Case Number: 2204961/2018

HC

EMPLOYMENT TRIBUNALS

Claimant: **Ms A Christie**

Respondent: **(1) Paul, Weiss, Rifkind, Wharton & Garrison LLP**
(2) David Lakhdhir

Heard at: **London Central Employment Tribunal** **On: 8 March 2019**

Before: **Employment Judge H Clark**

Appearances:

For Claimant: **In person**
For Respondents: **Mr P Epstein – Leading Counsel**

JUDGMENT FOLLOWING OPEN PRELIMINARY HEARING

1. The Respondent's application to strike out the Claimant's claims is refused.

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Employment Judge Clark

Corrected version dated: 15 April 2019

JUDGMENT SENT TO THE PARTIES ON

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS

REASONS

1. This Preliminary Hearing was listed to consider the Respondent's applications dated 17 December 2018 to strike out the Claimant's claim or alternatively for unless orders. The application was a response to what the Respondents describe as a campaign of internet and email harassment against the Respondents (and others associated with them) by a friend/associate of the Claimant's, Mr Joseph Liptrap. It is the Respondents' case that the Claimant and Mr Liptrap were working in concert and that the latter's actions can be attributed to the Claimant. Such behaviour, it is said, amounts to scandalous, unreasonable or vexatious conduct of the proceedings on her part for the purposes of Rule 37(1)(b) of the Employment Tribunal (Constitution and Rules of Procedure) Regulations 2013 and that a fair trial is no longer possible. A hearing to determine liability is listed for 10 days commencing 13 May 2019.

The Proceedings

2. For the purposes of this hearing, the Tribunal had the benefit of written skeleton arguments and bundles of documents from both parties together with oral submissions from the Claimant in person and Mr Epstein QC on behalf of the Respondents. Oral submissions finished at 5pm, so judgment was reserved.

3. By a Claim Form presented on 12 June 2018, the Claimant made a number of claims arising out of the termination of her employment as a corporate lawyer for the First Respondent on 13 February 2018. In a Response Form dated 12 September 2018, the First Respondent cites the reason for dismissal as the Claimant's enrolment in a full-time PhD programme at the University of Cambridge in circumstances where she had not sought or obtained permission to do so, against a background of allegedly poor performance on her part. The Claimant suggests that her dismissal was an act of direct sex discrimination or alternatively, that it was automatically unfair because she made a protected disclosure (in a written communication dated 5 February 2018). The Claimant further claims that her dismissal amounted to harassment or victimisation. There are also claims of religious discrimination on the basis that the Claimant received fewer days' holiday pay compared to employees of the Jewish faith and for breach of contract relating to her pay and benefits during the notice period.

4. A Closed Preliminary Hearing (CPH) for case management purposes took place on 9 October 2018, at which the issues were identified. A subsequent application by the Claimant to amend her Claim Form to amplify the factual background (but not to add additional claims) was refused. For the purposes of this preliminary hearing,

the potentially relevant allegations are of direct sex discrimination, victimisation and harassment related only to the Claimant's dismissal.

Factual Background to Application

5. Both the Claimant and Mr Liptrap are PhD candidates at Cambridge University and it is common ground that Mr Liptrap accompanied the Claimant to the CPH within these proceedings on 9 October 2018. Following that hearing, Mr Liptrap embarked on what the Respondents describe as a "*massive and unrelenting campaign of internet and email harassment"* which can be attributed to the Claimant. It is said that this public internet harassment intended to damage the reputations of the Respondents and coerce a settlement prior to the full merits hearing. All the tweets and most of the emails in question emanate from Mr Liptrap.

The first one was the day after the CPH on 10 October 2018 directed at the First Respondent and the NY Law Journal and named the Chairman of the First Respondent describing him as "*a so-called "leader" who doesn't seem to understand equality."* The following day Mr Liptrap tweeted:

> "*Is there a term for law firms like @PaulWeiss LLP that swear by equality of treatment of women yet continue to face allegations of sexual discrimination and harassment. Smells like greenwashing to me. What do we think @legalcheek@RollonFridayWeb? #Equality #MeToo #ThursdayThoughts."*
>
> And:
>
> "*Yet @PaulWeissLLP hire outsiders [name inserted] who *allegedly* (infer sarcasm) – bully women into crying on the job and create a toxic work environment. This is insidious and repugnant; but I guess he brought the firm loads of work, so….#Equality #MeToo."*
>
> On 12 October 2018:
>
> "*AIRHORN! UK ladies qualified to practice NY law: do *not* consider working for @PaulWeissLLP in London. They treat women like rubbish and the work environment is toxic #MeToo #Hypocrisy #sexism #uk #WomensRights #RetweetPlease."*

6. The Respondents' Solicitors, Stephenson Harwood, wrote to the Claimant on 22 October 2018 attaching hard copies of Mr Liptrap's tweets, alleging that they were published with her "*approval and/or at your instruction and/or you have otherwise been involved in their publication, such as by drafting or helping draft parts or all of them."* The letter points out that conducting proceedings "*in this way is scandalous, unreasonable and vexatious. We ask that all publications of the same or a similar nature will cease immediately. If you do not, our client reserves the right to seek orders that your claims be struck out, with costs*."

7. Following this letter, Mr Liptrap's tweets and emails continued and included at 11.59 on 22 October 2018:

"*Just been informed that @PaulWeissLLP might try and sue me for defamation if I don't stop tweeting about the firm. I suspect they might not understand the law of defamation. I will not stop telling the #truth about gender discrimination and harassment #MeToo #equality #law."*

And at 12.08

"*Poll: Is it #bullying if a 200cm tall man towers a #woman who was just wrongfully sacked, orders her to pack her belongings in carrier bags, marches her out of the building and leaves her shaking in the lobby? That's what office manager [name inserted] of @PaulWeissLLP did this year."*

The tweets and emails continued and included asking the NGO, Human Rights Watch, on whose Board the Second Respondent sits, "*I'm going to keep asking until I get a response; do you think it is appropriate for someone facing allegations related to gender discrimination and harassment to be one of your directors?"* He further suggested that the First Respondent were "*facing multiple suits on similar grounds.*"

8. Mr Liptrap also contacted Harvard University via Twitter on 22 October 2018. The Second Respondent and his wife were booked to speak there on 29 October 2018 in the Traphagen Distinguished Alumni Speaker Series. Mr Liptrap tweeted as follows:

   "*@Harvard_Law is it common practice to invite speakers who are currently facing allegations related to #gender #discrimination and #harassment? If not, you might want to rethink David Lakhdhir of @PaulWeissLLP #metoo."*

   He followed this up with further tweets in a similar vein, including to news organisations (the BBC and NY Times) and then sent an email to (I infer) the organisers of the Harvard Distinguished Alumni Speaker Series informing them of these proceedings and stating, "*Thus, until the Tribunal have taken their decision, I must strongly object to David Lakhdhir – or his wife – stepping foot in front of students. It goes without saying that future lawyers have a duty to act with decency and integrity, not only vis-à-vis their dealings with the public but also with their colleagues. As far as those allegations go, David Lakhdhir does not seem fit for the task. You should both know that I will be contacting as many news outlets as I can about this, so I would be grateful if this could be taken seriously."*

This email was then tweeted to various news organisations including the Guardian, New York Times, Washington Post, BBC News, Boston Globe, Al Jazeera and Huffington Post.

9. In an email dated 23 October 2018 to Stephenson Harwood, Mr Liptrap defended his tweets on the basis that the information contained with them was true and, in a reference to Stephenson Harwood's letter to the Claimant dated 22 October 2018, continued as follows, "

"*You should also know that the Cambridge Law Faculty is a supportive community. When Ms Christie disclose to us what had happened to her at Paul, Weiss, we then formed our own opinions. I cannot speak for my other colleagues, but I can say – with absolute certainty – but it is my prerogative and indeed my duty as a male lawyer to speak out against gender discrimination, harassment, bullying and the like, no matter the personal cost – in particular when it is all true and documented in one way or another. Therefore, the threat that you made to Ms Christie was ultimately misdirected, as I refuse to stay quiet. You seem to have also conflated Ms Christie's claim with my tweeting: I am fully capable of drafting tweets, without instruction or suggestion. That you leveraged the threat you made against me as a fear tactic against Ms Christie to silence and prejudice her claim has also been thoroughly noted in my complaint the SRA as it clearly cuts across their Principles and Guidelines."*

10. On 25 October 2018 Mr Liptrap tweeted the First Respondent, including the hashtag "MeToo", copying an email he had just sent to the Second Respondent which named one of the First Respondent's clients who, he alleged, had created a hostile environment. On 26 October 2018 he turned his attention to a number of individuals involved in the NGO Human Rights Watch, suggesting that the Second Respondent was facing allegations of sex discrimination/harassment, stating, "*I confronted him: he/his firm bullied me. He isn't fit to be on the board and he damages your credibility."*

11. On 5 November 2018 Mr Liptrap emailed all the partners of the Respondents' Solicitors naming a client of the First Respondent and attaching an email from the First Respondents' client to the Claimant and an extract from a letter from the Respondents' Solicitor to the Claimant.

12. Both Mr Liptrap and the Claimant have separately made regulatory complaints against two of the Solicitors at Stephenson Harwood in relation to their conduct of the Respondents' case. This was first raised in a tweet by Mr Liptrap on 22nd October 2018 and the Claimant's SRA complaint was made on 4th November 2018

13. On 13 December 2018 the Claimant herself emailed the Chairman of the First Respondent and copied in 625 others at the First Respondent with the subject heading, "Sex Discrimination and Harassment at Paul, Weiss", attaching confidential email which she received from the Respondents in the course of the Tribunal disclosure process.

14. On 14 December 2018, Mr Liptrap emailed two named Solicitors at Stephenson Harwood, copying in all the partners in the Firm, making a data subject access request, asking for an apology for the false accusation of defamation, stating that the Respondents should stop suggesting that he was being instructed to tweet on the Claimant's behalf and that all his tweets should be removed from the discovery bundle. He further stated, "*If my requests are not met reasonably soon, the circumstances are going to grow far, far worse for anyone in your firm that had any part to play in this wretched string of events, the nature of which is bound to quickly become very public."*

15. Mr Liptrap explained in his 14 December 2018 email that he was not instructed to tweet by the Claimant, but that "*People often stand up against injustice for its own sake because it is right to do so,"* he continued, "*I think it is only fair to warn you that I now have copies of every piece of documentation necessary to protect my reputation in preparation for future legal proceedings if they were to arise. To give a flavour of the scope, I have physical possession of the recordings which directly contradict the firms' and David Lakhdhir's collective Tribunal response to Ms Christie's initial claim"* and then makes reference to the internal email he was sent by the Claimant on 13 December 2018 referred to above.

16. There was a degree of overlap in the contents of the Claimant's and Mr Liptrap's respective emails of the 13 and 14 December 2018. For instance, they both allege that the Respondents' defence was "fabricated", that the Chair of the First Respondent appeared to have lied and the Respondents and Stephenson Harwood had committed data protection offences.

17. The Respondents applied to strike out the Claimant's claims on 17 December 2018. On the same date, Stephenson Harwood wrote to Mr Liptrap pointing out that the documents received by the Claimant were subject to an implied undertaking and the Employment Tribunal Presidential Guidance that they should be used only for the conduct of the Tribunal claim and warning Mr Liptrap against any further dissemination of any such documents received. It put him on notice of the confidential nature of the documents he claimed to have and the fact that any allegations he made about the Claimant's circumstances would not be protected by the litigation process. The Respondent confirm that Mr Liptrap's tweets and other public correspondence concerning the Respondents ceased from this point.

The Law

18. The Tribunal has the power to strike out a Claim or Response Form or parts of them pursuant to Rule 37 of the Employment Tribunal (Constitution & Rules of Procedure etc) Regulations 2013, the relevant part of which provides:

> "*At any stage of the proceedings, either on its own initiative or on the application of a party, a tribunal may strike out all or part of a claim on any of the following grounds –*
>
> *(b) that the manner in which the proceedings have been conducted by or on behalf of the claimant or the respondent (as the case may be) has been scandalous, unreasonable or vexatious."*
>
> "Scandalous" in the context of rule 37 has been held to relate to an abuse of the legal process (*Bennett v LB Southwark [2002] ICR 881.)*

19. In exercising any power under the 2013 Regulations, the Tribunal must give effect to the overriding objective in Regulation 2, to deal with a case fairly and justly, including ensuring that the parties are on an equal footing and in dealing with cases in ways which are proportionate the complexity and importance of the issues.

20. The approach which the Tribunal should take to a strike out application under Rule 37(1)(b) was considered in *Bolch v Chipman [2004] IRLR 140 EAT.* It was held that the Tribunal should address the following questions:

    20.1 There must be a conclusion by the Tribunal not simply that a party has behaved scandalously, unreasonably or vexatiously, but that the proceedings have been conducted by or on his behalf in such a manner.

    20.2 Even if such a condition is found to exist, the Tribunal must reach a conclusion as to whether a fair trial is still possible.

    20.3 Even if a fair trial is not considered possible, the Tribunal must still examine what remedy is appropriate, which is proportionate to its conclusion. It may be possible to impose a lesser penalty than one which leads to a party being debarred from the case in its entirety.

    20.4 Even if the Tribunal decides to make a striking out order, it must consider the consequences of such an order.

21. Documents disclosed by parties in Employment Tribunal proceedings are subject to the implied undertaking that they will only be used for the purposes of the case (*McBride v Body Shop [2014] EWHC).* This is also made clear in the Presidential Guidance – General Case Management, Guidance Note 2 (2018), which provides that "*documents must not be used for any purposes other than the conduct of the case.*" (paragraph 16).

Submissions

22. The Respondent invites the Tribunal to infer that Mr Liptrap's actions can be attributed to the Claimant for the following reasons:

    22.1 Mr Liptrap accompanied the Claimant to the CPH;

    22.2 It is inherently implausible that Mr Liptrap would have acted in this way without the Claimant's agreement.

    22.3 Mr Liptrap has evidently seen the pleadings in the case.

    22.4 The Claimant has supplied Mr Liptrap with documents in the case (she admits to having supplied one, he claims to have been passed "*all the documents required to clear my name..*" including covert recordings made by the Claimant).

    22.5 There is a similarity in the content of some of the communications from the Claimant and Mr Liptrap.

    22.6 The complaints to the SRA were co-ordinated in nature.

22.7 The fact that Mr Liptrap desisted from his campaign of harassment when the Respondent's applied to the Tribunal to strike out the Claimant's claim.

23. The Respondents do not suggest that the Claimant's misuse of a document disclosed to her on its own would be sufficiently serious to amount to unreasonable conduct of proceedings.

24. The Respondents submit that the campaign of online harassment was designed to put pressure on them to settle the Claimant's grossly inflated claim (valued by her at £136 million). The implication of the use of the hashtag "MeToo" invites the inference that sexual assault was involved. A fair trial is no longer possible because of the effect on the named individuals and the Firm itself of this intentional campaign to discredit them.

25. The Claimant submitted that it was absurd to hold her liable for the actions of a third party. She had not seen most of Mr Liptrap's tweets until she received the strike out application on 17 December 2018. Her assessment was that once the Respondent threatened a defamation action, Mr Liptrap retaliated by escalating his actions. This was a separate dispute between the Respondent and Mr Liptrap and has no bearing on the Claimant's Tribunal claim. The Claimant said she asked Mr Liptrap to stop tweeting, even though she did not consider it her responsibility to do so.

26. In relation to the contents of Mr Liptrap's various communications, the Claimant stated in her submissions that she did not agree with Mr Liptrap's approach and does not condone it, but suggests that nothing contained in his tweets or emails is untrue. The Claimant expressed her "*fundamental disagreement"* with the fact that Mr Liptrap implicated the Second Respondent's wife and stated, "*I do not want that behaviour attributed to me."* She also made it clear that it was Mr Liptrap's choice to email Harvard University, not hers.

27. The Claimant accepts that she disseminated one of the First Respondent's internal emails on 13 December 2018, although suggests that she believed she was entitled to this because she alleges that the Respondents have committed a criminal offence in failing to disclose this document in response to a DSAR request she made. She has provided a letter from a Case Officer at the ICO dated 28 January 2019 expressing the view that the First Respondents were in breach of their data protection obligations to her. The Respondents should not be able to profit from their own wrong-doing in failing to disclose it. Had it been disclosed pursuant to her DSAR request, the document would have been her property. It is against public policy to rely on the disclosure process to protect documents which should have been provided (and therefore belong to) the Claimant. In any event, she submits, the communication of 13 December 2018 was a protected disclosure.

28. The Claimant does not accept that there is any implication as to the serious nature of the Respondents' behaviour from the use of the MeToo hashtag. She submits that MeToo is a general movement against silencing women.

29. The Claimant relies on the fact that there is currently a second claim by a former female employee of the First Respondent in the London Central Employment Tribunal and she has been contacted by another former member of staff who is aggrieved at her own treatment. It is a matter of public importance that her claim is heard. In the case of *Bolch* the Respondent threatened the Claimant with physical violence in an incident outside the Claimant's house. The EAT held that notwithstanding the threat of physical violence, a fair hearing was still possible. If threats of physical violence were not enough to strike out a claim or conclude that a fair hearing was not possible, tweets and emails are certainly not capable of doing so. There was no evidence that a fair hearing had been jeopardised and no adverse impact or damage had been demonstrated. Mr Liptrap's correspondence had, in fact, generated limited publicity as he only had 38 followers on Twitter, the Second Respondent and his wife had still spoken and Harvard and Human Rights Watch had not removed the Second Respondent as a director.

Conclusions

30. Mr Liptrap was neither present nor represented at this hearing and has not, therefore, had an opportunity to defend or explain his conduct within these proceedings. The contents of his tweets and emails arguably make allegations or insinuate conduct on the part of the Respondents and others associated with them which go beyond that which is set out in the Claimant's Claim Form. The use of the hashtag "MeToo" could certainly be regarded as an invitation to draw parallels between the Respondents' alleged conduct and some of the very serious allegations of sexual assault out of which the "MeToo" hashtag/movement emerged. The Claimant has made no such claims. For the reasons set out below, however, I do not need to reach a concluded view on these issues. In particular, I decline to do so in Mr Liptrap's absence in case it is necessary for there to be other litigation in relation to them. Further, he should be afforded the opportunity to be heard prior to any findings being made. For the purposes of this hearing, it suffices for me to record that I accept that the Respondents had entirely legitimate concerns about the contents and wide distribution of many of Mr Liptrap's communications and as to his and the Claimant's motivations.

31. Notwithstanding the conclusions the Tribunal has reached, this strike out application was undoubtedly a proper one for the Respondents to make. It will be the function of the Tribunal hearing the Claimant's claim to determine the merits of her claims and the Respondents' defence to it with the benefit of all the evidence. There is a strong public interest in claims being determined in a Court or Tribunal with due regard to natural justice and in furtherance of the rule of law. Conducting the sort of public campaign outlined above quite clearly has the potential to jeopardise the prospects of a fair hearing.

32. The Claimant regards it as absurd that she might be held responsible for the actions of Mr Liptrap and they have both strongly have denied any suggestion that the emails and tweets are their joint enterprise or responsibility. The Claimant relies on the case of *Ameyaw v Pricewaterhousecoopers Services Limited UKEAT/0244/18/LA* specifically the finding that a Claimant was not held responsible for her mother's actions in an Employment Tribunal, which were described as "*aggressive and threatening."* The Claimant referred to paragraphs 19 and 20 of

the decision. In fact, the decision in question was that of the Employment Tribunal on 10 March 2017 rather than the EAT judgment she has cited, which concerned the inclusion of a Claimant's name and details on the public register. The judgment of EJ Morton in the Employment Tribunal, on which the Claimant relies, does not bind this Tribunal. In any event, the circumstances were quite different from those in the instant case, in that it concerned aggressive behaviour which occurred in a hearing and, therefore, the extent of the Claimant's encouragement or otherwise of her mother would have been more straightforward to discern.

33. Contrary to the Claimant's submissions, there is evidence from which the Tribunal could infer that the Claimant was involved in/encouraging Mr Liptrap's communications in relation to her case. That they are colleagues and friends is not in dispute. Although Mr Liptrap is not representing the Claimant, he is conversant with the contents of the pleadings and has seen some of the documents, if not all, including a communication received by the Claimant from one of the First Respondents' clients. Whilst the Claimant suggests that this was a private communication, such a contention is curious in circumstances where it is said to have created a hostile work environment for her.

34. The fact that both the Claimant and Mr Liptrap made regulatory complaints to the SRA against two of Stephenson Harwood's Solicitors within a short period of time can be no coincidence. They must have liaised in this regard. I accept Mr Epstein's submission that there were similarities in the content of some of their communications and in how the Claimant and Mr Liptrap approached the dissemination of information to multiple recipients. For instance, the Claimant's email of the 13 December 2018 and Mr Liptrap's of the 14 December 2018 were both sent to hundreds of people. There has undoubtedly been a degree of liaison or co-ordination between them about this. The fact that Mr Liptrap is conversant with the details of the Claimant's claim and her pleadings is not necessarily problematic, however. The Claimant is representing herself. Being a litigant in person can be a very isolating experience. It is entirely understandable that the Claimant might need support and advice about her case from her friends or colleagues – the more so if they have legal knowledge. Similarly, that she might want to bring someone with her to hearings to support or assist her. That is a common occurrence in this Tribunal. There is no necessary implication that such a supporter is acting on behalf of the litigant in question.

35. Once the Respondents' Solicitors wrote to the Claimant on 22 October 2018, but not separately to Mr Liptrap, suggesting his tweets were defamatory, Mr Liptrap's communications started to focus on his own burgeoning dispute with the Respondents and their Solicitors. It was shortly after the 22 October 2018, that Mr Liptrap repeatedly contacted Harvard University and Human Rights Watch (and over 30 named people associated with the organisation). The Tribunal did not hear evidence on oath from the Claimant, but she was asked in the course of her submissions specifically what she thought about Mr Liptrap's suggestion that the Second Respondent's wife should be "no platformed" at Harvard University, apparently by reason of her association with her husband. The Claimant's response to this was unequivocal opposition to it. As this was not evidence, but assertion, the Respondents did not have the opportunity to cross-examine the Claimant, however, Mr Epstein replied to the Claimant's submissions and did not

challenge the fact that she distanced herself from Mr Liptrap's approach in this regard. In light of the Claimant's very clearly expressed view that the Second Respondent's wife should not have been no platformed, I accept that she did not support or encourage Mr Liptrap's actions in this specific regard. It does not follow that the Claimant did not support or encourage some of Mr Liptrap's other communications to which she was not expressly a party. However, it suggests that the Claimant and Mr Liptrap did not agree on all the latter's communications or compose them together.

36. The Claimant asserts that she is not on Twitter and had not seen the majority of Mr Liptrap's tweets. She was sent hard copies on 22 October 2018, but it is plausible that she did not see all of Mr Liptrap's subsequent tweets, if not on Twitter herself. They would have been accessible to her had she wished to look, but she would not have received notifications herself without a Twitter account. It is also notable that, prior to Mr Liptrap's presence at the hearing on 9 October 2018, the Claimant had not herself engaged in an analogous email campaign. She had sought to enforce her asserted rights against the Respondents through the Tribunal process rather than attempting to conduct a media campaign.

37. Mr Liptrap is expressly supportive of the Claimant's claim and clearly believes her account and interpretation of her treatment by the Respondents. The Claimant took no steps to offer any reassurance to the Respondents that the public tweeting and emails would stop following their letter of the 22 October 2018. At no point prior to the hearing did she distance herself from Mr Liptrap's communications. This is regrettable and reasonably reinforced the Respondents' view that Mr Liptrap was acting on behalf of the Claimant. Whilst the Claimant did confirm her disagreement with Mr Liptrap's approach in the hearing, she maintained that what was in the tweets "generally" appeared to be factual.

38. Given it was Mr Liptrap's aim to support the Claimant, it seems likely that he would have stopped publicly tweeting and emailing about her case in October had the Claimant asked him in strong terms not to do so. Mr Liptrap did stop doing so after the strikeout application was made on 17 December 2018. The Claimant says she asked him to stop tweeting, although she did not consider it her responsibility to do so. Whilst the Tribunal is invited to infer from the fact that the tweeting stopped on 17 December 2018 that it was a joint enterprise, it could also have been because Mr Liptrap realised that he might be legally exposed himself. He had separately received a strongly worded letter from Stephenson Harwood on the same day pointing this out. Perhaps Mr Liptrap had also appreciated that the way he had exercised "his prerogative as a male lawyer to speak out against gender discrimination" risked having the (unintended) consequence of silencing the Claimant in the context of these proceedings. There are cogent reasons why the potentially defamatory communications stopped on 17 December 2018, the least likely of which was that Mr Liptrap was acting on behalf of or with the encouragement, tacit or otherwise, of the Claimant.

39. There has obviously been information sharing between the Claimant and Mr Liptrap in relation to the Claimant's litigation with the Respondents (and their Solicitors) and some co-ordination as to tactics (litigation or otherwise) up until 17 December 2018. However, from 22 October 2018, Mr Liptrap was engaged in his own separate

(albeit closely related) dispute with the Respondents and their representatives. The Claimant and Mr Liptrap had a joint interest in furthering their individual disputes, because they both involved the First and Second Respondent. In my judgment, the co-ordination of their disputes was not such as to enable the actions of one to be attributed to the other. The Claimant can be criticised for failing to take any steps to distance herself from Mr Liptrap's communications after 22 October 2018, but her failure to do so is insufficient, in my judgment, to render her liable for his actions after that. She had no control over how he chose to conduct his own dispute with the Respondents. In so far as Mr Liptrap's actions after 22 October 2018 related to the Claimant's dispute with the Respondents (the lines being somewhat blurred between the two disputes), I am satisfied that the manner of Mr Liptrap's social media campaign (both prior to and after 22 October 2018) was not something which was encouraged or supported by the Claimant. The fact that she did not act in a similar manner (albeit outside the medium of Twitter) prior to 9 October 2018, reinforces this conclusion. As a result, I am not satisfied that Mr Liptrap's tweets and email communications can be attributed to the Claimant or regarded as her conduct of these proceedings.

40. The only remaining ground for the Respondents' application relates to the Claimant's dissemination of a confidential email received by her through the discovery process within these proceedings. This document was received subject to the implied undertaking that it would be used only for the purposes of conducting the litigation (as set out above). The Claimant has sought to justify her procedural breach after the event, but as the Respondent does not suggest that this incident alone would justifying striking out her claim, it is not necessary to determine the merits of her justifications. On any view, the Claimant's breach cannot be described as a deliberate and persistent disregard of the Tribunal's procedures and it has not rendered a fair trial impossible.

41. Although I am not satisfied that Mr Liptrap's communications can be attributed to the Claimant, if I am wrong in that conclusion and she can be held responsible for some or all of Mr Liptrap's actions, I am not satisfied that a fair hearing is no longer possible as a result. It is not suggested by the Respondents that the Tribunal itself would have been prejudiced by any of the public assertions which the Claimant or Mr Liptrap have made. It is said that the Respondents have been subjected to intimidatory pressures. The Tribunal does not doubt that the Second Respondent and others (including the Respondents' named Solicitors) have been placed under additional personal pressure as a result of Mr Liptrap's public airing of this and his own dispute. The prospect of trial by Twitter or national media rather than Tribunal is obviously a daunting one, particularly in circumstances where the Respondents are conscious of their own legal obligations in relation to the Tribunal proceedings.

42. The widespread publicity Mr Liptrap attempted to generate by his tweets does not appear to have materialised and neither Harvard University nor Human Rights Watch acceded to his request to no platform/remove the Second Respondent from the Board before the Tribunal determination of the issues between the Claimant and the Respondents. This does not, however, mean that reputational damage has not been caused to either Respondent and it is either naïve or disingenuous for the Claimant to suggest otherwise. It is accepted that witnesses can be intimidated by a variety of means, including through reputational damage or threats of it. Although

the Respondents are sophisticated litigants and, no doubt, used to the cut and thrust of legal proceedings, that does not mean they will have been unaffected by the personal attacks which have been made on their integrity. I accept, without evidence, that the Respondents' witnesses will have been placed under additional pressure by the nature and scale of Mr Liptrap's communications. However, there is no evidence (either by specific assertion, witness statement or medical evidence) to suggest that the effect of the social media/email communications on individual parties or witnesses has been such that their ability to prepare their case, give instructions to their lawyers or, mostly importantly, evidence to the Tribunal has been materially affected or restricted. As such, assuming there is no resumption of potentially defamatory tweets and emails, I am satisfied that a fair hearing remains possible and that striking out the Claimant's claim is not justified.

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