



# EMPLOYMENT TRIBUNALS

**Claimant**        **Lauren De Lacey**

**Respondent** **Wechseln Limited t/a the Andrew Hill Salon.**

**Heard at: Exeter**                      **On: 4, 5 and 6 November 2019**

**Before: Employment Judge Goraj**

**Members: Mrs S Richards**  
**Mr TJ McAuliffe**

**Representation**

**The Claimant: Mr S De Lacey, Solicitor (the Claimant's father)**

**Respondent: Mr J Allsop, Counsel**

**Mr D Leach (participant) Mr M Lee, Counsel**

## **JUDGMENT ON APPLICATION BY THE CLAIMANT DATED 22 JUNE 2018 FOR PART RECONSIDERATION OF JUDGMENT ISSUED ON 8 JUNE 2018**

**The unanimous judgment of the Tribunal is that: -**

The claimant has failed to establish the allegations at paragraphs 6 (a) and (b) of the Tribunal's letter dated 3 January 2019.

**The majority judgment of the Tribunal is that: -**

The claimant has also failed to establish the allegations at paragraph 6 (c) of the Tribunal's letter dated 3 January 2019.

**The minority judgment of the Tribunal (which is attached at  
Annexe A) is that: -**

The claimant has established the allegations at paragraph 6 (c) of the Tribunal's letter dated 3 January 2019.

# REASONS

## Introduction

1. By a reserved judgment which was sent to the parties on 8 June 2018 (“the Judgment”), the Tribunal held, in summary, that (a) the claimant had been unfairly (constructively) dismissed by the respondent and (b) dismissed the claimant’s complaints of pregnancy/maternity/sex discrimination against the respondent.
2. The claimant subsequently presented an application dated 22 June 2018 for the reconsideration of the dismissal of the discrimination elements of the Judgment (“the application dated 22 June 2018”) pursuant to Rule 70 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations dated 2013 (“the 2013 Rules). The application dated 22 June 2018 was only allowed to proceed to the limited extent identified at paragraph 6 of the Tribunal’s letter dated 3 January 2019 (“the letter dated 3 January 2019”) (pages 199-202 of the bundle). The remaining elements of the application dated 22 June 2018 were dismissed by the Tribunal as it was satisfied that there was no reasonable prospect of the issues raised resulting in the Judgment being varied or revoked for the reasons stated at paragraph 8 of the letter dated 3 January 2019
3. Mr D Leach, the respondent’s Counsel at the liability hearing in April 2018, made a subsequent application to participate in these proceedings pursuant to Rule 35 of the 2013 Rules. This was granted by the Tribunal on 4 June 2019 in the light of the potentially very serious allegations of professional misconduct which were made against him in the application dated 22 June 2018 (page 212 of the bundle). Mr Leach’s participation in these proceedings is limited to his defence of the allegations against him identified at paragraph 6 of the letter dated 3 January 2019 and related matters.
4. The claimant made related complaints to (a) the police (b) the Solicitors Regulation Authority (“the SRA”) in respect of the alleged professional misconduct of the respondent’s solicitor at the relevant time, Mr J Osborne, and (c) to the Bar Standards Board (“BSB”) in respect of the alleged misconduct of Mr Leach. The police have declined to take any further action at this time. The SRA informed Mr Osborne’s firm by letter dated 15 May 2019 that it had closed its file as there was no evidence that they had breached its rules. The investigation of the claimant’s complaint to the BSB is stayed pending the determination by this Tribunal of the allegations against Mr Leach.
5. The Claimant has also lodged an appeal to the Employment Appeal Tribunal in respect of the dismissal by the Tribunal of the pregnancy/maternity / sex

discrimination claims which is also stayed pending the outcome of the application dated 22 June 2018.

6. The application dated 22 June 2018 has been the subject of 2 case management preliminary hearings including on 19 July 2019. This case was listed for hearing for 3 days on 4, 5 and 6 November 2019 to deal with (a) the application dated 22 June 2018 and (b) the claimant's outstanding claim for compensation. The judgment relating to the application dated 22 June 2019 was reserved on 6 November 2019.

The bundle and associated documents

7. The Tribunal was provided with an agreed bundle of documents for use at this reconsideration hearing ("the bundle"). The Tribunal has also had regard, where relevant, to the witness statements and documents which were relied upon at the liability hearing.

The written submissions/ skeleton arguments of the parties

8. The Tribunal was also provided with written skeleton arguments/ submissions by the parties/ the participant (including updated written submissions from the claimant on 6 November 2019) together with various legal authorities and associated guidance. The Tribunal has had regard to the contents of the written and oral submissions of the parties together with the authorities referred to therein insofar as they are relevant to the matters in issue in the claimant's application dated 22 June 2019. The Tribunal has had regard in particular in respect of the determination of the allegations at paragraph 6 of the letter dated 3 January 2019 to the following authorities/ guidance: -

Ladd v Marshall [1954] 1 WLR 1489.

Flint v Eastern Electricity Board [1975] IRLR 277.

Stonehill Furniture v Phillippo [1983] ICR 556.

Wileman v Minilec Engineering Limited [1988] IRLR144.

In re H (Minors) [1996] AC 563.

Secretary of State for the Home Department v Rehman[2003] 1AC 153. In re D (Secretary of State for Northern Ireland intervening ) [2008] 1WLR 1449.

Foodco UK LLP v Henry Boot Developments Limited [2010] EWHC358(Ch).

Newcastle upon Tyne City Council v Marsden [2010] ICR 743.

SQR Security Solutions v Badu (UKEAT/0329/15/DA).

Employment Rights Advice Limited v Craig Vernon and Volksmaster Limited (UKEAT/0082/18/LA).

Phipson on evidence (19<sup>th</sup> edition) at paragraphs 6-57 – 6-58.

The Law

9. The Tribunal has reminded itself in particular, that when determining an application for reconsideration a Tribunal is required to have regard to the

provisions of Rules 70 -72 of the 2013 Rules including that a Tribunal may revoke or vary a Judgment (or part thereof) where it is satisfied that it is necessary to do so in the interests of justice.

10. The Tribunal has further reminded itself in particular, that when determining the relevant factual disputes which it is required to determine in respect of paragraph 6 of the letter dated 3 January 2019 (for the purposes of determining whether it is therefore necessary in the interests of justice to revoke or vary the Judgment relating to the claimant's discrimination claims) it is required, in summary :- (a) to apply the civil standard of proof namely whether the claimant has established that it is more likely than not that the factual matters relied upon in support of her application dated 22 June 2018 occurred (b) when doing so however, the Tribunal is also required to take into account that the more serious the allegation/ the more serious the consequences if the allegation is proved, the less likely it is to have occurred and (c) accordingly, the stronger the evidence therefore required to prove the allegation on the balance of probabilities.

#### The approach of the Tribunal

11. It was agreed that the Tribunal would (a) determine first whether the claimant has established the factual basis of the allegations at paragraph 6 of the letter dated 3 January 2019 (or any of them ) and (b) thereafter set out in this judgment its proposed resolution of the application dated 22 June 2018 in the light of such findings subject to any further written submissions from the parties (but not the participant Mr Leach).

#### Witnesses

12. The Tribunal has received witness statements/ heard oral evidence from the following witnesses: -
  - 12.1. Ms Gemma Shillabeer stylist with the respondent.
  - 12.2. Ms S Cooper, stylist with the respondent
  - 12.3. Mrs F Cole, stylist with the respondent.
  - 12.4. The claimant
  - 12.5. Mr D Leach, the respondent's former Counsel and participant.
  - 12.6. Mrs S Delany, the general manager of the respondent.
13. Ms Shillabeer ("GS") and Ms Cooper ("SC") attended this hearing pursuant to the terms of witness orders dated 25 October 2019 which were obtained by the claimant. The Tribunal Judge decided, in the light of the potentially serious and sensitive nature of the allegations contained in the application dated 22 June 2018, which included allegations of interference with witness evidence by the respondent, not to notify the respondent or Mr Leach of the issue of the witness orders prior to the commencement of the hearing. The Tribunal however conducted a case management hearing at the commencement of this hearing during which it advised the respondent / Mr Leach of the position regarding the issue of the witness orders. Further, it

was agreed at the hearing that (a) GS and SC would give oral evidence without being required to provide a witness statement (b) the legal representatives for the respondent and Mr Leach would be given an opportunity to take their client's instructions/ prepare their questions prior to the cross examination of GS and SC and (c) that GS and SC would not be in attendance in the Tribunal room whilst the other gave evidence.

#### Background – the liability hearing in April 2018

14. The liability hearing in this case took place on 23 - 26 April 2018. As set out in the case management order dated 1 December 2017 (pages 39 a – 39c of the original hearing bundle) that hearing was timetabled on the basis that the oral evidence of the parties would be concluded by the end of day three (25 April 2018) and that the last day of the hearing would be limited to (a) oral closing submissions (b) the deliberations and judgment of the Tribunal and (c) the determination of remedy (if relevant). A proposed timetable of evidence was agreed accordingly.
15. On the second day of the hearing (24 April 2018), the claimant made a successful application for a witness order requiring the attendance of an additional witness (LM) who had not previously been scheduled to give evidence on her behalf. LM gave her unscheduled oral evidence to the Tribunal on 24 April 2018.
16. The Tribunal heard oral evidence from a total of 16 witnesses (5 for the claimant and 11 for the respondent) during the course of the liability hearing. The respondent had three principal witnesses (Mr A Hill, Mrs Delany and Ms G Low) who were the alleged discriminators in the case. The respondent's remaining witnesses included six trainees/former trainees/stylists (including GS and SC), who were scheduled to give their evidence to the Tribunal on 25 April 2018 (after the respondent's principal witnesses had concluded their evidence) and attended the Tribunal accordingly. The witness statements of such witnesses, including GS and SC were, in comparison to the principal witnesses, relatively short and, overall, limited to specific issues in the case.
17. The signed witness statement of GS, then a graduate stylist, dated 24 October 2017 is at pages 91-92 of the bundle. GS' witness statement addressed the claimant's allegations regarding the circumstances in which GS took her trade test in July 2016. The respondent also submitted to the Tribunal a signed statement from BY dated 21 October 2017 (which is at pages 84-85 of the bundle). BY's statement also addressed the claimant's allegations relating to the circumstances in which BY took her trade test.
18. It was apparent by 25 April 2018 that the witness evidence of the parties would not be concluded by the end of that day. In the circumstances, the Tribunal agreed to hear the remaining oral evidence and closing submissions on 26 April 2018 and did so accordingly. GS did not give evidence to the Tribunal on 26 April 2018 and no application was made by

the claimant's representative for a witness order securing her attendance. The hearing concluded on 26 April 2018 and judgment was reserved.

#### The events of 4 May 2018

19. The claimant's application dated 22 June 2018 relies in large part on alleged disclosures by GS to the claimant during a chance meeting at a local public house on the evening of 4 May 2018. These alleged disclosures concerned the alleged wrongdoing by the respondent and /or its professional advisers, as identified in paragraphs 6 (a) and (b) of the letter dated 3 January 2019, relating to the preparation for and defence of the claimant's Tribunal claim in April 2018. GS was a former work colleague who, prior to the events in question, was also a close friend of the claimant. The nature of the matters allegedly disclosed by GS to the claimant on 4 May 2018 are contained in paragraphs 5 - 8 of the claimant's witness statement dated 11 May 2018 (pages 97 – 98 of the bundle) and in the claimant's subsequent statement dated 18 June 2018 (pages 100 – 101 of the bundle) ("the claimant's statement dated 18 June 2018") - which was submitted in support of her application dated 22 June 2018. The veracity of the allegations (as opposed to the discussions on 4 May 2018) are considered separately below.
20. GS' position regarding her discussions with the claimant on 4 May 2018 is contained in (a) her written statement at pages 57 – 60 of the bundle, referred to further below, and (b) in her oral evidence to this Tribunal. In brief summary, GS accepted that she had had a chance meeting with the claimant at a local public house on 4 May 2018 but denied that she had disclosed any alleged wrongdoing by the respondent/ its professional advisers to the claimant during such encounter.
21. Having weighed the available evidence, the majority of the Tribunal is not satisfied that the claimant has established, on the balance of probabilities, that GS disclosed the alleged wrongdoing identified in the statements of the claimant dated 11 May 2018 and/or 18 June 2018 to the claimant on 4 May 2018. When reaching this conclusion, the majority of the Tribunal has taken into account in particular, that (a) the burden is on the claimant to establish the factual basis of her claim (b) GS denied making any such alleged disclosures to the claimant on 4 May 2018 and (c) the claimant has not provided any supporting witness evidence / did not make any contemporaneous notes of the alleged discussions.
22. Notwithstanding that the claimant has failed to establish the events of 4 May 2018 on the balance of probabilities, the Tribunal is however satisfied that GS would have been in a difficult position at that time because of the conflicting loyalties towards her employer and her friend. It is therefore possible that GS may have led the claimant to believe on 4 May 2018 that

the respondent / its advisers had acted inappropriately in relation to the conduct of the Tribunal proceedings in order to seek to preserve their friendship.

23. Further, the Tribunal has, in any event, gone on to address the veracity of the allegations identified at paragraphs 6 (a) – (b) of the letter dated 3 January 2019 below.

Paragraph 6 (a) of the letter dated 3 January 2019 - The allegations contained in paragraphs 7 and 8 of the claimant's witness statement dated 18 June 2018 relating to the alleged conduct of Mr Osborne/Mr Leach in respect of the alleged exclusion of the evidence of GS

The alleged events of 25 and 26 April 2018 relating to the alleged exclusion of the evidence of GS

24. In summary, the claimant contended at paragraphs 7 and 8 of the claimant's statement dated 18 June 2018 that :- (a) Mr Leach and his instructing solicitor Mr Osborne told GS whilst she was in the waiting room at the Tribunal with other witnesses that she should not attend the Tribunal the following day to give oral evidence (b) that they would tell the Tribunal that GS had booked the time off to go away for her birthday and (c) that Mr Leach and Mr Osborne insisted upon this course of action, notwithstanding GS' protests, because they perceived that GS was a likely to be a weak witness for the respondent. The claimant further contended in her statement dated 18 June 2018 (paragraph 2) in support of such allegations, that on the late afternoon of 26 April 2018 Mr Leach subsequently told the tribunal that GS could not attend the Tribunal that day to give oral evidence as she was away for a pre-booked birthday weekend.
25. The claimant made additional allegations in her witness statement which was prepared for this hearing ("the claimant's witness statement") including (a) (at paragraphs 6 & 7 ) that Mr Leach had deliberately waited until mid-afternoon on the last day of the hearing (26 April 2018) to inform the Tribunal that he would not be calling GS as (i) he did not want GS to be summoned by way of a witness order as he knew that she would tell the truth in particular regarding the claimant's discriminatory treatment after she had returned from maternity leave) and (ii) that by saying that GS had gone away it would make it more difficult for the claimant to witness summons GS to attend the hearing and (b) (at paragraph 8) of the claimant's witness statement that the respondent's diary entry for 26 April 2018 (page 94 of the bundle) which showed that GS had booked leave for 26 April 2018 on 21 April 2018 was created after that date as GS had told the claimant that she had been told to stay away. The author of such entry is recorded at page 94 of the bundle as Sam (Delany). This allegation was not however put to Mrs Delany in cross examination and was subsequently formally withdrawn by the claimant on the final day of the Hearing (in

response to the Tribunal's request to the claimant to clarify her position regarding this matter).

#### The Claimant's evidence

26. The claimant was not present in the respondent's waiting room on 25 April 2018 and is therefore unable to give first hand testimony of what happened including any discussions between GS and Mr Leach/ Mr Osborne. The claimant largely relies on the alleged disclosures by GS on 4 May 2018 referred to above.
27. The claimant also relies in support of her allegations relating to 26 April 2018 on the extract notes of the Tribunal relating to Mr Leach's comments to the Tribunal on 26 April 2018 regarding the attendance of GS as a witness and the oral evidence of GS. The claimant has not however produced a copy of any contemporaneous notes which were taken by her representatives/ family at the hearing on 26 April 2018.

#### The evidence of GS

##### The written evidence of GS

28. The Tribunal has had regard to GS' evidence contained in the bundle regarding the alleged exclusion of GS' oral evidence from the Tribunal hearing in April 2018 and related matters including in particular, the written statements contained in the bundle which were prepared by GS in response to / following the claimant's statement dated 18 June 2018. These statements are at pages 57 – 60 and 61 of the bundle.
29. In summary, GS stated in her written statements as follows:- (a) she attended the Tribunal on 25 April 2018 to give her oral evidence that day but was unable to do so as the claimant's representative ran over with his questions (b) she had Thursday 26, Friday 27 and Saturday 28 April 2018 booked off in advance for her birthday (c) she did not say that she would be unable to attend the Tribunal because she would be going away (d) she was not instructed by anybody to say that she was going away/ told not to attend because they did not want her to tell the truth (e) the claimant was well aware that GS was not going away as the claimant was due to attend GS' birthday party on 28 April 2018 (f) in the light of the fact that the evidence had run over and GS' booked holiday on Thursday 26 April 2018, Mr Leach and Mr Osborne reviewed GS' evidence and realised that her non- attendance on 26 April 2018 would not affect the case as GS' evidence regarding her trade test would be covered by the evidence of BY and (f) GS had originally booked leave with the respondent for 27 and 28 April 2018 (for her birthday) but had subsequently also requested leave at



short notice for 26 April 2018 as her father had arranged for her to have a tattoo that day which additional leave was granted by the respondent.

30. In summary, GS further stated in her oral evidence as follows:- (a) she told Mr Leach on 25 April 2018 that she was not working on 26 April 2018 as she had an appointment (b) she did not recall saying anything to Mr Leach about going away (c) after she told Mr Leach that she was unable to attend on Thursday 26 April 2018 he left the waiting room (d) When Mr Leach returned he told the claimant that she was not needed on 26 April 2018 as her evidence and that of BY was so similar (e) GS said that she could be available on 26 April 2018 because it was just an appointment but was told that she was not needed because they had BY's evidence and (f) GS was pretty sure that she told Mr Leach about having a tattoo but was not sure what she had said to him about it.

The evidence of Mr Leach

31. The evidence of Mr Leach concerning the alleged exclusion of GS' evidence is addressed at paragraphs 5 – 35 of his witness statement (“the witness statement of Mr Leach”). In brief summary, (a) Mr Leach strongly denied that he had conspired with anyone to exclude the evidence of GS or to mislead the Tribunal regarding GS' availability on 26 April 2018 (b) sets out the sequence of events leading to/ the reasons for his decision not to call GS on 26 April 2018 including that he decided (after consultation with the respondent) that it was not necessary for GS to attend the hearing on 26 April 2018 as GS had booked leave on Thursday 26 April 2018 for an appointment and that her evidence could, in any event, be addressed by BY and (c) it was Mr Leach's understanding that GS had an appointment on 26 April 2018 in preparation for her going away for her birthday at the weekend and GS had told him that it was not possible for her to attend the Tribunal on 26 April 2018 (d) Mr Leach 's recollection of his explanation to the Tribunal on 26 April 2018 for GS' non-attendance that day is set out at paragraphs 27 and 28 of Mr Leach's witness statement.
32. In summary, Mr Leach further stated in his oral evidence as follows :- (a) he had formulated a list of the proposed order of witnesses as part of his preparation for the hearing in April 2018 (b) he could not recall when and by whom he was first told about GS' non availability on Thursday 26 April 2018 but believes that he was probably told by Ms Low of the respondent on the afternoon of Tuesday or the morning of Wednesday 24/ 25 April 2018 ( c) when he became aware of GS's non availability on Thursday 26 April 2018 he considered the possibility of interposing her evidence but decided not to do so as GS' evidence was similar to that of BY (and he also had text evidence upon which he could rely in relation to GS' evidence ) and he did not want adversely to effect the flow of evidence of Andrew Hill or Ms Low who were more significant witnesses of the respondent / increase the risk of going part heard (d) he had no discussion with GS regarding her evidence and had no reason to believe that her

statement was not true or accurate in any way (e) Mr Leach denied that he had considered that the claimant would have been placed at any disadvantage by his decision not to call GS to give evidence to the Tribunal – to the contrary he believed that it would be to the claimant's advantage as GS' statement was likely to carry little weight in the absence of her oral evidence and further, the reduction in the number of witnesses would reduce the risks of an application for costs against the claimant arising from the delay caused by the witness order issued in respect of LM (e) nobody advised him that GS was absent on 26 April 2018 because she was having a tattoo and further he was unaware of this until the preparations for this hearing (f) Mr Leach may have assumed that GS was going away for the weekend as he was told that GS had annual leave booked for the weekend and (g) Mr Leach told the Tribunal on 26 April 2018 what he understood to be the position namely, that GS was not available on Thursday 26 April 2018 and that she was going away at the weekend however he could not recall the exact words which he used to the Tribunal.

### Evidence of Mrs Delany

33. The written evidence of Mrs Delany concerning the alleged exclusion of the evidence of GS is addressed at paragraphs 36 – 47 of her witness statement. In brief summary, Mrs Delany stated in her witness statement that:- (a) the running order of the claimant's witnesses was determined by the respondent's legal team (b) GS was scheduled to give evidence on 25 April 2018 and attended the Tribunal that day accordingly - the reason that she did not give evidence that day was because the hearing was running over (c) it was GS' birthday on 28 April 2018 and on 9 February 2018 she had requested (and had been granted) 2 days leave on 27 and 28 April 2018 – page 93 of the bundle (d) on 21 April 2018 GS requested an additional day's leave on 26 April 2018 – page 94 of the bundle which was granted on the understanding that GS' evidence would be completed by then (e) the reason why GS wanted a day off on 26 April 2018 was because her father had booked an appointment for GS to have a tattoo for her birthday on that day (f) GS was embarrassed about telling Mr Leach / Mr Osborne that the absence on 26 April 2018 was because she was having a tattoo and Mrs Delany does not recollect that either of them were told the reason for GS's leave on 26 April 2018 (g) Mr Leach/ Mr Osborne were told that GS had pre- booked leave for next 3 days because it was her birthday weekend and (h) It was agreed that GS would not be required to attend on 26 April 2018 in the circumstances including as another witness would be giving evidence on the same point and (i) it was nonsense to suggest that GS was excluded from the hearing in any way because the respondent/ its legal team did not like what she had to say or that she was regarded as the respondent's weakness witness (j) GS did not at any stage state that her statement was incorrect and no-one at any point tried to influence her answers. Mrs Delany also stated in her oral evidence that :- (a) she had not had any input into the decision about when/ if to call GS (b) she understood that GS was embarrassed about

telling Mr Leach / Mr Osborne about her tattoo and that they were not told about it.

#### Evidence of Mr Osborne

34. The Tribunal has not heard any oral evidence regarding this matter from Mr Osborne. The Tribunal has however had regard in particular to the contents of the letter from WBW solicitors (who were acting for the respondent at the relevant time) to the SRA dated 26 September 2018 (at pages 145 – 148 of the bundle) in which (a) the allegations are denied on behalf of Mr Osborne and (b) an account of the events in question is provided which is broadly consistent with that provided by Mr Leach.

#### Contemporaneous documentation

35. There is very limited contemporaneous documentary evidence. When considering the allegations the Tribunal has had regard in particular to (a) the respondent's diary entry for 26 April 2018 (page 94 of the bundle) which records an entry on 21 April 2018 by Sam (Delany) showing a holiday booking for 26 April 2018 (page 94 of the bundle) (which the claimant no longer contends may have been fabricated) and (b) the Tribunal's brief (non- verbatim) notes of what Mr Leach said to the Tribunal on 26 April 2018 regarding the non – attendance of GS as set out below.
36. Employment Judge (a) (around 11.30am on 26 April 2018 ) DL – I am not calling GS not available today and (b) between 3 and 3.55pm – gone away for birthday.
37. Member (around 3.12pm) - She (GS) was here yesterday. She was here when it was scheduled. It's her birthday on Saturday. She's gone away for the weekend.

The findings of fact of the Tribunal in respect of paragraph 6 (a) of the letter dated 3 January 2019

38. When reaching its conclusions regarding the allegations at paragraph 6 of the letter dated 3 January 2019 the Tribunal has had regard in particular to (a) the evidence referred to in this judgment and (b) the associated written and oral submissions of the parties/ Mr Leach together with the legal authorities upon which they rely as referred to above .

#### The events of 23- 25 April 2018

39. The Tribunal is satisfied, on the balance of probabilities as follows: -
  - 39.1. GS had booked leave with the respondent to be taken on 27 and 28 April 2018 for her birthday. On 21 April 2018 GS requested, and was granted, by Mrs Delany a further day's holiday to be taken on 26 April 2018. This additional day's leave was requested by GS when her father booked her an appointment to have a tattoo on 26 April 2018. When

reaching this conclusion, the Tribunal has taken into account in particular, the oral evidence of GS and Mrs Delany together with the respondent's diary entry at page 94 of the bundle (which the Tribunal is satisfied is a genuine diary entry).

- 39.2. Mr Leach decided, as part of his preparation for the hearing in April 2018, to call the respondent's witnesses in the order set out in his document at page 1 of the bundle including (a) that he would call the respondent's principal witnesses first namely Mr Hill, Mrs Delany and Ms Low (who had all been identified as alleged discriminators) and (b) GS was intended to be the penultimate witness for the respondent with BY as the final witness.
- 39.3. Mr Leach became aware on or around the morning of Wednesday 25 April 2018 that GS had an appointment on 26 April 2018.
- 39.4. GS attended the Tribunal on 25 April 2018 together with a number of her colleagues in order to give their oral evidence to the Tribunal as scheduled that day.
- 39.5. It was apparent by 25 April 2018 that the oral evidence of the parties would not, as had previously been scheduled, be concluded by the end of that day.
- 39.6. Mr Leach had a brief discussion/discussions with GS on 25 April 2018 regarding her availability to give evidence to the Tribunal as a result of which Mr Leach understood that (a) GS was not available to attend the hearing on 26 April 2018 as she had booked leave for an appointment that day (b) GS had also booked leave for 27 and 28 April 2018 for her birthday and (c) Mr Leach understood/assumed that GS was going away at the weekend for her birthday. The Tribunal is not however satisfied, on the balance of probabilities that (a) Mr Leach was aware that GS was having a tattoo on 26 April 2018 or (b) that GS indicated to Mr Leach any willingness to cancel her appointment to attend the Tribunal on 26 April 2018.
- 39.7. When reaching the above conclusions the Tribunal has taken into account in particular, that (a) the evidence of GS and Mr Leach concerning such matters is broadly consistent including that GS would be absent from work by reason of an appointment on 26 April 2018 (b) whilst GS recalled that she did not say anything to Mr Leach about going away  
Mr Leach accepted that he may have assumed this as he was told that GS had annual leave booked for her birthday weekend (c) that Mr Leach denied that he was aware that GS was having a tattoo on 26 April 2018/ that she had made any offer to attend on 26 April 2018 (d) that whilst GS said that she was pretty sure that she had told Mr Leach about having a tattoo she was not sure what she had said to him about it and

(e) Mrs Delany's evidence that GS was embarrassed about telling Mr Leach/ Mr Osborne about having a tattoo.

- 39.8. Following discussions with Mr Osborne/ the respondent, Mr Leach decided that it was not necessary to call GS to give evidence on 26 April 2018 or to interpose her evidence on Wednesday, 25 April 2018.
- 39.9. The Tribunal is satisfied that the respondent/ Mr Leach/ Mr Osborne reached this conclusion for the following reasons namely (a) that they understood that GS was not available to give evidence on 26 April 2018 for the reasons referred to above and (b) Mr Leach was satisfied that it was not necessary for GS to give oral evidence to the Tribunal as she was not a central witness in the case and that her evidence could be addressed instead by BY who gave similar evidence in her witness statement regarding the circumstances in which she had taken her trade test .
- 39.10. The Tribunal has taken into account in particular, the evidence of Mr Leach, Mr Osborne and GS referred to above including that (a) GS accepted in her oral evidence that when she informed Mr Leach that she was unable to attend on 26 April 2018 he informed her after consultation with the respondent that she was not needed on 26 April 2018 as her evidence and that of BY was so similar (b) GS was not a central witness - as stated above her witness statement is limited to the issue of the circumstances of her trade test which is also addressed in the witness statement of BY.
- 39.11. The Tribunal is further satisfied that there was no further discussion between Mr Leach/ Mr Osborne and GS regarding the contents of GS' witness statement/ any evaluation of her likely strengths as a witness including that (a) there was no practising of GS' witness evidence (b) that there was no assessment by Mr Leach/ Mr Osborne that GS was the respondent's weakest witness (c) that the respondent / Mr Leach/ Mr Osborne did not therefore conclude that they did not wish GS to give evidence and (d) that there was no agreement by Mr Leach/ Mr Osborne that they would tell the Tribunal that GS had pre-booked time off to go away for her birthday as a pretext to avoid GS giving evidence on 26 April 2018/ any associated objections from GS.
- 39.12. When reaching such conclusions the Tribunal has taken into account in particular that (a) the respondent/ Mr Leach/ Mr Osborne denied any such discussions (b) GS denied the allegations in her statement at pages 57-60 of the bundle and GS also denied any such discussions in her oral evidence and (c) the claimant was not present during any such alleged discussions on 25 April 2018 and further that evidence upon which she relies in support of her case is largely based on the alleged disclosures which were made by GS to the claimant on the night of 4 May 2018 which are denied by GS.

39.13. The Tribunal has also taken into account the inherent unlikelihood of Mr Leach and/or Mr Osborne, who are both experienced employment practitioners subject to regulation by the SRA/BSB, being engaged in the potentially serious professional misconduct alleged by the claimant, particularly given that (a) viewed objectively the evidence of GS was of limited relevance in the case as her witness statement was restricted to the issue of the taking of her trade test which was also addressed in the evidence of BY and (b) that there is no evidence to suggest that Mr Leach / Mr Osborne had any reason to believe at the relevant time that GS was unhappy with her signed witness statement or that her oral evidence was likely to depart in any way from such statement.

The events of 26 April 2018

40. The Tribunal is satisfied, on the balance of probabilities that on 26 April 2018: -

40.1. Mr Leach advised the Tribunal during the morning of 26 April 2018 that he did not intend to call GS to give evidence as she was not available that day (paragraph 36 above). The Tribunal is further satisfied that the reasons for such notification were as previously stated above.

40.2. Mr Leach further confirmed to the Tribunal during the afternoon of 26 April 2018 the position regarding GS as stated at paragraphs 36 and 37 above.

40.3. The information provided by Mr Leach to the Tribunal on 26 April 2018 reflected his understanding of the situation regarding GS as referred to previously at paragraph 39 above.

40.4. The claimant's representative did not at any time make an application to the Tribunal for a witness order to require GS' attendance at the Tribunal as a witness.

40.5. There is no evidence to support the contention of the claimant that (a) Mr Leach misled and/or sought to mislead the Tribunal (or the claimant) regarding the availability of GS on 26 April 2018 or (b) that Mr Leach's/ Mr Osborne's decisions or actions in respect of the attendance of GS as a witness at the Tribunal on 26 April 2018 were made for anything other than wholly appropriate and proper case management reasons.

41. In all the circumstances, the Tribunal is not satisfied that the claimant has established the factual basis for allegation 6 (a) of the letter dated 3 January 2019.

Paragraph 6 (b) of the letter dated 3 January 2019 - the allegations contained in paragraphs 7 & 8 of the claimant's witness statement dated 18

June 2018 relating to the alleged conduct of Miss Low and/or Mr Osborne and/or Mr Leach relating to the alleged interference with the evidence of other witnesses.

42. In summary, the claimant contends that during the course of the hearing in April 2018 (a) Ms Low and/ or Mr Leach coached GS and other stylists about what to say in their evidence and/or (b) that Mr Leach told them to say in their evidence to the Tribunal “I don’t know” or “I can’t remember” when their answers were not “what he wanted”.

The claimant’s evidence

43. The claimant did not witness any of the alleged conduct of Mr Leach/ Mr Osborne or Ms Low on 25 April 2019 and is therefore unable to give first-hand testimony regarding such matters. The claimant relies upon the information previously identified at paragraphs 19 -21 above. The claimant did not make any specific allegations against Mr Osborne.

The evidence of GS

44. The Tribunal has had regard to the evidence of GS in the bundle regarding such matters including in particular, the written statements contained in the bundle which were prepared by GS in response to/following the claimant’s statement dated 18 June 2019 (pages 57- 60 /61 of the bundle).
45. In summary, GS stated in her statement (page 60 of the bundle) that (a) she and a number of her colleagues were in the waiting room together with Ms Low on 25 April 2018 (b) they were very nervous and were therefore talking about their statements (c) when BY made a comment about the circumstances of her trade test Ms Low responded by saying that that was not what had happened and (d) EB and SC also recalled something similar being said and (e) Mr Leach did not instruct them to say that they did not know or could not remember as alleged by the claimant but only to do so when they genuinely did not know the answer.
46. In summary, GS stated in her oral evidence that (a) when BY was asked a question GL stated that it had not happened like that (b) she felt that Ms Low was helping them/ reminding them of what had happened because they were nervous and she was their training manager. Ms Low did not however tell them / coach them on what to say – she just gave them advice about the situation. Nobody placed any pressure on GS or any other witness as to how they should give their evidence (c) GS could not recall whether Ms Low discussed the evidence in front of Mr Leach or Mr Osborne or whether they were even in the room at the time (d) Mr Leach did not tell anyone how to respond to the evidence other than to advise them that if they were unsure about how to answer a question/ could not remember the answer it was okay for them to say that they didn’t know or could not remember.

The oral evidence of SC.

47. In summary SC stated in her oral evidence that (a) she was in present in the Tribunal waiting room on 25 April 2018 with the other trainees/ stylists (b) SC recalled Ms Low asking GS and other stylists questions in the waiting room (c) Ms Low told GS on one occasion that she did not agree with the way in which GS described how something had happened (d) the stylists were nervous and Ms Low was trying to calm them down (c) Ms Low did not coach anybody or bring any pressure to bear on any of the witnesses regarding their evidence (d) SC did not believe that Mr Leach or Mr Osborne were in the room when Ms Low was talking to the stylists and (e) Mr Leach did not seek to coach the witnesses in any way. A number of the witnesses asked Mr Leach what to do if they didn't know or couldn't remember and Mr Leach told them that they were allowed to say as such.

#### The evidence of Mr Leach

48. The allegations relating to the alleged coaching of/ interference with witnesses is addressed at paragraphs 36- 43 of Mr Leach's witness statement. In brief summary, :- (a) Mr Leach absolutely denied that he had "practised the evidence with any of the witnesses" including that he had, as alleged, told GS or any of the respondent's witnesses to say that they did not know or could not remember if their evidence was "not what he wanted" (b) Mr Leach had had a discussion with the witnesses as a group on 25 April 2018 during which he had explained, in accordance with his standard practice, that although they should try as far as possible to answer any questions, if they could not remember they should say so (d) Mr Leach did not discuss the substance of her evidence with GS - he did not need to do so as he did not consider GS' evidence to be of any particular importance to the respondent's case and (e) Mr Leach did not witness any of the alleged discussions between Ms Low and any of the witnesses.
49. In summary, Mr Leach also stated in his oral evidence as follows : - (a) Mr Leach did not have any discussion with GS regarding the substance of her evidence whatsoever and had absolutely no reason to believe that her statement was not true or accurate in anyway (b) Mr Leach was not party to any discussions between Ms Low and the other witnesses / did not speak to Ms Low about the witness evidence (c) the waiting room in the Tribunal on 25 April 2018 was very busy with a large number of witnesses for the respondent together with parties in other cases and there was no way in which Mr Leach could have been privy to all the conversations in the waiting room that day.

#### The evidence of Mrs Delany

50. In summary, Mrs Delany stated in her witness statement as follows: - (a) the witnesses were nervous and asked what they should do if they were



asked about something they couldn't answer or couldn't remember- in response to which they were told in clear terms to tell the truth and do the best that they could and (b) the witnesses were not coached and nobody tried to influence their answers to any questions.

51. In summary, Mrs Delany further stated in her oral evidence as follows:- (a) Mrs Delany was in attendance at the Tribunal hearing apart from the first morning and (b) Mrs Delany did not witness any alleged coaching of the witnesses by Ms Low and (b) Ms Low left the employment of the respondent in February 2019.

The findings of fact of the Tribunal in respect of paragraph 6 (b) of the letter dated 3 January 2019.

52. When reaching its conclusions the Tribunal has had regard in particular to (a) the evidence summarised at paragraphs 43 - 51 above and (b) the further submissions and matters referred to paragraphs 8 - 10 above.

The allegations against Mr Leach/ Mr Osborne

53. The Tribunal is satisfied, on the balance of probabilities, that: -

53.1. Mr Leach had a discussion with the respondent's witnesses as a group on 25 April 2018 regarding the Tribunal process. As part of such discussion, and in response to questions from the witnesses about what they should do if they could not remember/ could not answer a question, Mr Leach advised them, in accordance with his standard practice, that (a) they should try as far as possible to answer any questions and (b) however, if they could not remember something/could not answer the question they should say so.

53.2. Mr Leach did not discuss the substance of their evidence with any of the respondent's trainees/ stylists on 25 April 2018. Further, Mr Leach was not party to any alleged discussions between Ms Low and the respondent's witnesses on 25 April 2018 regarding their evidence.

53.3. Mr Leach and Mr Osborne acted wholly appropriately and professionally in their dealings with the respondent's witnesses on 25 April 2018 including that they did not, at any time, seek to coach or interfere with the evidence of the witnesses.

54. When reaching the above conclusions the Tribunal has taken into account in particular that (a) Mr Leach/ Mr Osborne denied any such conduct (b) the allegations are also denied by the other witnesses (GS/ SC and Mrs Delany) (c) the claimant was not present in the respondent's waiting room on 25 April 2018 and further that the evidence upon which she relied in support of her claims is limited to the disclosures which were allegedly made by GS on the night of 4 May 2018 which are denied by GS (d) although Mr Osborne has not given oral evidence to the Tribunal, the

Tribunal has had regard to the written submissions which were provided on his behalf to the SRA/ in response to the claimant's allegations and further that no specific allegations have been made by the claimant against Mr Osborne / suggested in any way by any of the other witnesses and (e) the inherent unlikelihood of Mr Leach / Mr Osborne being engaged in such potentially serious professional misconduct.

#### The allegations against Ms Low

55. Ms Low is no longer in the employment of the respondent and has not given any evidence to the Tribunal in response to the claimant's allegations. Having given careful consideration to the available evidence (including in particular to the evidence of GS, SC and Mrs Delany referred to above) the Tribunal is satisfied, on the balance of probabilities as follows: -
- 55.1. There was a discussion between Ms Low and the trainees/ stylists regarding the latter's evidence whilst they were in the Tribunal waiting room on 25 April 2018 including, during the course of which, Ms Low disagreed with GS' and BY's recollections on matters.
- 55.2. The trainees/ stylists were nervous about the prospect of giving evidence to the Tribunal and, in recognition of such, Ms Low acted towards the trainees/stylists in a supportive manner in her role as their training manager. There was some limited discussion about the witnesses' recollection of events, Ms Low did not however coach the witnesses or seek to pressurise them to change their evidence.
56. When reaching the above conclusions the Tribunal has taken into account in particular that whilst it has not heard any evidence from Ms Low (who is no longer in the respondent's employment) in response to the claimant's allegations (a) Mr Leach and Mrs Delany have both confirmed that they did not hear any alleged inappropriate conduct on the part of Ms Low (c) the claimant was not present in the waiting room on 25 April 2018 and was therefore not privy to any such alleged discussions and (d) SG/ CS denied that there had been any improper conduct on the part of Ms Low and stated that they perceived Ms Low to be acting as a supportive manager and in recognition of the fact that the trainee/stylists were nervous about giving evidence to the Tribunal that day.
57. In all the circumstances, the Tribunal is not satisfied that the claimant has established the factual basis for allegation 6 (b) of the letter dated 3 January 2019.

Paragraph 6 (c) of the letter dated 3 January 2019 – The allegations contained in paragraphs 1 and 2 of the claimant's statement dated 15 July 2018 relating to the alleged interference by the respondent with witness evidence.

### The claimant's case

58. The claimant's case in respect of the above principally relies on what she was allegedly told by GS on 8 July 2018. In summary, the claimant contended at paragraphs 1 and 2 of her statement dated 15 July 2018 that she was told by GS in a bar on 8 July 2018 that (a) GS had been called into the office at the respondent and instructed to make a statement thereby causing GS to become distressed and (b) that GS agreed with the claimant's statement to GS on 8 July 2018 that the respondent had got the respondent's witnesses to lie and change their statements (for the Tribunal hearing).
59. The claimant made further allegations in the claimant's witness statement that witnesses (including GS and SC) had felt pressurised by the respondent to change their witness statements / that their witness statements had been changed by the respondent/Mr Osborne to support the respondent's case/disadvantage the claimant (paragraphs 11-31 of the claimant's witness statement).
60. The claimant relied in particular, in support of her claims on (a) what she had allegedly been told by GS on the night of 8 July 2018 (b) the respondent's notes of the meeting with GS at pages 77 a- 80a of the bundle and (c) the written statements of GS, SC and SB dated 10 July 2018 at pages 221 – 223 of the bundle.
61. The claimant did not make any contemporaneous notes of any alleged discussions with GS/, SC/ Sophie Barnes ("SB") also a former colleague, on the night of 8 July 2018. The claimant accepted that the alleged discussions had taken place in a late-night bar (albeit she contended earlier than suggested by GS/ SC) but denied that she had had anything significant to drink that night and /or that her recollections had been impaired by alcohol.

### The evidence of GS

62. In summary, GS stated in the written statement which she prepared on or around 10 July 2018 (page 221 of the bundle) that (a) she was approached by the claimant who confronted GS (who was accompanied by SB and SC) about her blocking the claimant on social media (b) GS responded that the claimant had twisted what she had told her and that this had placed GS in a difficult position (c) GS told the claimant and SB that although the choice of words which she had used in her statement (for the Tribunal hearing) had been changed to improve her grammar the facts had not been changed (d) the claimant alleged that Mrs Delany and Mr Hill were trying to turn the witnesses against the claimant (d) SC joined in the dispute between the claimant and GS and said " you know what annoyed me about the court case, everything getting changed to be a lie" (e) GS felt uncomfortable about the confrontation with the claimant and texted her

boyfriend to request him to get her away from the situation and (f) GS, SB and SC had been drinking that night.

63. In summary, GS' oral evidence regarding the incident on 8 July 2018 and associated matters was as follows :- (a) GS told the claimant on 8 July 2018 that she had blocked the claimant on social media because of the CCTV footage which the claimant had previously obtained of GS in ASDA on 26 April 2018 (b) GS did not recall agreeing with the claimant's allegation on night of 8 July 2018 (including nodding her head in acquiescence) that the situation had arisen because the respondent had got the witnesses to lie and change their statements (c) GS believed that SC had been talking about changes to grammar rather than to any factual changes to the witness statements (for the Tribunal hearing) (d) GS walked away from the confrontation with the claimant on 8 July 2018 and did not hear what SB said (e) Mrs Delany, Mrs Hill and Amanda (Head) had questioned GS in a meeting about the claimant's statement dated 18 June 2018 and had explained to her the seriousness of the situation/ asked GS how her parents would feel (c) although Mr Hill had popped in and out of the room during that meeting he did not participate in the meeting (d) GS had become upset during the meeting but did not feel intimidated by the respondent. GS was upset because of the nature of the situation and not because of any pressure by the respondent (d) GS prepared her response (pages 57 – 60 of the bundle) to the claimant's statement dated 18 June 2018 at home following the meeting with the respondent and (e) GS prepared her subsequent statement at page 221 of the bundle concerning the events of 8 July 2018 at the request of the respondent in the staff room on 10 July 2018.

#### The evidence of SC

64. In summary, SC stated in the brief statement which she prepared on 10 July 2018 regarding the events of 8 July 2018 (page 222 of the bundle) that (a) GS and the claimant were shouting at each other (b) the claimant accused SB and SC of lying at the (Tribunal) hearing and said that she thought that they were friends (c) GS responded by saying something along the lines that it was not a lie it was a grammar change.
65. In summary SC at first denied in her oral evidence to the Tribunal regarding the events of 8 July 2018 that she had made the alleged statement referred to at paragraph 62 above. However, SC subsequently accepted in her oral evidence that she could not remember much about the conversation on 8 July 2018, including whether she had made the alleged comment, as it was 18 months ago and she had been drinking heavily that night.

#### The evidence of Mrs Delany

66. In summary, Mrs Delany stated in her witness statement that following the receipt of the claimant's statement dated 18 June 2018 (which had been submitted to the Tribunal in support of the claimant's application for a

reconsideration of the Judgment) she, Mrs Hill and Ms Head had held a meeting with GS to discuss the statement, the typed notes of which are at pages 77a – 80a of the bundle (b) GS became upset when she read the claimant's statement dated 18 June 2018 and said that her words had been twisted by the claimant who was supposed to be a good friend (c) Mrs Hill asked GS if her parents knew what had happened and advised her to speak to them for support as the situation could become serious (c) GS was provided with a copy of the claimant's statement dated 18 June 2018 and asked to write down in her own words, after speaking to her mother, what had happened including that she should be completely honest about everything (d) GS subsequently prepared the statement at pages 57 – 60 of the bundle which Mrs Delany understood had been prepared by GS at home and (e) SB advised the respondent of the subsequent incident on 8 July 2018 and GS, SC and SB were asked by the respondent to write down on 10 July 2018 their recollections of that night which are the unsigned statements at pages 221 – 223 of the bundle.

#### The events of June/ July 2108

67. Having given careful consideration to the available evidence, the majority of the Tribunal is satisfied, on the balance of probabilities, as follows: -
  - 67.1. Following the receipt of the claimant's application dated 22 June 2018 (for the reconsideration of the Judgment) and accompanying statement dated 18 June 2018) GS was asked to attend a meeting with Mrs Hill, Mrs Delany and Ms Head, Head receptionist at the respondent on an unknown date in response to the claimant's statement dated 18 June 2018. Mr Hill came in and out of the room in which the meeting was being held from time to time but did not participate in the meeting.
  - 67.2. GS did not receive any prior notice of the meeting/ the purpose of the meeting and became upset when she became aware of the contents of the claimant's statement dated 18 June 2018 (and in particular what the claimant stated that she had been told by GS on the night of 4 May 2018). In summary, the respondent explained to GS the potential seriousness of the situation and advised GS to discuss it with her parents. GS was requested by the respondent to prepare a statement responding to the claimant's statement dated 18 June 2018. GS was provided with a copy of the claimant's statement dated 18 June 2018 for such purposes. GS was advised by the respondent to speak to her mother about the statement dated 18 June 2018 and to give an honest response.
  - 67.3. GS subsequently prepared and submitted to the respondent her written statement at pages 57 – 60 which was prepared by her at home.
  - 67.4. In the light of the above findings, the majority of the Tribunal is not satisfied that the Respondent acted inappropriately towards GS

following the receipt of the application dated 18 June 2018 as alleged by the claimant.

- 67.5. On 8 July 2018, there was a subsequent confrontation between the claimant and, in particular, GS at a local late-night bar. GS was accompanied by SC and SB. The incident occurred late at night and all of the participants had been consuming alcohol. SC in particular had been drinking very heavily. The claimant had had less to drink than the remaining participants.
- 67.6. The claimant confronted GS about GS blocking the claimant on social media. The claimant was distressed/ angry as she and GS had previously been close friends.
- 67.7. GS told the claimant that she was upset because (a) of the footage which the claimant had obtained of her of at ASDA on 26 April 2018 (b) she had subsequently been required to attend a meeting with the respondent which she had found distressing and (c) that the claimant had placed her in a difficult and distressing position.
- 67.8. The claimant replied to GS in the broad terms set out in the penultimate sentence of paragraph 1 of her statement dated 15 July 2018 including, in summary, alleging that the situation had arisen because the respondent had got the witnesses to lie and change their statements (for the Tribunal hearing).
- 67.9. The majority of the Tribunal is not satisfied that GS agreed with the claimant's allegations as contended by the claimant. The majority of the Tribunal is satisfied, on the balance of probabilities, that GS walked away from the situation without responding to the claimant's allegations. When reaching this conclusion, the Tribunal has taken into account in particular (a) the context of the discussion including that it took place late at night following the consumption of alcohol (b) the allegation is denied by GS and (c) it is unlikely that GS would have made such a comment in the light of the position in which she had been placed following the receipt of the claimant's statement dated 18 June 2018 and the subsequent events referred to above.
- 67.10. The Tribunal is however satisfied, on the balance of probabilities, that SC made the comment to the claimant on 8 July 2018 which is attributed to her at the beginning of paragraph 2 of the claimant's statement dated 15 July 2018 namely "my statement was changed but in court I had to go along with my statement, and with what they told us to say".
- 67.11. When reaching this conclusion the Tribunal has taken into account in particular that (a) although SC initially denied in her evidence to the Tribunal that she had made such a remark she subsequently

accepted that she had been drinking heavily on the night of 8 July 2018 and could not recall what had happened (b) GS stated in her note of the incident dated 10 July 2018 (at page 221 of the bundle and paragraph 62 above) that SC had something similar and (c) SB stated in her brief statement dated 10 July 2018 of the incident on 8 July 2018 (page 223 of the bundle) that “SC said to Lauren that her statement and everyone elses are a lie and their words have been twisted”.

#### The preparation of the respondent’s witness statements

68. In summary, the claimant contended that the respondent / Mr Osborne had interfered with the witness evidence before the Tribunal including that they had changed the witness statements of her former colleagues, GS and SC in order to strengthen the respondent’s case and disadvantage the claimant. The claimant relies in support of her case in particular on the contents of her statement dated 15 July 2018 and the statements dated 10 July 2018 of GS, SC and SB at pages 221 – 223 of the bundle (referred to previously above).
69. The claimant expanded her allegations further at paragraphs 11 onwards of the Claimant’s witness statement.

#### The evidence of GS

70. In summary, GS stated in her written statement at pages 57 – 60 of the bundle (which was written in response to the claimant’s statement dated 18 June 2018) that (a) GS prepared a written statement (for the purposes of the Tribunal proceedings) which she gave to Mrs Delany to type up for her so that she could use the correct format and grammar (b) the statement was typed up for GS by Mrs Delany who put it in a slightly more grown up way but without changing the factual basis of the statement (c) after Mrs Delany had typed up the statement for her GS was given a copy to sign once she was happy with the contents.
71. In summary, GS stated in her oral evidence that (a) she prepared the document at page 55 of the bundle for the purposes of the Tribunal hearing in April 2018 – GS believes that it may have been written at home (b) she sent her statement to Mr Osborne / Mr Leach – she believed that she dropped into the office opposite Argos (c) GS cannot recall the document at page 56 of the bundle – GS does not believe that it was prepared by Mrs Delany as Mrs Delany was not at work at that time (d) GS received the email from Mr Osborne dated 24 October 2017 at page 90 of the bundle together with an attached draft witness statement (f) GS was happy with the form of statement at pages 91-92 of the bundle and signed it accordingly (g) GS did not feel under pressure to accept any changes to her statement.

The evidence of SC

72. In summary, SC stated in her oral evidence that :- (a) Mrs Delany typed up the statement at page 52 with SC in the office (b) SC did not prepare a handwritten version (c) the only changes which SC could recall were changes to improve her grammar (d) SC was given the draft statement at pages 53- 54 of the bundle for comments and gave feedback to Mrs Delany who made the manuscript notes on the draft and (e) SC subsequently received a copy of the final form of statement at pages 87 – 89 of the bundle which she signed as she was happy that the statement was true.

The evidence of Francesca Cole

73. Francesca Cole (“FO”), hairstylist at the respondent, submitted a witness statement for the reconsideration proceedings in which in summary, FO (a) explained the process by which her witness statement had been produced for the purposes of the Tribunal hearing in April 2018 (b) confirmed that she had not been placed under pressure by anyone to say anything and (c) the content of the statement which she had signed for the purposes of the Tribunal hearing in April 2018 was true. The contents of FO’s witness statement were not challenged by the claimant.

The evidence of Mrs Delany

74. Mrs Delany’s written evidence relating to the process by which the witness statements were prepared for the hearing in April 2018 is set out at paragraphs 5- 29 of her witness statement. In brief summary, Mrs Delany stated in her witness statement that :- (a) the evidence of the respondent’s principal witnesses (Mr Hill, Ms Low and herself) was prepared following meetings with Mr Osborne (b) the evidence of the remaining witnesses was shorter and focused on specific points raised by the claimant (c) it was therefore decided that they would be asked to record their own accounts of the events in question in writing which were then collated by Mrs Delany and forwarded to Mr Osborne (d) some of the witnesses prepared written notes, others preferred to sit down with Mrs Delany who typed out what they wanted to say (e) all of the witness for whom Mrs Delany prepared a typed witness statement were asked to check that it was accurate and that they were happy with the content (f) their handwritten notes were returned to the witnesses, the majority of which were subsequently discarded (g) after the information had been reviewed by Mr Osborne he formatted the information into a formal witness statement tidying up the wording and grammar where required (h) Mr Osborne emailed to Mrs Delany the proposed changes to the draft statements (page 83 of the bundle) for checking by the witnesses (i) the witnesses had the opportunity to read through the draft statements and to notify Mrs Delany of any amendments (j) in some statements the witnesses were asked to clarify matters raised by Mr Osborne in the draft and (k) the statements were then finalised and signed by the witnesses.



75. Mrs Delany set out at paragraph 24 of her witness statement the process which she stated was followed in respect of SC which she further contended illustrated the process which was adopted with the junior witnesses.
76. Mrs Delany contended that the process adopted for GS, who was the last witness to provide the respondent with a statement, was slightly different as set out at paragraph 20 of Mrs Delany's witness statement. In summary, Mrs Delany stated that:- (a) GS prepared the written statement at page 55 of the bundle / a typed statement was also prepared (page 56 of the bundle) which was sent direct to Mr Osborne (pages 83 and 90 of the bundle) (b) Mrs Delany was on holiday between 23 – 29 October 2017 and Mr Osborne wrote to GS direct on 24 October 2017 with a draft witness statement for checking (page 90 of the bundle).

#### The oral evidence of Mrs Delany

77. Mrs Delany confirmed the above account in her oral evidence and further stated, in summary, that:- (a) this was the first time that she had been involved in such a process (b) although she checked her own statement closely she left it to the remaining witnesses to check and approve their own individual statements (c) she clarified with the witnesses the matters raised by Mr Osborne in the drafts supplied by him (d) she did not put any pressure on any of the witnesses to make any changes to their statements (e) it was up to the witnesses to decide what was in their statements and they signed them of their own free will and (e) Mr Hill had no involvement in the preparation of the witness statements for the staff.

#### The evidence of Mr Osborne

78. Mr Osborne did not attend the Hearing and the Tribunal has had no direct written or oral evidence from him. The Tribunal has however had regard in particular to (a) the contents of the emails passing between Mr Osborne and the respondent / GS referred to above and (b) the contents of the letter dated 26 September 2017 which was sent to the SRA on Mr Osborne's behalf (at pages 145 – 148 of the bundle) (and in particular to page 147 of the bundle).

#### The conclusions of the Tribunal regarding the preparation of the witness statements for the liability hearing

79. After giving careful consideration to all of the above, the majority of the Tribunal is satisfied, on the balance of probabilities, as follows: -
- 79.1. The process adopted by the respondent / Mr Osborne for the preparation of the witness statements for the Tribunal hearing in April 2018, including GS and SC, was as summarised above and, in

particular, in the evidence of Mrs Delany and in the letter to the SRA dated 26 September 2017 (page 147 of the bundle).

- 79.2. In brief summary :- (a) the witnesses, other than the respondent's principal witnesses Mr Hill, Mrs Delany and Ms Low, were requested to provide initial drafts of the statements which were supplied by way of a manuscript note and /or a typed version (which was prepared with the assistance of Mrs Delany) (b) the drafts were sent to Mr Osborne who prepared formal draft statements for consideration by the witnesses, including in some cases, identifying matters which required clarification, such as in the case of SC ( pages 53- 54 of the bundle) (c) the witnesses were requested to check their statement/ provide feedback, which in most cases was obtained by Mrs Delany and passed to Mr Osborne (d) Mr Osborne made any necessary amendments and provided updated statements for approval and signature by the witnesses and (e) the witnesses signed and returned their statements confirming that the facts contained in their statements were true.
- 79.3. The process adopted with regard to GS' statement was slightly different for the reasons given above including that Mr Osborne corresponded with GS directly as confirmed by the email dated 24 October 2017 at page 90 of the bundle in the light of Mrs Delany's absence on leave.
- 79.4. There is no evidence, notwithstanding the Tribunal's findings regarding what SC said to the claimant on the night of 8 July 2018 (at paragraph 67.10 above) that the witness statements of SC or any other witnesses were changed under instruction and/or under pressure from the respondent.
- 79.5. When reaching the above conclusions the majority of the Tribunal has taken into account in particular that :- (a) FC, GS and SC have all denied such allegations and confirmed that the statements which they signed in respect of the Tribunal hearing in April 2018 were true and accurate (b) the evidence of Mrs Delany and Mr Osborne regarding the process by which the relevant witness statements were prepared is consistent with the available documentary evidence including Mr Osborne's emails to the respondent dated 20 October 2017 (page 83 of the bundle ) and to GS dated 24 October 2017 (page 90 of the bundle) (c) the comments which were made by SC to the claimant on the night of 8 July 2018 were made in a confrontational situation late at night and after SC had been drinking heavily. Further SC was in a difficult position with conflicting loyalties to her employer and to the claimant and (d) that the complaint against Mr Osborne has been dismissed by the SRA and further that it is inherently unlikely that he would have acted in such away in breach of his professional duties as a solicitor and the potential consequences of such conduct.

79.6. Further, the majority of the Tribunal is satisfied that there is no cogent evidence that any amendments to the relevant witness statements for the Tribunal Hearing in April 2018 went beyond the process of clarification and amendment which occurred/ would be expected as part of the normal process for the preparation and finalisation of witness statements.

79.7. When reaching the above conclusions the majority of the Tribunal has had regard in particular to (a) the above findings regarding the process adopted by the respondent/ Mr Osborne for the preparation of the witness statements (b) that GS and SC have both confirmed in their evidence to the Tribunal that the factual basis of their statements remained unchanged and that any amendments were confined to stylistic improvements to formatting and grammar and (d) the Tribunal's reasons at paragraph 79.5 above.

80. In all the circumstances, the majority of the Tribunal is not satisfied that the claimant has established the factual basis for allegation 6 (c) of the letter dated 3 January 2019. The minority of the Tribunal is however satisfied, for the reasons set out in the minority judgment attached at Annexe A, that the claimant has established the factual basis for allegation 6 (c) of the letter dated 3 January 2019. The majority of the Tribunal disagrees with the minority judgment for the reasons set out above.

The proposed determination of the claimant's application dated 22 June 2018 – the provisional view of the majority of the Tribunal.

81. It was agreed with the parties at the conclusion of the hearing on 6 November 2019, that:- (a) the Tribunal would set out in this reserved judgment its provisional view of the proposed determination of the claimant's application dated 22 June 2018 in the light of its findings in respect of the matters identified at paragraph 6 of the letter dated 3 January 2019 (b) such provisional view would however be subject to the parties (but not the participant who has no wider interest in this case) being given an opportunity to make written representations regarding the proposed outcome of the claimant's application dated 22 June 2018 before any final determination was made by the Tribunal. The provisional view of the majority of the Tribunal is accordingly set out below.

82. The Tribunal stated in the letter dated 3 January 2019 that: -

82.1. The remit of the reconsideration hearing would be strictly limited to the determination of the issues identified at paragraph 6 of that letter including that it would be for the claimant to satisfy the Tribunal at such hearing that (a) the respondent/its representatives had committed such alleged misconduct and (b) that in such circumstances it was, in any event, necessary in the interests of justice for part or all of the Judgment

relating to the claimant's discrimination claims to be varied or revoked (paragraph 7 at pages 200- 201 of the bundle).

- 82.2. The Employment Judge was satisfied in respect of the remaining matters raised in the application dated 22 June 2018 that there was no reasonable prospect of the Judgment being revoked or varied and that the claimant's application in respect of such matters was refused for the reasons given at paragraph 8 of the letter dated 3 January 2019 (at page 201 of the bundle).
- 82.3. The claimant has an extant appeal to the Employment Appeal Tribunal in which she will be entitled, to the extent permitted by that tribunal, to pursue any alleged errors of law or perversity by the Tribunal in respect of its findings in the Judgment.
83. In all the circumstances, the majority of the Tribunal does not, subject to any further written representations, consider, that it is necessary in the interests of justice for the purposes of Rule 70 of the 2013 Rules, to revoke or vary any part of the Judgment relating to the claimant's discrimination claims for the following reasons: -
- 83.1. The claimant has failed, for the reasons explained above, to establish the factual basis for the allegations identified at paragraph 6 of the letter dated 3 January 2019 save that (a) there was some discussion by Miss Low of the evidence at the Tribunal hearing on 25 April 2018 (paragraphs 55.1 – 55.2 above) and (b) in respect of SC's comments on 8 July 2018 (paragraph 67 .10 above).
- 83.2. The Tribunal is not however satisfied, for the reasons explained in particular at paragraphs 55.2 – 56 above, that Ms Low sought to coach the witnesses and/or to bring any pressure to bear on them to change their evidence as alleged by the claimant.
- 83.3. Further, notwithstanding that Tribunal accepts that SC made the comment to the claimant on 8 July 2018 referred to at paragraph 67.10 above, the majority of the Tribunal is not satisfied for the reasons explained, in particular at paragraphs 55- 56 and 79 above, that the claimant has established the veracity of such allegation.
- 83.4. Having regard to the overall findings of the Tribunal set out above, the claimant has not established any new evidence in respect of the matters identified at paragraph 6 of the letter dated 3 January 2019 which make it necessary in the interests of justice to revoke or vary any part of the Tribunal's findings in the Judgment relating to the claimant's discrimination claims. The provisional view of the majority of the Tribunal is therefore that the claimant's application dated 22 June 2018 should be dismissed.

84. The provisional view of the minority of the Tribunal is however that (a) the findings of the Judgment of the Tribunal dismissing the claimant's discrimination claims should be revoked and (b) the respondent's response in respect of such claims should be struck out for the reasons given in the minority judgment. The majority of the Tribunal disagree with the provisional view of the minority of the Tribunal for the reasons set out above.

#### Way forward

85. The parties have 14 days from the date of the issue of this judgment in which to make any written representations to the Tribunal (with a copy to the other party) regarding the provisional views of the Tribunal regarding the proposed determination of the claimant's application dated 22 June 2018. The parties will also have 7 days thereafter in which to respond to any matters arising from the other's representations. Any written representations should be strictly limited to the proposed determination of the claimant's application dated 22 June 2018 in the light of the findings of the Tribunal regarding the matters identified at paragraph 6 (a) – (c) of the Tribunal's letter dated 3 January 2019.
86. If the parties (or either of them) fail to provide written representations within the timescales identified above the Tribunal will (unless it decides otherwise) make a final determination of the claimant's application dated 22 June 2018 without further notice to the parties.

Employment Judge Goraj

Dated: 29 November 2019

Judgment sent to parties: 5 December 2019

FOR OFFICE OF THE TRIBUNALS