entitled to attend the meetings of the Strategic Management Team (SMT) but the respondent did not object to her attendance.
- The respondent also raised the issue of how it invited the claimant to sit on a selection board responsible for the short-listing and interviewing of applicants for the position of Library Assistant. The claimant entered into protracted correspondence with the respondent on questions of detail regarding the process. According to the

respondent the information sought by the claimant was only appropriate to people who had accepted an invitation to participate in the selection board. I am satisfied that the respondent acted fairly in this matter and was frustrated in its attempts to facilitate the claimant by the claimant herself.

- Set out in Appendix C are the details of yet another example of how the claimant frustrated management in the respondent organisation and, at the same time, caused what would appear to have been unwarranted, concern among a group of staff.

8. RECOMMENDATION

- 8.1** Based on the foregoing I find that the Dublin Institute of Technology (DIT) did penalise Ms. Mary Helen Davis in terms of Section 2(d) of the Employment Equality Act, 1977 for having brought previous claims under this Act.
- 8.2** I recommend that the Dublin Institute of Technology pay Ms. Davis the sum of £2,000 in respect of the stress she experienced as a result having been so penalised.

Gerardine Coyle
Equality Officer

8th March, 2000

APPENDIX A

Extract from the Respondent's submission
on the Claimant's involvement with the
Web Advisory Group (WAG)

EXTRACT FROM THE RESPONDENT'S SUBMISSION:

Following some e-mail exchanges, including an invitation for suggestions, the claimant wrote to the Director of External Affairs on 26th May, 1997 acknowledging and welcoming the establishment of the "small advisory ad hoc group". Her main concern at the time was the existence of two web sites within the Institute and associated problems, particularly as they related to Library Services. She suggested "perhaps one Librarian liaising with the ad hoc committee" would be a good idea.

The Office of the Director of External Affairs requested that the claimant attend on behalf of the Institute's Library Services (10th June, 1997). The claimant was unable to attend the next meeting of the Group (1st July, 1997). She subsequently attended and indicated early on that she might not be the Library representative over the longer term.

At the Group's 29th October, 1997 meeting, it was acknowledged that after the appointment of a "web site administrator" there would be less need for the Group to meet. Following this meeting, it was suggested that the Head of Library Services be asked to nominate somebody from Library Services for future purposes.

The new web site administrator attended her first Group meeting on 12th January, 1998. The claimant was unable to attend. The next meeting (2nd March, 1998) was attended by Monica Brinkley as a Library representative and this change in Library representation had been indicated by the Head of Library Services to the Office of the Director of External Affairs. Following a request from the Head of Library Services (18th March, 1998) which indicated that the claimant would like to attend one last meeting, both the claimant and Ms. Brinkley attended on 7th April, 1998. The claimant's letter (included in her submission) of 28th April, 1998 to Lorraine Horgan followed.

An oversight led to the claimant not being invited to a Web Advisory Group (WAG) meeting of 2nd March as the Head of Library Services had agreed with her at an earlier SMT. The claimant made serious allegations about named library staff in relation to this. The Head of Library Services, in a subsequent e-mail to the claimant in the same correspondence, stated that he had ensured that the claimant would be invited to one further meeting of the WAG and the invitation was issued.

At no time, from January, 1998 to the end of this correspondence did the Head of Library Services indicate that the claimant's lack of HTML expertise was the sole or significant reason for re-constituting the Group. If HTML expertise had indeed been the deciding factor there were other library staff already in the library with this expertise. The Head of Library Services nominated Ms. Brinkley, a new member of staff, to this committee because she had already run a big web site. She had more expertise in this area than anyone else in the Library, and arguably as much as anyone in the Institute as a whole. It was essential that she should have close contact with the WAG which decided that standards, etc. under which the site would be created. The Head of Library Services indicated these reasons from the beginning of this correspondence with the claimant.

APPENDIX B

Extract from the Respondent's submission
on its Legal Arguments

RESPONDENT'S LEGAL ARGUMENTS

Section 2(d)(i) of the Employment Equality Act, 1977 provides that 'for the purposes of this Act, discrimination shall be taken to occur where a person is penalised for having in good faith made a reference under Section 19'. In this case the claimant contends that the matters complained of constituted penalisation of her for having made reference under Section 19 namely EE 2/98 and EE 3/98. It is clear that it is for the claimant to produce prima facie evidence for her allegation and in the absence of such prima facie evidence the Equality Officer must reject this claim. In this regard the attention of the Equality Officer is drawn to Equality Officer recommendation EE 7/1986 (North Western Health Board and Catherine Martyn). At paragraph 8 of that recommendation the following passage appears:

"In any dispute concerning alleged discrimination within the meaning of section 2(d)(i) of the Act, it is reasonable to me to expect that the person making the allegation should have prima facie evidence for his or her allegation and to dismiss as without proper or sufficient foundation any allegation for which no such evidence is presented. On the other hand, where such evidence is presented, and the employer concerned fails to give a convincing alternative explanation for his actions, it is equally reasonable to find in favour of the complainant. By prima facie evidence I mean evidence which, in the absence of any convincing alternative explanation by the employer, would lead any reasonable person to conclude that discrimination had probably occurred.

In that case Ms. Martyn's evidence of alleged penalisation (based on her experience, the likelihood that the members of the Interview Board were probably aware of the fact that she had previously referred a dispute to the Labour Court and based on the fact that she obtained less temporary employment with the Health Board since referring her original dispute to the Labour Court) was found by the Equality Officer when considered either individually or collectively not to constitute prima facie evidence that she was discriminated against in a competition for the appointment of clerical officers. The Equality Officer stated in paragraph 10 of the Recommendation, that:

"There is no evidence of any statement having been made by any member or representative of the Health Board to the effect that she had not been offered an appointment because she had referred a dispute with the Board, to the Labour Court under Section 19 of the Act. Neither is there any evidence that Ms. Martyn's non-appointment constituted in any respect unusually unfavourable treatment which, in the absence of any alternative explanation by the Board, could reasonably be attributed to discrimination on that basis".

APPENDIX C

Extract from the Respondent's submission
demonstrating an example of inappropriate
remarks made by the Claimant on the
validity of Library Staff Appointments

APPENDIX D

Summary of Submissions made after the
joint hearing of this claim

SUMMARY OF THE RESPONDENT'S SUBMISSION

Web Advisory Group

In December, 1996 the Institute's senior management team decided that responsibility for the creation and development of the Institute's web site should be assigned to the Director of External Affairs. At that time the Institute had in place a web site which it considered primitive and in need of replacement. The Director decided in early 1997 to identify a small group of members of Institute staff with expertise in the area to supply a degree of expert advice to him as to how to proceed and provide a two-way flow of information between faculties and group members. The ad hoc group became known as the Web Advisory Group.

The claimant e-mailed the Director of Academic Affairs on the establishment of the new web site and her e-mail was forwarded to the Director of External Affairs who replied by memo dated 22nd May, 1997. This was replied to by the claimant by letter dated 26th May, 1997. The claimant's letter was forwarded to Dr. Des O'Mahony of the School of Physics and a member of the Web Advisory Group. He replied on 10th June by e-mail and the claimant in turn replied on 16th June stating that "*I believe that there will probably be one of the Librarians (myself) joining the ad hoc advisory group set up by [the Director of External Affairs] for this matter*".

On 10th June a staff member from the Office of the Director of Academic Affairs wrote to the Director of External Affairs indicating that as a result of discussions at the then DIT Library Committee they would like to nominate the claimant. The Director of External Affairs agreed that the claimant could attend the group meetings if she wished and this was conveyed to the claimant.

The claimant attended the meetings of the group on 29th October, 18th November and 9th December, 1997. She may also have attended the meeting of the group on 3rd September, 1997 (no notes were made of that meeting). Throughout this time the Institute's Library was in the process of re-organisation. The claimant, at her first meeting, indicated that she might not be the Library representative over the long term.

By September, 1997 the Director of External Affairs had concluded that it would be necessary to appoint a Web Administrator on a dedicated, full-time basis and that the Web Administrator would not be in a position to write the various functional areas within the Institute, but that the Web Administrator would need considerable assistance from persons within the various functional areas in order to create the web pages. The Respondent noted the following paragraph from the notes of the meeting of the group held on 29th October, 1997:

“Future of Web Advisory Group:

Once the Web Site Administrator would be in place, it was decided that a small group should continue to meet when necessary but at least 4 times per year (twice during the first term and once during the second and third terms). This group would ideally be composed of a representative from each faculty, of central management and of administration.”

Accordingly the Director of External Affairs informally requested each Director within the Institute to nominate a suitable person to the WAG from each functional area. At that time the Director of External Affairs and the Head of Library Services were housed next door to each other and the former made known to the latter his desire for a nomination from the Library having regard to the former’s conclusions on the role of the nominee.

The notes of the meeting of the WAG of 9th December, 1997 record the Director of External Affairs as reminding the meeting *“that a person from each ‘unit’ must now be designated to keep the information up-to-date and the web site active, as it would not be possible for [the Web Administrator] to assume this function. [The Director of External Affairs] would contact all such units through the Directorate”*.

Prior to December, 1997 the Head of Library Services was involved in interviewing candidates for the position of Faculty Librarian. Ms. Brinkley (an external candidate) was appointed to one such position in December, 1997. From Ms. Brinkley’s application, the Head of Library Services became aware of her very considerable experience in the creation and management of web sites. The Head of Library Services, therefore, decided on her appointment (1st December, 1997) that she would be the best nominee for the WAG. Ms. Brinkley took up duty on 5th January, 1998 as a Faculty Librarian in the Central Library Services Unit. The Head of Library Services then made known his decision to nominate Ms. Brinkley to the WAG in the place of the claimant.

The respondent submits that, for a number of reasons, the decision to nominate Ms. Brinkley to the WAG as a replacement for the claimant was entirely proper and did not constitute penalisation of the claimant. The respondent says that, firstly, it had been conceded by the claimant herself that she might not be the Library’s representative on the WAG over the longer term. Secondly, the claimant’s nomination to the group occurred at a time when the Library was being re-organised and before the present central structures were put in place. Thirdly, the Head of Library Services decided that Ms. Brinkley would be the most suitable candidate for the position because of her particular qualifications and experience in the creation and management of web sites. Fourthly this decision, according to the respondent, was made prior to the institution by the claimant of her first two sets of proceedings under the 1977 Equality Act which proceedings were notified to the respondent on or after 22nd December, 1997. The respondent notes that the matters complained of in the current proceedings took place *“from January, 1998 to date”* as set out in the referral form. Finally the respondent submits that it is entirely appropriate that the Library’s representative in the WAG at that stage be a person drawn from the Central Library Services Unit with responsibility across the various Faculty Libraries rather than the claimant who had responsibility for

one Library.

The respondent emphasises that the decision to appoint Ms. Brinkley to the WAG was based on her considerable experience in the creation and management of web sites. Her HTML experience was but one factor in the decision. The respondent notes that at least two other members of the Library staff at the time had HTML experience.

HTML Training

Most staff training courses in the respondent organisation are conducted under the auspices of the Staff Training and Development Office. However from time to time Departments in the respondent organisation organise their own training programmes. Courses of the latter type are advertised in the respondent organisation's newsletter under the heading of "Notice Board". In the March, 1998 newsletter a course was advertised on the creation of HTML documents (two sessions). These courses were organised by the School of Business and Management. There is no record of any application by the claimant for participation in these training courses. There were up to twenty places available on these courses but only four persons attended. The respondent says that there is no record of any application by the claimant for the Internet Skills Training programmes which were advertised at the same time.

Another relevant training course which was run by the Staff Training and Development Office was that entitled "*Advanced Internet Techniques*". This was advertised in the respondent organisation's newsletter of November, 1998 and on the Staff Development noticeboards. Again there is no record of any application from the claimant for participation on the course. The first Internet/web/HTML related training course run by the Staff Training and Development Office was conducted on 27th April, 1998. It was by invitation only and confined to persons on the list of the Web Editors. Furthermore such training took place on three subsequent occasions.

On 11th November, 1998 the Staff Training and Development Office advertised a "*DIT Wide Internet Course*" on the staff notice boards. This course would run in four sessions. There were only twelve places available so the course was filled on the basis of '*first come, first served*'. The method of selection for the course was specified in the course advertisement. The claimant had a place of 60th on the list of interested participants. The respondent says that the Staff Training and Development Office had substantially under-estimated the level of interest in the web/Internet training. Furthermore not all Web Editors had received the training. Hence for the training in February and April, 1999 the Staff Training and Development Office reverted to the policy of confining training to Web Editors by invitation only. Therefore in the advertisement for the February and April training it was expressly stated that the allocation of places would take place as follows:

- "(1) *Departmental web page editors,*
- (2) *Those on waiting list since Nov. 1998 course (including the claimant) and*
- (3) *new applicants*".

Because of the pressure of work on the Staff Training and Development Office, the intervention of the summer vacation and the unavailability of the external training manager it has not been possible to resume Internet training since April, 1999. The claimant is now positioned 44 on the list.

It should be noted that HTML skills have recently diminished in importance in the context of the creation and maintenance of Internet pages as the latest release of *Microsoft Office* includes functionality whereby pages can be converted into a web format automatically without the use of HTML skills. The respondent says that its records show that the claimant attended a Web Page Design course given by Jefferson Training in March, 1998 at a cost to the respondent organisation of £349.

SUMMARY OF THE CLAIMANT'S RESPONSE

Web Advisory Group

The claimant says that there appears to be confusion in the respondent's submission in relation to the Web Advisory Group (WAG). There is the impression created that the note of the group's meeting of 29th October, 1997 signalled the end of the original group and its replacement by a smaller group composed of a representative from each faculty, of central management and of administration. According to the claimant this did not happen. The WAG continued in its original form with the exception of the removal of the claimant, at least until April, 1998 when the claimant attended her last meeting of the group. The claimant notes that she was removed from the group by way of a telephone call from the Head of Library Services on 19th January, 1998. The claimant says that, at this time and for some time following, she was the only member removed from the group.

According to the claimant the appointment of the Web Administrator did not impact significantly or immediately on the work of the group, which was mainly concerned with the contents and communication aspects of the respondent's web site. Some members of the group had technical expertise in the area while other members had little technical expertise in relation to web sites. Furthermore many of the points raised at group meetings were not specifically technical. A major concern for the group was the Web site regulation and Internet usage/publication policy. The claimant says that the appointment of a Web Administrator and discussion on the nomination of persons to assist her were co-incidental and did not impact on the WAG significantly except to result in her removal from the group.

The claimant says that the claim that the Director of External Affairs made known to the Head of Library Services his desire for a nomination from the libraries in some informal context is new and unsubstantiated. No indication is given as to when this occurred. The claimant notes that the Head of Library Services is not at Director level within the respondent organisation - the Director with responsibility for the libraries is the Director of Academic Affairs. At a Web group lunch on 12th January, 1998 the claimant says that she sat almost opposite the Director of External Affairs who made no mention of the fact that he had asked the Head of Library Services to remove her from the group. The claimant notes that the Director of External Affairs was not in attendance at the hearing of this claim. She says that she has still not been told why she had to be removed from the group given that it otherwise continued unaltered. The claimant says that Ms. Brinkley could have been added to the group without the need to remove her. The claimant also says that if she made remarks in relation to not being a representative on the Group over the long term she would have meant at least more than a few months. Furthermore she says that it would have been preferable if she had been more properly informed and warned of the end of her position on this group.

In relation to the timing, the contention that the Head of Library Services made a decision to replace the claimant with Ms. Brinkley at the time of her appointment (1st

December, 1997) seems extraordinary considering that Ms. Brinkley did not even take up duty until 5th January, 1998 and the claimant was not informed of the decision until 19th January, 1998. The claimant lodged her claim with the Labour Court under the Employment Equality Act, 1977 well in advance of her being informed by the Head of Library Services on 19th January, 1998 of the decision to replace her.

The claimant says that, in relation to the two other members of Library staff with HTML experience, both were at grades which would not normally serve on institute wide committees. It would be highly unlikely that they would be invited to serve on such committees.

HTML & Internet Training

The claimant says that she did not apply for training as advertised in the March, 1998 newsletter because she did not see this newsletter at the time. She says that she appears not to have been alone in this as only four persons attended on courses designed to take twenty participants. The claimant says that it was widely acknowledged at the time that there were problems with the distribution of the newsletter at these early stages. The claimant says that she did not apply for the Advanced Internet Techniques training course as she felt this particular programme to be inappropriate to her needs at that time.

The first HTML course, according to the claimant, was confined to web editors. The claimant says that she should have been eligible to apply as a web editor but was denied the position of Editor by the respondent.

The claimant says that she applied promptly for the course advertised on 11th November, 1998. She says that it is most surprising that she should be placed 60th on the list of applicants.