**Case Number: 2200174/2017**

# THE EMPLOYMENT TRIBUNAL

**SITTING AT:** **LONDON CENTRAL**
**BEFORE:** **EMPLOYMENT JUDGE ELLIOTT**
**MEMBERS:** **MR G BISHOP**
**MR J CARROLL**

**BETWEEN:**

**Miss K Gillard**

**Claimant**

**AND**

**Goldsmith Chambers (Services) Ltd**

**Respondent**

**ON:** **9, 10, 11, 12, 13, 16, 17, 18, 19, 23, 24 April 2018 and 1, 2, 3, 4, 7, 8, 9, 10, 11 and 14 October 2019**
**(10, 11 and 14 October 2019 in chambers)**

**Appearances:**
**For the Claimant:** **In person**
**For the Respondent:** **Mr A Johnston, counsel**

## RESERVED JUDGMENT

The unanimous Judgment of the Tribunal is that the claim fails and is dismissed.

## REASONS

1. By a claim form presented on 26 January 2017 the claimant Ms Karen Gillard claims whistleblowing detriment, direct sex discrimination, direct discrimination because of sexual orientation and victimisation.

2. Being relevant to this claim we set out that the claimant is a barrister, female and gay. At all relevant times until 23 December 2016 she was a tenant of Goldsmith Chambers.

**The procedural history**

3. A case management hearing took place on 29 March 2017 before

Employment Judge Snelson who ordered that a preliminary hearing take place on 11 July 2017 to determine the correct respondent and the claimant's employment status. There were initially two respondent, Goldsmith Chambers and Goldsmith Chambers (Services) Ltd.

4. A preliminary hearing took place on 11 and 12 July 2017 before Employment Judge Welch. The correct respondent was identified as the respondent in these proceedings, Goldsmith Chambers (Services) Ltd (referred to hereafter as "the respondent"). The claimant was found to be a worker of this respondent and it was not necessary for the tribunal to consider, for the purposes of these claims, whether she was also an employee and this allegation was withdrawn. The claim against the original first respondent "Goldsmith Chambers" was dismissed.

5. The case management hearing took place on 4 September 2017 before Employment Judge Pearl by telephone.

6. A further preliminary hearing took place before Employment Judge Goodman on 15 January 2018. Judge Goodman ordered that by 29 March 2018 the parties must draft and attempt to agree a list of issues. It was ordered that if the parties could not agree on the list of issues, each must file their own list and a note of the reasons for lack of agreement.

7. A telephone preliminary hearing took place on 7 March 2018 before Employment Judge Grewal for further case management.

8. A further case management hearing took place in person, on 23 March 2018, a few days before the start of this full merits hearing, before Employment Judge A Stewart. This hearing dealt with amendment when new acts of victimisation were added and orders were made for specific disclosure. The parties were reminded at this hearing of their duty to assist the tribunal in the furtherance of the overriding objective in matters of process and procedure reserving their "lively" dispute as far as possible to the substantive issues in dispute.

9. This tribunal relied on the findings of fact made by Employment Judge Welch and sent to the parties on 24 August 2017.

## The issues

10. At the start of this hearing the list of issues had not been agreed. We had lengthy draft lists of issues from both sides. We spent time clarifying the issues with the parties.

11. The disclosures relied upon as protected disclosures had not been clearly set out. They were identified by the claimant under four broad headings:

    a. Financial and other mismanagement of arrangements to close down the liabilities of Argent Chambers. This was further put in the claimant's list of issues as:

i. Occupiers and health and safety liability for building at 5 Bell Yard
ii. Specific debts outstanding to creditors
iii. Bell Yard still being technically occupied by Argent Chambers
iv. Confidential waste being left open to third parties
v. Impending legal action by creditors
vi. Financial irregularities which had not been highlighted previously
vii. The manner in which certain organisations (eg Jeff Lehmer Associates, Duff and Phelps and Daniel Jacob) were employed by Mr Metzer and Mr Gersch at the point of merger of the two sets of chambers
viii. £5,000 transferred from the Argent fee account to the respondent Chambers account on instructions from Mr Metzer.

b. Nepotism – recruiting family members of the Head of Chambers as paid interns to work in Chambers without advertising vacancies or opportunities – said to be in breach of the Bar Standards Board Regulations as well as inconsistent with equal opportunities policy.

c. Inviting a tenancy recruitment panel to revisit its unfavourable application of a particular candidate (whom we identified as Mr F Selita) whom the Head of Chambers was keen to recruit was inappropriate and inconsistent with fair recruitment and selection practice.

d. There was a failure to address inappropriate and potentially discriminatory behaviour by members and staff.

12. The claimant relies on the second, third and fourth disclosures as her protected acts for her victimisation claim.

13. The list of detriments relied upon was agreed between the parties and is set out below.

14. On day 3 at the start of the evidence the parties informed us that the following was an agreed list of issues:

Public Interest Disclosures

15. In respect of each of the alleged protected disclosures set out in Appendix 1 below:

(a) Did the claimant make the disclosure alleged? On day 3 the respondent produced an agreed list of 39 disclosures relied upon by the claimant. On day 4 during cross-examination the claimant agreedthat disclosure 21 was no longer relied upon and on Day 9 the claimant said that disclosure 6 was no longer relied upon.

(b) was the disclosure raised by the claimant in her capacity as a worker of the respondent or merely in her capacity as a member of

Chambers and/or the Chambers Management Committee and/or as an ex-member of Argent Chambers?

(c) was the disclosure made to the respondent in accordance with section 43C ERA? In particular, if the disclosure was made to an individual(s) who was not a member of the Chambers Management Committee and/or was not a member of Chambers, can it be regarded as having been made by the claimant to her employer?

(d) did the alleged disclosure amount to a disclosure of information rather than the mere making of an allegation?

(e) did the claimant genuinely and reasonably believe that the disclosure tended to show (as the case may be):

(i) that a criminal offence (and, if so, which criminal offence by reference to statute/regulations) had been committed, was being committed or was likely to be committed? (section 43B(1)(a) ERA). The claimant confirmed that the criminal offence relied upon was theft.
(ii) that a person had failed, was failing or was likely to fail to comply with any legal obligation to which he was subject (and, if so, what legal obligation by reference to statute/regulations)? (section 43B(1)(b) ERA). The legal obligations are set out in Appendix 1 below.
(iii) that information tending to show any matter falling within (i) or (ii) above had been, was being or was likely to be deliberately concealed? (section 43B(1)(f) ERA)

(f) did the claimant reasonably believe that the disclosure was made in the public interest?

16. The criminal offences and legal obligations relied upon by the claimant are set out at Appendix 2 to these Reasons.

17. Was the claimant subjected to the following alleged detriments (or any of them) by the respondent on the ground that she had made one or more of the alleged protected disclosures (section 47B(1) ERA):

(i) encouraging employees of the respondent, Mr Francis and Miss Ozalgan, to make complaints against her (Grounds of Complaint paragraph 48(i));
(ii) withholding relevant information from the investigatory process (Grounds of Complaint paragraph 48(i)); the information was the absence of access to the claimant's emails and Mr Metzer withholding emails dated 25 April 2016 (bundle page 941) from the investigator Mr Gardiner.
(iii) delaying arrangements in respect of the continuation of the claimant's work for the respondent (Grounds of Complaint paragraph 48(ii)); the arrangements were the setting up of the ad hoc committee and twice delaying the EGM.

(iv) delegating the consideration of the continuation of the claimant's work for the respondent to a subcommittee whose members were personally selected by the Head of Chambers QC (Grounds of Complaint paragraph 48(ii));
(v) suspending the claimant from work with immediate effect on 27 October 2016 (Groundssof Complaint paragraph 48(iii));
(vi) escorting the claimant from the building on 27 October 2016 (Grounds of Complaint paragraph 48(iv));
(vii) circulating statements calculated to damage the claimant's reputation to all members of staff and Chambers (Grounds of Complaint paragraph 48(v));
(viii) denying the claimant the opportunity to challenge her suspension from work (Grounds of Complaint paragraph 48(vi));
(ix) denying the claimant the opportunity to challenge the decision to end her contract (Grounds of Complaint paragraph 48(vii));
(x) suspending the claimant from membership as a tenant of Chambers (Grounds of Complaint paragraph 49(i));
(xi) denying the claimant due process in respect of the implementation of the suspension decision (Grounds of Complaint paragraph 49(ii)); the claimant said the suspension should not have been effective for 7 days and a further 30 days under the appeal process.
(xii) expelling the claimant from her membership of Chambers without giving her any opportunity to state her case to members (Grounds of Complaint paragraph 49(iii));
(xiii) denying her the opportunity of a fair and impartial appeal against the decision to expel her from Chambers (Grounds of Complaint paragraph 49(iv)).

18. Were any of the claimant's detriment claims presented out of time? If so, was it reasonably practicable for those complaints to have been presented in time? If not, were the claims presented within such further period as the Tribunal considers reasonable? (section 48(3) ERA). For the avoidance of doubt, the respondent accepts that complaints in respect of alleged detriments which occurred on or after 27 October 2016 have been presented in time.

Direct Sex Discrimination

19. Insofar as the claimant, for the purposes of her claim of sex discrimination, seeks to rely upon the acts of individual members of Chambers, who are not also members of the Chambers Management Committee, are such acts to be treated as done by the respondent (section 109 EqA)? The respondent says that if they are not part of the CMC and they are not employees they cannot be treated as acts done by the respondent. The claimant's case is all members of Chambers are members of the limited company.

20. Did the respondent treat the claimant less favourably than it treated or would have treated a male comparator. The claimant told the tribunal on day 3 of the hearing at the start of the evidence that her male comparators

were: Mr Michael Martin, Dr Anton van Dellen, Mr Dominic D'Souza and Mr Andrew Fitch-Holland.

(i) in the way in which it afforded her access to the procedural protection provided by Chambers' constitution (Grounds of Complaint paragraph 52(i));
(ii) subjecting her to pressure to leave Chambers (Grounds of Complaint paragraph 52(i));
(iii) encouraging employees of the respondent, Mr Francis and Miss Ozalgan, to make complaints against her (Grounds of Complaint paragraph 52(iii));
(iv) withholding relevant information from the investigatory process (Grounds of Complaint paragraph 52(iii)); the information was the absences of access to the claimant's emails and Mr Metzer withholding emails dated April 2016 (bundle page 941) from Mr Gardiner.
(v) delaying arrangements in respect of the continuation of the claimant's work for the respondent (Grounds of Complaint paragraph 52(iii)); the arrangements were the setting up of the ad hoc committee and twice delaying the EGM.
(vi) delegating the consideration of the continuation of the claimant's work for the respondent to a subcommittee whose members were personally selected by the Head of Chambers, Anthony Metzer QC (Grounds of Complaint paragraph 52(iii));
(vii) suspending her from work with immediate effect on 27 October 2016 (Grounds of Complaint paragraph 52(iii));
(viii) escorting her from the building on 27 October 2016 (Grounds of Complaint paragraph 52(iii));
(ix) circulating statements calculated to damage the claimant's reputation to all members of staff and Chambers (Grounds of Complaint paragraph 52(iii));
(x) suspending her from membership as a tenant of Chambers on 27 October 2016 (Grounds of Complaint paragraph 52(iii));
(xi) denying the claimant due process in respect of the implementation of the suspension decision (Grounds of Complaint paragraph 52(iii));
(xii) expelling the claimant from her membership of Chambers without giving her any opportunity to state her case to members (Grounds of Complaint paragraph 52(iii));
(xiii) denying her the opportunity of a fair and impartial appeal against the decision to expel her from Chambers (Grounds of Complaint paragraph 52(iii)).

21. Is the claimant able to establish facts from which a Tribunal could properly decide, in the absence of any other explanation, that the less favourable treatment of which she complains was because of her sex? (section 136 EqA).

22. If so, can the respondent show that the claimant's sex was not the reason for any such treatment?

23. Were any of the claims of sex discrimination presented out of time? If so, would it be just and equitable to extend time in respect of the same? (section 123(1) EqA). For the avoidance of doubt, the respondent accepts that complaints in respect of acts which occurred on or after 27 October 2016 have been presented in time.

Direct Discrimination because of Sexual Orientation

24. The claimant identifies as gay and relies upon her sexual orientation as a protected characteristic (section12(1)(a) EqA).

25. Insofar as the claimant, for the purposes of her claim for sexual orientation discrimination, seeks to rely upon the acts of individual members of Chambers, who are not also members of the Chambers Management Committee, are such acts to be treated as done by the respondent (section 109 EqA)?

26. Did the respondent treat the claimant less favourably than it treated or would have treated a hypothetical comparator of different sexual orientation by:

    (i) in the way in which it afforded her access to the procedural protection provided by Chambers' constitution (Grounds of Complaint paragraph 52(i));
    (ii) subjecting her to pressure to leave Chambers (Grounds of Complaint paragraph 52(i));
    (iii) encouraging employees of the respondent, Mr Francis and Miss Ozalgan, to make complaints against her (Grounds of Complaint paragraph 52(iii));
    (iv) withholding relevant information from the investigatory process (Grounds of Complaint paragraph 52(iii)); the information was the absences of access to the claimant's emails and Mr Metzer withholding emails dated April 2016 (bundle page 941) from Mr Gardiner.
    (v) delaying arrangements in respect of the continuation of the claimant's work for the respondent (Grounds of Complaint paragraph 52(iii)); the arrangements were the setting up of the ad hoc committee and twice delaying the EGM.
    (vi) delegating the consideration of the continuation of the claimant's work for the respondent to a subcommittee whose members were personally selected by the Head of Chambers (Grounds of Complaint paragraph 52(iii));
    (vii) suspending her from work with immediate effect on 27 October 2016 (Grounds of Complaint paragraph 52(iii));
    (viii) escorting her from the building on 27 October 2016 (Grounds of Complaint paragraph 52(iii));
    (ix) circulating statements calculated to damage the claimant's reputation to all members of staff and Chambers (Grounds of Complaint paragraph 52(iii));

(x) suspending her from membership as a tenant of Chambers on 27 October 2016 (Grounds of Complaint paragraph 52(iii));
(xi) denying the claimant due process in respect of the implementation of the suspension decision (Grounds of Complaint paragraph 52(iii));
(xii) expelling the claimant from her membership of Chambers without giving her any opportunity to state her case to members (Grounds of Complaint paragraph 52(iii));
(xiii) denying her the opportunity of a fair and impartial appeal against the decision to expel her from Chambers (Grounds of Complaint paragraph 52(iii)).

27. Is the claimant able to establish facts from which a Tribunal could properly decide, in the absence of any other explanation, that the less favourable treatment of which she complains was because of her sexual orientation? (section 136 EqA).

28. If so, can the respondent show that the claimant's sexual orientation was not the reason for any such treatment?

29. Were any of the claims of sexual orientation discrimination presented out of time? If so, would it be just and equitable to extend time in respect of the same? (section 123(1) EqA). For the avoidance of doubt, the respondent accepts that complaints in respect of acts which occurred on or after 27 October 2016 have been presented in time.

<u>Victimisation</u>

30. Did the claimant do one or more protected acts within the meaning of section 27(2) EqA?

- The pleaded protected acts upon which the claimant has sought to rely upon were the same matters raised at paragraphs 42(2) to (4) of her Grounds of Complaint (Grounds of Complaint paragraph 58, bundle page 20). They were three of the four broad categories of protected disclosure referred to above namely:
    - Recruiting family members of the Head of Chambers as paid interns to work in Chambers without advertising vacancies or opportunities – put as a breach of the Bar Standards Board Regulations as well as inconsistent with equal opportunities policy.
    - Inviting a tenancy recruitment panel to revisit its unfavourable application of a particular candidate (Mr Fatos Selita) who the Head of Chambers was keen to recruit was inappropriate and inconsistent with fair recruitment and selection practice.
    - A failure to address inappropriate and potentially discriminatory behaviour by members and staff.

- The precise disclosures relied upon are set out in Appendix 1 to these reasons, a total of 37. There were originally 39 and two were withdrawn during the course of the hearing (numbers 21 and 6). Where the disclosures relied upon are in writing, the respondent accepted that those words were communicated. In the main the respondent disputes that the oral disclosures relied upon were made or that they were said in the way relied upon.

- The respondent conceded that the bringing of the present proceedings (her ET1 of 26 January 2017) is a protected act. The claimant confirmed that she relied upon this. No concession was made in respect of any other matter relied upon as a protected act.

31. Was the claimant subjected to the following alleged detriments (or any of them) by the respondent either because she had done a protected act or because the respondent believed that she had done or may do a protected act (section 27(1) ERA)?

i. encouraging employees of the respondent, Mr Francis and Miss Ozalgan, to make complaints against her;
ii. withholding relevant information from the investigatory process; the information was the absences of access to the claimant's emails and Mr Metzer withholding emails dated 25 April 2016 (bundle page 941) from Mr Gardiner.
iii. delaying arrangements in respect of the continuation of the claimant's work for the respondent; the arrangements were the setting up of the ad hoc committee and twice delaying the EGM.
iv. delegating the consideration of the continuation of the claimant's work for the respondent to a subcommittee whose members were personally selected by the Head of Chambers, Anthony Metzer QC;
v. suspending the claimant from work with immediate effect on 27 October 2016;
vi. escorting the claimant from the building on 27 October 2016;
vii. circulating statements calculated to damage the claimant's reputation to all members of staff and Chambers;
viii. denying the claimant the opportunity to challenge her suspension from work;
ix. denying the claimant the opportunity to challenge the decision to end her contract;
x. suspending the claimant from membership as a tenant of Chambers;
xi. denying the claimant due process in respect of the implementation of the suspension decision;
xii. expelling the claimant from her membership of Chambers without giving her any opportunity to state her case to members;
xiii. denying her the opportunity of a fair and impartial appeal against the decision to expel her from Chambers;

xiv. sending a letter demanding money to the claimant on 9 February 2017;
xv. sending a letter demanding money to the claimant on 16 February 2017;
xvi. contacting the Metropolitan Police making (on the claimant's case, false) allegations of harassment against her on or before 7 March 2017;
xvii. persisting in attempting to get the said allegations against her investigated on or around 22 March 2017.

32. Were any of the claimant's claims of victimisation presented out of time? If so, would it be just and equitable to extend time in respect of the same? (section 123(1) EqA). The respondent accepts that, save in relation to (xiv) – (xvii) above, complaints in respect of acts which occurred on or after 27 October 2016 have been presented in time. The claims at (xiv) - (xvii) above were added as a result of an application by the claimant to amend her claim, made orally at a Preliminary Hearing on 23 March 2018, but the question of whether they had been brought in time as at the date of the application was expressly left to be determined at the final hearing.

**Applications made on day 3**

33. Days 1 and 2 were reading days. On day 3, Wednesday 11 April 2018 the respondent made the following applications:

a. Witness orders in respect of two of its witnesses Mrs Ong and Mr Gersch who are both barristers involved in other trials and required witness orders in order for the judges in those trials to release them. We granted this application. By agreement with the respondent the witness orders were given to the respondent on day 4 for hand delivery to the witnesses. On day 5 the same application was made and granted in respect of Mr Anthony Metzer QC. On day 6 the witness order for Mr Gersch was set aside to assist with his involvement in the other trial and he attended this hearing voluntarily. On day 9 the witness order for Mrs Ong was set aside.
b. The respondent said that the claimant had never previously pleaded that her first category of protected disclosures was also relied upon as a protected act and the respondent asked that we rule that the claimant not be in a position to rely on it as a protected act.
c. The respondent had prepared a schedule of alleged protected disclosures and said that numbers 1, 7, 8, 11, 13, 37 and possibly 35 or 36 had not previously been relied upon. The respondent said that the claimant should not be in a position to rely upon them as protected disclosures.

34. We took the view that in relation to the reliance on the first category of protected disclosures as a protected act, we would need to hear the factual evidence in any event. We unanimously took the view that we should hear the evidence and it remained open to the parties to deal with this point by way of submissions.

35. The same applied to the respondent's contention that numbers 1, 7, 8, 11, 13, 37 and possibly 35 or 36, had not previously been relied upon. It was our firm and unanimous view that it was time for the evidence to be heard.

36. In the first part of the hearing in April 2018 claimant wanted to admit documents she had submitted to the Bar Standards Board. The respondent objected to this on grounds that disclosures to the BSB had never been part of the pleaded case or included in the list of issues. On that basis we did not agree to the inclusion of these documents.

**Witnesses and documents**

37. For the claimant: The tribunal heard from the (i) claimant, (ii) Mr Simon Sherriff, (iii) Ms Sophia Goodall, (iv) Ms Alexandra Gilmore and (v) Mr Jonathan Mitchell. There was a statement from the claimant's partner Ms Helen Newbold. The claimant told the tribunal at the start of the evidence on day 3 that she would not be calling Ms Newbold as the evidence related to remedy rather than liability and reserved her position to call Ms Newbold on the issue of remedy, if applicable.

38. For the respondent: The tribunal heard from eleven witnesses (i) Mr Anthony Metzer QC, (ii) Mr Dingle Clark, (iii) Mr Adam Gersch, (iv) Dr Anton van Dellen, (v) Mr John Francis, (vi) Mr Bruce Gardiner, (vii) Mr Barry Coulter, (viii) Ms Asli Ozalgan, (ix) Mr Michael Morris, (x) Ms Catherine Milsom and (xi) Mr Stephen Wilmer.

39. We had a witness statement from a member of Chambers, Ms Grace Ong, who was not called. We could therefore only attach very limited weight to this statement.

40. A set of documents ran to over 3,000 pages in 6 lever arch files. There was a separate bundle of 21 witness statements. Some witnesses had provided more than one statement.

41. We also had separate draft lists of issues, a list from the claimant of 165 "missing documents" – the parties were asked to seek to resolve any document issues during our reading in time on days 1 and 2, a separate pre-reading list from each party, a joint cast list, a chronology running to 7 pages with an 11-page supplemental chronology from the respondent. We asked on day one for a consolidated chronology and for the claimant to mark with either a tick or across whether the entries were agreed and this was given to the tribunal on day 3.

42. On day 6 the "missing documents" were introduced by the claimant. The respondent had no objection.

43. We took the majority of the morning on day 1 dealing with case management issues and had the remainder of day 1 and all of day 2 for tribunal reading.

44. On day 3 we were handed a list of issues drafted by the respondent and which the claimant confirmed was agreed; a list by the claimant of the legal obligations and criminal offences for the whistleblowing claim; a new bundle index from the respondent and from the respondent a schedule of the alleged protected disclosures.

45. We also had an agreed timetable which we originally imposed under Rule 45 of the Employment Tribunal Rules of Procedure 2013. As a result of being part heard we were given a revised timetable on 2 October 2019.

46. On day 4 the respondent introduced a document which was a Companies House search relating to Astor Chambers, the address given by the claimant in her witness statement as her professional address, being an address in Reading. As it was a document of public record we agreed to it being admitted at that late stage.

47. On day 11 from the respondent we were given an extract from the Bar Standards Board Handbook which we had requested and the Fair Recruitment Guide from the Bar Council. The claimant did not object to the introduction of these documents.

48. On day 18 the claimant introduced a letter from the Bar Standards Board dated 4 October 2018, six months after the first part of this tribunal hearing. It was a dismissal of the complaint against herself. The respondent said that it did not consider this letter relevant to the issues this tribunal had to consider. so did not take issue within its introduction. The claimant also introduced certain extracts from the Bar Standards Board Handbook. The respondent said that in its view it did not address a relevant point so had no issue with its introduction.

49. We had a bundle of 18 authorities from the respondent.

50. We had written submissions from both parties. All submissions were fully considered together with all authorities relied upon whether or not expressly referred to below.

**Adjournment on day 12**

51. On day 12, Tuesday 24 April 2018, the claimant was visibly unwell and at the start of the hearing day she applied for an adjournment on health grounds. We granted this ordering that by 12:00 the next day Wednesday 25 April 2018 she file medical evidence with a prognosis so that we could know whether any further hearing days could be utilised and/or whether to relist. No evidence was taken on 24 April 2018 although the tribunal was convened and dealt with the amendment application.

52. On 25 April 2018 the claimant submitted medical evidence and made an application for an adjournment which was granted in the light of that evidence. The case was therefore relisted for a further 8 days to include

tribunal deliberation time. These dates were in December 2018.

**A further application for an adjournment made in December 2018**

53. In early December 2018 the claimant made an application for a further adjournment on health grounds. This application was granted on 5 December 2018 by Employment Judge Wade.

54. A telephone case management hearing took place with the parties on 14 January 2019 before Employment Judge Elliott in order to deal with relisting the case. The claimant said that her medical advice was to the effect that she was likely to be fit to continue with the hearing, from about six to nine months forward. The parties were asked to submit non-availability dates and the case was relisted for ten days commencing on Tuesday 1 October 2019 to include time for the tribunal to read back in to the case, the completion of the witness evidence, submissions and tribunal deliberation time.

55. As at 24 April 2018 the claimant's evidence and all of her witnesses had been heard. There were about six remaining respondent witnesses heard in the resumed part of this hearing. The hearing resumed on Tuesday 1 October 2019 as day 13. Day 13 was a reading day for the tribunal to read back in to the documents after being part heard for 18 months. There was a misunderstanding as to whether day 14 was also a reading day. The claimant and counsel for the respondent appeared on day 14 without witnesses and explained their understanding that a further day was to be used as a reading day. Evidence recommenced on day 15, Thursday 3 October 2019.

**Application made on day 18, Tuesday 8 October 2019**

56. On the morning of 8 October 2019 (day 18) the claimant made an application on the basis that she wished to finish the evidence that day but said she was not feeling well enough to do submissions on Wednesday 9 October as planned and she wished to do written submission in six weeks time.

57. She submitted in support of this application a letter from a Head of Arts Therapies and Specialist Counselling who provides the claimant's counselling in Plymouth. This letter was prepared for the purposes of an appeal to the Department of Work and Pensions and was dated 19 August 2019. It was not contemporary with this hearing.

58. The claimant wanted more time to do her submissions. She said she initially thought of asking for 28 days but sought 6 weeks to tie in with her therapy sessions.

59. We asked the claimant if, as we had previously indicated, she had been working on her submissions as she went along. She said she had being doing so as far as she was able. She reminded the tribunal that she had

no notetaker.

60. We explained the difficulty with tribunal resourcing and that a delay of this nature would mean that this tribunal was unlikely to be in a position to deliberate this year. This was based on pressure on listings, Members' availability, the Judge's holiday arrangements and sitting commitments in another jurisdiction.

61. The respondent reminded the tribunal that the case had already been delayed for 18 months. The claim was issued on 26 January 2017 and was nearly three years old. The overriding objective meant that it should not be further delayed.

62. Both the claimant and the respondent spoke of the matter hanging over their heads. The respondent said that the impact on Mr Metzer had been great and there had been further press reporting on the matter that day.

63. The respondent said that as a trained barrister the claimant should be under no illusions as to what was required of her. We understood this to mean in relation to submissions. There had already been ample tribunal resources applied to this case and if submissions were not given in this time allocation, the additional days allocated (through to Monday 14 October 2019 inclusive) would be wasted.

64. We mentioned to the parties the dicta of Underhill LJ in ***Pimlico Plumbers Ltd v Smith 2017 IRLR 323*** in the Court of Appeal, final paragraph in relation to written submissions: "*In a complex and important case like the present one, that course is unsatisfactory, carries considerable risk and should be avoided if at all possible. It does not give the ET the opportunity to question and test the case of each side in the light of the evidence and to clarify submissions which are or appear to be inconsistent or unclear".* (We are of course aware that this case went to the Supreme Court, but it is this particular passage in the Court of Appeal which was relevant to this issue). Underhill LJ urged real caution when relying on written submissions alone, so this was by no means our preferred course.

65. We weighed three matters into our consideration. The position of the claimant, the position of the respondent and the interests of justice. We were naturally sympathetic to the claimant and her health position and the difficulties of being a litigant in person. This tribunal is accustomed to seeking to accommodate the needs of litigants in person and we appreciated that these proceedings were difficult for her.

66. We were also mindful of the considerable delays which were not in the interests of justice. It becomes harder for the tribunal to deliberate, the further away it is from the evidence and submissions. The matter also weighed heavily on the respondent and its key witnesses.

67. We were aware that the claimant had been working on her submissions as best she could and this would no doubt have included work on the

evidence taken in 2018 as well as October 2019. The submissions did not need to be perfect. They could be in note form and/or with bullet points.

68. In the light of the dicta of Underhill LJ in ***Pimlico Plumbers*** we took the view that in these exceptional circumstances and to assist the claimant, we agreed to take written submissions only and we did not insist on oral submissions. This enabled the claimant to return home to the southwest and not to return to the tribunal on day 19 for submissions.

69. We required written submissions by no later than 10am on Thursday 10 October so that the case could be concluded by the tribunal in its time allocation. This had the benefit in our view of bringing these tribunal proceedings to a conclusion so that both sides could have the closure that they sought.

70. If the claimant was unable to provide written submission by this time, we said we would deliberate in the absence of those submissions. In our experience not all claimants are able to present a submission or a submission that is of any great assistance to the tribunal but the opportunity was there. It was not in the interests of justice or the interests, in our view, of either party for this case to continue into 2020 which would be the situation if we granted the claimant's application in full. We granted the application to do written rather than oral submissions and we gave some additional time.

71. The claimant asked if we would extend this time further until close of business on 10 October 2019 (day 20). We said we could not further extend the time if we were to carry out the deliberations in the light of the submissions and we declined that request. It would lose a whole day of tribunal deliberation time.

## Findings of fact

72. The claimant is a barrister having been called to the Bar in 2004. She is female and describes herself as openly gay. At the material times she held two roles: she was a tenant in Goldsmith Chambers and also worked as the Chambers Manager. She was a member of the Family Group within Chambers, working in the field of family law but she rarely practised. The Head of Chambers is and was Mr Anthony Metzer QC. The Deputy Head of Chambers is and was Mr Dingle Clark. The Treasurer is and was Mr Adam Gersch.

73. The respondent company, Goldsmith Chambers (Services) Ltd, is a limited liability company and employs the employees of Goldsmith Chambers including the clerking team.

## Background – findings made by Employment Judge Welch

74. The background to this matter is set out in the decision of Employment Judge Welch, sent to the parties on 24 August 2017. We made it clear to

the parties on day 1 of this hearing that we considered ourselves bound by those findings of fact and we would not make fresh findings on these matters.

75. Simply for context and based on those earlier findings we record that the claimant joined Chambers in May 2014. It was a merger of Goldsmiths Chambers and Argent Chambers. The constitution of Goldsmiths Chambers provides that it is administered and managed by members of Chambers in a Chambers Management Committee to which we refer as the CMC.

76. The claimant was interviewed and appointed by the Head of Chambers Mr Metzer QC. He also initially offered to help her to make a Criminal Cases Review Commission application in relation to a case concerning the claimant's parents. Judge Welch found that the claimant was extremely grateful for this and that this bought such loyalty that the claimant would have done anything to assist him.

77. The claimant was co-opted onto the CMC in August 2014. She became Deputy Treasurer from 10 April 2015. She was a member of the CMC until 26 January 2017, the circumstances of which we deal with below.

78. The findings of Judge Welch were that the claimant had three phases of her working relationship with the respondent and these were:

a. 2014 during which she worked for free in Chambers but was a full rent paying member of Chambers.
b. 2015 during which she continued as a full rent paying member of Chambers but received an allowance in respect of her expenses due to the amount of time she spent in Chambers doing work for them; and
c. January 2016 onwards during which she was paid an amount of money each month for the work she carried out for Chambers.

79. In 2015 her role expanded into project management. Judge Welch found that the claimant spent a considerable amount of time working for the respondent on a voluntary basis. There were many conversations about her role and how this should be financed, which were not necessarily recorded in writing. Judge Welch made findings of fact as to the financial arrangements that were entered into.

80. There was a consultancy agreement entered into for six months from April 2016 to September 2016. In September 2016 it was extended for a month to 31 October 2016.

81. Judge Welch found that the claimant worked for the respondent on a daily basis under consultancy agreements from January 2016 until at least October 2016 and was paid in respect of this work (judgment paragraph 87b).

82. The claimant does not assert that she was a worker before January 2016

(judgment paragraph 77). The claimant was not an employee of the respondent.

**This tribunal's findings of fact**

83. The claimant was offered a tenancy at Argent Chambers on 1 May 2014, she joined Argent on 5 May 2014 and the merger with Goldsmith Chambers took place on 6 May 2014. She was only a member of Argent for one day, in common with three others who joined Goldsmith Chambers on that date.

84. The claimant said in her witness statement that she has been a "practising barrister" since 2014. She was called to the bar in 2004 but for reasons that are not relevant to these proceedings, she did not begin practising until 2014. Her area of practice is family law. The claimant has accepted very few instructions in the time under consideration in these proceedings, working predominantly on Chambers' administrative work. The claimant also has also had a political career in local government from 2000-2007.

85. The claimant accepted at the start of her evidence that the composition of Chambers was roughly 50/50 or 55/45 male to female and that the CMC had a roughly even composition male to female. She accepts that she was elected unopposed on to the CMC. She accepted that when she was recruited, her interviewers who included Mr Metzer, Mr Gersch, Mr Fitch-Holland and Ms Forbes were aware that she is a gay woman. She said that her sexuality is not something that she hides. On occasions her partner joined her at Chambers' social events. The claimant said she believed that around three of four members of Chambers "*would not describe themselves as heterosexual*".

86. The claimant described Ms Charlotte Proudman, who was appointed to Chambers in 2016, as their "*resident feminist*" and agreed that Ms Proudman was appointed to Chambers shortly after there had been a great deal of press attention surrounding her and views relating to issues of sexism. The claimant agreed that Ms Proudman is a "*vocal feminist*". This proved no barrier to Ms Proudman's appointment to Chambers.

87. The claimant initially said in oral evidence that she did not consider Mr Metzer to be homophobic but considered that he was sexist. She said: *"I don't believe that Mr Metzer is anti-gay. But I do believe that he is spiteful".* He knew her sexual orientation; she had attended Chambers events with her partner. The claimant accepted that the decision to suspend her from Chambers was in the first instance the decision of Mr Metzer and initially said in evidence that she did not believe that her sexuality was a factor in his decision. She also agreed in cross-examination that her expulsion from Chambers by Mr Metzer was not because she was gay but *"because it was convenient".*

88. After lunch on day 3 the claimant made a point of changing her evidence in relation to Mr Metzer saying she wanted to "*amend*" that evidence. The

claimant then said that she did not think he would have taken the action against her that he did, if she had been a straight male and therefore he must "*by definition*" be homophobic. We did not consider this change of evidence to be credible. We find that the change of evidence was, on a balance of probabilities, because the claimant realised over the lunch break that her original evidence undermined her case on direct sexual orientation discrimination. We accepted her original answers and not her changed evidence. The claimant did not put to Mr Metzer in cross-examination that he was homophobic or anti-gay. We find that the claimant did not and does not genuinely consider Mr Metzer to be homophobic or anti-gay. We find that he is not.

89. When the claimant joined Chambers she got to know Mr Metzer, the Head of Chambers, during the Legal London charity walk in May 2014. It is not in dispute that Mr Metzer offered to help the claimant with a Criminal Cases Review Commission application in relation to a historical case concerning her parents. Mr Metzer put the claimant in touch with people he thought could help her. The claimant was extremely grateful and initially was keen to help Mr Metzer and Chambers in any way she could.

90. Upon the merger with Argent Chambers, Mr Metzer had not realised the extent of the financial difficulties faced by Argent. He realised that there were serious issues with that Chambers' financial position with aged debt and ongoing arbitration with Argent members and dealings with creditors. Argent did not have its own Treasurer post-merger. Mr Adam Gersch became Treasurer of Goldsmith Chambers post-merger; he had not been the Treasurer of Argent. The claimant volunteered to help with administrative and financial matters arising from the merger with Argent.

91. In January 2015 the claimant began dealing with the outstanding matters relating to Argent Chambers which included the removal of furniture, lease severance, aged debt and debt collection.

<u>The Bell Yard premises</u>

92. It is not in dispute that the Bell Yard premises was left in a mess when vacated by Argent. They left furniture, rubbish and paperwork which the claimant, with colleagues, set about clearing.

93. On 7 April 2015 the claimant sent an email to Mr Adam Gersch regarding the sale of the furniture from Argent at 5 Bell Yard (page 884) in which she said: "*I will take eBay expenses and reasonable expenses from any sales. Monies to be paid into argent main account"*. The value of this second-hand furniture was low, around £350. There was no audit trail for the sale of the furniture or the expenses. Even though the sum was relatively low, the claimant did not keep a record for accounting purposes. No sum was ever paid into the Argent account and the claimant kept an unidentified sum in respect of her undocumented expenses.

<u>Cavendish Legal</u>

94. During the period July 2015 to April 2016 the claimant dealt with the matter of an outstanding fee owed by a firm of solicitors, Cavendish Legal, to a member of Chambers, Mr Jonathan Crystal. The outstanding fee was £4,500 + VAT; it was a legacy fee from Argent. The claimant agreed with the instructing solicitors to write off the fee, but Mr Crystal had not been involved in this agreement. He asked fees clerk Miss Ozalgan to deal with it for him. Mr Crystal was prepared to drop his fee to £2,000 + VAT. His revised fee note was at page 924.

95. In July 2015 the claimant emailed Mr Gersch as Treasurer and other senior members of Chambers regarding legacy fee issues between Cavendish Legal and Argent. In an email dated 23 July 2015 (page 645) she set up three options as to how she might try to deal with matters and was seeking permission. The third option was "*C. A cash incentive of £1000.00 repaid from Argent account to the equity partners as an act of good faith, whilst keeping in the spirit of paying Argent debt off".* Mr Gersch replied swiftly, within four minutes, saying in response to that option "*I believe it is unlawful/breach of BSB guidelines to pay solicitors whether by way of incentive or refund of fees or otherwise procure work through the use of cash incentives"* (page 645).

96. The claimant continued negotiating with the solicitors at Cavendish Legal, Ms Patel and Mr Brassey. The claimant accepted in evidence that she explained to Ms Patel that Mr Crystal would receive his fee of £2,000 + VAT but that in order for that to happen a sum of £1,000 would go in the first instance from the Argent account to Cavendish Legal. This was therefore a payment of £1,000 to the firm of solicitors to facilitate the payment of Mr Crystal's revised fee. Mr Crystal was not informed of this arrangement. The claimant had been told very clearly by Mr Gersch that he considered this unlawful and it should not happen.

97. The claimant instructed the fees clerk Miss Ozalgan to transfer £1,000 plus VAT from the Argent account and for Cavendish Legal to pay £2,000 plus VAT back to that account the next day. Miss Ozalgan said that the claimant told her that this had been authorised by Mr Gersch. It had not. On 20 April 2016 the claimant sent an email to Mr Brassey at Cavendish Legal saying *"Obviously it would all come through you. I would send £1k over tomorrow plus vat… you then send back £2k?"* (page 914).

98. The claimant sought to justify this by saying she was making the payment personally using her own bank account. We find that the advantage to her of this was that it would never appear in the Argent accounts and Mr Crystal and others would be none the wiser. They would simply see that Mr Crystal and been paid. The claimant herself accepted that this practice was "*highly unorthodox"* (her email 25 April 2016 to Miss Ozalgan page 941) and as "*extremely unorthodox"* (her long submission to undisclosed recipients on 21 November 2016, bundle page 1803 paragraph 28). She alleged that it was money owed to her by Argent in any event although the money was being paid by Goldsmith Chambers.

99. In an email to Mr Metzer and Mr Gersch on 25 April 2016 (page 941) the claimant stood by her decision to do this, saying it was her decision to take and that "*as a consequence there are no [I] more unexplored (sic) bombs that can effect GC [Goldsmith Chambers]".* This email was after the event.

100. Essentially the claimant agreed to pay money, the sum of £1,000, to Cavendish Legal to persuade them to settle Mr Crystal's fee of £2,000 + VAT. The claimant sought to justify this by saying that it was a commercial decision on her part to seek to prevent Cavendish Legal from suing. In his investigation report Mr Gardiner, to which we refer in more detail below, he found this to be the most serious act of misconduct which he found proven (his report, bundle page 176).

101. On our finding this was not just unorthodox. It was wrong and in breach of the Bar Standards Board Handbook upon which the claimant relied so heavily in these proceedings.

102. Based on her evidence we find that Miss Ozalgan was upset at having been asked to do this and told the claimant so at the time. She started to look for another job because she did not like the situation in which she had been placed. Ultimately she did not leave the respondent but we find that she was so unhappy about the situation, she contemplated leaving.

103. Miss Ozalgan later complained to Mr Metzer and Mr Gersch about this and we make further findings on it below.

<u>The business modelling report</u>

104. On 1 October 2015 the claimant was given the job title Chambers Business Development Chair.

105. On 3 November 2015 the claimant requested payment to herself of 12.5% of any saving she achieved when negotiating settlement on future repayment of Argent debts.

106. In November 2015 the claimant offered to prepare a paper for Chambers on to consider how it might operate as a business entity post-merger in the future. Goldsmith Chambers was considering becoming an LLP. She sent a proposal document to the CMC on 30 November 2015 (pages 710-711) with two proposals. The second proposal (page 711) was that she carry out a "*full business modelling exercise"* which she would do between 1 January and 31 March 2016 to be provided to the 2016 AGM. This included a consultancy fee for herself of £17,000 + VAT.

107. The claimant invoiced for this on 21 December 2015 (page 732-733) in which she said that the business plan was to be provided to the AGM in mid-March 2016.

108. It is not in dispute that the claimant never provided this business modelling

report to the respondent despite having invoiced and been paid for it.

The overclaimed invoice of 31 August 2016

109. The consultancy fee agreed for the claimant for the period April to September 2016 was £5,000 per month. This was approved by the CMC on 29 March 2016.

110. On 31 August 2016 the claimant tendered an invoice to Chambers in the sum of £7,200 + VAT (page 1274) which she said was "*To be paid by 1 September 2016*". The claimant was aware that the maximum amount she was entitled to invoice under the terms of her consultancy agreement was £5,000 + VAT which makes a total of £6,000. The claimant accepts that she was paid £7,200 plus VAT, a total of £8,640.

111. The claimant said that part of this was due to "*confusion*" around the arrangement for payment of Ms Rebecca Metzer through the claimant's consultancy arrangement. This only accounts for the sum of £600 and did not attract VAT. There was no reference to Ms Metzer in the invoice. The claimant also said that invoicing "*plus VAT*" was a "*typo*". The claimant said that the remainder invoiced, over and above £5,000 was due to an agreement with Mr Metzer.

112. In an email dated 29 August 2016, page 1271, claimant said she was in the process of finishing "*the baseline document doc GC*" and referred to her next consultancy agreement. She said: "*on that basis I ask that I am paid my previously agreed amount this month, and we extend the current arrangement temporarily until after the CMC*" and "*So to be clear…. I am asking that you authorise my continued presence until the next phase can be agreed at the CMC on the old rates? I will be putting an invoicing as usual tomorrow for the month. To put this simply no spondula, no work!"* Mr Metzer replied: "*Happy to agree this pro tem until the next CMC".* The claimant maintained in evidence that she did not know what "*pro tem*" meant because she did not study Latin and went to an "*ordinary school*" and an "*ordinary university*". We find that it is not difficult expression which is understood by many who have not studied Latin or law, or even been to university and coupled with the words "*until the next CMC*" we find it's meaning was obvious to the claimant.

113. There is such a large discrepancy between the £5,000 + VAT (£6,000) and the amount billed of £7,200 that we find it hard to believe that this was merely a typo. The £600 purportedly in issue for Ms Metzer does not account for it. We find that the claimant was overcharging the respondent which to date £1,920 of which has not been repaid.

114. In his report, Mr Gardiner found (paragraph 156, bundle page 208) that this was a negotiating tactic geared towards a future consultancy agreement rather than, as the claimant claimed, as the result of a verbal agreement with Mr Metzer. Mr Gardiner found that had the respondent paid this, she would have used it as grounds for arguing that the same

rate should apply to future months.

The claiming of expenses

115. It was the claimant who brought in an expenses policy and introduced the expenses claim form. She was also the Deputy Treasurer and we find that she fully understood the expenses claiming process which required a counter signature. The claimant routinely claimed expenses which were not countersigned. She sought to excuse this by saying that sometimes Mr Gersch was not in Chambers to countersign. As with her invoices, which she wanted paying by the very next day, the claimant wanted her expenses paying immediately. We find that there is no good reason why she could not have waited for Mr Gersch or Mr Metzer or another senior member of the CMC to be in Chambers to countersign her expenses claim.

116. The claimant submitted her expenses claims (an example was at page 1386) to Ms Ashley Perkins, the Chambers administrator whom she line-managed. The claimant did not accept that her method of claiming expenses was a system "*rife for abuse*".

117. There is no suggestion that the claimant was fraudulently claiming her expenses. She nevertheless encouraged Ms Perkins to make immediate payments to her despite the lack of any counter signature and we find in this respect she was in breach of the policy which she herself had introduced. The expenses claim form (example page 2421) has a section included for authorisation and countersignature.

118. Under her 2016 consultancy agreement the claimant accepted that when adding up all the figures and taking account of the fact that she had no responsibility for paying 13% in clerks' fees, she was earning the equivalent of around £72,000 per annum plus anything she might earn from fees from practising as a barrister.

Staff, interns and recruitment

119. The claimant had responsibility for hiring work experience students and interns and short-term member of staff. In an email of 29 February 2016 we saw an example of the claimant giving a "*heads up*" to Mr Metzer and Mr Gersch on the three interns they had starting over the next seven months. They were Jasmine Theilgaard, Joseph Benedyck and Jonathan Yates. Mr Yates was recruited by the claimant in Plymouth and he never once set foot in Chambers. The claimant said he would be assisting her in creating a guide to the BSB Handbook for staff and tenants and would also be looking at the staff handbook.

120. On 26 March 2016 the claimant gave a further "*heads up*" that she was going to draft an intern hiring policy for Chambers (page 865). She said that the next two (interns) that Mr Metzer had arranged would need to be the last from that stream. She praised the skills of her recruit Mr Yates. We saw no details of the recruitment procedure relating to him other than

the claimant saying she got him through Plymouth Law School. The claimant accepted that it was she who had the connections in Plymouth. Until the email of 29 February 2016 no-one else in Chambers knew about this "*immediate starter*" Mr Yates. No-one else in Chambers ever met him or interviewed him.

121. In about March 2016 the claimant asked members of Chambers if they knew anyone who might be interested in becoming an intern. This request of itself encouraged members of Chambers to put forward people they knew and would be closely connected to. Mr Metzer suggested four people: his daughters Rebecca and Anya Metzer, his nephew Samson and one of his daughter's friends named Freya Moffatt. Another member of Chambers, Mr Andrew Fitch-Holland suggested his partner's son Mr George Bull. These prospective applicants submitted their CV's to the claimant. In every case, even if they were family members of members of Chambers, they were always required to submit their CV or to contact the claimant who carried out the "hiring" which she did based on whether there was work available for them to do and funds available to pay them. It was the claimant who engaged the interns and it was not done by the members of Chambers independently.

122. The claimant's evidence in relation to George Bull was that he *"…ended up in the clerk's room. He was actually very good*". We saw her emails to him of 19 March 2016 saying "*it is my intention to try and fit you in. I just need to work out the money at the moment"* and 8 April 2016 (page 889) telling him she would "*get [him] in somehow".* It was she who dealt with his recruitment.

123. In relation to Samson, the claimant said in a lengthy email to Mr Metzer on 26 September 2016 (page 1397) "*Sam is of course welcome and protected. Please can I ask you not to advertise the fact that he is your nephew. That is not hiding the fact, it is just not rubbing it in people's faces who are contributing to his expenses. I will have work for him, but not yet."* She had complete control over this recruitment process, she was the gatekeeper. Mr Metzer pointed his colleagues to the claimant if they knew of anyone who was interested in a work placement (email page 1372).

124. The claimant's own evidence was that in the case of Anya Metzer, who worked for Chambers for five weeks in August 2015, it worked well and "*could be justified*" (claimant's witness statement paragraph 29). The claimant went as far as to say that "*it worked perfectly*" and in oral evidence said it was "*perfectly appropriate".* There was lots of work to be done and the claimant said she was "*fighting fires"* and "*spinning plates*". She said that Ms Anya Metzer had some free time and helped them under the circumstances. The claimant had told Mr Metzer that they needed some help and he suggested his daughter, to which the claimant readily agreed. Ms Anya Metzer, along with other interns, was paid £250 per week.

125. At the end of 2015 the claimant recruited Anya Metzer's friend Freya

Moffatt, on the recommendation of Ms A Metzer (see claimant's email page 2367). The claimant described Ms Moffatt as "*extremely helpful*" in dealing with some very basic tasks including a clear-out of unwanted items in the building.

126. At the beginning of September 2015 the claimant had recruited a junior clerk to fill a vacancy, but the candidate withdrew at the last minute. The claimant accepts that she asked Chambers' member Mrs Ong's husband Mr Coulter if he knew anyone who might be suitable to fill the gap. When Mr Coulter suggested his step-son (Mrs Ong's son Rupert) the claimant asked for his contact information. The claimant accepts that she approached Rupert, she said it was "*because we were desperate".* She told the tribunal that she thought he was a "*really, really good fit".*

127. Rupert worked in the clerks' room for about four weeks and was paid the same as the other interns, at £250 per week. The claimant considered Rupert's position to be different to other interns or those on work placements because he was "*a short-term gap filler*" although we find there was no distinction in the manner in which he was recruited or engaged. He was quite clearly recruited by the claimant in the full knowledge that he was a family member of a member of Chambers. There was no other way in which he knew about the role. The claimant did not suggest to anyone at the time, that this might be an improper method of recruitment. It suited her needs.

128. The claimant was asked if she considered that the recruitment of Rupert was a breach of a legal obligation. She said no, "*because of intention".* The Judge asked what this intention was and the claimant replied: *"it was never my intention to do it long term".* The claimant considered that the recruitment of Anya Metzer and Rupert was justified "*on the basis of need"* but the others were more difficult to justify. The claimant saw no difficulty with those members of Chambers' families who were recruited by her in 2015.

129. It was the claimant's witness Mr Simon Sherriff who initially complained about the use of interns. His evidence was that in November 2015 his pupil brought to his attention that Freya Moffatt was a friend of Mr Metzer's daughter. We had no evidence that he complained about this until 12 September 2016 in a number of emails when he asked to be given names of every work-placement individual. He believed that he might be a lone voice on this issue, for example in his email to Mr Metzer and Chambers on 12 September 2016 at page 1369 he said: "*I may stand alone on this issue…".* He made the point in his emails that those on work placements would gain valuable experience for the benefit of their CVs.

130. It was the claimant who drafted a very articulate response for Mr Metzer to send to Mr Sheriff. Amongst other things she accepted that there was a gap in their policies regarding work placements. This, on our finding, is a matter on which she held the responsibility, having previously offered to draft such a policy. We saw her draft email sent to Mr Metzer at page

1375. He thought it read very well and only made minor changes. It was defensive of the respondent's practices on the recruitment of interns. Ironically as it transpired, as will be seen from our findings below, the draft prepared by the claimant asked Mr Sherriff to communicate with Mr Metzer alone and not with all barristers saying: "*I have responded to all barristers, as that was how you chose to send your email, perhaps unfortunately. If any other member has any questions, could you also please send them to me alone. I really hate having conversations in this way"*.

131. It was at around this time, in mid-September 2016, that the claimant went with Mr Sherriff one evening to a pub in the Waterloo area. Mr Sherriff accepts that his relationship with the claimant changed from this point and their positions became aligned on the intern issue. Mr Sherriff also had his own dispute with Mr Coulter and took issue with the recruitment of his stepson on a work placement. From this point the claimant joined forces with Mr Sherriff.

132. In January 2016 Ms Rebecca Metzer worked with the claimant for a week. The claimant did not take kindly to Ms Metzer saying "*she came across as if manual labour was beneath her"* when she was asked to move some boxes. This was in contrast to her sister Anya, with whom the claimant said she "*struck up a good friendship"* (claimant's email at page 1399).

133. In mid-June 2016 the claimant was asked by another member of chambers, Ms Sethi, whether her daughter could do some work experience for a week in July. The claimant said that this was where she was drawing the line and thereafter she was going to ask that no family members of tenants be given any special treatment including acquaintances (email page 1014). The claimant relied upon this email as a protected disclosure (number 19). Mr Metzer responded saying "*OK*" but that that was a shame because his daughter Anya may be interested in further work. He fully accepted the position. He did not press for his daughter to be further engaged. For Anya Metzer the claimant said (page 1014):

> "*I could always pay her via my consultancy?!?!? Thus she works for me and not Chambers. I could just increase my contract for that month?!? As I said, you and I both know how invaluable Anya was. The problem is appearances, not reality"*

134. This was the claimant actively offering to engage Mr Metzer's daughter outside any formal recruitment process because she thought it was just a question of appearances and not "*reality*". She was in full agreement and the architect of the recruitment of family members of chambers. As we have found above, she was the gatekeeper. Subsequently for the purpose of these proceedings she relied upon anything she said about this recruitment practice as a protected disclosure.

135. The claimant said she believed Ms Sethi's daughter came on work experience. She did not do anything to prevent this, despite the strong views she now expresses on the matter.

136. The claimant considered that the recruitment of Anya Metzer, Rupert, George Bull and Jonathan Yates was justified "*on the basis of need*" but by 2016 her view was that it was all highly irregular and illegal. We did not follow the claimant's reasoning that somehow "*need*" justifies a lax recruitment process but otherwise it can be criticised. The claimant was the Equality and Diversity Officer but sought to distance herself from this and park the responsibility at the door of her witness Mr Mitchell who was the Compliance Officer.

137. None of these "internships" were to carry out legal work. They were not quasi-pupillages or mini-pupillages. The work was largely of an administrative nature, "*stuffing envelopes"* as Mr Clark put it, meaning sending bills and reminders to solicitors and the Legal Aid Board, moving books, doing deliveries and other fairly low grade administrative work. It was not "*glamorous"* work according to Mr Clark. Rebecca Metzer was asked by the claimant to move some boxes and Ms Moffatt had been utilised to clear some unwanted items from the building.

138. We find that the claimant was in full agreement with the practice, she was the gatekeeper, she controlled it and it was only when her relationship with the respondent deteriorated that it became a matter of protected disclosures and protected acts.

Mr Fatos Selita

139. The claimant's evidence was that in about June or July 2016 she had concerns about a tenancy application made by Mr Fatos Selita, a barrister and academic. Ms Catherine Milsom is and was the Head of Pupillage and Tenancy. It is not in dispute that Mr Selita was a personal contact of Mr Metzer and he recommended Mr Selita to the tenancy recruitment panel. Mr Metzer is not a member of that panel, but is permitted to make his views known to the panel. The panel went against Mr Metzer's views and did not recruit Mr Selita. On Ms Milsom's evidence we find that one of the reasons he was not selected was because he did not demonstrate sufficient commitment to doing work in the Magistrates' Courts which was an important part of pupillage.

140. Mr Metzer was naturally disappointed by the panel's decision. There is a dispute as to whether he asked the panel to review their decision. Ms Milsom's evidence and Mr Metzer's own evidence was that he did not. The claimant's evidence was that Mr Metzer was "*incandescent*" and "*instructed*" her to speak to the panel. She did not cross-examine him about this. We find on a balance of probabilities, on the evidence of Mr Metzer and Ms Milsom, that he did not instruct the panel to review their decision. He accepted it, although he was disappointed by it.

141. The claimant complains that Mr Selita spoke to her at the Middle Temple Garden Party in July 2016 and told her that Mr Metzer had asked him to introduce himself. We did not hear from Mr Selita. The claimant said she told Mr Selita that there was a process.

142. Mr Metzer suggested to Mr Selita that he reapply for a sponsored pupillage (page 1309). We were told that such an arrangement falls outside the Bar Standard Board Guidelines. Mr Metzer copied the claimant in to the email exchange and suggested that Mr Selita should meet with himself and the claimant. The claimant considered this wholly improper and her case was that Mr Metzer was seeking to circumvent the recruitment panel. The tribunal asked the claimant whether, in generic terms, she saw anything wrong with someone reapplying to an organisation when they had previously been unsuccessful. She did not in principle and after being pressed on the point she accepted that her partner Ms Helen Newbold, secured a place in Chambers upon her second application.

143. Mr Selita was not successful in securing a sponsored pupillage. Our finding is that the matter went no further. Mr Metzer put his candidate forward, the candidate was not selected.

144. It was not put to Mr Metzer in cross examination that he asked the interview panel to change their minds about Mr Selita or that he exercised pressure to have his choice of candidate selected. Nor were any of the alleged oral protected disclosures on the matter (numbers 27, 30, 31, 32 or 33) put to Mr Metzer in cross-examination. We find as a fact that these alleged disclosures were not made.

Pupil Mr Richard Bottomley and Home Office work

145. In late 2015 an immigration group of barristers from Mansfield Chambers joined Goldsmith Chambers. One of the existing pupils in Goldsmith Chambers, Mr Richard Bottomley, expressed to his pupil supervisor Mrs Ong, an interest in doing some immigration work. It appears, unbeknown to Mr Bottomley, that the immigration work had been red circled for the group from Mansfield Chambers and there was much discontent among them that Mr Bottomley had been given some Home Office immigration work.

146. The claimant agreed to investigate how this came about. The claimant was on the CMC when the Mansfield group joined Chambers, although she denied knowledge of the terms upon which this group joined. In mid-July 2016 there was a lengthy exchange of email correspondence between the claimant and Mrs Ong in which, amongst other things, the claimant queried whether Mrs Ong was a suitable person to supervise Mr Bottomley on this work. Mrs Ong suggested to the claimant that her investigation centred on those members of the CMC who may have been told of the Mansfield immigration group policy. She said the situation would not have arisen if she had been consulted at the outset (page 1057).

147. Both Mr Bottomley and Mrs Ong were upset about the matter because Mr Bottomley had been put in the position of being unable to carry out Home Office work that he had done for a short period and was keen to continue. The former Mansfield members were doing immigration work for individual

clients, rather than the Home Office. The correspondence between the claimant and Mrs Ong became acrimonious.

148. What the claimant had not told Mrs Ong, was that it was she who on 3 June 2016 had presented to Mr Bottomley and another pupil, the opportunity of some Home Office work. We saw at page 1080 an email from a Team Leader at the Home Office seeking expressions of interest from junior barristers wishing to represent the Secretary of State at Immigration Appeal hearings in Manchester. The claimant, who was on holiday at the time, sent this within less than an hour of its receipt, to both pupils saying: "*Have you two seen this?"* (page 1081). Mr Bottomley replied that he had not but that it looked interesting and he thanked the claimant for sending it.

149. The claimant was not forthcoming with Mrs Ong as to how this arrangement had come about. She sought to excuse herself by saying that she had been on holiday at the time of the Home Office email and had not looked at it closely. We find given the speed with which she replied that despite being on holiday, she was still taking a close interest in what was going on in Chambers and we do not accept that she did not know what this was about. The email from the Home Office Team Leader was short and clear.

150. Mr Bottomley thanked the claimant for sending it and she replied within four minutes: *"Glad to have been of service…."* (page 1088). We find she knew exactly what it was about.

151. On 5 September 2016 Mrs Ong lodged a formal grievance complaint against the claimant relating to this matter (pages 1324 to 1343). The claimant was informed of this by email on 6 September 2016 (page 1344).

152. The claimant's case in relation to her protected disclosures (number 37 in Appendix 1 below) was that on 7 September 2016 Mr Metzer allowed Mr Coulter "*to ritually humiliate me"* orally, using phrases such as *"stupid*" in close connection with the word "*woman*". The claimant said this was not the first time that she had raised concerns about Mr Coulter and his temper and his attitude towards women and gay people. The claimant did not put this allegation to Mr Coulter in cross-examination and counsel for the respondent raised this when the claimant said she had no further questions for Mr Coulter. The claimant was reminded that it was necessary to put her case to witnesses and challenge their evidence. She confirmed she had no further questions for Mr Coulter. The claimant did not cross-examine Mr Metzer on the issue or give evidence in chief on this alleged protected disclosure. We find that it was not made.

153. Mr Coulter admitted in evidence that he had once used the word "*catamite*" in relation to Ms Goodall, but not the claimant. This was in an email to the CMC on 15 December 2016 (page 2107). Mr Coulter denied using it towards the claimant but it was used of Ms Goodall describing her as the claimant's catamite. The use of the term catamite was not relied upon in

these proceedings by the claimant in that it did not form part of the list of issues.

Financial matters

154. We have found above that the claimant invoiced in the sum of £7,200 + VAT (total £8,640) on 31 August 2016, without an explanation (invoice at 1274) and in the knowledge that the amount she was entitled to invoice under the terms of her consultancy agreement was £5,000 + VAT (total £6,000). She explained part of this, £600 to which she had added VAT, as a payment through her consultancy agreement, to Ms Rebecca Metzer as an intern. The claimant's invoice was paid and she was therefore paid £1,920 more than that to which she was entitled. Mr Gardiner in his report (page 176) also found that the claimant was overpaid by £1,920. We have found above that she overcharged the respondent. The claimant alleged that she charged this amount as a result of a verbal agreement with Mr Metzer but she did not put this to him in cross-examination. We find that there was no such verbal agreement. As we have set out above Mr Gardiner found this was a negotiating tactic geared towards a future consultancy agreement.

155. Mr Gersch as Treasurer was concerned that the claimant had charged £17,000 + VAT in December 2015 for a business modelling report that had never been produced, whether for the AGM in March 2016 as agreed, or at all. The claimant had agreed to produce this report for the 2016 AGM. She invoiced for it, she was paid. It is not in dispute that it was never provided and to this extent she has been overpaid by £17,000 + VAT (total £20,400). In his report, Mr Gardiner said that he understood that substantial work had been done on the report so it should not be time consuming for the claimant to finalise it and send it to the CMC. To date this has not happened. We find the claimant has received a very substantial payment for something she has not produced.

Resignation and retraction

156. The claimant tendered her resignation on 22 September 2016 (page 1401). She was on holiday at the time in Gran Canaria. The background to the resignation was that the claimant telephoned Mr Metzer on that date to say that the Chambers' email system had crashed and the claimant placed the blame for this at the door of Mr Metzer's daughter Rebecca, who had been on a placement. Mr Metzer was defensive of his daughter who had not been in Chambers on 22 September because she was in hospital. This conversation was a watershed moment in the relationship between the claimant and Mr Metzer. Their relationship did not recover after this date. He no longer wished to have any sort of personal relationship with her, but was content to continue a professional relationship.

157. The claimant placed a call to Ms Rebecca Metzer and on the claimant's case, told her that her father should not speak to her (the claimant) like

that. We find that this phone-call was unprofessional and the claimant should not have involved a short-term intern in her disagreement with the Head of Chambers, regardless of the relationships. The resignation email said:

> *It is with regret that I wish to tender my resignation from Goldsmith Chambers. I will continue in my current duties until 22.1.17… If you wish me to stop prior to this date just say. I am happy to keep this to myself for the meantime if that is helpful. I will see your the hearing [sic]*

158. The claimant's evidence which we accept and find is that she resigned by email whilst on holiday in Gran Canaria. Her own witness Ms Gilmore's evidence was that the claimant had expressed an intention to resign prior to going on holiday to Gran Canaria. This conversation took place in Ms Gilmore's house prior to the claimant's holiday. We find that prior to the telephone conversation with Mr Metzer on 22 September the claimant was already feeling dissatisfied with working in Chambers.

159. On Monday 26 September 2016 Mr Metzer replied "*Is this a resignation from your responsibilities as business operations manager and/or as a member of chambers? Is it your intention to resign from the CMC at all by the next meeting*?" (page 1400). Within a matter of eight minutes, the claimant responded by saying "*I have withdrawn my resignation in total*." The respondent accepted this position and did not seek to rely upon the effectiveness of the earlier resignation.

160. Between 22 and 26 September 2016 a number of telephone conversations took place between the claimant and Mr Gersch. The claimant's case is that he was seeking to persuade her to withdraw her resignation and his evidence was that he received a number of agitated phone calls from her. He said he was trying to placate her and calm her down.

161. The hearing to which the claimant referred in her resignation email, was in the Central London County Court, small claims track, in a claim being defended by Mr Metzer in relation to Argent Chambers debt. The claimant was very angry that she was required to fly back from her holiday in Gran Canaria to give evidence at the hearing. The trip was one she had booked many months before and she was aware of the hearing date. As often happens in litigation, there had been an expectation that this claim would settle, but it did not. This meant that the claimant was required to give evidence. No postponement was sought on grounds of her non-availability overseas.

162. The claimant was persuaded by Mr Gersch to retract her resignation. Her case is that she was encouraged to withdraw her resignation to give the respondent the opportunity to "*discredit the protected disclosures that she had been making*" (statement paragraph 48). The claimant also contends that the reason she was so persuaded by Mr Gersch was so that her evidence could be secured at the Central London County Court hearing. We do not accept this reason as we find that this could have been dealt with by means of a witness order in conjunction, if necessary, with an

application for a postponement, if she was a key witness, overseas and no longer cooperating. The resignation email could have formed part of the paperwork for that application.

163. Had the respondent been keen to part company with the claimant because of her sexuality or her gender or because of any disclosures made prior to this date, this was their ideal opportunity. There was no need to persuade her to remain. We find that at that point, they valued the job that she was doing and this is why they sought to persuade her to stay. They did not need to ensure that she stayed so that they could "*discredit*" any disclosures that she had previously made. It is not realistic to suggest that they persuaded her to stay just so they could build up a case against her.

164. The disclosures made prior to the claimant's resignation on 22 September 2016 as per Appendix 1 below are those numbered: 1, 17-20, 22 and 27-37. This includes all of the disclosures in the third category relating to Mr Selita and more than half of those relating to the recruitment of family members. We find that none of those disclosures were causative of any of the matters the claimant relied upon prior to that date. Had the respondent wished to part company with her because of those disclosures they had the perfect opportunity to take the resignation at face value and not to seek to persuade her to stay. Disclosure 23 was said to be on 26 September 2016, the date upon which she retracted her resignation. The same applies to disclosure 23.

Legal Cheek

165. On 17 October 2016 the on-line legal publication Legal Cheek sent an email to Chambers putting them on notice to the fact that they intended to publish a story regarding Chambers' use of family and friends as interns and work experience students. The email went to the clerks' email address and Senior Clerk Mr John Francis forwarded it to Mr Metzer. As it concerned Mr Metzer's family members, Mr Francis thought Mr Metzer should be aware of it. One of the matters that struck Mr Francis was the reference by Legal Cheek to one of the interns named Samson, who had only been known as "*Sam*" within Chambers and he considered it was a leak to Legal Cheek from the inside. Mr Francis told Mr Metzer that to his knowledge, only two other people knew "*Sam's*" full name was Samson and they were the claimant and Ashley (Ms Perkins). Mr Francis (rightly as it turned out) suspected the claimant.

166. The Legal Cheek email was also sent to Mrs Ong whose son Rupert was on a work placement in the clerks' room. The timing of this was not good for Mrs Ong because she was standing for election to the Bar Council and voting was on 19 October 2016.

167. Until day 4 of this hearing, the source of the information to Legal Cheek had been a mystery for 18 months. The claimant had continually and forcefully denied being the source. In cross-examination she admitted for the first time that she was the source of the story. She admitted that she

told Legal Cheek that internships were being "*misused*" by Chambers.

168. She did not mention this in her witness statement in these proceedings or when interviewed by Mr Gardiner within his investigation in December 2016 when she was interviewed three times. When asked if she spoke to Legal Cheek before they wrote to Mr Metzer and Mrs Ong, the claimant said she was "*not sure about that*". We find that she was absolutely sure that she had done so. The claimant also had the benefit of finding from Mr Gardiner that she had not been responsible for the leak to Legal Cheek, when she had spoken directly to the journalist. We find she misled Mr Gardiner and did nothing to correct the finding that was beneficial towards her and incorrect.

169. What the claimant said, at paragraph 60 of her witness statement in relation to a meeting on 20 October 2016, was: "*AMQC [Mr Metzer] accused me of ….. leaking stories about him to Legal Cheek. I was slightly confused about the Legal Cheek question …… I told AMQC that I had no idea what he was talking about regarding Legal Cheek*". We find that the claimant was not remotely confused about this issue and had a very clear idea of what Mr Metzer was talking about. She knew full well that it was she who had spoken to this publication, described by counsel for the respondent as the "*legal gutter press*" and accepted by the claimant as being "*bad, but not that bad*". This did not prevent her from saying she was shocked at the suggestion and from threatening action against anyone who repeated such an allegation (her email to Mr Metzer and Mr Gersch at 23:55 hours on 20 October 2016 page 2383 point 1).

170. We find that the claimant lied about the matter and was deceptive.

171. The claimant tried to play down the significance of this by saying that Legal Cheek is not really read outside London and had a small readership. It is an online publication and we find that anyone searching for Goldsmith Chambers, for example on Google, may have discovered the story, had it been published. This could have included solicitors doing their research with a view to placing instructions with Chambers. It had the potential to be damaging for Chambers and its reputation and to Mr Metzer personally as Head of Chambers.

<u>The work experience policy</u>

172. Late on the evening of 17 October 2016 (at 10:23pm) Mr van Dellen gave instructions to Ms Goodall to upload on to the careers section of the Chambers' website a work experience policy dealing with mini-pupillages. This was, on our finding, the respondent seeking to limit any damage that might be done by the publication of a story in Legal Cheek (email at page 1536). Ms Goodall received that instruction when she came into work on the morning of Tuesday 18 October 2016. At 09:19 hours she sent an email to Dr van Dellen saying that she had uploaded the policy, she attached the link and copied the claimant as her line manager.

173. At 9:41am the claimant sent an email to Ms Goodall copied to Dr van Dellen saying: "*Could you possibly take down the current policy that you put up this morning regarding the work place policy. We actually have no policy at the moment. This was an oversight on the CMC part. We will vote and then give you the policy to put up."*

174. At 9:43am Dr van Dellen replied to the claimant and Ms Goodall "*This was a direct instruction from Tony [Metzer]. Please do not take it down. Karen, please liaise directly with him.*" (page 1540).

175. At 09:50am Ms Goodall replied: "*Dear Karen I have removed as instructed".* The instruction given to Ms Goodall by her employer via Dr van Dellen, was not to take down the policy. Ms Goodall disobeyed that instruction from the Secretary of the CMC having been told that it came as a direct instruction from the Head of Chambers and deferred to the claimant by preferring her instructions and taking down the policy. It was clear from Dr van Dellen's email at 9:43am that if there was any issue over the matter the claimant was to take this up directly with Mr Metzer as Head of Chambers.

176. Ms Goodall accepted in evidence that putting up a policy on the website was a sensible step for the respondent to take to seek to limit the potential fall out if Legal Cheek were to publish their story. She agreed that this could dissuade them from publishing the story at all. She also accepted that it could have been damaging to Mrs Ong whom she knew was imminently standing for election to the Bar Council as the Equality and Diversity officer. Despite this she actively disobeyed a lawful and reasonable management instruction from the most senior members of the CMC. We find that she was doing so at the claimant's bidding.

177. Ms Goodall also then began covertly recording a voicemail message from Mr Metzer and in-person conversations with Mr Metzer and senior clerk Mr Francis. She said that she had engaged in this sort of behaviour before, by making covert recordings with previous employers. We do not condone such a practice and find it distasteful and undermining of the employment relationship.

178. Ms Goodall, who at the time she gave evidence had her own employment tribunal claim against the respondent, said that she was doing this to "*protect herself*". It took some time in her evidence before she was able to clarify exactly what it was she was protecting herself from. She eventually said it was from potential disciplinary action. It was not clear to us why she thought she would risk disciplinary action if she was acting on the written instructions of senior members of the CMC.

179. The claimant's explanation for telling Ms Goodall to take down the policy was because the policy had to go to the CMC for approval on 27 October 2016 and she thought it was a "*mistake"* to upload it on 18 October. Ms Goodall endorsed this reasoning in her own evidence although we find that she was insufficiently senior within the organisation to make that

decision for herself and she was following the claimant's line.

180. The claimant said in a text message to Mr Metzer on 18 October 2016 "*I presume that the nonsense with the policy this morning is about those journalists sniffing. Just ignore it. I did when one tried to make contact yesterday."* (page 1544). First of all, it is and was completely untrue that the claimant ignored the journalists, it was she who gave them the story. Secondly, she knew exactly what it was about, namely the recruitment of interns so it was directly related to the policy. The publication of the policy on the website was an attempt by the respondent to protect the reputation of Chambers in the event that the story emerged. We find that the action of the claimant was aimed at adding fuel to the story and encouraging publication. It was deliberate and disloyal to the organisation and the individuals she alleges she was seeking to protect.

181. We find the argument that the policy had not received the vote of the CMC was a convenient excuse for the claimant's actions. There was nothing to stop the policy being approved and/or amended at a subsequent CMC meeting a few days later. We do not agree with Mr Gardiner in this respect as his evidence was that it should have gone to the CMC first. We did not see an evidential basis for this.

182. Both Mrs Ong and Mr Metzer wrote to Legal Cheek and ultimately they made a decision not to publish.

183. Once the claimant had been suspended she repeated this untruth in a number of separate emails in November 2016, to all members of the CMC, to the Directors of the respondent and to the whole of Chambers and also to Mr Gardiner within his investigation. The claimant admits that she did so and she also has the benefit of an erroneous finding from Mr Gardiner that she was not responsible for the leak.

184. In tribunal questions we asked her whether she considered what was said in paragraph 60 of her witness statement (quoted above) to be truthful? She said that it was truthful in that it was what she said to Mr Metzer. Although this is correct on a clinical and technical basis, we find that it severely stretched the boundaries of truthfulness because what the claimant did was to accurately report the lie that she told. On our finding it amounts to sophistry. The claimant said that if she had not lied about it, the disclosures to Legal Cheek would have formed part of her protected disclosures.

185. By way of example, the claimant blatantly lied about this to the whole of the CMC in an email dated 2 November 2016, at page 1701, when she said: "*It occurred to me this morning what Tony [Mr Metzer] is being driven by. He thinks I went to legal cheek. <u>I did not. I never leaked any information about his 'dodgy' use of interns.</u> I also have done nothing else. Looking back at the meeting in 20th October, it is clear that he is obsessed with this fact. I think that the investigation that he wants is into who leaked his behaviour*." (our underlining).

Allegations of sexism on the part of Mr Metzer and Mr Gersch

186. The claimant alleged that Mr Metzer demonstrated that he is sexist because he said that he thought female counsel should be referred to as Ms, unless they specifically said otherwise. The claimant objected strongly to this (email 9 September 2016 page 1356) saying that she was "Miss" and refused to be "Ms". The claimant said that women must be enabled to title themselves as they see fit and it was not for any man to tell them otherwise.

187. The background to this was Mr Metzer asking Ms Goodall to refer to barristers on the website as either *Mr X* or *Miss/Ms Y* (page 1357) instead of using first names. We could find nothing sexist or discriminatory about this. Mr Metzer specifically gave the option for women to use either Ms or Miss, but said he thought female counsel should be Ms unless they specifically said otherwise. Ms Goodall in evidence said that she preferred the title Ms as this did not denote marital status. We find that the term Ms achieves this aim of disassociating women from their marital status and it is not sexist. We can find nothing from which to draw any adverse inference of sex discrimination from Mr Metzer's views in this respect. He was completely open to any woman wishing to use the title Miss if she wished to do so.

The claimant's suspension and expulsion

188. The claimant's consultancy agreement was due to expire at the end of October 2016. Mr Metzer convened a subcommittee to consider whether it should be renewed. There were four members of the subcommittee: Mr Dingle Clark, Dr Anton van Dellen, Ms Catherine Milsom and Mr Adam Gersch. The members of the subcommittee were all senior members of the CMC. The claimant complains that these members were personally selected by Mr Metzer. Mr Metzer admits that he selected these members.

189. The claimant considered that Ms Gilmore should have been a member of the subcommittee. It was put to her that Ms Gilmore had a conflict of interest in that she was the claimant's landlord, renting a room to her. The claimant's witness Mr Mitchell accepted that this "*may be*" a conflict but his concern was the way in which Ms Gilmore was "*rebuffed*", as he put it.

190. Ms Gilmore suggested in evidence that she (Ms Gilmore) could have left the room if there were conflict issues. We find that this was not a practical solution and that it was much better to have individuals on the subcommittee who had no such obvious or perceived conflict. Mr Coulter was ruled out because of his disagreements with the claimant and Mr Metzer sensibly recused himself.

191. We find that it was impossible within the CMC to find people who were completely unconnected with the matters in question. We find that Mr Metzer did the best he could in the circumstances in the selection of the

subcommittee. He did not include himself and selected senior members of the CMC. Mr Gersch was the Treasurer, Dr van Dellen the Secretary, Ms Milsom the Head of Pupillage and Tenancy and Mr Clark the Deputy Head of Chambers. He considered it helpful to have a female member of the subcommittee as he did not want the suggestion of an all-male committee. Mr Metzer denied that Mr Clark always went along with his decisions. He said that Mr Clark often gave him wise counsel. His selection of these individuals had nothing to do with any of the disclosures made and now relied upon by the claimant.

192. We find in relation to the selection of the subcommittee that there was no evidence that it was tainted by considerations of gender or sexual orientation or that their decision was tainted by this. We find that had the claimant been male or heterosexual, the respondent would have made the same decisions.

193. The subcommittee reported on 27 October 2016 and decided that the claimant's consultancy should not be continued (page 1658). One of the reasons for this was that they considered the claimant did not offer value for money and she had not provided the report for which she had been paid £17,000.

<u>The meeting of 20 October 2016</u>

194. On 20 October a meeting took place between the claimant, Mr Metzer and Mr Gersch. Mr Gersch also runs a mediation business and he hoped, following the suggestion of the subcommittee, that it would be possible to mediate between the claimant and Mr Metzer. This did not prove to be the case.

195. Mr Metzer told the claimant that he believed she gave the story to Legal Cheek. The claimant's evidence (statement paragraph 60) was that she was "*slightly confused"* about the Legal Cheek question and told him that she had "*no idea*" what he was talking about. We have made findings on this above that she was not confused and knew exactly what he was talking about.

196. Mr Metzer also put to the claimant some discrepancies concerning her invoices and suggested that she resign from her role as Deputy Treasurer and end her consultancy but that he was prepared for her to continue as a member of Chambers.

197. The claimant became angry in that meeting. She stood up and began pacing the room, raising her voice and shouting. She said she was furious. She told Mr Metzer and Mr Gersch that she had nothing to do with the Legal Cheek matter. We now know, on her own evidence, that this was a lie.

198. Mr Metzer's evidence was that the claimant threated him in this meeting saying she would bring him down and would bring down Chambers and

that she "*knew where the bodies were buried".* Mr Gersch corroborated this in his evidence (statement paragraph 33) saying that the claimant made threats against Mr Metzer and Chambers and that she threatened to bring down Chambers and Mr Metzer if she was not paid. The claimant disputed that she made such threats. Mr Gardiner in his report (page 176) found that the claimant made serious threats in that meeting to report Mr Metzer and Chambers to the Bar Standards Board. We find, given the claimant's credibility in relation to the Legal Cheek matter, that she did threaten Mr Metzer and Chambers in that meeting.

199. The claimant's case is that there was a difference in treatment between herself and Mr Coulter in relation to the way they respectively behaved: herself at the meeting on 20 October 2016 and Mr Coulter at a CMC meeting in September 2016. The claimant considered that Mr Coulter was aggressive towards her at that meeting, raising questions at the meeting about why they were paying the claimant when they had other capable staff such as Mr Francis. In an email at page 1381 from Mr Gersch to the claimant about that matter, he described Mr Coulter as "*aggressive and firm"* asking questions of the claimant that were *"valid".* Mr Gersch thought the claimant had *"round table support"* at the CMC meeting. In oral evidence Mr Gersch said that the difference between the conduct of the claimant and Mr Coulter at those respective meetings was that the claimant was standing up and pacing around in an otherwise seated meeting and was shouting and raising her voice whereas Mr Coulter was not.

<u>The complaints by Miss Ozalgan and Mr Francis</u>

200. In the afternoon of Thursday, 20 October 2016 the administrator Ms Perkins had a conversation with fees clerk Miss Ozalgan and brought up, out of the blue according to Miss Ozalgan, the matter of the sale of the furniture which had belonged to Argent Chambers.

201. On Friday 21 October 2016 Miss Ozalgan went to speak to Mr Metzer about two matters; firstly the Argent furniture matter and secondly the Cavendish Legal matter. The conversation took place in Mr Metzer's room. Before Miss Ozalgan had gone into any detail, Mr Metzer asked her to speak to Mr Gersch about it.

202. On Friday afternoon 21 October 2016 Miss Ozalgan telephoned Mr Gersch and was quite upset during that phone call. They only had the briefest of conversations on Friday 21 October because it was the Jewish sabbath and Mr Gersch was about to cease work for religious reasons. He invited Miss Ozalgan to put her concerns in writing by email and he would have a word with her over the weekend if she was OK with that. Miss Ozalgan was happy to speak to Mr Gersch over the weekend. We find nothing untoward about the fact that they had a conversation over the weekend as we find that it was due to Mr Gersch's religious observance and Miss Ozalgan's agreement to speak later on, over the weekend.

203. On Sunday 23 October 2016 Miss Ozalgun sent Mr Gersch an email which we saw at page 1578. She said that the claimant had approached her "*on Thursday"* which we find was 20 October, telling her to go through the Argent bank statements to find the date upon which Mr Metzer had asked former clerk Mr Harding to transfer £5,000 from the Argent fees account to the Argent services account as she needed it for a report she was writing. Miss Ozalgan was not convinced that this was the real reason the claimant wanted this information.

204. Miss Ozalgan went on to complain about the subject of the Argent furniture and said she had never seen the sale proceeds go into the account. She also set out her disquiet over the Cavendish Legal matter. She indicated that the staff in the clerks' room did not have a happy working relationship with the claimant and told Mr Gersch that she thought there was bullying on the claimant's part. Her evidence was that each of the matters in that email were raised of her own volition and she was not asked or prompted by Mr Gersch to raise any of them. We had no reason to doubt Miss Ozalgan's evidence on this. Mr Gersch's evidence to the tribunal in relation to the Cavendish Legal matter was that he considered it "*abusive*" of the claimant to instruct staff to make a transaction which caused them to be *"deeply troubled".*

205. Miss Ozalgan was asked why she did not raise any of these matters directly with the claimant. She said she was nervous of approaching the claimant. Miss Ozalgan's evidence was that the claimant was often short with her and was very demanding. She said the claimant would often give her tasks to do and then call or email a few minutes later to find out if she had done it. Miss Ozalgan said that the claimant did not seem to appreciate that she had other urgent work to do and she felt pressurised. She found the claimant unpredictable, at one point seeming to listen and the next, rubbishing what Miss Ozalgan had to say. Miss Ozalgan said that the claimant once called her "*deaf, dumb and blind"* for not understanding something and describing her as a "*bit of a twat*" for saying that she was under pressure.

206. The evidence of Mr Francis, the senior clerk was that the claimant "*ordered*" the junior clerks to do tasks immediately and was "*aggressive*" in her management style (his statement paragraph 6). Mr Francis received a complaint from the father of one of the junior criminal clerks about how the clerk had been spoken to by the claimant. The father of the clerk was a Senior Clerk himself (see page 1697). Mr Francis said that both Ms Perkins and Miss Ozalgan came to him in tears about the pressure the claimant put them under.

207. Initially the claimant and Miss Ozalgan got on well but this position changed towards the end of 2015. They used to socialise together but this did not continue after the end of 2015. As to complaining about the claimant, Miss Ozalgan said she was nervous about any backlash she might receive. She felt more comfortable about complaining in October 2016 because Mr Metzer and Mr Gersch told her that unless it was

absolutely necessary, her name would not be revealed and she would be referred to only as "*a staff member*".

208. We have considered the claimant's contention that Miss Ozalgan has benefited from making the complaint about her. As from 3 April 2018 Miss Ozalgan became the Operations Manager in Chambers and the claimant said she had benefited from Ms Goodall's departure. We find that it is not unusual when people leave, for those who remain to take on more responsibility and even achieve promotion. The promotion to Operations Manager took place some 18 months after the events in question and we find on a balance of probabilities that this promotion was based on Miss Ozalgan's greater experience and her own performance over that period of time. Miss Ozalgan denied that she had been encouraged by anyone to make her complaints. We agree and find that she was not encouraged by anyone to complain but that she drew confidence when she was told that her name would not be revealed. We find these were her genuine concerns and complaints.

209. It was also put to Miss Ozalgan that her "*nose was out of joint"* when Ms Goodall joined in May 2016 because Miss Ozalgan lost the claimant as her *"font of information"*. We found Miss Ozalgan credible when she said that she was happy when Ms Goodall joined as it lifted work pressure from herself. This was a matter she had been complaining about for some time. She said she did not need a "*font of information",* she simply got on with her work. We find that Miss Ozalgan did not have her "*nose out of joint*" and she did not need a "*font of information"* and these were not the reasons for the complaints she made to Mr Gersch and Mr Metzer.

210. We accepted her evidence and find that once she had decided to make a complaint she decided that she would raise everything that she wanted to say, rather than just confining it to one or two matters.

211. We find that the claimant did not hold the staff she managed in high regard. In an email to Mr Coulter on 17 March 2016 she described them as "*our general shite staff"* (page 860). She also does not hold back from using course language, saying to Mr Metzer in an email on 16 June 2016: "*Do you think that I am sitting here with my finger up my bum.*" (page 996A).

212. On 7 December 2016 Miss Ozalgan sent an email to Mr Gersch (page 1972) setting out what happened. She said: "*Dear Adam, you have asked me to confirm how the payment of "£1,200 to Cavendish Legal Group was recorded*". The claimant's case is that the respondent encouraged her to make a complaint and that this was an act of whistleblowing detriment, victimisation, direct sex discrimination and direct sexual orientation discrimination. In that email (page 1972) Miss Ozalgan said that in relation to the fee transaction the claimant told her that she had asked Mr Gersch and he had agreed to this. This was not correct, she did not ask Mr Gersch beforehand, he did not agree to it. She told Mr Gersch and Mr Metzer after the event and said it was her decision to make (email 25 April 2016 page 941).

213. In support of our finding that Mr Gersch did not agree to it, we saw his email to the claimant of 23 July 2015 (page 645) saying in relation to her suggestion of this course of action, that he believed it was unlawful and a breach of BSB guidelines to pay solicitors, whether by way of incentive or refund of fees or otherwise procure work through the use of cash incentives. To suggest to Ms Ozalgan that Mr Gersch had agreed to this was very misleading. She did not alert Mr Gersch or Mr Metzer until four days after the event.

The Chambers' Constitution and the power to suspend

214. Dr van Dellen advised Mr Metzer in relation to the claimant's suspension. As far as Dr van Dellen was concerned, the allegation that the claimant was the source of the leak to Legal Cheek was not a sufficient ground for suspension but the allegation made by senior clerk Mr Francis, of bullying and harassment of staff crossed the threshold.

215. Under the Chambers' Constitution at page 595 of the bundle, there are two ways in which a Member of Chambers can be suspended. The first is in accordance with article 66 which provides at page 618:

> *64. A member may only be suspended or expelled by the Head of Chambers*
> *65. The suspension or expulsion of a member shall take effect seven days thereafter unless he gives notice of his intention to appeal pursuant to the provisions of article 66, or the Head of Chambers agrees to defer the suspension or expulsion pending a resolution of any dispute.*
> *66. A member may appeal against a decision of the Head of Chambers to suspend or expel him in the following manner:-*
> *……..*
> *(c) a notice complying with Article 12 convening an Extraordinary Chambers Meeting to take place within 30 days to determine the said appeal.*
> *……...*
> *(iii) The Appellant shall have the right if he so elects to send every member of Chambers a statement in writing in of his appeal.*
>
> *(iv) In the event of the Appellant giving notice of appeal as aforesaid his suspension or expulsion shall take effect only if it is confirmed by special resolution at the Extraordinary Chambers Meeting called the purpose, in which case it shall take effect from the date of such resolution.*

216. The second is in urgent circumstances under article 32 which provides at page 608:

> *In the proper execution of his powers, duties and responsibilities, the Head of Chambers may do all things which are necessarily incidental thereto, and in the case of genuine urgency he may take such actions on behalf of Chambers as he considers essential after such consultation with other members and staff as is reasonably practicable in the circumstances.*

217. The claimant complains that Mr Metzer used the urgent powers in article 32 and says she should have been given the 7 day and 30 day deferment of her suspension under article 66.

218. The claimant's case is that in any event article 32 did not disapply article 66 and she should have been entitled to an initial deferment of her suspension of 7 days and a further 30 days pursuant to her right of appeal.

219. We find that as article 32 says (in precis form) that the Head of Chambers may do "*all things*" which are necessary to the proper execution of his powers, duties and responsibilities, he may take such action as he considers essential, we find that article 32 takes priority. It is the exercise of emergency powers.

220. Article 88 (page 623) says: *"The Head of Chambers or the Management Committee shall have the power to require the service company to suspend any member of staff for a period not exceeding 28 days".* It does not require discussion with the Directors of the service company (the respondent) as the claimant suggested. Article 87 says that the power to "*appoint or dismiss*" members of staff shall not be exercised by the service company without consultation with the Management Committee. This is not about suspension. It is about appointing or dismissing.

221. The claimant was in a unique situation. She had the rights of a Member of Chambers but she was not practising as a Member of Chambers. She was at the time of her suspension in October 2016 working exclusively under her consultancy agreement as a Chambers Manager. It is not in dispute and there is a decision from Employment Judge Welch which we adopt, that the claimant was not an employee, so she was not entitled to rely on any of the provisions of the Staff Handbook.

222. Dr van Dellen notified all staff in Chambers by email at 17:28 hours on 27 October of the claimant's suspension (page 1655).

223. On 23 October 2016 the claimant sent to the subcommittee a report on her consultancy services – essentially it was her pitch for a new consultancy agreement for the period 1 November 2016 to 30 September 2017 (pages 1580-1607).

224. The claimant considered that the subcommittee was "*hand-picked*" by Mr Metzer. At that meeting they considered the claimant's proposal for her own reengagement on a consultancy basis at page 1581. The claimant attended the subcommittee meeting on 24 October, chaired by Mr Clark. The subcommittee's role was only to make a recommendation which had to be considered by the full CMC. The unanimous view of the subcommittee was that the claimant should not be offered a further consultancy agreement.

225. The report of the subcommittee was at pages 1656-1658, setting out their unanimous views. Their main reason for reaching the decision not to renew the claimant's consultancy agreement was that the consultancy was not providing good value for money. They had paid £17,000 for a report that had not been produced. They felt that there was a lack of need for the kind of intensive supervision and management proposed by the

claimant and it could be undertaken by existing staff. They also referred to the breakdown of relationships between the claimant, the staff and the Head of Chambers.

226. Following the subcommittee meeting on 24 October, Mr Metzer took legal advice as a result of which he made a decision to suspend the claimant on allegations of misconduct.

Mr Francis' complaint

227. On 26 October 2016 the claimant arranged for a representative from a telephone company to attend Chambers to look at the possibility of recording telephone calls. This was something she had been looking at for some months but had not communicated to the clerking team. The senior clerk Mr Francis had no prior knowledge of this and when it became known, it caused some disquiet amongst the clerks.

228. Mr Francis made a telephone call to Mr Metzer about this and spoke more generally about his concerns about the claimant. Mr Metzer asked him to put these concerns in writing, which he did. We saw the written complaint at pages 1697-1698. Mr Francis typed the document himself. We find it not at all unusual that having expressed concerns on the telephone, Mr Metzer asked him to put it in writing. This is standard employment practice and standard practice for a lawyer to ask that such matters be written down. It was not put to Mr Metzer that he told Mr Francis what to say and we find that he did not. Although the document was undated, the parties agreed that it was written on 26 October 2016.

229. Mr Gardiner found in his report (paragraph 68e at bundle page 190) that Mr Francis had an interest in the claimant's removal because it would make matters easier for him to have less interference in the day to day running of the clerks' room. He considered the timing was significant (page 190 paragraph 68c). Mr Gardiner also found that Mr Francis and his team had a point (report paragraph 71, bundle page 191) in that there was a lack of clarity in claimant's role, it was frustrating for the clerks team and there was a lack of communication about the executive from the telephone company. Mr Francis's own frustrations and concerns about the claimant supports our finding that this was his own complaint and not one instigated or encouraged by senior members of Chambers.

230. The document was sent to Mr Metzer as Head of Chambers and Mr Clark as Deputy Head of Chambers and said as follows (page 1697):

> *In my position as Senior Clerk and having spoken to the staff we are in agreement that we cannot continue to work with Karen Gillard. We have found her on most occasions to be manipulative, aggressive, and very controlling. The staff are constantly on edge whenever she is around and she has made it perfectly clear that her intention is in due course to replace existing staff with graduates/interns and as a result the staff morale has been extremely low for some considerable time now.*

*She does not like to be challenged and if your views are in opposition to hers she can make life very difficult for you. I feel I have been undermined on a number of occasions and kept in the dark over certain matters and members have been actively encouraged to email her with problems that in effect I should be dealing with, likewise with other members of staff which is encouraged an atmosphere of distrust and suspicion. The staff as a whole feel intimidated by her present and dependent on her mood do not know what to expect when she is in Chambers and what they are likely to encounter either personally or via the telephone or via email, that is not conducive to a good working environment.*

*By way of example on occasion she has reduced both Ashley and Asli to tears, she has on occasion spoken to both Mike and Elliott and told them that certain members do not rate them as clerks and if not for her involvement their position in Chambers would be vulnerable…… Mike was also told by her following a couple of drinks…….. that he had to think long and hard who he associated himself with because it could affect his future in Chambers which is tantamount to bullying, upset Michael and I had to fend questions from his father who was a senior clerk as to what was going on…….. she has also on a number of occasions asked either directly or indirectly when I will be retiring, which I could view it as being ageist. It would appear he has asked Sophie to what in effect is to spy on the staff again by way of example on the third August, both Alex and Lynn had to leave early for family emergencies and I was out with a solicitor all of the times being noted by SG without knowing the circumstances……..*

*All of this has been done in your name and obviously there has been reticence to mention this before, because any time anybody queries anything we are told everything is with the full knowledge of either yourself or the CMC.*

*……..I strongly suspect she was behind the legal cheek email, only she and Ashley knew that Sam's full name was Samson.*

*She has had a run in's with Michael Morris, Vicky Wilson, Barry Coulter to name but three and I hear that she is also at loggerheads with AVD…….. I have also been told off the record that a number of members of chambers will consider leaving if she does not step down*
*Regards*
*John*

231. Mr Metzer considered this email before making the decision to suspend, the decision under Articles 32 and 64 of the Constitution was his alone. Mr Gardiner found Mr Metzer to be acting in good faith in this regard (his report paragraph 63, bundle page 188).

The suspension meeting of 27 October 2016

232. On 27 October 2016 the claimant was due to attend a CMC meeting. Prior to this meeting she received a text message from Mr Metzer asking her to see him in his office. There was an exchange of text messages between the claimant and Mr Metzer in which she understandably asked about the purpose of the meeting and whether it was wise for them to meet alone.

233. Mr Metzer said they would not be alone, he told her who would be present and he had something he wanted to give her. Ultimately she was told by text about her suspension (page 1654). She attended the meeting and was handed a suspension letter which we saw at page 1663. The claimant opened it in the meeting; she was given the opportunity to read it there and then but she declined.

234. Two clerks were present, Mr Francis and Mr Nunn at the meeting so that there were four people in total in the room: the claimant, Mr Metzer and the two clerks. At the end of the meeting Mr Nunn alone walked the claimant out from chambers. It was not in dispute that he is a tall and large man. The claimant believes that escorting her from the building was with a view to intimidate, humiliate and degrade her. The parties used different terminology: the claimant said that she was escorted from the building and Mr Francis said she shown the door or walked to the door. It was not suggested that anyone made any physical contact with the claimant and we find that the claimant was not in any way touched or pushed by Mr Nunn, although we accept that it is not necessary to have physical contact in order to be intimidating.

235. It was an unusual situation to wish to suspend a barrister. We find that in those circumstances it was not untoward or out of place to have that person escorted from the workplace. It happens across workplaces and it is not uncommon upon suspension. We find that it had nothing to do with the claimant's gender, sexual orientation or any protected disclosures or protected acts she had done. Mr Metzer would have done the same if there had been a heterosexual male barrister in the same circumstances, who had not made any disclosures.

236. The claimant at paragraph 70 of her witness statement, in relation to the suspension meeting: "*I was then escorted from the building by the two clerks"* (our underlining). She said the same in paragraph 23 of her original Grounds of Complaint (bundle page 17). In cross-examination the claimant did not challenge Mr Francis' oral evidence that she was escorted by Mr Nunn alone and that Mr Francis did not see them once they left Mr Metzer's room. We find that she exaggerated this incident in her ET1 and at paragraph 70 of her witness statement to bolster her claim.

237. Mr Metzer's evidence was that he wanted the two clerks present in the meeting because he was fearful that the claimant would make false allegations and that she might become aggressive. His evidence was that Mr Francis is a calm influence and he thought his presence would be particularly helpful. Mr Francis' evidence was that Mr Metzer asked him to be present together with Mr Nunn because he was worried about the claimant's possible reaction and he wanted one or two witnesses present. Mr Francis and Mr Nunn attended because they were asked to do so by their Head of Chambers and we find it was not for them to refuse that request.

238. The claimant did not have a high opinion of Mr Francis. She described

him in March 2016 in an email to Mr Metzer (page 852) as a "*schmuck*" who was "*not engaged"* and "*did not give a toss"* and to whom they were paying a significant salary. Mr Francis has been a clerk with Goldsmith Chambers for over 40 years.

239. The claimant challenged Mr Metzer in evidence as to why he chose to be accompanied by clerks rather than barristers as there were members of Chambers in the vicinity. Mr Metzer said he chose the two clerks because they were experienced, had "*seen it all before"* and they were both calm individuals with whom he believed the claimant had no issues. He also thought that lawyers tended to want to get involved in the dialogue whereas he was only seeking a presence in case matters became agitated with the claimant. We have found above that it had nothing to do with the claimant's gender, sexual orientation, disclosures or protected acts.

240. Mr Metzer had three reasons for suspending the claimant. They were (a) the allegations of bullying of staff (b) financial impropriety for example in relation to the Cavendish Legal matter which was of heightened concern to him because she was the Deputy Treasurer an (c) his rightly held suspicion that the claimant was the source of the leak to Legal Cheek which he considered had the potential to damage the reputation of Chambers. It was put to Mr Metzer that he did not know about the Cavendish Legal matter when he suspended the claimant. We find that he did, from the email he received from Miss Ozalgan at page 1578 dated 23 October 2016. The claimant had also, at the meeting on 20 October 2016, made threats to bring down Mr Metzer and Chambers. It was a very serious situation.

241. At the CMC meeting that same day, the claimant's suspension was approved. The staff were informed by Dr van Dellen by email at 17:28 hours.

242. The claimant exercised her right of appeal on 31 October 2016 (pages 1686-1689). The claimant said she did not have notice of the allegations against her. It is not normally the case that all allegations are put at suspension stage. The reason for the suspension is set out in the letter at page 1663 and she was told that there would be an investigation and that following the investigation she would be informed of the next steps. She was also told that no prejudgment or findings should be inferred from the suspension.

243. The claimant challenged the use of the Chambers Constitution and asked for access to her emails. She was aware of the allegation that she had leaked material to Legal Cheek as she referred to this in her covering email at page 1686.

<u>Mr Gardiner's investigation and report</u>

244. Mr Metzer instructed a firm of solicitors, Withers, to carry out an external investigation into the claimant's conduct. The claimant takes issue with

this because Ms Meriel Schindler, a partner at Withers, is Mr Metzer's step-sister-in-law, she is married to his step-brother. The solicitor with conduct of the matter was Mr Philip Lindan and not Ms Schindler. Mr Lindan works in the employment department at Withers and therefore comes under Ms Schindler's supervision. Withers instructed Mr Bruce Gardiner, who at the time was counsel of 2 Temple Gardens, as the investigator. His extremely thorough report dated 19 December 2016 was at pages 174-494 including interview records from 23 witnesses. The claimant was seen three times by Mr Gardiner. Mr Metzer and Mr Gersch were each seen twice.

245. The claimant was asked in evidence whether there were any witnesses who were not seen and yet should have been. She had difficulty with this question and eventually said that there were two witnesses who were not seen and should have been. They were barristers Sarah O'Kane and Dominic D'Souza. Ms O'Kane was invited for interview but was involved in a long running trial and did not have time to participate. Mr Gardiner did not consider her evidence to be relevant to his conclusions and the claimant did not insist at the time that Mr Gardiner speak to her. Mr D'Souza made himself potentially available for a telephone discussion but thought he could not assist. Once again the claimant did not insist at the time that Mr Gardiner speak to him. The claimant suggested written questions to these individuals but Mr Gardiner did not consider their evidence to be particularly relevant (his report, Methodology section, bundle page 180). The claimant did not tell this tribunal what Mr D'Souza and Ms O'Kane would have contributed to Mr Gardiner's report and what difference, if any, it might have made to his findings. We find that Mr Gardiner was thorough and saw all the material witnesses.

246. Mr Gardiner did interview six witnesses suggested by the claimant who had not appeared on the original list with which he was provided by the respondent (see his report paragraph 6 bundle page 32).

247. The claimant was asked by the tribunal whether it was her case that Ms Schindler influenced the outcome of Mr Gardiner's report. The claimant said this was her case because Mr Gardiner's terms of reference were designed to get the outcome the respondent wanted although she said she "*did not suggest that Ms Schindler told Mr Gardiner what to put in his report*". We find, having heard from Mr Gardiner, that Ms Schindler did not suggest what he should put in his report and there was no predetermined outcome.

248. We saw in the Supplemental Bundle at page 212 the Instructions to Counsel to Mr Gardiner which said at paragraph 1.2: "*Counsel is to have free rein to run the investigation as he sees fit. He is invited to interview all and any witness he considers relevant and to review all relevant evidence supplied to him".* This could not have been clearer. It was also within his remit to investigate any counter allegations against the respondent to the extent it provided a defence to the allegations against her or related to any mitigation (page 218 supplemental bundle).

249. The claimant put to Mr Gardiner that he should have regarded her as a whistleblower and investigated as such. Mr Gardiner disagreed and said that he was not acting in the capacity of an employment tribunal judge hearing a whistleblowing claim. We agree and find that it was not within Mr Gardiner's remit or the scope of his instructions to consider whether the claimant was a whistleblower who was being subjected to a detriment as such. This was a conduct investigation. It did not and has not prevented the claimant from bringing a subsequent whistleblowing claim but this was not the matter under investigation by Mr Gardiner.

Telephone conversation with Mr Clark on 1 November 2016

250. On the day that Mr Gardiner was instructed, being 1 November 2016, Mr Clark, the Deputy Head of Chambers and the claimant had a telephone conversation. He was at Cannon Street station waiting for a train. He made some notes of the call on his copy of the Evening Standard which we saw at page 1695 of the bundle. Mr Clark's evidence is that the claimant said in relation to the Gardiner investigation that she wanted "*due process*" and not "*Jew process*"; Mr Metzer and other senior members of Chambers are Jewish. The claimant denied saying this. It was noted by Mr Clark on his copy of the Standard.

251. In the schedule of protected disclosures (disclosure 8) the claimant relied upon an oral disclosure to Mr Clark during the 1 November 2016 telephone call - that she said: "*Tell him that the 5,000 must be sorted out before the conclusion of the arbitration. That if it is not, it ceases to be an administrative cock up on AMQC part and turns into a criminal offence".* This was not put in evidence in chief in the claimant's witness statement, nor was it put to Mr Clark in cross-examination, so we find that it was not said to him during the call.

252. The following morning the claimant emailed Mr Clark to confirm the conversation (bundle page 1699-1701). In that email of 2 November 2016 she twice referred to "*due process*", including in relation to Mr Metzer "*He also likes to use the phrase due process a lot"* and criticising him for "*breaching the constitution*" and making up a plan "*on the hoof"*. We find on a balance of probabilities that she used the phrase noted by Mr Clark on his newspaper. This same email contained a denial of being the leak to Legal Cheek (page 1701), which was untrue.

253. The claimant appealed her suspension on 31 October 2016 (page 1686). On 1 November 2016 Mr Metzer sent a note to the Members of Chambers (page 1690) setting out the reasons for the suspension of the claimant and the background. We find he did this under Article 66(ii)(b) of the Constitution, which provides that within 48 hours of an appeal against suspension the Head of Chambers shall sent a written statement of reasons for suspending. It was not sent because of any disclosures made by the claimant.

Mr Gardiner's report

254. Mr Gardiner considered the following charges against the claimant:

i. Bullying and harassment of members of staff
ii. Passing information to Legal Cheek
iii. Attempting to prevent a Work Placements Policy from being posted on the Chambers website
iv. Threating to report Chambers or members of Chambers to the Bar Standards Board
v. Threatening to harm Chambers
vi. Failing to provide a business modelling report
vii. The manner in which she chose to resolve the dispute between Jonathan Crystal and Legal Cavendish about outstanding fees
viii. Excessive sums claimed and received for work undertaken or expenses incurred on behalf of Chambers
ix. Failing to following the Chambers procedure for authorising expenses
x. Proceeds of sale of Argent furniture at Bell Yard

255. Mr Gardiner upheld five out of ten allegations, partially upheld one and did not uphold four allegations. He upheld allegations (iv), (vi), (vii), (viii) and (ix), he partially upheld allegation (v) and did not uphold the other four allegations. Although in no way do we criticise him for this, he did not uphold the allegation that the claimant had passed information to Legal Cheek and we now have the benefit of the claimant's admission that she did. Had he known this, he would have upheld 6.5 of the 10 allegations.

256. Mr Gardiner's evidence was that had he known that the claimant was the source of the leak to Legal Cheek, he may have found differently on allegation 1 as to the bullying of members of staff. Not unusually, allegations of bullying and harassment are often unsupported with documentary evidence and Mr Gardiner had to form views on the claimant's credibility as to what she told him. His evidence was that as it now transpired that the claimant was not being truthful on the Legal Cheek matter, she repeatedly denied being the source, this might have influenced the weight he attached to evidence she gave him on other matters, in particular allegation 1 on bullying and harassment of staff. Based on this we find on a balance of probabilities that he would have upheld up to 7.5 of the ten allegations.

257. During the resumed part of the hearing, in October 2019, we noted that the claimant went from admitting that she was the source, to refining this admission to being "*one of the sources*". This was after she had given her evidence and after she had 18 months to reflect on it and we were not at all persuaded by this change of emphasis.

258. To the extent that the claimant criticised Mr Gardiner's involvement, referring to the respondent "*contracting out*" the investigation into her conduct, we find that this was an eminently sensible step on their part.

259. It was put to Mr Gardiner that he took Mr Metzer at face value and this was by implication to the claimant's detriment. Mr Gardiner said that at times he was not complimentary about Mr Metzer in his report, for example at paragraph 128 of his report (page 202) he was critical of Mr Metzer and Mr Gersch for not providing until very late in the day, the claimant's email of 25 April 2016 in relation to the Cavendish Legal matter. He also criticised Mr Metzer for the four-day delay in responding to her email of resignation in September 2016. We say we do not share Mr Gardiner's criticism of Mr Metzer in this respect particularly as those 4 days spanned a weekend and there is no requirement to formally accept a resignation. It is effective in its own right.

260. Mr Gardiner's evidence was that he did not conclude that Mr Metzer and Mr Gersch were "*deliberately burying*" the 25 April email but he did not know why they did not give it to him at the start of his investigation.

261. We find that it was a sensible step for the respondent to instruct an external investigator, given that all potential internal investigating officers were likely to have had contact with the claimant and most probably held views about her. We consider it certain that if their report did not completely exonerate her, she would have challenged their independence and claimed discrimination and victimisation against them. The claimant did not go as far as to put to Mr Gardiner that he had been told what to say in his report and as we have found above, she "*did not suggest that Ms Schindler told Mr Gardiner what to put in his report*". We find that Mr Gardiner had a free rein, he was independent and he did not have any pressure put upon him. These were his own independent findings.

262. Furthermore, although the claimant criticised the delay, we find that Mr Gardiner completed his investigation within an efficient time scale given the sheer quantity of witnesses (some of whom he saw more than once), documents and voluminous email correspondence from the claimant. This was a substantial task. It would have been nonsensical to hold the ECM without his report. This was the whole point of the ECM, to consider the claimant's suspension.

<u>The Extraordinary Chambers Meeting (ECM)</u>

263. On 21 December 2016 an Extraordinary Chambers Meeting took place to vote on the claimant's suspension. The claimant complained about the delay in holding this ECM and relied upon it as an act of whistleblowing detriment and victimisation. It is not in dispute that it was postponed twice. The reason for this was set out in Dr van Dellen's email of 7 December 2016, page 1974, in which he gave notice of the ECM for 21 December. In that email he said, in reference to Mr Gardiner's report:

> *"The ECM will be on 21st December 2016 1730 in the large conference room. Please find the formal notification attached. Further evidence is still to be obtained early next week and the CMC unanimously approved the course that the ECM should not take place until the receipt of the investigator's report, subject only to*

*that being received within a reasonable period which all agreed would certainly encompass any time before Christmas…… The CMC has been very aware of the need to expedite matters which has been mitigated by the knowledge that KG can still practice using her other Chambers. Nevertheless, the CMC is very keen for there to be a prompt resolution of this matter and keep the period of suspension as short as reasonably practicable."*

Proxy votes

264. Those who were not able to attend the ECM had the right to vote by proxy. The claimant's case was that Mr Clark, the Deputy Head of Chambers, went on a "*campaign*" to secure proxy votes against her and that those who voted by proxy did so before Mr Gardiner's report was even available. Mr Clark denied any such campaign. The ECM was on 21 December 2016 so it is unsurprising that many members of Chambers planned to be away for seasonal holidays. Mr Clark's evidence was that out of about 75 members of Chambers, 49 attended the ECM and this was a very high turnout which he put down to the relatively controversial item on the Agenda being the question of the claimant's suspension.

265. At page 409 we saw an email from Dr van Dellen dated 23 November 2016 saying "*I encourage all members to attend. If you are unavailable, or anticipate being late, I would be grateful if you could send your apologies and details of any nominated proxy to me in writing*." We could see nothing unusual or untoward about this email. There was nothing in that email that encouraged anyone to vote in a particular way.

266. Mr Clark's evidence, which we accepted, was that it was not unusual for those voting by proxy to give power to another member of Chambers, or to the Chairman, to exercise the proxy vote as that person saw fit. This did not mean that they had voted before the outcome of Mr Gardiner's report was known, but that they had delegated the exercise of the vote to another member of Chambers who would have knowledge of the outcome. Of the approximately 20 proxy votes submitted, a certain number were in the claimant's favour. Even without all the proxy votes, the decision would have been the same. The claimant submitted that "*proxy votes were used to circumvent any danger of [her] coming back*". We do not agree.

267. We find that there was no "*campaign*" to influence the voting against the claimant. The use of proxy votes was within process and the number was reflective of the fact that it was holiday season and the interest members of Chambers had in the issue of the claimant's suspension.

268. On 9 December 2016 Mr Clark sent an email to all barristers (page 2041 onwards) setting out his understanding of the position on the charges against the claimant. We find that he did this because the claimant had been emailing members of Chambers and he wanted to set out his view.

269. We find that the reason the ECM was twice postponed was to allow for the completion of Mr Gardiner's investigation report which was to inform the important matter under consideration at the ECM, namely whether to

uphold the claimant's suspension. We agree with Mr Metzer's evidence and find that it was an important report that members of the CMC should see before making an informed decision. We cannot see how it would have been in either party's interests to have the ECM without the benefit of Mr Gardiner's report.

Appeal against suspension

270. The claimant's appeal against her suspension was dated 31 October 2016. The ECM was on 21 December 2016. Mr Gardiner was instructed with great promptness on 1 November 2016 (instructions page 210 of the supplemental bundle). Within his investigation he saw 23 witnesses, some more than once, and produced a report on 19 December 2016 of over 300 pages. He considered a vast quantity of documents.

271. The report was sent to the barristers in Chambers at 10am on 20 December 2016 (page 2285) and there was time for proxy voters to read it and give instructions on their proxy vote, if they so chose.

272. The claimant's suspension was upheld by way of special resolution, 62 votes to 10. On 22 December Dr van Dellen wrote to the claimant inviting her to resign.

273. It was put to Mr Coulter in cross-examination that he took against her because she was in conflict with his wife over the Richard Bottomley matter. Mr Coulter said that he took against the claimant because she had told him in mid-2016 that he and his wife were expendable and the immigration group were not and he felt she was threatening their position in chambers. He said this is why he voted against her at the ECM. His vote was was only 1 out of 62 against her.

274. On 23 December Dr van Dellen wrote to the claimant advising her of the decision to expel her from Chambers with effect from 1pm that day. The claimant was advised of her right to appeal against her expulsion. She was also advised that any communication with Chambers should be sent solely to Dr van Dellen as secretary.

275. The claimant did not abide by the instruction to communicate solely with Dr van Dellen. She continued to copy the whole of Chambers on her correspondence and indicated that she would continue to do so, despite her own views on the subject - for example her email page 1294 on 1 September 2016 saying: "*As most of you know …..I hate 'reply all'. It is no way to communicate"*. Dr van Dellen requested that all future correspondence be to him by post rather than email. He emailed her with the subject "*Harassment*" asking her to desist to continue to make adverse references to him to his colleagues.

Appeal against expulsion

276. On 31 December 2016 the claimant appealed against her expulsion from

Chambers (page 2308). She sent her submissions for the appeal (page 2308A) on 26 January 2017. She asked that the result be emailed to her after the meeting. The submission was at page 2309. At 18:16 hours on 26 January 2017 Dr van Dellen emailed all barristers to say that the ECM voted to support the decision to expel the claimant. The motion was carried by 63 votes to 4, with 2 spoilt or blank votes. We find that by asking to be emailed the outcome, she made clear that she did not propose to attend. She dealt with this at paragraph 91 of her witness statement and said there was no way she was going to attend.

277. The claimant's witness Mr Simon Sherriff accepted, in answer to tribunal questions, that if it had been "*done properly*" procedurally, then the claimant's suspension and expulsion was justified if that is what Chambers decided. His objection was to the way in which it was done. We do not find fault with the way it was done.

278. The claimant's witness Mr Mitchell considered that exclusion as a Member of Chambers (a situation in which Members of Chambers can continue to practice although not come in to Chambers) would be acceptable if proportionate, rather than suspension. We agree and find that this would have been suitable had the claimant been practising as a barrister. She was not. She was working exclusively in her role as a Chambers Manager and she admits that she was not practising. We find that had the claimant wished to practice as a barrister, appropriate arrangements could have been made during her suspension, for example for her to collect instructions from Chambers or to receive them electronically. There was no evidence that she was in receipt of instructions, despite her evidence that she had her own solicitor contacts.

279. The ET1 was issued on 26 January 2017. It was served on the respondent by the tribunal on 27 February 2017 (the Notice of Claim). There was no evidence to suggest that the respondent had prior notice of the claim prior to 27 February 2017 and we find that they did not. So far as the proceedings as a protected act is concerned, we find that the respondent was not acting with knowledge of the existence of these proceedings until 27 February 2017.

<u>Access to emails</u>

280. The claimant complained that she was denied access to her emails once she was suspended and in particular she focused on an email of 25 April 2016 which was not initially provided to Mr Gardiner within his investigation. In this email the claimant told Mr Metzer and Mr Gersch about the Cavendish Legal transaction, a few days after the event. Mr Gardiner became aware of it during his investigation because he referred to it in his report and we find that his conclusions were reached with the benefit of having seen this email.

281. It was a term of the claimant's suspension (suspension letter page 1663) that she should not enter the premises of Chambers except by prior

agreement with the Head of Chambers or Deputy Head of Chambers and that she was not to contact members of staff without such prior agreement. Her access to her Chambers email account was suspended.

282. Mr Gardiner's evidence was that he could understand why Chambers had chosen to suspend the claimant's email account. He understood the concern they might have that the claimant may begin sending emails to all of Chambers or to third party organisations which might be detrimental to Chambers. We find that suspending the Chambers email account was a normal step upon suspension and in any event she was able to send copious emails to members of Chambers.

283. The claimant's constant refrain to Mr Gardiner was that she had not been able within her emails to go back any earlier than 4 July 2016. The claimant had been given a memory stick by Mr Gardiner's instructing solicitors, Withers, but she said she could not open its contents. Mr Gardiner suggested a number of ways in which she could achieve access to her emails. These methods were: (i) to ask Withers to supply her with another memory stick, which he considered would have been the obvious solution; (ii) to use Withers' sharefile on their server upon which they had uploaded the emails, (iii) to check her bandwidth internet connection which she had told Mr Gardiner was problematic or (iv) the opportunity to view her emails at Chambers. This would clearly have been in a supervised way, she considered this would be "*demeaning and inconsistent with her data rights".* Mr Gardiner did not agree. In evidence his view was that if she was fighting for her position in Chambers and if she thought that by accessing her emails she could find evidence to help her, she should have taken this and not "*stood upon her pride."*

284. The claimant said on a number of occasions that she wanted, or was denied, "*unfettered*" access to her email account. We considered this meant unrestricted use of the account and we find that is why none of the solutions put forward were acceptable to her.

285. So far as Mr Gardiner was concerned the only issue that he was investigating that preceded 4 July 2016 was the Cavendish Legal matter. By the time he produced his investigation report he had seen the key 25 April 2016 email. At no point did the claimant say to him, for example in relation to bullying and harassment: "*I know there are relevant emails and if only I could get access to them that would show that I was not bullying and harassing the staff*". Had the claimant said anything of that nature to Mr Gardiner we accept his evidence and find that he would have asked Withers to make sure he had access to specific emails on specific topics.

286. By the time he completed his report, Mr Gardiner was satisfied that the claimant had achieved access to all the emails she wanted to see. He said at paragraph 16 of his report (page 179):

> *"By some means, at the 11th hour, KG has been able to search for relevant emails on this issue [Cavendish Legal]. She produced a 20 page document on that issue alone, accessing by some means her emails from the middle of 2015."*

287. We are similarly satisfied and find that before Mr Gardiner completed his conduct report on the claimant, she had obtained access to all relevant emails. We also find that Mr Gardiner made a number of very sensible and practical suggestions, set out at paragraph 14 of his report (pages 178 – 179) to enable her to obtain such access and the claimant did not avail herself of any of these.

288. Based on Mr Gardiner's evidence, we also find that at no time did the claimant tell him that she needed access to her Chambers email account because she wanted to practice as a barrister. We find that she wanted these emails to put forward her defence to the allegations.

289. The claimant sent Mr Gardiner about 17 emails just before he concluded his report, which when printed off ran to over 100 pages, all of which he considered prior to completing his report.

290. We find that the restriction on the access to her email account had nothing to do with the claimant's gender, sexual orientation or any disclosures or protected acts that she had made. It was the respondent securing and protecting the email account in circumstances of a contentious suspension based on serious allegations.

The report to the police

291. In his investigation report Mr Gardiner found that the claimant was not entitled to the sum of £1,920 from her invoice of 31 August 2016 (page 176) and she had not provided the business modelling report for which she had been paid sum of £17,000 plus VAT (page 177). Based on Mr Gardiner's findings, Dr van Dellen wrote to the claimant on 9 February 2017 (page 2317) to seek reimbursement of these sums and a letter before action on 16 February 2017 (of which we only had the second page, at page 2318). The claimant continually referred to this as "*unsolicited mail*". We find that letters seeking payment of money are rarely welcome and this was an unnecessarily emotive description of this correspondence. It was legitimate correspondence.

292. Although Dr van Dellen was not the Treasurer, given the poor relationship between the claimant and Mr Gersch, it was considered sensible for Dr van Dellen as Secretary, to send the letters seeking repayment. The claimant also complains that there was no CMC decision to send letters seeking payment of sums due from her. We find it unsurprising that the CMC was not asked to vote on seeking to recover sums due to Chambers. It would create an unnecessary amount of business if the CMC were required to vote every time money was owed to Chambers and needed to be recovered. The respondent had a clear finding from Mr Gardiner (bundle page 197) that the claimant had not delivered what she had promised despite receiving full remuneration. In the absence of delivery of her report, we find that the respondent was acting properly in seeking to recover payment for a service they paid for and did not receive.

293. We find that the sending of the letters of 9 and 16 February 2017 was not because of any protected act that may have been done by the claimant but because of Mr Gardiner's clear finding at paragraph 102 of his report, with which we agree and because the claimant was in breach of contract in being paid for and failing to provide the report. We also find that the respondent would not have been content to let a combined sum of over £22,000 lie, if the claimant had not made protected disclosures. It was a substantial sum of money that Chambers could not ignore.

294. The claimant began sending a voluminous number emails from a number of different email addresses (including a yahoo, gmail and an icloud address including *responsetoletterbeforeaction@gmail.com* (supplementary bundle page 177) to members of the CMC and the directors of the respondent making a number of different allegations. The emails were usually to "*undisclosed recipients*". One of the characteristics of these emails was that the claimant sent them to herself and bcc'd them to undisclosed recipients. This meant that the recipients did not know who else was being sent or copied on these communications.

295. On 21 December 2016 after suggesting that Mr Gersch had engaged in unorthodox financial transactions and corrupted staff, the claimant said she would deal with Mr Gersch "*in a different forum".* Much of the claimant's fire in these emails was directed at Mr Gersch. She had suggested that he had been fraudulent as the Treasurer and that he had mismanaged Chambers finances.

296. We find that the claimant knew exactly what she was doing in sending these multiple emails. It was the very thing she had asked Mr Sherriff not to do, in the email she drafted for Mr Metzer to send to him in September 2016 (page 1375) saying how much she hated this sort of correspondence. The claimant relied upon clause 66(iii) of the Constitution which says that the Appellant (herself) shall have the right if [she] so elects to send to every member of chambers a statement in writing in support of his appeal. This refers to a statement singular and not multiple statements.

297. Mr Gersch felt unable to respond to these emails because of the ongoing investigation. The constant accusations against him began to take their toll. On 6 December 2016 he saw his GP who recorded elevated blood pressure and he and his GP discussed possible ways to reduce or prevent the communications coming to his attention.

298. On 23 December 2016 in an email to Dr van Dellen and other members of Chambers, including Mr Gersch, she accused him of bribery and untruthfulness.

299. Mr Gersch discussed the matter with Dr van Dellen who was not prepared to take injunctive action on behalf of Chambers.

300. Allegations against Mr Gersch (many of which were also made against Mr Metzer) included carrying out a witch-hunt against her, using staff as a battering ram, withholding emails to discredit her, changing his story and misleading Chambers. The claimant alleged that Mr Gersch had been fraudulent as Treasurer and that he had mismanaged Chambers' finances. Mr Gersch understandably found the allegations, which were sent to his professional colleagues, damaging to his reputation.

301. On 21 December 2016 in a lengthy email at 11:42am to undisclosed recipients, the claimant said: "*Comments by [Mr Gersch] will be dealt with in a different forum"* (page 2292). The claimant's 21 December 2016 email attached an 80 page long document restating her position and her allegations against senior members of chambers.

302. The constant bombardment of emails continued to have a negative impact upon Mr Gersch's health. In addition to seeing his GP for high blood pressure, he was also admitted to hospital for observation. He was worried about the lengths to which the claimant might go, particularly given the threats she made at 20 October 2016 meeting. He was concerned because she knew where he lived. He did not know what she might do. He was so concerned he had CCTV installed (his second statement paragraph 10).

303. For this reason, Mr Gersch emailed the claimant on 23 December 2016 (page 2298) saying that he found her emails menacing and unpleasant and that he thought they were designed to cause distress and disruption. He wanted no further communication from her and asked her to cease and desist from referencing him to his professional colleagues. The claimant had been told on numerous occasions to address her correspondence to Dr van Dellen as Chambers Secretary but she ignored that, maintaining her right to communicate with all members of the CMC.

304. The claimant took no notice of Mr Gersch's request. In December 2016 in his own personal capacity, he reported the matter to the Metropolitan Police asking that it just be reported for information only, in case the matter should escalate. He was given a crime reference number.

305. The police made enquiries. The claimant was informed on 19 December 2016 that due to the lack of any evidence as to an offence, the matter was closed as the police believed no crime had taken place (email page 2356).

306. The claimant made a complaint to the Police Complaints Commission about their handling of the matter. She complained about the officer dealing with the matter.

307. It is not necessary for us to make findings about the police handling of the matter or their decisions as this is not part of the issues for our determination. The issue for us was whether Mr Gersch contacted the police and made false allegations of harassment against the claimant, because she had done a protected act (the victimisation claim).

308. The one admitted protected act, the issuing of these proceedings, post-dated Mr Gersch's report to the police and therefore could have had no influence on Mr Gersch's actions.

309. We have considered whether Mr Gersch went to the police because of any other protected acts relied upon by the claimant. We find that the reason he went to the police was because he felt harassed and it was affecting his health.

310. As an act of victimisation the claimant relied upon "*persisting in attempting to get the said allegations against her investigated on or around 22 March 2017*". In early 2017 Mr Gersch continued to feel harassed by the ongoing correspondence from the claimant. He was contacted by the police in early March 2017. He became aware that the claimant had a meeting with PC Utley (about whom she subsequently complained) in about the first week of March. The police asked Mr Gersch for further documents which were provided. On 23 March 2017 Mr Gersch was informed by the police that they had decided not to take further action. They had asked the claimant not to contact him. We find that Mr Gersch's contact with the police was because of the fact that he felt harassed by the claimant wanted this to stop and because the police asked him for information in March 2017. It was not because of any protected act.

Astor Chambers

311. In these proceedings the claimant gave her professional address as Astor Chambers in Reading. The business was incorporated as Astor Chambers Ltd on 8 February 2017. The address is Ms Goodall's mother's address. It was incorporated a matter of days after Ms Goodall's resignation from Chambers on 30 January 2017. At incorporation the claimant, Ms Julie Okine and Ms Goodall were directors. The claimant and Ms Okine resigned as directors on 20 March 2017. Ms Goodall remained a director when she gave her evidence, but told the tribunal that she was not actively working in that business as she was in education and training.

The disclosures relied upon

312. The claimant initially relied upon 39 disclosures and her case is that she made these in the public interest. Two were withdrawn during the hearing, numbers 6 and 21.

313. Where the claimant relied upon an oral disclosure, yet led no evidence in chief on the alleged disclosure and additionally, where the individual witness to whom a disclosure was allegedly made was not cross-examined upon it, we find as a fact, in the absence of evidence, that the disclosure was not made. This applies to the following disclosures: 1 to Mr Metzer about "the regulator"; 7 to Mr Gersch at the 20 October meeting; 8 to Mr Clark in the phone call on 1 November 2016; 17 on unspecified

dates between February and May 2016 on the intern issue; 20 to Mr Metzer regarding his daughter; 24 to Dr van Dellen regarding the recruitment policy; 25 to the CMC on the same issue: 26 to Mr Metzer and Mr Gersch on the intern issue; 31 to Mr Metzer regarding Mr Selita – Mr Metzer was not cross-examined on this topic at all and this also goes to disclosures 31, 32, 33, 34, 35, 36 and 37 all of which were said to be oral disclosures. We find that these were not made.

314. In summary we find as a fact for the above reasons that disclosures 1, 7, 8, 17, 20, 24, 25, 26, 31, 32, 33, 34, 35, 36 and 37 were not made.

315. The following disclosures (other than those referred to above) did not form part of the claimant's pleaded case, either within her initial ET1 or within her Further Particulars of claim. This point was raised by the respondent when we clarified the issues at the outset of the hearing in April 2018 when they said that if further disclosures were to be relied upon, there needed to be an application to amend. No such application was made.

316. We therefore find that the following disclosures (other than the ones previously dealt with) do not form part of the case and therefore we make no finding upon them: Disclosures 11 to the CMC about a conflict when spending monies; 13 to solicitor Mr Lindan saying she was a whistleblower and relying on the Argent report; 15 to Mr Gardiner saying that Mr Gersch and Mr Metzer kept the CMC in the dark; 16 again to Mr Gardiner saying there was a fire risk and ICO breaches; 22 to the CMC saying there was a compliance issue with the BSB; 35 relating to Mr Fitch-Holland; 36 about alleged sexism in the clerks' room and 37 allegedly Mr Metzer allowing Mr Coulter to humiliate her; did not form part of the claimant's pleaded case, 38 and 39 related to alleged disclosures relating to "one of our staff" which we find refers to Ms Goodall, this was not part of the claimant's pleaded case and was not given in evidence in chief.

317. In summary under this heading we find that disclosures 11, 13, 15, 16, 22, 35, 36, 37, 38 and 39 did not form part of the claimant's pleaded case whether originally or in further and better particulars.

318. So far as any remaining written disclosures were relied upon, the respondent accepted at the start of the hearing that those words were communicated and we find that they were.

<u>The Bar Standards Board Code of Conduct</u>

319. For her whistleblowing claim the claimant relied upon the core duties which apply to all barristers and are set out in the Bar Standards Handbook. It derives its power from the Legal Services Act 2007. The respondent took no point as to whether this amounted to a legal obligation for the purposes of the whistleblowing claim. The particular core duties she relied upon were 5, 8 and 9 which say as follows:

*5- you must not behave in a way which is likely to diminish the trust and confidence which the public place in you or the profession.*

*8- you must not discriminate unlawfully against any person.*

*9- you must be open and cooperative with your regulators.*

The Bar Standards Board decision of 4 October 2018

320. On day 18 of the hearing, on the final day of evidence, the claimant introduced the Bar Standards Board outcome letter of 4 October 2018 in relation to the complaint about herself. The complaint was dismissed. It appears from the face of the letter to have taken place by way of a review of Mr Gardiner's report. If that is the case we observe that we heard and saw considerably more evidence than was reviewed by the BSB Senior Case Officer including hearing from a total of 16 witnesses. In any event we are not bound by the BSB letter.

**The relevant law**

321. Under section 48A of the Employment Rights Act 1996, a "protected disclosure" is defined as a "qualifying disclosure" which is disclosed in accordance with sections 43C to 43H of that Act.

322. Section 43C ERA provides that a qualifying disclosure is made in accordance with this section if the worker makes the disclosure to his employer.

323. Section 47B provides that a worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

324. The time limit for bringing a detriment claim under section 47B is set out in section 48(3) of the Employment Rights Act 1996. It is the "reasonably practicable" test. An employment tribunal shall not consider a complaint unless it is presented—

*(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or*

*(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.*

325. Section 43B(1) of the Employment Rights Act 1996 defines a qualifying disclosure:

*(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—*

*(b) the information disclosed tends to show that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject.'*

*(d) that the health or safety of any individual has been, is being or is likely to be endangered,*

*(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.*

326. In terms of the reasonableness of the belief, the Court of Appeal in ***Babula v Waltham Forest College 2007 ICR 1026*** said that whilst an employee claiming the protection of section 43B(1) must have a reasonable belief that the information he/she is disclosing, tends to show one or more of the matters in that section, there is no requirement to demonstrate that the belief is factually correct. The belief may be reasonable even if it turns out to be wrong. Whether the belief was reasonably held is a matter for the tribunal to determine.

327. The time limit for bringing a detriment claim under section 47B is set out in section 48(3) of the Employment Rights Act 1996. It is the "reasonably practicable" test. An employment tribunal shall not consider a complaint unless it is presented—

*(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or*

*(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.*

328. In ***Chesterton Global Ltd v Nurmohamed 2018 ICR 731*** the CA dealt with the question of the public interest test which was introduced in June 2013. The worker's belief that the disclosure was made in the public interest must be objectively reasonable. The words "*in the public interest"* were introduced prevent a worker from relying on a breach of his or her own contract of employment where the breach is of a personal nature and there are no wider public interest implications.

329. In ***Chesterton*** whilst the employee was most concerned about himself (in relation to bonus payments) the tribunal was satisfied that he did have other office managers in mind and concluded that a section of the public was affected. Potentially about 100 senior managers were affected by the matters disclosed. The claimant believed that his employer was exaggerating expenses to depress profits and thus reducing commission payments in total by about £2-3million.

330. The Court of Appeal held that the mere fact something is in the worker's private interests does not prevent it also being in the public interest. It will be heavily fact-dependent. Underhill LJ noted four relevant factors:

a. The numbers in the group whose interests the disclosure served
b. the nature of the interests affected and the extent to which they are affected by the wrongdoing disclosed
c. the nature of the wrongdoing disclosed – disclosure of deliberate

wrongdoing is more likely to be in the public interest than the disclosure of inadvertent wrongdoing affecting the same number of people

d. the identity of the alleged wrongdoer – the larger or more prominent the wrongdoer (in terms of the size of its relevant community, i.e. staff, suppliers and clients), the more obviously should a disclosure about its activities engage the public interest although this should not be taken too far.

331. The CA also sounded a note of caution (paragraph 36) that the public interest test did not lend itself to absolute rules. The broad intent behind the amendment to the law in July 2013 introducing the public interest test, is that workers making disclosures in the context of private workplace disputes should not attract the enhanced statutory protection accorded to whistleblowers, even where more than one worker is involved.

332. In ***Parsons v Airplus International Ltd EAT/0111/17*** the claimant was a qualified non-practising barrister. She made a number of disclosures to her employer and later argued that the disclosures were protected, making her dismissal automatically unfair for whistleblowing. The tribunal and the EAT found that she only had her self-interest in mind when making the disclosures, rather than the public interest. Whilst a disclosure made in the worker's self-interest may also be in the public interest and protected, following ***Chesterton*** (above), in this case the disclosures were held not to be protected. The fact that the claimant could hypothetically have believed the disclosures were in the public interest did not assist, if she did not hold that belief.

333. In ***Blackbay Ventures Ltd v Gahir (trading as Chemistree) 2014 ICR 747*** the EAT summarised the case law in relation to public interest disclosures as set out below.

> *1. Each disclosure should be identified by reference to date and content.*
>
> *2. The alleged failure or likely failure to comply with a legal obligation, or matter giving rise to the health and safety of an individual having been or likely to be endangered or as the case may be should be identified.*
>
> *3. The basis upon which the disclosure is said to be protected and qualifying should be addressed.*
>
> *4. Each failure or likely failure should be separately identified.*
>
> *5. Save in obvious cases if a breach of a legal obligation is asserted, the source of the obligation should be identified and capable of verification by reference for example to statute or regulation. It is not sufficient as here for the employment tribunal to simply lump together a number of complaints, some of which may be culpable, but others of which may simply have been references to a check list of legal requirements or do not amount to disclosure of information tending to show breaches of legal obligations. Unless the employment tribunal undertakes this exercise it is impossible to know which failures or likely failures were regarded as culpable and which attracted the act or omission said to be the detriment suffered.*

*If the employment tribunal adopts a rolled up approach it may not be possible to identify the date when the act or deliberate failure to act occurred as logically that date could not be earlier than the latest of act or deliberate failure to act relied upon and it will not be possible for the Appeal Tribunal to understand whether, how or why the detriment suffered was as a result of any particular disclosure; it is of course proper for an employment tribunal to have regard to the cumulative effect of a no of complaints providing always have been identified as protected disclosures.*

*6. The employment tribunal should then determine whether or not the claimant had the reasonable belief referred to in s.43B(1) and under the 'old law' whether each disclosure was made in good faith; and under the 'new' law whether it was made in the public interest.*

334. A disclosure can still amount to a qualifying disclosure even if the information disclosed is not factually correct - ***Darnton v University of Surrey 2003 IRLR 133 (EAT).*** The test to be applied is whether the employee had a reasonable belief in the information at the time the disclosure was made.

335. Section 13 of the Equality Act 2010 provides that a person (A) discriminates against another (B) if because of a protected characteristic A treats B less favourably than A treats or would treat others.

336. Section 23 of the Act provides that on a comparison of cases for the purposes of section 13, there must be no material difference between the circumstances relating to each case.

337. Section 136 provides that if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

338. One of the leading authorities on the burden of proof in discrimination cases is ***Igen v Wong 2005 IRLR 258***. That case makes clear that at the first stage the Tribunal is to assume that there is no explanation for the facts proved by the claimant. Where such facts are proved, the burden passes to the respondent to prove that it did not discriminate.

339. Lord Nicholls in ***Shamoon v Chief Constable of the RUC 2003 IRLR 285*** said that sometimes the less favourable treatment issues cannot be resolved without at the same time deciding the reason-why issue. He suggested that Tribunals might avoid arid and confusing disputes about identification of the appropriate comparator by concentrating on why the claimant was treated as he was, and postponing the less favourable treatment question until after they have decided why the treatment was afforded.

340. In ***Madarassy v Nomura International plc 2007 IRLR 246*** it was held that the burden doers not shift to the respondent simply on the claimant establishing a different in status or a difference in treatment. Such acts only indicate the possibility of discrimination. The phrase “could conclude” means that “a reasonable tribunal could properly conclude from all the

evidence before it that there may have been discrimination".

341. In ***Hewage v Grampian Health Board 2012 IRLR 870*** the Supreme Court endorsed the approach of the Court of Appeal in ***Igen Ltd v Wong*** and ***Madarassy v Nomura International plc***. *The judgment of Lord Hope in* ***Hewage*** *shows that* it is important not to make too much of the role of the burden of proof provisions. They require careful attention where there is room for doubt as to the facts necessary to establish discrimination, but have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other

342. The courts have given guidance on the drawing of inferences in discrimination cases. The Court of Appeal in ***Igen v Wong*** approved the principles set out by the EAT in ***Barton v Investec Securities Ltd 2003 IRLR 332*** and that approach was further endorsed by the Supreme Court in ***Hewage*****.** The guidance includes the principle that it is important to bear in mind in deciding whether the claimant has proved facts necessary to establish a prima facie case of discrimination, that it is unusual to find direct evidence of discrimination.

343. Section 27 provides that a person victimises another person if they subject that person to a detriment because the person has done a protected act. A protected act is defined in section 27(2) and includes the making of an allegation (whether or not express) that there has been a contravention of the Equality Act.

## Conclusions

<u>The protected disclosures</u>

344. Of the 39 disclosures relied upon in the Schedule set out below, two were withdrawn and we have found as a fact that a number were not made and a number did not form part of the pleaded case. This deals with the following numbered disclosures: 1, 6, 7, 8, 11, 13, 15, 16, 17, 20, 21, 22, 24, 25, 26, 31, 32, 33, 34, 35, 36 and 37. We deal with the remaining disclosures as follows.

345. <u>Disclosure 2:</u> We find that the words "*just to say that D&P wish to commence legal proceedings"* comes nowhere near amounting to a protected disclosure. It told Mr Metzer and Mr Gersch that a firm wished to commence legal proceedings against the respondent. It says nothing about the merits of any such proceedings, it does not say for example "*and I believe this claim will succeed and I believe you are acting in breach of the core duties".* It is no more than a statement of this firm intending to bring a claim. It could be an unmeritorious claim or an eminently defendable claim. The claimant does not disclose anything within section 43B(1)(b) ERA when using the words relied upon. We find that disclosure 2 was not a protected disclosure.

346. <u>Disclosure 3</u>: Was in an email to Mr Metzer and Mr Gersch on 6 October

2016 (page 1469). *"PS it really is in our interests to get the accounts shut down. I think that an audit on the fees account would raise questions both before and after GC merger. I cannot account for £5k being transferred from the fees account to the services account before I became involved. If this is picked up we will have very serious problems for whoever authorised that to top up the services account, as this month was being held in trust. Just an FYI!"* The respondent accepted in submissions that this passage raised an issue in relation to the transfer of the sum of £5,000 from the fees account to the services account. She said that it would raise questions on an audit and that she could not account for it. She said there would be serious problems, but she does not say what the serious problems would be. She relies on the words quoted as tending to show that a criminal offence has been committed, that of theft, that there was a breach of a legal obligation or that the words tended to show that this had been covered up or concealed. The legal obligation said to be breached was core duties 5 and 9. We cannot go so far as to import into those words, any tendency to show that a criminal offence had been committed. There is no suggestion in that wording that the offence of theft has been committed. Core duties 5 and 9 are that you must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession and you must be open and co-operative with your regulators (the BSB). We find that there is enough in the wording stated for disclosure 3 to amount to a protected disclosure. The claimant said that the transfer from the fees account to the services account could not be accounted for and there would be serious problems. We find that although it is tenuous, there is enough there to regard her as disclosing that what had taken place could amount to a breach of the core duties. The public interest relied upon was that public money formed the income of many in Chambers, their entire or nearly entire practice and that some members of Chambers also held judicial roles. We find that this is enough to satisfy the public interest test. We find that disclosure 3 was a protected disclosure.

347. Disclosure 4: Was in an email dated 7 October 2016 to Mr Gersch (page 1468): *"Adam I think we need formal approval of this, I am not comfortable it not being on paper…"* and "*because of the firewall*". The claimant relied upon this as tending to show the breach of a legal obligation. This related to a debt that Argent Chambers owed to the firm Duff & Phelps. The claimant gave a number of options in her email of 6 October (page 1469) as to how to deal with the aged debt. She was setting out a view that the CMC should be told how the Argent aged debt was going to be dealt with by Goldsmith Chambers. Mr Gersch said he was happy to agree to her Option 2 and the claimant said she thought they needed formal approval on it, with a paper to the CMC. This does not on our finding tend to show that there was a breach of a legal obligation. It was the claimant suggesting to Mr Gersch that in relation to one of her proposed options, they seek formal CMC approval. There is no suggestion in the wording relied upon that any person is in breach or about to be in breach of any particular unspecified legal obligation. We find that disclosure 4 is not a protected disclosure. The claimant needed to say more if she wished to

disclose the breach of a legal obligation, such as – without this approval I believe we would be acting unlawfully or in breach of the core duties.

348. Disclosure 5: *"For the record I an uncomfortable breaching merger agreement without approval from the CMC…"* and *"so much negative feeling toward AMQC over the Argent (and intern)…. issue"* contained in an email to Mr Gersch dated 10 October 2016. This email follows on from the email referred to in disclosure 4. This is the claimant suggesting to Mr Gersch that he authorises the full amount of the debt and they would keep their fingers crossed that the arbitration dealt with the balance (her option 2 in the 6 October email). It was another statement as with disclosure 4 of wishing to have CMC approval. We make the same findings as with disclosure 4. It does not tend to show a breach of a legal obligation. All it says is that the claimant is not comfortable without CMC approval. By implication, with that approval she would be content. We find that disclosure 5 was not a protected disclosure.

349. Disclosure 9: *"You will see that the treasurer over ruled me and is wilfully going to breach the merger agreement. 'formal approval' should have happened in advance. (For the newbies there is a merger agreement, which expressly prohibits GC money being used for Argent debt). CMC approval would have validated this, if it were necessary to do by the arbitration not happening by December".* This was made in an email to members of the CMC on 2 November 2016 (after the claimant's suspension) at page 1702). The claimant in the Appendices below relied upon a breach of core duties 5 and 9 set out in relation to disclosure 3 above, yet in the words relied upon, clearly referred to a breach of the merger agreement – a document we were not taken to. We cannot make a finding in relation to the provisions of the merger agreement when we were not taken to it, so we can make no findings as to the reasonableness of any belief in what the disclosure tended to show in that respect. For the same reasons there is insufficient evidence for us to find that the words tended to show a cover up in relation to this – notwithstanding that the merger agreement was not the legal obligation actually relied upon. The claimant in this set of words, makes no reference to the core duties or the BSB Handbook. We find that the words relied upon do not tend to show the matters in section 43B(1)(b) or (f) and that it was not a protected disclosure.

350. Disclosure 10: *"I have had a campaign run against me by AMQC. He is using chambers funds as his own personal piggy bank to run a vendetta against me. As Directors I am urging you to stop this 'process' immediately".* This was in an email to Mr Clark, Ms Okine and Mr Routley (being Directors of the respondent company) on 9 November 2016 (page 1734). We find following ***Parsons v Airplus*** (above) that this was a disclosure entirely in the claimant's own personal interests. It was not a disclosure which she made in the public interest. It was about what she perceived as a "*campaign against me"* and a "*vendetta against me"* and must "*stop".* We find that this was not a protected disclosure.

351. Disclosure 12: This disclosure was contained in a paper prepared by the claimant and sent to former Argent Members on 21 November 2016. She relies upon the whole of paragraphs 16-18 on page 1800 of the bundle. This is under a section headed "*Misuse of fees Account Money by AMQC and insurance*". We were not taken to this document in evidence but saw it in the bundle. The section dealt with the £5,000 Argent debt also referred to at disclosure 3. This was effectively the same matter. In paragraphs 16-18 the claimant referred to self reporting to the Bar Standards Board. We find for the same reasons as in disclosure 3 that this was a protected disclosure.

352. Disclosure 14: This was an email that on the face of it was to herself, but we find was sent to all members of chambers on 28 November 2016. It was on page 1906. She refers to whistleblowing in that email saying "*I should have whistle blown on the activities of [Mr Metzer and Mr Gersch] earlier…"*. The claimant relied on a large number of passages, which she said were her attached set of answers to the investigator (Mr Gardiner). The email was about herself and the upcoming EGM. She said "*the meeting being held tomorrow night is to get agreement from 75% of you that you agree with [Mr Metzer's] unilateral decision to suspend me on 27th October 2016"* and "*I am so glad tomorrow night is happening, as this is the first time what I have been able to contact you….".* We find following ***Parsons v Airplus*** that this was an email sent entirely in the claimant's personal interests. It was effectively her "*pitch*" to the members of chambers who would be voting at the ECM. She did not make these disclosures in the public interest. It was in her personal interest in relation to her own situation. We find that disclosure 14 was not a protected disclosure.

353. Disclosure 18: *"the point is, that they cannot and should not go anywhere near anything that resembles mini-pupillages".* This was in an email to Mr Metzer on 26 March 2016 (page 865) relating to the claimant's intention to draft an intern hiring policy, which ultimately she did not do. All this disclosure says is that the "interns" need to be kept separate from mini-pupillage. This is a statement of fact and intent, not a disclosure tending to show a breach of a legal obligation. The evidence we heard was that the none of the interns in question carried out any legal work and they all did administrative work. There is no suggestion in these words, that there was a breach of a legal obligation. All the claimant does is to state the need for the administrative interns to be kept away from any work that could be construed as a mini-pupillage. We find that this was not a protected disclosure.

354. Disclosure 19: *"This is where I draw the line"* and *"Hence the need for a policy".* This is contained in an email to Mr Metzer on 14 June 2016 (page 1014). The context was that Ms Sethi, a member of Chambers, wrote to the claimant asking whether there was any chance of casual work experience for her daughter. The precise quote of the first part is: "*This is where I am drawing the line".* As we have found above, the claimant was the gatekeeper in relation to the interns. She informs Mr Metzer of a

request she has received from Ms Sethi and this is where she was drawing the line. When Mr Metzer responded that it was a shame because his daughter Anya may be interested in further work, the claimant said: "*The problem is appearances, not reality"* as she considered Anya "*invaluable"* and she suggested paying Anya through her (the claimant's) own consultancy agreement. We find that the claimant did not reasonably believe that the words she relies upon tended to show the breach of a legal obligation. If she reasonably believed this, we find she would not have suggested a means by which Anya Metzer could be engaged through her own consultancy agreement, thus being complicit with any illegality. The claimant also said to Mr Metzer in relation to Ms Sethi's daughter "*I am going to have to let this one in".*

355. Disclosure 23: *"6… I have told you over and over again that this was not necessarily a good idea".* This was in an email to Mr Metzer and Mr Gersch dated 26 September 2016 (page 1397), a point at which the working relationship had hit a turning point (from 22 September 2016). This was again about interns and work placements. The words relied upon were in relation to Mr Metzer's nephew. She said at point 6 of her email: "*I said we would not have the work. I have told you over and over again that this was not necessarily a good idea".* In addition she relied upon the words at point 11 of the same email on page 1398: *"You have been pushing one of your children's friends as applicants for various clerks jobs. I go formerly (sic) on record when I say she can apply if she wishes… I do not want you to talk to me about her or indeed any other applicant for work placement or employment. You constantly put me in a position which makes me feel uncomfortable".* For the same reasons as we have given in relation to disclosure 19, we find that this is not a protected disclosure. It does not tend to show a breach of a legal obligation. If the claimant really was as uncomfortable as she suggested and reasonably believed that what she said tended to show the breach of a legal obligation, she would not have offered to pay Anya Metzer, whom she described as invaluable, through her own consultancy agreement. We find that she did not hold such a reasonable belief.

356. Disclosure 27: This related to Mr Selita, a matter upon which Mr Metzer was not cross-examined. The words relied upon were "*AMQC asked me to ask the panel members to change their mind. I told AMQC that I did not want to do this".* This does not come close to disclosing a breach of a legal obligation or a cover up of such. We have found as a fact above that Mr Metzer accepted the panel's decision in relation to Mr Selita and we find, based on Ms Milsom's evidence (statement paragraph 11) that he did not in any event ask the claimant to ask the panel to change their minds. We find that the disclosure was not made.

357. Disclosure 28: This was said to be a disclosure to Ms Milsom: "*I told Catherine Milsom, Head of Pupillage and Tenancy Committee, that I was not happy chatting out AMQC instructions. She told me not to worry and that Fatos could reapply.... I presumed that she meant that he will get through one way or the other.* The only words that can be relied upon as

a protected disclosure within the words relied upon are: "*I was not happy chatting out AMQC instructions".* The other words state what Ms Milsom allegedly said and what claimant presumed. We find that even if the claimant said: "*I was not happy chatting out AMQC instructions"* this does not come anywhere near disclosing a breach of a legal obligation or a cover up of such. Ms Milsom in any event did not recall such a discussion (her statement paragraph 12). We find that this was not a protected disclosure.

358. Disclosure 29: This was said to be an oral disclosure to Ms Sarah O'Kane a member of Chambers around June or July 2016 after Mr Selita was interviewed. The words relied upon were: *I told Sarah O'Kane that the HOC wanted Fatos in, but that I thought that the panel decision should stand. She said that she would change her decision, but AMQC should never ask her to be on a panel again. I told her that he should speak to her himself.* Ms O'Kane was not called as a witness to this tribunal. The words the claimant said or disclosed from this were: "*HOC wanted Fatos in, but that I thought that the panel decision should stand*". Other words quoted were those apparently spoken by Ms O'Kane and the claimant telling her to speak to Mr Metzer. The disclosure relied upon does not discuss or tend to show a breach of a legal obligation or a cover up. To be a protected disclosure the claimant needed to say more, by at least making some reference to her belief that this was in breach of the core duties she relied upon.

359. Disclosure 30: This also related to the Selita matter: The claimant relied upon the following said in June or July 2016: "*I reported conversation with SO'K back to AMQC, and said that asking panel members to change their minds was a breach of the code".* If the claimant reported what she had said to Ms O'Kane, we have found that this did not amount to a protected disclosure so any onward disclosure of it to Mr Metzer was similarly not a protected disclosure for the same reasons. In disclosure 30 she says that she told Mr Metzer that it was a breach of the code. She did not cross-examine Mr Metzer at all on the Selita matter. She did not say in evidence in chief (paragraphs 36-38) that it was a breach of the code. There is insufficient evidence therefore, as we have said above, for us to find that the disclosure was made.

The whistleblowing detriments

360. Even if we are wrong on our findings as to whether protected disclosures were made, we make findings on whether the claimant was subjected to detriment because she made any such disclosures. We repeat the whistleblowing detriments from the list of issues as follows:

(i) encouraging employees of the respondent, Mr Francis and Miss Ozalgan, to make complaints against her (Grounds of Complaint paragraph 48(i));
(ii) withholding relevant information from the investigatory process (Grounds of Complaint paragraph 48(i)); the information was the

absence of access to the claimant's emails and Mr Metzer withholding emails dated 25 April 2016 (bundle page 941) from the investigator Mr Gardiner.

(iii) delaying arrangements in respect of the continuation of the claimant's work for the respondent (Grounds of Complaint paragraph 48(ii)); the arrangements were the setting up of the ad hoc committee and twice delaying the EGM.

(iv) delegating the consideration of the continuation of the claimant's work for the respondent to a subcommittee whose members were personally selected by the Head of Chambers QC (Grounds of Complaint paragraph 48(ii));

(v) suspending the claimant from work with immediate effect on 27 October 2016 (Grounds of Complaint paragraph 48(iii));

(vi) escorting the claimant from the building on 27 October 2016 (Grounds of Complaint paragraph 48(iv));

(vii) circulating statements calculated to damage the claimant's reputation to all members of staff and Chambers (Grounds of Complaint paragraph 48(v));

(viii) denying the claimant the opportunity to challenge her suspension from work (Grounds of Complaint paragraph 48(vi));

(ix) denying the claimant the opportunity to challenge the decision to end her contract (Grounds of Complaint paragraph 48(vii));

(x) suspending the claimant from membership as a tenant of Chambers (Grounds of Complaint paragraph 49(i));

(xi) denying the claimant due process in respect of the implementation of the suspension decision (Grounds of Complaint paragraph 49(ii)); the claimant said the suspension should not have been effective for 7 days and a further 30 days under the appeal process.

(xii) expelling the claimant from her membership of Chambers without giving her any opportunity to state her case to members (Grounds of Complaint paragraph 49(iii));

(xiii) denying her the opportunity of a fair and impartial appeal against the decision to expel her from Chambers (Grounds of Complaint paragraph 49(iv)).

361. On (i) we have found as a fact above that the respondent did not encourage Mr Francis and Miss Ozalgan to make complaints against her. This issue fails on its facts.

362. On (ii) so far as withholding relevant information from the investigatory process was concerned this is the 25 April 2016 email. Our finding of fact above is that although it was not disclosed initially to Mr Gardiner, it was ultimately disclosed to him and his report was prepared with the benefit of having seen this relevant email. There was delayed disclosure, but it was disclosed and it was not ultimately withheld. We find that the claimant was not subjected to a detriment because the investigatory process was concluded with the benefit of this email. We have also found as a fact that the claimant was given numerous options by which she could access her emails. She chose for her own reasons not to avail herself of those alternatives. In any event, prior to the end of the investigation, she accepts

that she had access to her emails (her submissions paragraph 4) and Mr Gardiner's finding that she had access at the 11th hour.

363. On (iii) delaying the arrangements for the setting up of the ad hoc committee and twice delaying the EGM. We have found above that it was entirely sensible to delay the ECM (as we have termed it) to await Mr Gardiner's report. We found that it would have been nonsensical to hold the ECM without his report. This was the whole point of the ECM, to consider the claimant's suspension. The reason for delaying the ECM was not because of any disclosure(s) that the claimant had made, it was because the ECM needed the benefit of the report, prepared and provided in a timely manner, to properly make its decision. The ad hoc committee is what we have termed the subcommittee. This was put at paragraph 48(ii) of the Grounds of Complaint that "*Arrangements in respect of the continuation of the claimant's work for Chambers were delayed and eventually delegated to a subcommittee whose members were personally selected by the Head of Chambers".* We have made findings above as to the selection of the members of the subcommittee. We found that it was impossible within the CMC to find people who were completely unconnected with the matters in question. We found that Mr Metzer did the best he could in the circumstances in the selection of the subcommittee. We found that the selection of the subcommittee had nothing to do with any of the disclosures made and now relied upon by the claimant. The setting up of the subcommittee did not delay anything. We have found that they decided on 27 October 2016 that the consultancy agreement should not be extended beyond 31 October 2016. This was not a detriment because of any whistleblowing.

364. Whistleblowing detriment (iv) is on the same issue and we repeat our findings at to the selection of the subcommittee. This had nothing to do with any disclosures made by the claimant.

365. On (v) we have found above that Mr Metzer had three reasons for suspending the claimant and in addition she had threatened to bring down both himself and Chambers, which we and Mr Gardiner found to be threatening. These were the combined reasons for her suspension. It was not because of any disclosures she made and was not a detriment for whistleblowing.

366. On (vi) we found that the claimant was escorted from the building upon her suspension on 27 October 2016, by Mr Nunn alone and not by two clerks as she had alleged both in her ET1 and in her witness statement. We found that she exaggerated this to bolster her claim. We found that the reason for having Mr Nunn escort her from the building was because of concerns about how she might behave or react when being told of her suspension. She was not escorted by Mr Nunn because of any disclosures she had made.

367. On (vii) the claimant relied upon the circulating of statements calculated to damage her reputation to all members of staff and Chambers. The

claimant did not make clear exactly which statements she relied upon. We did our best in the absence of this. We have found that Dr van Dellen sent an email telling members of staff and Chambers that the claimant had been suspended (27 October 2016 page 1655). We have found that Mr Metzer's communication of 1 November 2016 was sent under Article 66(ii)(b) of the Constitution. There was an email from Mr Clark on 9 December 2016 setting out his understanding of the position and our finding was that he did this to set out his understanding when the claimant had been emailing members of Chambers. There were emails advising members of staff on the position and the Gardiner report was circulated. These emails were not sent because the claimant had made her disclosures but for the reasons we have set out above.

368. On (viii) the claimant's case was that she was denied the opportunity to challenge her suspension from work, as an act of whistleblowing detriment. We have found as a fact that the claimant appealed her suspension and that she sent voluminous emails to members of Chambers challenging her suspension. This issue fails on its facts.

369. On (ix) the claimant's case was that she was denied the opportunity to challenge the decision to end her contract as an act of whistleblowing. It is correct that the claimant was not given the opportunity to challenge this. There is a finding from Employment Judge Welch that the claimant was a worker and the claim that she was an employee was withdrawn (bundle page 43) and that she was a worker from January 2016 (judgment paragraph 77). As the claimant was not an employee she had no legal right to "challenge" the termination of her contract/consultancy agreement. This was not the dismissal of an employee and she did not claim to be an employee. We find that this was not an act of whistleblowing detriment. The claimant did not have a right to challenge the ending of a consultancy agreement in any event.

370. On (x) the claimant relied on being suspended from membership as a tenant of Chambers as an act of whistleblowing detriment. The claim against Goldsmith Chambers as opposed to Goldsmith Chambers (Services) Ltd was dismissed by Judge Welch (bundle page 43). The claim is against the service company and not the set of barristers' Chambers. We have set out our findings as to the reasons for suspension. We accepted Mr Metzer's evidence and have found accordingly. The reason for suspension was not because of any disclosure made by the claimant but was for those reasons given by Mr Metzer. The claimant's position in Chambers had become untenable.

371. On (xi) the claimant relied upon being denied the claimant due process in respect of the implementation of the suspension; she said it should not have been effective for 7 days and a further 30 days under the appeal process. We have found above that Article 32, the Head of Chambers exercising emergency powers in circumstances of genuine urgency, takes precedence over article 66 on appealing a suspension and Mr Metzer was acting within the Constitution. It was not an act of whistleblowing detriment

to deny the claimant the exercise of the rights under article 66.

372. On (xii) the claimant relied upon being expelled from the membership of Chambers without any opportunity to state her case to members. We have found that the claimant made copious representations to members of Chambers, including a lengthy statement at page 2990 of the bundle, prior to the ECM and this issue fails on its facts.

373. On (xiii) the claimant relied upon being denied the opportunity of a fair appeal against the decision to expel her from Chambers. She exercised a right of appeal on 31 December 2016. We find that the claimant was given a fair and impartial appeal to which she submitted representations and made her own decision not to attend. We find this issue fails on its facts.

374. The claim for whistleblowing detriment fails and is dismissed.

Direct sex discrimination

375. The claimant relied upon the following acts as being less favourable treatment because she is female:

(i) in the way in which it afforded her access to the procedural protection provided by Chambers' constitution (Grounds of Complaint paragraph 52(i));
(ii) subjecting her to pressure to leave Chambers (Grounds of Complaint paragraph 52(i));
(iii) encouraging employees of the respondent, Mr Francis and Miss Ozalgan, to make complaints against her (Grounds of Complaint paragraph 52(iii));
(iv) withholding relevant information from the investigatory process (Grounds of Complaint paragraph 52(iii)); the information was the absences of access to the claimant's emails and Mr Metzer withholding emails dated April 2016 (bundle page 941) from Mr Gardiner.
(v) delaying arrangements in respect of the continuation of the claimant's work for the respondent (Grounds of Complaint paragraph 52(iii)); the arrangements were the setting up of the ad hoc committee and twice delaying the EGM.
(vi) delegating the consideration of the continuation of the claimant's work for the respondent to a subcommittee whose members were personally selected by the Head of Chambers, Anthony Metzer QC (Grounds of Complaint paragraph 52(iii));
(vii) suspending her from work with immediate effect on 27 October 2016 (Grounds of Complaint paragraph 52(iii));
(viii) escorting her from the building on 27 October 2016 (Grounds of Complaint paragraph 52(iii));
(ix) circulating statements calculated to damage the claimant's reputation to all members of staff and Chambers (Grounds of Complaint paragraph 52(iii));

(x) suspending her from membership as a tenant of Chambers on 27 October 2016 (Grounds of Complaint paragraph 52(iii));
(xi) denying the claimant due process in respect of the implementation of the suspension decision (Grounds of Complaint paragraph 52(iii));
(xii) expelling the claimant from her membership of Chambers without giving her any opportunity to state her case to members (Grounds of Complaint paragraph 52(iii));
(xiii) denying her the opportunity of a fair and impartial appeal against the decision to expel her from Chambers (Grounds of Complaint paragraph 52(iii)).

376. The following issues failed on their facts, issue (i) we do not agree that the claimant was not afforded access to the constitution and we have found that the respondent acted within the constitution. Our finding was that article 32 took precedence as it was the exercise of emergency powers, which we find were legitimately exercised in the circumstances so this issue fails on its facts issue, (ii) the claimant's case was that it was an act of direct sex discrimination that she was "*subjected to pressure to leave Chambers*". We found above that at the 20 October 2016 meeting Mr Metzer suggested that she resign from her role as Deputy Treasurer and end her consultancy but that he was prepared for her to continue as a member of Chambers. This issue therefore fails on its facts as he was prepared on our finding, for the claimant to remain as a member of Chambers and he also allowed her to rescind her 22 September resignation which as a matter of law he was not obliged to do (iii) we found that the respondent did not encourage Mr Francis and Ms Ozalgan to make complaints against her, (iv) the 25 April 2016 email was not withheld from Mr Gardiner's investigation, albeit it was disclosed late, the investigation report was prepared with the benefit of this email, on (v) we found that Mr Metzer did the best he could in the circumstances in the selection of the subcommittee and we find that this had nothing to do with the claimant's gender, (vi) on delegating the consideration of the continuation of the claimant's work for the respondent to a subcommittee, this issue is aligned with (v) and our finding is the same, it had nothing to do with the claimant's gender, (vii) we accepted Mr Metzer's reasoning for the suspension and this was not because of the claimant's gender (viii) we found that the reason for having Mr Nunn escort her from the building was because of concerns about how she might behave or react when being told of her suspension. She was not escorted by Mr Nunn because of her gender, (ix) we repeat our findings above and find that these emails were not sent because of the claimant's gender, (x) we find that the reason for suspension was not because of the claimant's gender; we accepted the reasons given by Mr Metzer. The claimant's position in Chambers had become untenable, this was nothing to do with her gender, (xi) We found that by Article 32, the Head of Chambers was exercising emergency powers in circumstances of genuine urgency and that Mr Metzer was acting within the Constitution, so this issue failed on its facts (xii) this issue fails on its facts, the claimant made copious representations to members of Chambers (xiii) fails on its facts, we find that the claimant was given a fair and impartial appeal which she chose not to attend.

377. Our finding on the direct sex discrimination claim, is that the claimant did not show us facts from which we could conclude, in the absence of any other explanation, that the respondent had directly discriminated against her because of her gender. The burden of proof did not pass to the respondent. The claimant on our finding did not make out a prima facie case.

378. The claimant named four male comparators, Mr Morris, Dr van Dellen, Mr D'Souza and Mr Fitch-Holland but made no case as to how we should find that she was less favourably treated than those men on the precise issues we were asked to determine and where they were in circumstances which were not materially different to her own. The claimant was in a unique situation and was not in the same situation as her comparators. The respondent submitted that none of the comparators had made threats against Chambers, or against the Head of Chambers personally; none of them had been accused of the sort of financial impropriety that the claimant had been accused of; none of them were accused of bullying and harassing staff and we agree with that submission.

379. We had no evidence that on the issues we had to determine, that any of these individuals were in materially the same circumstances. The claimant did not cross-examine in relation to the comparator exercise. She did not put to the respondent's witnesses that they had treated her less favourably than any of her four comparators in materially the same circumstances as herself.

380. The claimant accepted in evidence that the composition of Chambers was roughly 50/50 or 55/45 male to female and that the CMC had a roughly even composition male to female. It was also clear to us and we find that women reached senior positions in Chambers. Ms Proudman was described by the claimant as the "*resident feminist"* and her high profile press attention on an issue related to sex discrimination proved no barrier to her appointment. We found nothing from which we could draw an inference that there was sex discrimination in the treatment of the claimant.

381. The claim for direct sex discrimination fails and is dismissed.

Direct sexual orientation discrimination

382. The claimant relied upon the same acts of less favourable treatment for her sexual orientation discrimination claim as for her direct sex discrimination claim. As such we repeat our findings in relation to both whistleblowing and direct sex discrimination. These issues either fail on their facts or we have been given satisfactory evidence for us to find that there was no act of discrimination involved.

383. There were no named comparators. The claimant relied upon a hypothetical comparator but again put no cross-examination to any

witness, that they would have treated her differently had she been heterosexual.

384. The claimant said in evidence: *"I don't believe that Mr Metzer is anti-gay. But I do believe that he is spiteful".* She amended her evidence on this after the lunch break and we did not consider the change of evidence to be credible. We accepted her original evidence and have found that the change was made when she realised how this affected her case on direct sexual orientation discrimination.

385. The respondent was well aware of her sexual orientation. She did not hide it. She attended social events in Chambers with her partner, who also secured a place in Chambers on a second application.

386. The claimant relied upon Mr Coulter's use of the word "*catamite*" (email 15 December 2016 (page 2107). This was not one of the issues for our determination. Therefore we considered whether the use of this derogatory word which has homophobic connotations, should lead us to draw any adverse inferences on the issues that were for our determination.

387. We were not taken to any other homophobic terminology. The claimant was openly gay and recruited to Chambers, as was her partner, and Ms Goodall. The claimant herself said she believed that around "*three of four*" members of Chambers "*would not describe themselves as heterosexual*". We have found that she did not genuinely believe that Mr Metzer was anti-gay. She did not put to any other witness other than Mr Coulter, that they were anti-gay, or were treating her less favourably because she was gay or that had she been heterosexual they would have treated her more favourably.

388. The claimant did not make out a prima facie case on sexual orientation discrimination. The burden of proof did not pass to the respondent. The claim for direct sexual orientation discrimination fails.

<u>Victimisation</u>

389. The claimant relied upon doing protected acts under these broad headings:

    a. Recruiting family members of the Head of Chambers as paid interns to work in Chambers without advertising vacancies or opportunities – put as a breach of the Bar Standards Board Regulations as well as inconsistent with equal opportunities policy.

    b. Inviting a tenancy recruitment panel to revisit its unfavourable application of a particular candidate (Mr Fatos Selita) who the Head of Chambers was keen to recruit was inappropriate and inconsistent with fair recruitment and selection practice.

c. A failure to address inappropriate and potentially discriminatory behaviour by members and staff.

390. Essentially the claimant relied upon her protected disclosures on those three categories as her protected acts.

391. The respondent accepted that the bringing of this claim was a protected act.

392. On category (a) so far as the claimant relies on any complaint about a breach of the BSB Handbook, this is not the test under section 27 Equality Act 2010. She has to show that she made an allegation that the respondent contravened the Equality Act itself and not some other legal obligation. Even in June 2014 when the claimant said she was "*drawing the line*" she told Mr Metzer it was about "*appearances not reality*". She was in no way making a complaint that the Equality Act was being contravened. The protected act relied upon specifically related to family members of the Head of Chambers Mr Metzer. As we have found above, she was the gatekeeper and was the person who did the recruiting when names were passed to her. She was also the person who was supposed to draft the policy which she did not prepare. When she said she was drawing the line Mr Metzer said it was a "*shame*" as Anya would have been interested in further work; he did not say I insist that you take my daughter as an intern. The claimant did not take us to any specific complaint she made that there was a breach of the Equality Act. We spent time during our deliberations looking for such, within the 3,000 or so pages in front of us and revisited the claimant's witness statement on the issue. We find that there was no protected act on this issue. The claimant was content and considered it justified to recruit family members of members of Chambers when it suited her needs and until her relationship with Mr Metzer and Mr Gersch broke down in late September 2016. Her change of position was directly related to the breakdown of those relationships.

393. On category (b), we found against the claimant. We found that Mr Metzer accepted the recruitment panel's decision and he did not invite them to revisit its decision and the claimant did not make a disclosure about this and therefore there was no protected act. We saw no complaint on this issue where the claimant made an allegation that Mr Metzer had contravened the Equality Act. The claimant did not cross-examine Mr Metzer on the Selita issue.

394. On category (c) this was said to be a protected act complaining of a failure to address inappropriate and potentially discriminatory behaviour by members and staff. The claimant relied upon her protected disclosures numbered 34 to 39 under this heading. We considered whether any of these made an allegation that the respondent had contravened the Equality Act. On disclosures 34 – 37 inclusive, we had no evidence upon which we could make a finding that these words had been said and we found that as protected disclosures they were not made and for the same reason we find that as protected acts, they were not done. We have found

that disclosures 38 and 39 did not form part of the claimant's pleaded case and the same applies to them as protected acts. We therefore find that category (c) as protected acts were either not done or were not part of the pleaded case.

395. Even if we are wrong about this and the claimant did a protected act or acts, she relied upon the same acts for her victimisation claim in numbers (i) to (xiii) and we rely on our findings above. Either the issue failed on its facts or we have found that they were not done because of gender, sexual orientation or any protected disclosure. As the protected disclosures and protected acts are aligned, we find that there was no act of victimisation on issues (i) to (xiii).

396. The respondent conceded and we obviously find that the commencement of these proceedings was a protected act. The respondent was not aware of the issue of the claim until 27 February 2017 when it was served on them.

397. There were four acts of post termination victimisation relied upon:

(i) sending a letter demanding money to the claimant on 9 February 2017;
(ii) sending a letter demanding money to the claimant on 16 February 2017;
(iii) contacting the Metropolitan Police making (on the claimant's case, false) allegations of harassment against her on or before 7 March 2017;
(iv) persisting in attempting to get the said allegations against her investigated on or around 22 March 2017.

398. On issues (xiv) and (xv) our finding above was that the sending of the letters of 9 and 16 February 2017 was not because of any protected act that may have been done by the claimant but because of Mr Gardiner's clear finding at paragraph 102 of his report, with which we agreed and because the claimant was in breach of contract in being paid for and failing to provide the business modelling report. We also found that the respondent would not have been content to let this lie, if she had not done a protected act. It was a substantial sum of money which they could not ignore and the correspondence was legitimate. Furthermore these two letters were sent before the respondent was served with the ET1 on 27 February 2017 and this supports our finding that the sending of the letters had nothing to do with the one admitted protected act.

399. The claimant also relied upon Mr Gersch contacting the Metropolitan Police making false allegations of harassment against her on or before 7 March 2017. Our finding above is that the reason Mr Gersch went to the police was because he felt harassed and it was affecting his health. It was not because of any protected act.

400. Issue (xvii) was put as persisting in attempting to get the said allegations

against her investigated on or around 22 March 2017. We have found above that Mr Gersch was in contact with the police because he felt harassed by the claimant and wanted this to stop and because the police had asked for information around the time they met with the claimant in March 2017 and he provided this. It was not because of any protected act.

401. The claim for victimisation fails and is dismissed.

**Employment Judge Elliott**
**Date: 14 October 2019**

Judgment sent to the parties 14/10/2019 :

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For the Tribunals

# APPENDIX 1

# SCHEDULE OF ALLEGED PUBLIC INTEREST DISCLOSURES

***"Financial and other mismanagement of arrangements to close down the liabilities of Argent Chambers"***

| Alleged PID no. | Date | Whether orally or in writing | To whom was it made?<br><br>If in writing, document said to contain the protected disclosure | If made orally, the gist of the words used by C<br><br>If in writing, the passage(s) relied upon | Which paragraphs of s.43B(1) engaged |
|---|---|---|---|---|---|
| **1** | **Days leading to: 3rd July 2016** | Oral | **Anthony Metzer QC** | Gist of words used:<br>*"You need to contact the Arbitrator. It has been going on too long. This could cause mass litigation amongst many of our members. this would be a breach of our legal duties with the regulator".* | (b) and (f) |
| **2** | **28th September 2016** | Writing | **Adam Gersch and Mr Metzer**<br><br>Email of 28.9.16<br><br>**Page 1270A** | Passage(s) relied upon:<br>"*just to say that D&P wish to commence legal proceedings*" | (b) |
| **3** | **6th October 2016** | Writing | **Adam Gersch**<br><br>**1469** | Passage relied upon:<br>*"PS it really is in our interests to get the accounts shut down. I think that an audit on the fees account would raise questions both before and after GC merger. I cannot account for £5k being transferred from the fees account to the services account before I became involved. If this is picked up we will have very serious problems for whoever authorised that to top up the services account, as this month was being held in trust. Just an FYI!"* | (a), (b) and (f) |
| **4** | **7th October 2016** | Writing | **Adam Gersch**<br><br>**1468 – 1469** | Passage relied upon:<br>*"Adam I think we need formal approval of this, I am not comfortable it not being on paper…"* and "*because of the firewall*". | (b) |
| **5** | **10th October 2016** | Writing | **Adam Gersch**<br><br>**1474 – 1476** | Passage relied upon:<br>*"For the record I an uncomfortable breaching merger agreement without approval from the CMC…"* and *"so much negative feeling toward AMQC over the Argent (and intern)…. issue".* | (b) and (f) |
| **6** | **19th October 2016** | Writing<br><br>(maybe oral on 20th) | (Mr Metzer QC and Mr Gersch) | Passage(s) relied upon if PID:<br>Not stated and withdrawn<br><br>If oral, words used:<br>Not stated and withdrawn | Withdrawn |
| **7** | **20th October 2016** | Oral | **Anthony Metzer QC** | Gist of words used:<br>*"I told them that we had to get 5k that AMQC had moved sorted, otherwise it* | (a), (b) and (f) |

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| | | | **Adam Gersch** | *would become a criminal matter. I also stated that I did not think that it was appropriate under the governance documents of chambers to undertake the finances as AGE was going".* | |
| **8** | **1st November 2016** | Oral (by telephone) | **Dingle Clark** | Gist of words used:<br>*"Tell him that the 5,000 must be sorted out before the conclusion of the arbitration. That if it is not, it ceases to be an administrative cock up on AMQC part and turns into a criminal offence".* | (a), (b) and (f) |
| **9** | **2nd November 2016** | Writing | **All members of the CMC**<br><br>**1702** | Passage(s) relied upon:<br>*"You will see that the treasurer over ruled me and is wilfully going to breach the merger agreement. 'formal approval' should have happened in advance. (For the newbies there is a merger agreement, which expressly prohibits GC money being used for Argent debt). CMC approval would have validated this, if it were necessary to do by the arbitration not happening by December".* | (b) and (f) |
| **10** | **9th November 2016** | Writing | **Directors of R 1732-1734** | Passage relied upon:<br>*"I have had a campaign run against me by AMQC. He is using chambers funds as his own personal piggy bank to run a vendetta against me. As Directors I am urging you to stop this 'process' immediately".* | (b) and (f) |
| **11** | **16th November 2016** | Writing | **R's CMC**<br><br>**1763 – 1766** | Passage(s) relied upon:<br>*"I am certain that AVD, AMQC or AGE will have insisted that all members of the CMC had known such a conflict when spending monies. Had you been told this?"* | (b) and (f) |
| **12** | **21st November 2016** | Writing | **Former members of Argent Chambers**<br><br>**1792 – 1804** | Passage(s) relied upon:<br>The whole of paragraphs 16, 17 and 18 (Section F) [**1800**] | (a), (b) and (f) |
| **13** | **22nd November 2016** | Writing | **Philip Lindan** (R's solicitor) Email to Philip Lindan<br><br>Argent Report **1792 – 1804** | C said to R solicitors: *"Relied upon same paragraphs. Indicated that I was a whistleblower".*<br><br>Plus as above:<br>The whole of paragraphs 16, 17 and 18 (Section F) [**1800**] | (a), (b) and(f) |
| **14*** | **28th November 2016** | Writing | **All members of Chambers**<br><br>**1906** (plus attachment) | Passage(s) relied upon if PID:<br>*Please see annexed list of matters relied upon | (a), (b) and (f) |
| **15** | **14th December 2016** | Writing | **Bruce Gardiner**<br><br>**2015 – 2022** | Passage(s) relied upon:<br>"*AMQC and AGE kept the CMC in the dark on these matters"* | (a), (b) and (f) |
| **16** | **18th December 2016** | Writing | **Bruce Gardiner**<br><br>**2247** | Passage(s) relied upon:<br>"*they failed to do this leaving the members of Argent exposed to claims in terms of fire risk of the building and ICO breaches"* | (a), (b) and (f) |

***"Nepotism – Recruiting family members of the Head of Chambers as paid interns to work in Chambers without advertising vacancies or opportunities – breach of the BSB regulations as well as inconsistent with equal opportunities policy"***

| Alleged PID no. | Date | Whether orally or in writing | To whom was it made?<br><br>If in writing, document said to contain the protected disclosure | If made orally, the gist of the words used by C<br><br>If in writing, the passage(s) relied upon | Which paragraphs of s.43B(1) engaged |
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| **17** | **February - May 2016** | Oral | **Anthony Metzer QC** | Gist of words used:<br>*"The gist was that I tried on multiple occasions to get him not to invite anymore friends of family members. I told him that it was bad for chambers and in fact a breach of equalities legislation. His attitude was that paid internships for his family was his perk as HOC".*<br><br>*"Further through March and June I attempted to start a policy, but AMQC encouraged me to kick it off for a while".*<br><br>*"I was making protected disclosures to AMQC when I told him that GC would be in breach of Equalities legislation. AMQC is particularly difficult regarding his family, and needs constant reassurance. Therefore the conversations would start with a protected disclosure, and end with AMQC needing to be told how fabulous he was. It could be argued that AMQC did not absorb the protected disclosure. Evidence of his coverup suggests otherwise".* | (b) and (f) |
| **18** | **26th March 2016** | Writing | **Anthony Metzer QC**<br><br>**865** | Passage(s) relied upon:<br>*"the point is, that they cannot and should not go anywhere near anything that resembles mini-pupillages".* | (b) |
| **19** | **14th June 2016** | Writing | **Anthony Metzer QC**<br><br>**1014 – 1015** | Passage(s) relied upon:<br>*"This is where I draw the line"*<br><br>And<br><br>*"Hence the need for a policy".* | (b) and (f) |
| **20** | **11th September 2016** | Oral | **Anthony Metzer QC** | Gist of oral discussion:<br>*"Verbal conversations took place where I tried to dissuade AMQC from having Rebecca on again. We had done quite heated exchanges in his room. I felt pressured into carrying out his wishes. I told him in these exchanges that having Rebecca in was bad in terms of our regulator etc.* | (b) and (f) |
| **21** | **12th September 2016** | Writing | **Anthony Metzer QC**<br><br>**1364** | If written, passage(s) relied upon:<br>*"8. There is a compliance issue here if we do not with the BSB in the long run".* | (b) Withdrawn |
| **22** | **13th September 2016** | Writing | **R's CMC**<br><br>**1380** | Passage(s) relied upon:<br>*"8. There is a compliance issue here if we do not with the BSB in the long run".* | (b) |
| **23** | **26th September 2016** | Writing | **Anthony Metzer QC**<br><br>**1397 – 1399** | Passage(s) relied upon:<br>*"6… I have told you over and over again that this was not necessarily a good idea"* | (b) |

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| | | | | *And*<br><br>*"You have been pushing one of your children's friends as applicants for various clerks jobs. I go formally on record when I say she can apply if she wishes… I do not want you to talk to me about her or indeed any other applicant for work placement or employment. You constantly put me in a 24position which makes me feel uncomfortable".* | |
| **24** | **18th October 2016** | Oral | **Anton van Dellen** | Words relied upon:<br>*"I spoke to AVD and told him that it was not acceptable. He told me that it was a directive from HOC".* | (b) and (f) |
| **25** | **18th October 2016** | Oral | **CMC** | Words relied upon:<br>*"I made PID to the CMC as a whole as the policy should not have gone up.* | (b) and (f) |
| **26** | **20th October 2016** | Oral | **Anthony Metzer**<br><br>**Adam Gersch** | Gist of words:<br>*"I told AMQC and AGE that the intern issue had been toxic for chambers. That we had failed in our duty to follow EO legislation, and that the cover up attempted on 18th was not helpful".* | (b) and (f) |

***"Inviting a tenancy recruitment panel to revisit its unfavourable application of a particular candidate who the Head of Chambers was keen to recruit was inappropriate and inconsistent with fair recruitment and selection practice"***

| **Alleged PID no.** | **Date** | **Whether orally or in writing** | **To whom was it made?**<br><br>**If in writing, document said to contain the protected disclosure** | **If made orally, the gist of the words used by C**<br><br>**If in writing, the passage(s) relied upon** | **Which paragraphs of s.43B(1) engaged** |
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| **27** | **June or July 2016 (after Fatos Selita interviewed)** | Oral | **Anthony Metzer QC** | Words used:<br>*AMQC asked me to ask the panel members to change their mind. I told AMQC that I did not want to do this.* | (b) and (f) |
| **28** | **June or July 2016 (after Fatos Selita interviewed)** | Oral | **Catherine Milsom** | Words used:<br>*I told Catherine Milsom, Head of Pupillage and Tenancy Committee, that I was not happy chatting out AMQC instructions. She told me not to worry and that Fatos could reapply.... I presumed that she meant that he will get through one way or the other.* | (b) and (f) |
| **29** | **June or July 2016 (after Fatos Selita interviewed)** | Oral | **Sarah O'Kane** | Words used:<br>*I told Sarah O'Kane that the HOC wanted Fatos in, but that I thought that the panel decision should stand. She said that she would change her decision, but AMQC should never ask her to be on a panel again. I told her that he should speak to her himself.* | (b) and (f) |
| **30** | **June or July 2016 (after Fatos Selita interviewed)** | Oral | **Anthony Metzer QC** | Words used:<br>*I reported conversation with SO'K back to AMQC, and said that asking panel members to change their minds was a breach of the code.* | (b) and (f) |
| **31** | **5th July 2016** | Oral | **Anthony Metzer QC** | Words used:<br>*I had been approached by Fatos at AMQC's request and had told him that I could not help him. I told* | (b) and (f) |

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| | | | | *AMQC that it was highly inappropriate to have me put in that position. I told him that he was breaching the Code of Conduct* | |
| **32** | **After 1st September 2016** | Oral | **Anthony Metzer QC** | Words used:<br>*After 1st September I spoke to AMQC again stating that I believed that Fatos being brought in was a huge mistake and a breach of the code. I told him that the rules were not there to be bent to his will. He was not happy with my comments* | (b) and (f) |
| **33** | **2nd September 2016** | Oral (either in person or by telephone) | **Anthony Metzer QC** | Words used:<br>*AMQC asked me verbally about sponsored pupillages. It was clear that he was going to put Fatos forward at all costs. I stated again that I believed that AMQC's response to a brick wall of regulation was to knock it down* | (b) |

***"There was a failure to address inappropriate and potentially discriminatory behaviour by members and staff"***

| **Alleged PID no.** | **Date** | **Whether orally or in writing** | **To whom was it made?**<br><br>**If in writing, document said to contain the protected disclosure** | **If made orally, the gist of the words used by C**<br><br>**If in writing, the passage(s) relied upon** | **Which paragraphs of s.43B(1) engaged** |
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| **34** | **14th or 15th March 2016** | Oral | **Anthony Metzer QC** | Words used:<br>*I stated that Nicole Gisby had been discriminated against over her travel card... being treated differently from all males. That she had been discriminated against on basis of gender by Michael Martin. One grievance had already been found in her favour. I told him that it was not enough just to let more senior staff bully her. She was now able to get access to DDA as a consequence of her knee.*<br>*I told him that we were in breach of our duty of care as an employer. I told him that we were in breach of equalities legislation.*<br>*He said that I should deal with it. I helped NG to be managed out as I felt that she was never going to be treated fairly.* | (b) and (f) |
| **35** | **August or early September 2016** | Oral | **Anthony Metzer QC** | Words used:<br>*During August or early September a verbal conversation took place between AFH and a group of members plus one staff member. He called a new a tenant a lesbian as she was a feminist. Generally unpleasant. These matters were reported to the head of chambers.* | (b) |
| **36** | **August or September 2016** | Oral | **Members of CMC including Anthony Metzer QC** | Words used:<br>*I stated that the level of sexism against young women in the clerks room was becoming noticeable. Also was in as she had powerful connections with AGE etc.... she also did everybody in crimes billing.* | (b) |

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| **37** | **7th September 2016** | Oral | **Anthony Metzer QC** | Words used:<br>*AMQC allowed BC to ritually humiliate me. He used phrases such as 'stupid' in close connection with 'woman'. This was not the first time that I raised concerns about BC and his temper and cereal attitude towards women and gay people. AMQC did nothing* | (b) and (f) |
| **38** | **After 7th October 2016** | Oral | **Alexandra Gilmore** | Words used:<br>*I disclosed my concerns regarding equalities legislation and the welfare of one of our staff. They passed on the information into the centre of GC.* | (b) and (f) |
| **39** | **After 7th October 2016** | Oral | **Jonathan Mitchell** | Words used:<br>*I disclosed my concerns regarding equalities legislation and the welfare of one of our staff. They passed on the information into the centre of GC.* | (b) and (f) |

**Passages relied upon by the Claimant re PID14**

*a)* *That on the 30th March 2015, AMQC instructed a member of staff, Paul Harding, to move £5000 from the Argent fees account (members money held in trust) to the Argent services account in order to pay ongoing liabilities to Argent creditors. This was against the express advice of the member of staff. The member of staff stated that he was forced by AMQC in making the transaction in the full knowledge that this action was theft. AMQC made no note nor did he indicate that he intended to repay this money. KG questioned him at the time and AQMC stated that he had to do it because the bank loan needed to be paid. He indicated to KG that he did not see why he had to pay out of this own funds as head of chambers. In forcing a member of staff to commit a criminal act, AMQC intentionally intimidated through his use of his position as Head of Chambers.*

*b)* *On 7th January 2016, AMQC forced the Deputy Treasurer, Karen Gillard (KG), to have repaid to him from chambers finances £75 for the removal of a splinter from the finger of this daughter, RM, who had been working and paid by chambers £250 for a week's work experience. This work experience had been imposed by AMQC on KG. The splinter had been got when Rebecca was moving boxes in the basement. Ashley Perkins at the time stated that "a pair of tweezers could be purchased for £1.99" but KG felt that AMQC would not have done this and felt compelled to sign off at the Head of Chambers request.*

*c)* *On multiple occasions between 6th May 2014 to date, AMQC has received expenses from chambers to take his own solicitors out. These solicitors and meetings have not been to discuss anything but this own work. These expenses were often not filled incorrectly or the form was filled in after the monies paid at AMQC request.*

*d)* *That September 2014, AGE instructed a structural engineer to advise as to whether the archway in the clerks room was a load bearing wall. He could have asked any member of staff, and indeed a member of staff from Middle Temple Estates department stated to AGE that it most likely was a load bearing wall, it having been turned into a archway in the first place. There was no CMC authorisation either before or after the event. It cost £1000 + VAT.*

*e)* *That AGE attempted to bring chambers into disrepute with GC landlord, Middle Temple, when having instructed a structural engineer, in front of the head of estates department of Middle Temple, AGE then denied that he had done this. KG was forced to negotiate with Middle Temple who were angered and embarrassed by AGE behaviour. KG at the time, not being Deputy Treasurer, and believing that Head of Chambers had best interest of Goldsmith's at heart, took the matter to AMQC and she suggested that payment of this bill was now a matter of retaining "face and relationship" with GC landlord as well as what AGE had agreed with the structural engineer.*

*f)* *That in August 2014, a staff review was undertaken by AGE where he did not properly administer the agreements made with the TUPE'd members of staff brought over from Argent to Goldsmith in effect treating the males differently from the females thus creating an inequality not only between GC and Argent staff but between female and male Argent joining Goldsmith.*

*g)* *That AGE contracted with QDOS (insurance company) a company AGE uses in private interest outside of the Bar. He did not as Treasurer either conduct due diligence in his contracting with this firm on behalf of Goldsmith nor did he declare an interest in previous involvement with this company.*

*h)* *That May 2014 – May 2015, AMQC and AGE, withheld information from members of ex-Argent who were tenants either in Goldsmith or outside of Goldsmith that they were all in breach of their legal obligations under ICO as both AMQC and AGE had not ensured that the building, 5 Bell Yard, had been cleared. The members were lead to believe that this has been completed under guidance of AMQC and AGE.*

*i)* *That during Argent closure, AGE contracted with firms known to him, in outside of the Bar, on the behalf of Argent. These contracts totalled more that £40,000 of members money. They were not*

*declared as an interest by AGE or scrutinise by anyone else and therefore it is impossible to identify whether AGE was able to receive preferential treatment by these firms for the work given by Argent chambers. AGE has stated previously that one of these contracts was given to a solicitor who had offered AGE office space for free in the event that the Goldsmith merger did not take place.*

*j) That Barry Coulter (BC) failed to advise the insurance company QDOS at each point that his actions were taken in the Michael Martin disciplinary. This rendered the insurance invalid thus leaving Goldsmith chambers exposed to the potential settlement and all legal fees. As a consequence of this, GC ended up with legal cost in excess of £80,000 because of his negligence in his conduct by not reading the terms and conditions of the insurance company which he admitted to KG that he had not read.*

*k) That AMQC has pressured and bullied KG in taking on family and family friends of AMQC to have "paid internships" in 2016 against KG advice and needs of the business. AMQC ordered KG to lie as to when his nephew's application arrived in chambers to the CMC in September 2016.*

*l) That AMQC instructed KG to pay his daughter through her consultancy in order to conceal RM being paid by chambers for the second time in one calendar year. KG admits she became complicit in this course of action as instructed by AMQC as pressure was put on her by the HOC.*

*m) Due to negligence in dealing with Argent matters that AMQC either failed to know to instruct or in the alternative had failed to keep up to date with matters surrounding insurance renewal for employee negligence from Argent as a consequence of this failure, AMQC left Argent members exposed to photocopying contract, known as CIT, to c.£72,000 to Argent members.*

*n) That AMQC has run a smear campaign against a fellow member of the Bar namely KG in order that she be prevented from telling the truth regarding Agent to its members. AMQC has not only stated untruths about KGs conduct but also used GC finances without CMC prior approval to fund Withers LLP. No declaration has been made to chambers regarding familial connection to Withers LLP, the Senior Partner being the Sister in Law of AMQC.*

*o) That AGE and AMQC have wilfully breached the merger agreement between GC and Argent, namely paying debts belonging to Argent with Goldsmith money. KG attempted to tell the CMC that was happening in the full knowledge of AMQC, that AGE instructed KG not to tell GC CMC.*

*p) That AMQC has wilfully refused to fully engage in attempting to get the Arbitration settled preventing Barry Coulter and Stephen Willmer from complaining to the Bar Council much earlier on, that this as left Argent members exposed for longer than necessary to creditor including HSBC Bank*

## APPENDIX 2

LEGAL OBLIGATIONS AND CRIMINAL OFFENCES RELIED UPON BY THE CLAIMANT FOR ALLEGED PUBLIC INTEREST DISCLOSURES

Ongoing Core Duties (CD) apply at all times to all barristers in the Bar Standards Handbook. The BSB is the regulator for barristers and chambers. It derives its power from the Legal Services Act 2007.

CD 5- you must not behave in a way which is likely to diminish the trust and confidence which the public place in you or the profession.

CD 8- you must not discriminate unlawfully against any person.

CD 9- you must be open and cooperative with your regulators.

PID 1 CD 5
PID 2 CD 5 and 9
PID 3 Theft and CD 5 and 9
PID 4 CD 5
PID 5 CD 5 and 8
PID 6 CD 5 (withdrawn on day 9 of the hearing)
PID 7 CD 5
PID 8 CD 5
PID 9 CD 5 and 9
PID 10 CD 5 and 9
PID 11 CD 5 and 9
PID 12 theft and CD 5 and 9
PID 13 theft and CD 5 and 9
PID 14 theft and CD 5 and 9
PID 15 theft and CD 5 and 9
PID 16 theft and CD 5 and 9
PID 17 CD 5, 8 and 9
PID 18 CD 5 and 8.
PID 19 Equality Act 2010 and CD5 and 9
PID 20 Equality Act 2010 and CD5 and 9
PID 21 Equality Act 2010 and CD5 and 9 (withdrawn on day 4 of hearing)
PID 22 Equality Act 2010 and CD5 and 8 and 9
PID 23 Equality Act 2010 and CD5 and 8 and 9
PID 24 Equality Act 2010 and CD5 and 8 and 9
PID 25 Equality Act 2010 and CD5 and 8 and 9
PID 26 Equality Act 2010 and CD5 and 8 and 9
PID 27 Equality Act 2010 and CD5 and 8 and 9
PID 28 Equality Act 2010 and CD5 and 8 and 9
PID 29 Equality Act 2010 and CD5 and 8 and 9
PID 30 Equality Act 2010 and CD5 and 8 and 9
PID 31 Equality Act 2010 and CD5 and 8 and 9
PID 32 Equality Act 2010 and CD5 and 8 and 9

PID 33 Equality Act 2010 and CD5 and 8 and 9.
PID 34 Equality Act 2010 and CD5 and 8 and 9.
PID 35 Equality Act 2010 and CD5 and 8 and 9
PID 36 Equality Act 2010 and CD5 and 8 and 9
PID 37 Equality Act 2010 and CD5 and 8 and 9
PID 38 Equality Act 2010 and CD5 and 8 and 9
PID 39 Equality Act 2010 and CD5 and 8 and 9